

**MARK ARMIJO ACADEMY  
EMERGENCY PAID SICK LEAVE AND  
EXPANDED FAMILY MEDICAL LEAVE POLICY**

**PURPOSE:** To comply with the federal Families First Coronavirus Response Act referred to as the CARES Act. The CARES Act was passed to assist employees affected by the COVID-19 outbreak with job-protected leave and pay, where applicable. Under the CARES Act, two new temporary laws were enacted by Congress. The first is the Emergency Family Medical Leave Expansion Act and the second law is known as the Emergency Paid Sick Leave Act. This policy will address requirements of both new laws and is in effect immediately and until December 31, 2020, unless extended by Congress.

**EMERGENCY PAID SICK LEAVE  
(EPSL)**

**ELIGIBILITY/QUALIFYING REASONS**

No waiting period is required for employees to be eligible for EPSL. All current full-time and part-time employees scheduled but unable to do physical work at School or perform their job responsibilities as approved by the Administrator by teleworking or other remote delivery of services are eligible for EPSL if the requested leave is due to one of the following reasons for leave:

- #1 The employee is subject to a federal, state or local quarantine or isolation order<sup>1</sup> 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 #1 or #2 above.
- #5 The employee is caring for his or her child because the child's school (elementary or secondary) or other child care location 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 U.S. Secretary of Health and Human Services in consultation with the U.S. Secretary of the Treasury and the U.S. Secretary of Labor. (NOTE: As of the date of this policy, no other conditions have been identified.)

Unable to telework means that the employer has work for the employee, but the employee is not able to perform that work, either under normal circumstances at the normal worksite or by at a remote location.

- "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 incapable of self-care because of a mental or physical disability.
- "Child Care provider" means a provider who may or may not receive compensation for providing child care services on a regular basis. The term includes a center-based child care provider, a

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<sup>1</sup> This includes "stay-at-home" orders as used by New Mexico's Governor and Department of Health.

group home child care provider, a family-member child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under state law. However, a Child Care provider under the CARES Act need not be compensated or licensed if he or she is a family member or friend, such as a neighbor, who regularly cares for the employee's child.

- "Individual" means an immediate family member, roommate or similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined.
- "Telework" means the employer permits an employee to perform work while the employee is at home or at a location other than the employee's normal workplace. An employee is able to telework if: his or her employer has work for the employee; the employer permits the employee to work from the employee's location; and there are no extenuating circumstances (such as a serious COVID-19) symptoms) that prevents the employee from performing that at work. Telework is work for which an employee is paid at his/her normal rate of pay.

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**EPSL MAY NOT BE USED FOR ANY OTHER REASON OR SUBSTITUTED FOR ANY OTHER CATEGORY OF LEAVE AVAILABLE TO EMPLOYEES.**

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**PROCEDURE FOR REQUESTING EMERGENCY PAID SICK LEAVE**

Employees must give notice according to the same procedure followed for other sick leave, however, in addition to notifying the School of the need for leave, the employee must also be specific about the reason for leave under this policy. If employee is unable to personally (either by phone, text or email) provide notice of the need for leave, a spouse or adult family member may do so. Verbal notification will be accepted until practicable to provide written notice. The employee must complete the "Request for Emergency Paid Leave" form as soon as practical, the form will be provided in response to the request for EPSL or posted on the School's website. Failure to complete the required information or documentation within five business days after being notified by the School of the missing information/documentation, may result in an employee having to use accrued sick leave, request approved leave without pay, or be subject to other consequences. Employee shall communicate with the School about any obstacles to providing required documentation.

The following information and/or supporting documentation for EPSL must be provided in addition to the completed Request for Emergency Paid Leave form:

- A copy of the federal, state, or local quarantine or isolation order related to COVID-19 applicable to the employee or the name of the government entity that issued the order.
- Written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19 or the name of the provider who advised the employee.
- A statement which provides for the name and employee's affiliation or relation to the individual the employee is taking leave to care for who is subject to a quarantine or isolation order or is advised to self-quarantine; a copy of the order related to COVID-19 and issued by a federal, state, or local entity applicable to the individual directing that he/she self-quarantine, or the name of the government entity that issued the order; or the name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.

- The name and age of the child or children being cared for; the name of the school, place of care, or child care provider that closed or became unavailable; and a statement that no other suitable person is available to care for the child during the period of requested leave.

