

## Temporary FMLA Leave Expansion and Emergency Paid Sick Leave Procedure (Coronavirus)

### Purpose

The purpose of this temporary procedure is to effect the requirements of the recently enacted Families First Coronavirus Response Act (FFCRA). To ensure compliance with the FFCRA, this temporary procedure will be in effect retroactive to April 1, 2020, and terminate on March 31, 2021.

The critical elements of the FFCRA are the following:

1. It amended the Family Medical Leave Act (FMLA) to provide for the availability of certain FMLA protections for coronavirus-related reasons relating to childcare. (All other FMLA policies and procedures relating to other qualifying reasons have not been altered.)
2. It created a new paid sick leave entitlement for employees unable to work for coronavirus-related reasons.

Specific information regarding the San Diego Community College District's (District) implementation of these elements is provided below.

This procedure applies to eligible employees of all District classifications. This District has determined that it will not exercise its discretion to exempt certain categories of employees (e.g., first responders) from leave expansion as provided for in the FFCRA.

### Implementation Effective April 1, 2020

Prior guidance regarding the effects of the COVID-19 related closure of District sites, including the Human Resources Frequently Asked Questions (FAQs) distributed by email on March 17, 2020, remains in effect, amended as described herein.

As noted in the [FAQs](#), District employees are currently expected to inform their supervisor if they are unable to perform assigned tasks due to a coronavirus-related reason, but they have not been required to use their leave balances. The enactment of the FFCRA changes applicable legal requirements such that this element of prior guidance is no longer applicable. **Effective April 1, 2020, employees must still notify their supervisor of any potential unavailability to perform assigned tasks, and they must also now report leave taken for coronavirus-related circumstances as described in this temporary procedure.**

An employee who is not available to complete tasks for a noncoronavirus-related reason should report leave as is described in their applicable bargaining agreement or handbook.

**To be clear, this temporary procedure relates only to employees' use of leave, and does not impact the assigned tasks of any employee—in other words, unless an employee is on an applicable leave, as described in this procedure or in their bargaining agreement or handbook, the District expects them to continue to complete those tasks that have been or will be assigned to them by their applicable supervisor.**

## Family and Medical Leave Expansion

### Who is Eligible?

All employees who have been employed with the District for at least 30 calendar days.

### Qualifying Reasons for Expanded FMLA

An eligible employee who is unable to perform their assigned tasks—whether those tasks are in person or remote—due to a need to care for a child because the school or place of care has been closed, or the regular childcare provider is unavailable due to a public health emergency with respect to COVID-19

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is under 18 years of age; or 18 years of age or older and is incapable of self-care because of a mental or physical disability.

“Childcare provider” means a provider who receives compensation for providing childcare services on a regular basis, including:

- a center-based childcare provider
- a group home childcare provider
- a family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence)
- other licensed provider of childcare services for compensation
- a childcare provider that is 18 years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.

“School” means an elementary or secondary school.

“Place of care” means a physical location in which care is provided for the employee’s child while the employee works for the District, including:

- day care facilities
- before and after school programs
- schools
- homes
- summer campus
- summer enrichment programs
- respite care programs

### Duration of Expanded FMLA

Employees will have up to 12 workweeks of leave to use from April 1, 2020 through March 31, 2021. **This entitlement to leave is an additional qualifying reason for leave, and not an additional leave entitlement.** In other words, an employee is only entitled to a total of 12 workweeks of FMLA during a 12 month period, inclusive of all qualifying reasons.

For example, if an employee has already taken 6 workweeks of FMLA leave, that employee would be eligible for only the remaining 6 workweeks of expanded FMLA leave to care for a child under this procedure.

### **Leave May be Taken on an Intermittent Basis**

If an eligible employee's qualifying reason necessitates only an intermittent leave, the employee may request intermittent leave. At the discretion of an applicable manager or supervisor, and with the approval of District Human Resources, an employee may be permitted to continue to work on a full or partial basis on an alternate schedule in lieu of taking leave.

### **Paid Leave**

Leave will be unpaid for the first 2 workweeks of leave; however, employees may use any accrued paid vacation, sick or personal leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act, as further explained below. After the first 2 workweeks, leave will be paid at two-thirds (2/3) of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work, but **will not** exceed \$10,000 in total. An employee may use accrued paid leave to supplement the two-thirds (2/3) paid emergency sick leave and receive full pay.

