



Peter Hans, President

NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

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Memorandum

To: Community College Human Resources Directors and Business Officers
 From: Jonathar Harris, General Counsel
 Subject: Families First Coronavirus Response Act and NC Emergency Leave Policies
 Date: March 25, 2020

Background Summary

On March 18 President Trump signed the Families First Coronavirus Response Act into law. The Act contains two new employee leave provisions addressing absences due to the COVID-19 pandemic:

- (1) Emergency Paid Sick Leave (Emergency Sick Leave)
- (2) Emergency Family and Medical Leave (Emergency FMLA)

These leave provisions are effective April 1, 2020. We are still awaiting regulations and additional guidance and might consider the Emergency Sick Leave or Emergency FMLA.

x An employee can choose

the leave to take when the employee cannot work or telework due to a circumstance related to the COVID-19 outbreak—the new federal leave or the leave a college provides.

- x The federal leave provisions contain reductions and caps in pay. The State policies do not.
- x The federal leave provisions expire December 31, 2020.
- x If a college adopts emergency leave policies consistent with OSHA's policies, employees are less likely to use the new federal leave provisions.
 - o The State policies cover many of the situations covered by federal Emergency Sick Leave.
 - o The State policies cover the one and only situation covered by Emergency FMLA, which is needing to take care of child due to a school or child care closure.

Federal Emergency Paid Sick Leave

Conditions for Use

A college must provide paid sick time to an employee to the extent that the employee is unable to work or telework because:

- (1) The employee is subject to a governmental quarantine or isolation order related to COVID-19.
- (2) A health care provider has advised the employee to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- (4) The employee is caring for an individual subject to an order described in (1) or has been advised as described in (2).

Federal Emergency FMLA

Conditions for Use

A college must provide an employee paid Emergency FMLA in the following situation:

- x The employee is unable to work or telework due to a need to care for a child under 18 years of age if a school or place of care has been closed or is unavailable due to a public health emergency.

Eligible Employees

- x Full or part time employees who have been employed with a college for at least 30 calendar days.

Amount of Emergency FMLA Time

- x An employee can take 12 total weeks. The amount of leave is considered both for social security tax and for FMLA purposes.

Rate of Pay

- x The first ten days may consist of unpaid leave, but an employee can elect to use the new Emergency Sick Leave or any other leave the employee has during the first ten days.
- x The next ten weeks are paid at a rate of not less than 2/3 of the employee's regular rate of pay, times the number of hours the employee would normally be scheduled to work, subject to a \$200 per day cap (\$10,000 aggregate).

Tax Treatment of Federal Leave Payments

- x The leave payments under both federal provisions are not considered wages for social security tax (OASDI) withholding purposes. ~~Therefore, should not be withheld from employee — not wage~~

Status of State of Emergency Leave for State Employees
Currently, the State has four policies in effect

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U.S. DOL also has a Frequently Asked Questions section devoted solely to the posting requirement. It can be found at this link:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

One postingFAQof note:

1. Where do I post this notice? Since most of my workforce is teleworking, where do I electronically “post” this notice?

Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

Do the New Leave Provisions Apply to Contract Temporary Employees?

General Eligibility Provisions

Under the new law, an employee is eligible for Emergency Sick Leave immediately. An employee is eligible for Emergency FMLA if they have been employed for 30 days.

For Emergency FMLA, this eligibility requirement is very different from the eligibility requirement for ‘Regular’ FMLA. For Regular FMLA, the employee must be employed with a college for at least 500 employees for at least 1 year.

Counting Hours for PartTime Employees

For Emergency Sick Leave, leave for part-time employees is based on their average number of work hours in a two-week period. For Emergency FMLA, leave for part-time employees is based on the number of hours the employee would be normally scheduled to work. For part-time college employees that have irregular schedules, see US DOL Q&A #5 and #6

Employee Furloughs

If an employee has been furloughed prior to April 1 or after April 1, the employee is not eligible to take either type of leave. See US DOL Q&A #13, #23, #24, #26.

Can an Employee Use Other College Leave in Conjunction with Federal Leave?

Yes, under certain conditions. See U.S. DOL Q&A #31, #32, #33

Can an Employee Receive Unemployment Benefits While on Federal Leave?