Once EPSL has begun, the employee and the School's Administrator or designee will determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive EPSL. EPSL is only for the reasons above and only for as long as that reason exists.

#### **AMOUNT OF 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 are entitled to the number of hours worked, on average, over a two-week period.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

- If the employee has worked 6 months or more, 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. The average daily hours worked number is then multiplied by 10 working days to arrive at the total number of Emergency Paid Sick Leave hours.
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire, multiplied by 10 working days to arrive at the total number of Emergency Paid Sick Leave hours.

#### **Increments and Intermittent Use of EPSL**

Subject to the limitations described below, Administrator may agree to permit employees to use EPSL intermittently. Whether such request is agreed to by the Administrator will be determined by factors affecting school operations. An agreement to use EPSL and the intervals and increments will be set forth in writing. Any change in the interval or increment must be approved by the employee and Administrator in writing as soon as practical. This agreement will be used to track the employee's eligible EPSL. If an employee takes intermittent leave, only the amount of EPSL taken (and documented as described above) may be counted toward the employee's leave entitlement.

#### **RATE OF PAY**

EPSL will be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 will be compensated at two-thirds their regular rate of pay, or minimum wage, whichever is greater. Pay will not exceed:

- \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above.
- \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

**INTERACTION WITH OTHER PAID LEAVE**

The employee may use EPSL under this policy before using any other accrued paid time off for the qualifying reasons stated above.

Employees on EFML under this policy may use EPSL concurrently with that leave. EPSL may also be used when an employee is on leave under traditional FMLA (if employee is eligible) for his or her own COVID-19-related serious health condition or to care for a qualified family member with such a condition.

**TERMINATION AND CARRYOVER**

EPSL shall end under this policy and will not be provided beyond December 31, 2020, unless extended by an act of Congress. Any unused EPSL will not carry over or be combined with other categories of accrued sick leave or be paid out to employees at termination of employment. EPSL may not be contributed under the School's leave donation policy.

If employees do not exhaust the total number of eligible EPSL hours, the balance can be used later (before 12.31.2020) for another qualifying reason for EPSL, if the required notice and documentation are provided.

**COMBINING WITH OTHER LEAVE BENEFITS**

EPSL is in addition to other paid leave benefits and employees may opt to use EPSL and other earned paid sick, personal or annual leave in the sequence of their choice. The employee must notify the Administrator at the time leave is taken for one of the reasons above, whether the employee wishes to use another category of leave first. If employee does not so indicate, EPSL will be applied first based on the appropriate Rate of Pay. Employee may request to supplement EPSL taken for reasons ##4-6 (2/3 payrate) with other accrued paid leave up to normal rate of pay but must make that request as part of employee's written notice of request for EPSL.

**JOB PROTECTIONS**

No employee who appropriately utilizes EPSL under this policy will be discharged, disciplined or discriminated against for work time missed due to this leave or for filing any complaint or for participating in any proceeding related to the employer's alleged violation of EPSL.

If you believe that you have been disciplined or discriminated based on use of EPSL, it is appropriate to file a complaint pursuant to the School's anti-discrimination policy or grievance policy.

**EXTENDED FAMILY MEDICAL LEAVE  
(EFML)**

EFML provides eligible employees with up to 12 weeks of emergency family medical leave for a qualifying reason related to a public health emergency as declared by an official with jurisdiction to make such a declaration, e.g. the Governor of the State of New Mexico. Even if no employee at School is eligible for traditional Family Medical Leave, the School will provide EFML, if the employee is eligible as described in this policy.

**ELIGIBILITY/ QUALIFYING REASON FOR LEAVE**

All current employees who have been employed with the School for at least 30 calendar days and are actively scheduled for work are eligible for EFML, if the requested leave is for the following reasons:

An eligible employee is unable to work (or telework) due to a need to care for a child (as defined below) when a school or child care location has been closed, or when the regular child care provider is unavailable as a result of a COVID-19 related emergency declared by a federal, state or local authority. In addition, the employee certifies that no other suitable person is available to care for the child during the period of requested leave. "Closed" means the physical location of the location where the child received instruction or care is closed, even if some or all instruction is being provided online. Unable to telework means that the employer has work for the employee, but the employee is not able to perform that work, either under normal circumstances at the normal worksite or by at a remote location.

- "Child" has the same meaning as defined above under EPSL.
- "Child Care provider" has the same meaning as defined above under EPSL.
- "Telework" has the same meaning as defined above under EPSL.

