**COVID FFCRA LEAVE SAMPLE POLICY/TEMPLATES**

**Families First Coronavirus Response Act (FFCRA) Leave Provisions (Extended Under American Rescue Act (March 2021)**

This bill affirms that **mandated** leave expired on 12/31/2020.  However, if your business was previously covered under the FFCRA mandate (even if you chose to opt out at the time due to being a healthcare provider or small employer), you can opt back into one or both of the programs and continue receiving tax credits. Some of the details in this policy reflect past practice required by the DOL when the program was mandatory. If you question whether you can add to or change this policy, please contact Catapult. DOL guidance has not yet been released and therefore, this is our “best guess” until we receive the requested guidance under ARP. This document will likely be amended after guidance is released.

* While EFML does count towards traditional FMLA, the “bucket” of 12 weeks does not reset under current provisions and the maximum for tax credits is $12,000. Work with your tax specialists to make sure you are fully reimbursed under this program.
* EPSL “re-boots” with an additional 10 days of leave, even if it has been used previously as of April 1st. No more than 10 days of tax credits will be provided.
* Anti-discrimination provisions prevent discrimination to the benefit of highly compensated employees, full-time employees or employees due to tenure.
* Programs end on September 30th.

**THIS PACKET INCLUDES:**

* **Policy**
* **Certification Request (employee completes at time of, or after request)**
* **Designation (employer sends to employee within 5 days of request)**

**FFCRA SAMPLE POLICY**

**SUMMARY:**

The Families First Coronavirus Response Act provides for EMERGENCY PAID SICK LEAVE (EPSL) AND EMERGENCY FAMILY MEDICAL LEAVE (EFML) to assist with leave periods due to certain COVID-19 related situations. [Company Name] has chosen to voluntarily extend the EPSL and EFML provisions until September 30, 2020.

**LIMITATIONS:**

* The benefits described within are only available until September 30th, 2021.
* All previous time provided under the FFCRA program counts “against” any available balance remaining, except that ALL employees will have a full 10 days of EPSL (but no more) as of April 1st, 2021.
* EFML leave will be available only to the extent that “regular” FML time is still available to the employee.  (This 12-week amount is included in the overall 12-week amount for all types of FML.) There is no “renewal” of EFML, so if the company enters a new FMLA year, the EFML remaining will be whatever has carried over from the previous FMLA year, NOT a full 12 weeks.

**APPLICATION PROCESS:**You may apply verbally (or follow your standard FML request policy); a completed request form will be required to support your request. The HR Department may also take the information verbally and fill out a form on your behalf. Employees must give as much advance notice as practicable.

**ELIGIBILITY:**

* **EPSL:**None required (It is likely that you can make certain non-discriminatory exceptions but should review upcoming/current DOL guidance – the current law requests such guidance and expressly prohibits certain discriminatory rules such as discrimination in favor of highly compensated employees, full time status or tenure.)
* **EFML:** Requires 30 calendar days of employment. (See above note on EPSL if considering altering standard provisions))

**REASONS FOR LEAVE:**

1. **EPSL and EFML Reasons for leave include:**
   1. Employee subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
   2. Employee advised by a health care provider to self-quarantine related to COVID-19;
   3. Employee experiencing COVID-19 symptoms and seeking a medical diagnosis;
   4. COVID-19 vaccination
   5. Recovery from any illness, disability, condition or injury related to a COVID-19 vaccination.
   6. Awaiting results of a diagnostic test or medical diagnosis for COVID-19. This includes employer requested tests or tests due to exposure.
   7. Employee caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
   8. Employee unable to work or telework due to caring for a child whose school or place of care is closed (or childcare provider is unavailable) or closed to in-person care (online schooling required by the school - not elected by the parent) for reasons related to COVID-19;
   9. Employee experiencing another substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