For part-time employees with varying hours, to such an extent that the number of hours the employee would otherwise be scheduled to work cannot be determined with certainty, one of two methods for computing the number of hours paid will be used:

- The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type; or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

### **Benefits During Leave**

While an employee is on leave, the District will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on paid leave, the District will maintain the employee's health benefits in the same manner as if the employee were actually working.

### **Requesting Expanded FMLA**

All employees requesting FMLA leave should provide written notice of their need for FMLA as soon as is practicable to their appropriate manager or supervisor and to District Human Resources at [zcartwright@sdccd.edu](mailto:zcartwright@sdccd.edu). Written notice should be provided via the District form available here <http://www.sdccd.edu/docs/HumanResources/benefits/Employee%20Request%20for%20FMLA%20Form.pdf>. Verbal notice to the employee's manager or supervisor will be accepted on an interim basis until written notice can be provided. Within five business days after the employee has provided this notice, employee will be provided with any Department of Labor (DOL) required notices. An employee may be required to provide documentation of their qualifying reason (e.g., a public notice of school closure; a statement of unavailability of a childcare provider).

On a basis that does not discriminate against employees on FMLA leave, the District may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

### Employee Status After Leave

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. This protection would not extend to an employment action that would take place regardless of the employee having taken leave.

Please contact [employeerelations@sdccd.edu](mailto:employeerelations@sdccd.edu) with any questions.

### Emergency Paid Sick Leave

Emergency Paid Sick Leave, as described below, is available to employees retroactive to April 1, 2020.

### Availability of Emergency Paid Sick Leave

All full- and part-time employees may use emergency paid sick leave if they are unable to perform assigned tasks - whether those tasks are in person or remote - due to one of the following reasons:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
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 COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for their child under 18 years of age if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the secretary of health and human services in consultation with the secretary of the treasury and the secretary of labor.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older and is incapable of self-care because of a mental or physical disability.

### Quantity of Emergency Paid Sick Leave

All eligible full-time employees will have up to 80 hours of paid sick leave available to use for the qualifying reasons above. Eligible part-time employees will have the number of hours worked, on average, over a two-week period, of paid sick leave available to use for the qualifying reasons above.

For part-time employees with varying hours, to such an extent that the number of hours worked over a two-week period cannot be determined with certainty, one of two methods for computing the number of hours paid will be used:

- The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type; or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

To be clear, emergency paid sick leave is a new paid sick leave entitlement separate from and in addition to other paid leaves, and that may be used prior to using other accrued paid leave. An employee may use

emergency paid sick leave during the first 2 workweeks of expanded FMLA leave that are otherwise unpaid (see above).

### **Pay During Emergency Sick Leave**

Emergency paid sick leave will be paid at the employee's regular rate of pay, for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 will be compensated at two-thirds (2/3) their regular rate of pay.

Notwithstanding the above, pay will not exceed:

- \$5,110 in total for leave taken for reasons 1-3 above;
- \$2,000 in total for leave taken for reasons 4-6 above.

An employee may use accrued paid leave to supplement the two-thirds (2/3) paid emergency sick leave and receive full pay.

### **Requesting Emergency Paid Sick Leave**

Employees must notify their appropriate manager or supervisor, as well as District HR at [zcartwright@sdccd.edu](mailto:zcartwright@sdccd.edu) of the need and specific reason for leave under this procedure. A request form will be provided to all employees and must be returned to District HR at [zcartwright@sdccd.edu](mailto:zcartwright@sdccd.edu), at which time the employee will be provided with emergency paid sick leave. The leave will be administratively applied via the District's PeopleSoft system by District HR.

Once emergency paid sick leave has begun, the employee and his or her manager must determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive paid sick time.

Employees may be requested to provide medical certification or a medical note supporting the need for leave under appropriate circumstances, but will not be required when not practicable to obtain.

No employee who appropriately utilizes emergency paid sick leave under this procedure will be discharged, disciplined or discriminated against for use of leave under the procedure or any request to use leave under this procedure.

### **Unused Emergency Paid Sick Leave**

Emergency paid sick leave under this procedure will not be provided beyond March 31, 2021. Any unused emergency paid sick leave will not carry over to the next year or be paid out to employees upon separation.