



TOWN OF NEEDHAM

EMERGENCY FAMILY AND MEDICAL LEAVE POLICY

A. INTRODUCTION

As a result of the Coronavirus pandemic, the United States Congress has enacted the Families First Coronavirus Response Act (“FFCRA”), which includes the Emergency Family and Medical Leave Expansion Act (“EFMLA”). Under the EFMLA, eligible employees of public employers, including the federal government, state governments, and political subdivisions thereof, and also to private employers with fewer than 500 employees are entitled to take job-protected leave if the employee is caring for his/her son or daughter whose school or place of care is closed (or paid child care provider is unavailable) for reasons related to COVID-19.¹

The following Emergency Family and Medical Leave Policy (the “Policy”) provides for up to a maximum of twelve weeks of EFMLA for the reason specified in **Section C**, subject to the terms and conditions noted below.

B. ELIGIBILITY

To be eligible for EFMLA with The Town of Needham (“the Town”), an employee must be employed by the Town for at least 30 calendar days. An employee is considered to have been employed by the Town for at least 30 calendar days if the Town had the employee on its payroll for the 30 calendar days immediately prior to the day the employee’s leave would begin.

C. LEAVE ENTITLEMENT

Section 1. The Town of Needham will grant an eligible employee up to a total of twelve (12) work weeks of EFMLA between April 1, 2020 and December 31, 2020 if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

An employee’s eligibility for EFMLA depends upon how much FMLA leave the employee has already taken during the 12-month period as described in the Town of Needham’s FMLA Policy. Employees are entitled to take a total of 12 workweeks for FMLA or EFMLA during a 12-month period. If an employee has taken some, but not all, 12 workweeks of leave under the FMLA during the current 12-month period under the Town’s FMLA policy, the employee is entitled to take the remaining portion of leave available under this Policy. An employee who has

¹ For purposes of this Policy, “Son or daughter” shall mean the employee’s own child, which includes his/her biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee is standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child. A “son or daughter” is also an adult son or daughter (i.e., one who is over 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

already exhausted his/her FMLA leave during the 12-month period may not take additional EFMLA.

Example: An employee eligible for preexisting FMLA leave took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. The employee has 10 weeks of FMLA leave remaining. Because EFMLA leave is a type of FMLA leave, the employee is entitled to take up to 10 weeks of EFMLA, rather than 12 weeks. Any EFMLA an employee takes would count against the employee's entitlement to preexisting FMLA leave.

Example: An employee eligible for EFMLA in April 2020 takes four weeks to care for his/her child whose school is closed due to a COVID-19 related reason. These four weeks count against the employee's entitlement to 12 weeks of FMLA leave in a 12-month period. Thus, if the employee needs to take FMLA leave in August for a serious health condition, the employee would be entitled to take up to eight weeks of FMLA leave.

Section 2 The Town of Needham may allow employees to take EFMLA leave intermittently in the following instances:

(a) If an employee is able to telework, but is prevented from teleworking his/her normal schedule of hours during the day because the employee is caring for his/her child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee may take EFMLA intermittently while teleworking. An employee may take intermittent leave in the increment agreed to by the Town.

Example: The Town and an employee may agree to allow the employee to telework in 90-minute increments, where the employee could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

(b) If an employee is not teleworking on a particular day, the employee may take intermittent EMFLA.

Example: The Town and the employee may agree to permit the employee to take EFMLA on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursday, while the employee's child is at home because the employee's child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of the employee's leave.

D. CALCULATION OF EFMLA BENEFITS

(a) The first ten workdays of EFMLA are unpaid. However, during this time, an employee may be eligible to receive Emergency Paid Sick Leave under the FFCRA (see the Town of Needham's Emergency Paid Sick Leave Policy). Alternatively, an employee may elect to use existing vacation, personal, or medical or sick leave under the Town's other policies as applicable.

(b) After the first ten workdays of EFMLA have elapsed, employees will receive two-thirds of their regular rate of pay for the hours they would have been scheduled to work during the subsequent weeks they are eligible to take EFMLA. In no event, however, shall an employee's entitlement to EFMLA benefits exceed \$200 per day and \$10,000 in the aggregate.

Example: If an employee's regular hourly rate is \$20 per hour, and is regularly scheduled to work five days per week, and 40 hours in total, the employee is entitled to \$106.64 per day ($2/3 \times \$20 = \13.33 . $\$13.33 \times 8$ hours per day = \$106.64.)

Example: If an employee earns \$60 per hour, and is regularly scheduled to work five days per week at 8 hours per day, the employee will be entitled to a maximum of \$200 per day (despite the $2/3$ calculation of the regular rate multiplied by 8 hours equaling \$320 ($2/3 \times \$60 \times 8 = \320 .)

E. MAINTENANCE OF HEALTH BENEFITS

The Town of Needham will maintain group health insurance coverage for an employee on EFMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. The employee will make arrangements with the Town to pay his or her share of health insurance premiums while on leave. The Town may recover premiums it paid to maintain health coverage for an employee who fails to return to work from EFMLA leave.

F. EMPLOYEE REQUESTS TO USE EFMLA

An employee requesting to use EFMLA leave must contact the Town of Needham's Human Resources Department. Where the need for EFMLA is foreseeable, the employee shall provide as much prior notice as is practicable. When the need for EFMLA is not foreseeable, the employee should provide notice as soon as reasonably possible.

To be eligible for EFMLA, all employees are required to provide the Town of Needham with the following documentation: (1) employee's name; (2) the date(s) for which leave is requested; (3) a statement that the employee is unable to work or telework because of the qualifying reason; (4) the name of the child being cared for; (5) the name of the child's school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; and (6) a signed statement representing that no other suitable person is available to care for the child during the period of leave.

In addition to the foregoing documentation, the Town of Needham may require any such material as needed to support a request for tax credits pursuant to the FFCRA.

The Town's Human Resources Department will retain any written notice or documentation an employee provides in support of his/her need for EFMLA for a period of four years.

G. RETURN TO WORK FROM EFMLA

Upon return from EFMLA leave, an employee will be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

In addition, an employee's use of EFMLA leave will not result in the loss of an employment benefit that the employee earned or was entitled to before using FMLA leave.

H. EXCLUSION OF EMERGENCY RESPONDERS

As an employer of emergency responders, the Town of Needham may elect to exclude certain employees (based upon legitimate business needs) from the application of the EFMLA and this Policy. Emergency responders are employees who are necessary for the provision of transport, care, health care, comfort, and nutrition of patients, or whose services are otherwise needed to limit the spread of COVID-19. The term "emergency responder" includes but is not limited to, among others, law enforcement officers, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

EXCLUSION OF HEALTH CARE PROVIDERS

As an employer of health care providers, the Town of Needham may elect to exclude certain employees (based upon legitimate business needs) from the application of the EFMLA and this Policy. A "health care provider" is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. In addition, the definition includes any individual that the highest official of a state or territory determines is a health care provider necessary for that state or territory's response to COVID-19.

I. OTHER PROVISIONS

This Policy shall at all times be interpreted in a manner consistent with the Department of Labor's Regulations pertaining to the EFMLA.

The Town of Needham will comply with all federal and state laws enacted to address the Coronavirus pandemic. In the event of any conflict between this Policy and the FFCRA or any other leave laws enacted in response to the Coronavirus crisis, the terms of any such applicable federal or state law(s) that conflict(s) with or supersedes this Policy shall apply.

J. EFFECTIVE DATE

This Policy shall take effect on April 1, 2020 and any rights to EFMLA shall expire on December 31, 2020, or earlier upon written notice from the Town of Needham.