**BENEFITS:**

* **EPSL Benefits Include:**
  + Two weeks of paid sick time (up to 80 hours for full-time employees), based on regular rate of pay/ work schedule.  If employee has a variable schedule, six-month lookback to determine average weekly hours.  If under six-months of service, used promise schedule or if none, average all available workweeks (including overtime).
  + Sick time is paid for reasons 1-6 at 100% and capped at $511 per day, $5,110 aggregate.
  + Sick time is paid for reasons 7-9 at 2/3 pay and capped at $200 per day, $2,000 aggregate.  Hourly pay rate will never be under minimum wage.
  + Employees may choose (or not) to use EPSL and employer may not require them to substitute other leave for EPSL.
  + Pay may be provided through current company paid SICK or STD benefits – not other paid time off benefits. (If agreed to by employee - see question 32 of https://www.dol.gov/agencies/whd/pandemic/ffcra-questions - will not qualify for tax credit in this case).
  + May be used intermittently, if employer agrees.  Leave which is taken on intermittent days when school is closed for in-person learning is considered "consecutive" leave and does not require employer agreement - each day or consecutive range of days may be looked at as a separate request.
  + No retaliation for use of EPSL.
* **EFML Benefits Include:**
  + 12 total weeks of leave at 2/3 pay and capped at $200 per day, $12,000 aggregate.  Hourly pay rate will never be under minimum wage.
  + Average hours per week will be based on regular schedule.  Schedules which vary will have average hours determined under current FMLA guidance: [29 CFR 825.205(b)(3)](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d178a2522c85f1f401ed3f3740984fed&rgn=div5&view=text&node=29:3.1.1.3.54&idno=29#se29.3.825_1205)
  + May be used intermittently if both employer and employee agree.  (May also be used in a reduced schedule if employer can permit.)   Leave which is taken on intermittent days when school is closed for in-person learning is considered "consecutive" leave and does not require employer agreement - each day or consecutive range of days may be looked at as a separate request.
  + Restoration to original job or job with equivalent pay and benefits.
  + Pay may be provided through current company paid benefits.  (will not qualify for tax credit in this case).
  + Continuation of benefits during leave with options as per our FMLA policy (if applicable – in the case of no current FMLA policy, probably best to state that premiums will be withheld from any paid time.)
  + Restoration of benefits at the end of EFML leave.
  + No retaliation for use of this leave.

**Regular rate of pay for EFML and EPSL:**This will be calculated based on the regular rate of pay for a period of up to six months prior to the date of leave (or if the employee has worked less than six-months, the average of weeks worked.)  This should include most bonuses, as well as commissions, tips, piece rate, etc. that are used to calculate regular rate for overtime.  (Calculate by adding all regular rate compensation and dividing by sum or hours actually worked.)

**Sample Form: FFCRA CERTIFICATION FORM**

YOUR NAME (PRINT): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_ I am requesting two weeks of paid sick time for one of the reasons listed below.  I understand that sick time is paid for reasons 1-6 at 100% and capped at $511 per day, and for reasons 7-9, sick pay is at 2/3 pay and capped at $200 per day.  In both cases aggregate caps apply for the total ($5110/$2000)

\_\_\_\_\_\_\_ I understand my right for paid sick time under the FFCRA, but I am choosing not to use the paid sick time and would prefer to use: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (unpaid time, PTO, company sick bank) if applicable.

Dates of Leave Requested: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_.  If requesting reduced schedule or intermittent leave, provide details: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please describe your reason for being unable to work or telework:

1. \_\_\_\_\_ I am subject to a COVID-19 Federal, State, or local quarantine /isolation order.

                      Agency name issuing order: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. \_\_\_\_\_ I was advised by a health care provider to self-quarantine related to COVID-19;

                      Healthcare Provider name issuing advice: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. \_\_\_\_\_ I am experiencing COVID-19 symptoms and am seeking a medical diagnosis or awaiting results of a diagnostic test, to include employer tests due to exposure.

                      Healthcare Provider name offering diagnosis: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. \_\_\_\_\_\_ I need leave for a COVID-19 vaccination

  Healthcare Provider of vaccine: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. \_\_\_\_\_\_ I need leave for recovery from any illness, disability, condition or injury related to the COVID-19 vaccination.

  Healthcare Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. \_\_\_\_\_ Awaiting results of a diagnostic test or medical diagnosis for COVID-19. This includes employer requested tests due to exposure;

Healthcare Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. I am caring for an individual subject to an order described in (1) or self-quarantine as in (2);

Name and relationship of the individual I am caring for: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Agency/HC provider name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. \_\_\_\_\_ I am caring for a child whose school/ place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.  Note: If your child is in online learning as a school requirement or is missing                    days due to an alternative schedule required by the school, this category would apply if the school is closed to the child on certain school days.  This does not apply for voluntary online schooling.

                      School/Care Provider Name/Center: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Child or children's name(s) and age(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. \_\_\_\_ I am experiencing another substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

If #6, please describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I am unable to telework or work alternative schedules due to:

\_\_\_\_\_\_\_\_ Company cannot offer alternative schedule or telework.