#### **PROCEDURE FOR REQUESTING EFML**

All employees requesting EFML must provide written notice of the need for leave to the Administrator or designee as soon as practicable using the School's "EFMLA Employee Request Form." Verbal notice will otherwise be accepted until written notice and relevant documentation can be provided.

Notice of the need for leave must include:

- The name and age of the child or children being cared for.
- The name of the school, place of care, or childcare provider that closed or became unavailable due to COVID-19 reasons.
- A statement representing that no other suitable person is available to care for the child or children during the period of requested leave.

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

#### **DURATION OF LEAVE**

Employees will be entitled to 12 workweeks of leave to use through December 31, 2020, for the Qualifying Reasons stated above, including the two weeks (80 hours or part time hours total) for EPSL for reason #5. If you are an eligible employee for FMLA, EFML counts towards the 12 weeks of FMLA for which you would be entitled within a 12-month period. For example, if an employee has already taken 6 weeks of FMLA leave, that employee would be eligible for another 6 weeks of EFML under this policy.

#### **INCREMENTS & INTERMITTENT USE OF LEAVE**

Employees may take EFML intermittently and in increments as agreed to in writing between the Administrator and employee. For example, an employee may only need 4 hours per day of leave to care for his or her child or may only need to do so on Tuesdays and Thursdays.

#### **PAY DURING EFML**

Leave will be unpaid for the first 10 days of leave; however, employees may use accrued paid vacation or personal leave during this time. The employee may also elect to use and exhaust the paid leave provided under the EPSL, before using accrued paid leave or unpaid leave. If the School and employee agree, employee may supplement EPSL pay with other paid leave up to the employee's normal earnings for the first two weeks of EFML. After the EPSL pay expires (two weeks), the employee must use accrued paid leave. If employee exhausts all accrued paid leave, the employee will be paid for the remainder of EFML at the rate described below.

**Commented [p1]:** All public charter schools are covered employers under the FMLA. However, if your school employs less than 50 employees, your employees are not eligible to receive FMLA, even if they meet the other requirements unless you have adopted a policy that states otherwise.

However, EFMLA applies to charter schools regardless of the number of employees. So, this 12 weeks of EFMLA must be provided, even if your employee is not eligible for regular FMLA, i.e. reasons unrelated to COVID.

#### **RATE OF PAY**

After the first 10 days of EFML and exhaustion of all other accrued paid leave, employee will be paid at two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. EFML Pay will not exceed \$200 per day and \$10,000 in total, or \$12,000 in total if using EPSL for the first two weeks. Unused EFML pay does not carry over, will not be applied to existing accrued leave, and cannot be applied to the School's leave donation bank.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

- If the employee has worked 6 months or more, 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.
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Employees may supplement the two-thirds pay received under EPSL with accrued paid leave not to exceed 100% of normal rate of pay.

#### **EMPLOYEE STATUS AND BENEFITS DURING LEAVE**

While an employee is on leave, the company 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 EFML, the employer will continue to make payroll deductions to collect the employee's share of the premium. During any unpaid portions of leave, the employee must continue to make this payment per instructions from the School.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. During any portion of unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether the employee returns to work or not.

#### **RETURN TO WORK AFTER EFML**

Generally, an employee who takes EFML will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The Administrator may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to School's operations. Key employees will be given written notice their status as a key employee at the time they request EFML.

#### **NOTICE**

The School will post notice of employees' rights under the Emergency Family Medical Leave Expansion Act and the Emergency Paid Sick Leave Act in a conspicuous place including on the School's website if one is regularly maintained. The School may satisfy this notice requirement by sending an email or a direct mailing to its employees.

If you have questions concerning this policy, please contact the School's Administrator or designee.

**Commented [p2]:** Requiring the employee to exhaust accrued paid leave before paying EFML pay is not required. You can opt to pay EPSL (two weeks), then pay the balance of the 10 weeks out of pocket, permitting the employee to retain paid accrued leave. I did not write the policy this way, understanding the financial implications.

**Commented [p3]:** !!! Should decide whether school will pay the employee's portion of the premium. If not, then remove this.

**EFFECTIVE DATE OF THIS POLICY**

This policy is effective April 1, 2020 through December 31, 2020 and shall automatically expire without further action of the School's governing body or Administration. If the United States Congress extends these provisions of the CARES Act, this policy will be automatically extended to the extent required by law.