

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT POLICIES

(Addendum to Grant County FMLA Policy)

Effective April 1, 2020

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President Trump signed legislation on March 18, 2020 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.

The Department of Labor (DOL) on Saturday afternoon, March 28, 2020, issued critical new guidance defining which employees can be considered an “emergency responder” or “health care provider” and thus exempted by employers from FFCRA coverage. The guidance specifically related to the definitions of “emergency responder” and “health care provider”. With further guidance, the FFCRA Policy is being amended to expand the positions designated as COVID-19 Health Care Providers and Emergency First Responders.

On April 1, 2020, the DOL issued temporary regulations for the Families First Coronavirus Response Act. These temporary regulations confirm that employees must give notice to their employers of the need to take leave and must provide supporting documentation for paid sick leave and emergency family medical leave. The IRS also provided guidance on needed documentation for employers.

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

- A. **Employee eligibility:** Employed by Grant County for at least 30 calendar days.  
*Excludes health care providers and emergency first responders as defined below.*

Grant County defines “health care provides” as Orchard Manor nurses and all Orchard Manor staff and Grant County defines “emergency responders” as all of UCS employees, all of Orchard Manor Nursing Home staff, certified Law Enforcement Officers, Emergency Management Personnel, Dispatchers, Jailers, Social Services Workers, Social Workers, Economic Support, and all of Public Health.

- B. **Qualifications:** The employee needs to, and actually is, caring for his or her child and is unable to work or telecommute to care for a minor child if the child’s school or childcare has been closed or is unavailable due to a public health emergency (COVID-19). Generally, an employee does not need to take such leave if another suitable individual--such as a co-parent, co guardian, or the usual child care provider—is available to provide the care the employee’s child needs. For purposes of this policy, the definition of Child is defined under section 110(a) of the Federal

Medical Leave Act and includes a child age 18 or older who is incapable of caring for himself or herself because of a mental or physical disability.

- C. **Pay During Leave:** The EFMLEA provides for time away from work for up to 12 weeks. The first two weeks (typically 10 days) of EFMLEA leave is unpaid, unless the employee has available accrued vacation, personal or sick leave which can be substituted for the otherwise unpaid time. The employee will not be required to substitute pay for the first two weeks of unpaid time. After the two weeks of unpaid time, the employee will be eligible for pay from the County 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 base 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 childcare and need 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 is 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 is automatically reduced by the amount of leave an employee has already taken in the current administrative year, without regard to the reason for the previous leave.

- D. **Benefits During Leave:** Benefits during leave will be applied the same as FMLA Leave
- E. **Employee Status after Leave:** The FMLA's job protected leave requirements and anti-retaliation provisions also apply to EFMLEA scenarios.
- F. **Procedure for Requesting Leave and Certification:** Employees are required to provide oral or written notice for leave no later than after the first workday for which an employee receives EFMLEA in order to continue to receive such leave. Employees shall provide information on the Amended FMLA Request form that will be used specifically for the purposes under the FAMILIES FIRST CORONAVIRUS RESPONSE ACT. Forms can be requested by calling the Personnel Office, emailing the Personnel Office, or printing the form from the County website. In compliance with the recommended social distancing, please do not physically go

Understanding that Schools and Day Cares are closed, and health care providers are overwhelmed at this time, the required certification will be waived unless there is cause to believe the employee falsified the request. For leave taken under the FMLA for an employee's own serious health condition related to COVID-19, or to care for the employee's spouse, son, daughter, or parent with a serious health condition related to COVID-19, the normal FMLA certification requirements still apply.

However, the following documentation is required:

1. Employee's name
2. Date(s) for which leave is requested
3. The COVID-19 qualifying reason for leave
4. A statement representing that the employee is unable to work or telecommute because of the COVID-19 reason
5. The name and age of the child(ren) being cared for
6. The name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons
7. A statement representing that no other suitable person is available to care for the child(ren) during the period of requested leave
8. A statement that special circumstances exist, requiring the employee to provide care for a child older than fourteen during daylight hours and unable to work or telework

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

H. **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 County policy. An employee is encouraged to consult with the Personnel Department 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 (PSLA)**

Provides a limited term paid sick leave benefit for employees outside of the FMLA or EFMLEA.