\_\_\_\_\_\_\_\_ Other (please describe): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IF SELECTING REASON NUMBER EIGHT (8):**

I confirm that no other suitable person is available to care for the child during the leave.   \_\_\_\_\_\_\_\_\_\_\_ (Initial here.)

If my child is over the age of 14, I confirm I have special circumstances that require the child be supervised by an adult (during daylight hours):  \_\_\_\_\_\_\_\_\_\_\_\_ (Initial here.)

If my child is in online school and this is the cause for my leave, the online schooling is required by the school and is not being done voluntarily:  \_\_\_\_\_\_\_\_\_\_\_\_ (Initial here.)

**IF I HAVE OVER 30 DAYS OF WORK EXPERIENCE WITH THE COMPANY, this form will also be considered an application for Emergency Paid Family Medical Leave in the case it is applicable.  This time will be protected as described in the attached FMLA Rights and Responsibilities poster and will pay 2/3 of my pay.  The 2/3 pay is capped at $200 daily and $12,000 aggregate.**

(If applicable – delete if not relevant).

\_\_\_\_\_ I wish to supplement my 2/3 emergency paid sick leave with additional paid leave (if available) to pay 100% of my regular pay.

\_\_\_\_\_ I wish to supplement my 2/3 emergency family paid leave with additional paid leave (if available) to pay 100% of my regular pay.

I understand that some portions of this pay may be paid out of short-term disability, company paid time off or other methods, but in no cases will the two weeks emergency sick pay be deducted from a bank of time that is not sick-specific.  (Provide details as appropriate for your company.)

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_       Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SAMPLE Designation Notice (Family and Medical Leave Act) for Childcare Related Leave Under the FFCRA**

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on and decided:

\_\_\_\_\_ Due to your status within the company, you are considered a “key employee” as defined in the FMLA. As a “key employee,” restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We \_\_\_have/\_\_\_\_ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

\_\_\_\_\_ Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave. The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

Your leave will begin on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date) - This may be the date after you have accumulated 30 calendar days of service if you have not done so at this time.

\_\_\_\_\_ Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement:

                \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

\_\_\_\_\_ After two weeks of unpaid leave under this act, you will receive 2/3 pay. During this period and the two-week waiting period for paid benefits, your benefit premiums will be withheld from any pay that you receive.

\_\_\_\_\_ While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (no more frequent than every 30 days). If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on the this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

\_\_\_\_\_ You have requested to be paid through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (type of paid time off) during the two week unpaid period of FML: (you may use any eligible company paid time off benefits, or may choose to substitute pay under the Emergency Sick Pay entitlement which provides 2/3 pay for a two week period).

\_\_\_\_\_ You have requested not to be paid during the first two weeks of unpaid leave under FML.

\_\_\_\_\_ The company permits supplementing pay up to 100% of regular wages, and you have chosen to supplement pay with any available time off benefits during your leave.  These will be paid out in the following order: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.  Any paid leave taken for this reason will count against your FMLA leave entitlement.

\_\_\_\_\_ Additional information is needed to determine if your FMLA leave request can be approved:  You must provide the following information no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (provide at least 7 days if 2nd request, 15 days if 1st request) unless due to extenuating circumstances delaying it despite your diligent good faith efforts, or your leave may be denied.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_ The FMLA does not apply to your leave request.

\_\_\_\_\_ You have exhausted your FMLA leave entitlement in the applicable 12-month period.

We are providing a copy of the DOL poster related to FFCRA leave.

It is mandatory for employers to inform employees in writing whether leave requested under the FMLA has been determined to be covered under the FMLA.  Employers should retain this information for a period of 3 years.

IF YOUR COMPANY IS CURRENTLY COVERED UNDER OTHER FMLA REGULATIONS (50+ EMPLOYEES) ADD:

You are receiving a notice of your FMLA Rights and Responsibilities.  In addition:

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

• You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:

\_\_\_\_\_ the calendar year (January – December).

\_\_\_\_\_ a fixed leave year based on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_ the 12-month period measured forward from the date of your first FMLA leave usage.

\_\_\_\_\_ a “rolling” 12-month period measured backward from the date of any FMLA leave usage.

• You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

• Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.

• You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)  For businesses under 25 employees, we may have additional alternatives.  See FFCRA posting included.

• If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember’s serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

• If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have \_\_\_\_ sick, \_\_\_\_vacation, and/or \_\_\_ other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy.

Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

\_\_\_\_For a copy of conditions applicable to sick/vacation/other leave usage please refer to \_\_\_\_\_\_\_\_\_\_\_\_ available at: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_Applicable conditions for use of paid leave:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_