

City of De Pere

FAMILIES FIRST CORONAVIRUS RESPONSE ACT POLICIES

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Updated: April 1, 2020

Update: April 2, 2020

President Trump signed legislation which modifies the requirements of the Family and Medical Leave Act (Emergency Family and Medical Leave Expansion Act), expands access to Unemployment Compensation Insurance Benefits (Emergency Unemployment Insurance Stabilization and Access Act of 2020) and creates paid sick leave (Emergency Paid Sick Leave Act) for employees while the employee or his/her family members are impacted by COVID-19. The legislative responses to the COVID-19 pandemic are all within the scope of what is known as the FAMILIES FIRST CORONAVIRUS RESPONSE ACT (the “Act”). The Act will take effect on April 1, 2020, with a sunset date of December 31, 2020. Guidance on the new act is changing daily at this point so we will be administering it based on the latest guidance.

Any time used under the FFCRA “the Act” should be documented in Payroll as “FFCRA-COVID”. Employees will specify on the request form the specific type of leave as well as additional leave time to make themselves whole (if applicable).

I. **Emergency Family and Medical Leave Expansion Act (EFMLEA):**

- A. **Employee Eligibility:** Employed by City of De Pere for at least 30 calendar days. New guidance on who to exempt from eligibility was issued from the Dept. of Labor on Saturday, March 28th. Exempt from eligibility are emergency responders and health care providers, which has been defined by the City as the City Administrator, City Attorney, all sworn law enforcement personnel, all fire department personnel, all health department personnel, and the Directors of Public Works and Park, Recreation and Forestry and all field employees in the operations, street, and water divisions of those Departments.
- B. **Qualifications:** Employee is unable to work or telecommute due to the need to care for a minor child if the child’s school or child place of care has been closed or is unavailable due to a public health emergency (COVID-19).
- C. **Pay during Leave:** The EFMLEA provides for time away from work for up to 12 weeks. The first ten (10) work days of EFMLEA leave is unpaid, unless the employee has available accrued leave time (including sick leave) which can be substituted for the otherwise unpaid time. The employee will not be required to substitute pay for the first 10 days of unpaid leave. After the 10th unpaid work day, the employee will be eligible for pay from the City equal to 2/3 of the employee’s regular rate of pay for the remainder of the available FMLA leave associated with the qualifying COVID-19 reason, not to exceed a daily cap of \$200 or aggregate cap of \$10,000, per person.

For full time employees, the paid leave opportunity will be based on the regular rate of pay of the employee for the hours the employee would normally work. Part-time employees pay eligibility

will be based on their regular hours worked per week – or if variable – the average hours worked in the preceding six months.

An employee may be eligible for regular FMLA leave if they have a COVID-19 diagnosis and they meet the normal requirements of the FMLA. An employee who is not ill but merely quarantined because of coming into contact with COVID-19 would not be eligible for EFMLEA or regular FMLA.

Employer Paid FMLA leave is allowed **only** for the reason of closure of the child’s school or child’s place of care and the employee needs to provide child care due to the public health emergency and not allowed for other FMLA reasons.

It is important to note that while an employee is entitled to 12 weeks of leave under the EFMLEA, the length of the leave will be reduced by any FMLA Leave previously taken by the employee – this is not a separate 12 week entitlement. In other words, the Emergency Leave for childcare purposes may automatically be reduced by the amount of leave an employee has already taken in the current calendar year, without regard to the reason for the previous leave. FMLA leave will be reduced by any time taken under EFMLEA for the year 2020.

- D. **Employee Status after Leave:** The FMLA’s job protected leave requirements and anti-retaliation provisions also apply to EFMLEA scenarios.
- E. **Procedure for Requesting Leave and Certification:** Employees shall complete the Families First Coronavirus Response Act Request Form that will be used specifically for the purposes under the FAMILIES FIRST CORONAVIRUS RESPONSE ACT. Forms can be found on the City website under Human Resources/COVID-19 City of De Pere Employee Information.
- F. **Return to Work:** Employees will not be required to provide a return-to-work notice unless specifically requested by Human Resources. Employees who experience virus symptoms (cough, shortness of breath, fever) should be symptom free for 72-hours prior to returning to work.
- G. **Enforcement:** Nothing in this provision shall be construed to in any way to diminish the rights or benefits that an employee is entitled to under any law, collective bargaining agreement, or existing City policy. An employee is encouraged to consult with Human Resources regarding any questions or concern. An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