A. **Employee eligibility:** All employees actively employed by Grant County. *Excludes health care providers and emergency first responders.*

Grant County defines "health care providers" as Orchard Manor nurses and all Orchard Manor staff and Grant County defines "emergency responders" as all UCS employees, all Orchard Manor Nursing Home staff, certified Law Enforcement Officers, Emergency Management Personnel, Dispatchers, Jailers, Social Services Workers, Social Workers, Economic Support, and all of Public Health.

**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. This does not include quarantine recommended by the County due to voluntary travel or failure to adhere to the Safer at Home Order;
3. the employee is experiencing symptoms of the COVID-19 (fever, cough, sore throat, shortness of breath) and is seeking medical diagnosis from an appropriate health provider;
4. the employee is caring for a family member subject to a federal, state or local order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns 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. For purposes of this policy, the definition of Child is defined under section 110(a) of the Federal Medical Leave Act and includes a child age 18 or older who is incapable of caring for himself or herself because of a mental or physical disability; 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:**

The Paid Sick Leave Law requires that the employee give notice to the employer of the desire to use the available paid time. Notice must be given to the employer no later than the first workday (or portion of such workday) that the employee receives Emergency Paid Sick Leave.

Please refer to Procedures as set forth in Section I, Emergency Family Medical and Leave Expansion Act.

In addition to the documentation required under the EFMLEA (F) (1) – (4), the following is required as applicable:

1. Government ordered quarantine or isolation for employee or family member (qualifications 1 and 4): The name of the government entity that issued the quarantine or isolation order
2. Health Care Provider advisement of self-quarantine for employee or family member (qualifications 2 and 4): The name of the health care provider who advised the self-quarantine

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

G. **Enforcement:** Nothing in this provision shall be construed in any way to diminish the rights or benefits that an employee is entitled to under any law, collective bargaining agreement, or existing County policy. An employee is encouraged to consult with the Personnel Department 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. The Wisconsin Legislature still must take action to eliminate the one week benefit waiting period, which as of the writing of this Client Alert has not occurred.

03/25/2020, Revised 04/06/2020

## **PROCLAMATION #6**

### PAID SICK LEAVE FOR STAFF EXEMPT FROM FFCRA

WHEREAS, the Families First Coronavirus Response Act, known as FFCRA herein this document, 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 Act will take effect on April 1, 2020, with a sunset date of December 31, 2020, and

WHEREAS, the FFCRA excludes “health care providers” as defined in the Family Medical Leave Act, and excludes “emergency responders” as determined by local governments, and

WHEREAS, Grant County defines “health care providers” as all Orchard Manor nurses and all Orchard Manor staff, and

WHEREAS, Grant County defines “emergency responders” as all UCS employees, Orchard Manor Nursing Home staff, certified Law Enforcement Officers, Emergency Management Personnel, Dispatchers, Jailers, Social Services Workers, Social Workers, Economic Support, and all of Public Health.

WHEREAS, Grant County desires to compensate emergency responders and health care providers with up to 80 hours paid sick leave (pro-rated for part-time employees) for absences due to COVID-19 valid through the sunset date of December 31, 2020, and

NOW, THEREFORE BE IT RESOLVED, that Grant County will provide up to 80 hours paid sick leave to health care providers and emergency responders as defined above, for any of the following absences, and

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. This does not include quarantine recommended by the County due to voluntary travel or failure to adhere to the Safer at Home Order;
3. the employee is experiencing symptoms of the COVID-19 (such as fever, cough, sore throat, shortness of breath) and is seeking medical diagnosis from an appropriate health provider and is following the guidance of the health provider or health department;
4. the employee is caring for a family member subject to a federal, state or local order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

BE IT FURTHER RESOLVED, that emergency responders and health care providers follow the same process for requesting the leave as described in Grant County's FFCRA policy, and will contact the Personnel Office for assistance.

Under the authority of Resolution No. 70-18 Providing County Board Chair Emergency Administrative Flexibility for COVID-19, I hereby approve the recommendation as described above.

/s/Robert Keeney, County Board Chair

04/07/2020