II. **The Emergency Paid Sick Leave Act (EPSLA)**

Provides a limited term paid sick leave benefit for employees outside of the FMLA or EFMLEA. This is separate from the 80 hours (pro-rated for part-time employees and 96 hours for fire represented employees) of paid emergency leave hours that were provided earlier to all regular employees. **Those hours are still available for employees through the end of 2020 and must be approved by their supervisor.**

- A. **Employee eligibility:** All employees actively employed by City of De Pere. New guidance on who to exempt from eligibility was issued from the Dept. of Labor on Saturday, March 28th. Exempt from eligibility are emergency responders and health care providers, which has been defined by the City as the City Administrator, City Attorney, all sworn law enforcement personnel, all fire department personnel, all health department personnel, and the Directors of Public Works and Park, Recreation and Forestry and all field employees in the operations, street, and water divisions of those Departments.

B. Qualifications: The employee must be unable to work or telecommute because:

1. the employee is subject to a Federal, State or local quarantine or isolation order relative to the COVID-19 virus;
2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. the employee is experiencing symptoms of the COVID-19 (fever, cough, shortness of breath) and is seeking medical diagnosis from an appropriate healthcare provider;
4. the employee is caring for a family member subject to a federal, state or local order related to COVID-19;
5. the employee is caring for a son or daughter whose school or place of care is closed or child care provider is unavailable due to COVID-19 precautions; or,
6. the employee is experiencing a substantially similar condition to COVID-19 as has been identified by the Secretary of Health and Human Services.

C. Pay During Leave: The amount of Emergency Paid Sick Leave available to employees is limited:

- Full-time employees will be eligible for 80 hours of Emergency Paid Sick Leave.
- Regular, part-time employees will be pro-rated based upon their regular hours of work.
- Employees who work a variable work schedule, the average bi-weekly hours of work over the preceding six month period will be utilized.

The actual pay to which an employee will be entitled will depend on the reason for the absence.

1. If absent due to reasons identified under 1), 2) or 3) under qualifications above (generally arising from the employee's quarantine the employee will be entitled to:
 - a. 100% of his/her regular hourly rate of pay (as long as in excess of minimum wage) for the hours of work missed and
 - b. Subject to the cap of \$511 per day, to a maximum aggregate payment of \$5,110.
2. If absent due to reasons identified under 4), 5) or 6) under qualifications above, the employee will be entitled to:
 - a. 2/3 of the employee's regular rate of pay or minimum wage, whichever is greater, and
 - b. Subject to the cap of \$200 per day, \$2,000 in the aggregate

D. Benefits During Leave: Benefits will continue as actively working during this leave.

E. Procedure for Requesting Leave and Certification: Employees shall complete a Families First Coronavirus Response Act Request Form that will be used specifically for the purposes under the FAMILIES FIRST CORONAVIRUS RESPONSE ACT. Forms can be found on the City website under Human Resources/COVID-19 City of De Pere Employee Information.

F. Return to Work: Employees will not be required to provide a return-to-work notice unless specifically requested by Human Resources. Employees who experience virus symptoms (cough, fever, shortness of breath) should be symptom free for 72-hours prior to returning to work.

G. Enforcement: Nothing in this provision shall be construed to in any way to diminish the rights or benefits that an employee is entitled to under any law, collective bargaining agreement, or

existing City policy. An employee is encouraged to consult with Human Resources regarding any questions or concern.

An employee may not carry over any unused Emergency Paid Sick Leave. Further, upon an employee's separation from employment, any unused Emergency Paid Sick Leave is forfeited.

III. **Unemployment Compensation Rights**

The Families First Coronavirus Response Act also affords an opportunity to affected employees absent due to the Coronavirus to access Unemployment Compensation Benefits at an earlier point than exists under current law. The Act not only increases funding for Unemployment Compensation Benefits, it also removes the "job search requirement" and allows for benefit entitlement on the first day of the loss of employment, rather than a one week waiting period for benefits.

FAQ's

1. If I am able telework but become unable to because I need to care for my minor child under during day-light hours whose school or place of care is closed or child care provider is unavailable because of a COVID-19 related reason, am I entitled to any leave under the FFCRA?

Yes, if nobody else is able to care for the child and you are not considered a health care provider or emergency responder as defined in employee eligibility above.

2. If I am able telework but become unable to because I became ill or need to care for a family member that is ill for a COVID-19 related reason, am I entitled to leave under the emergency paid sick leave EPSA?

Yes, unless considered a health care provider or emergency responder as defined in employee eligibility above.