
Procedure 4-493
THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT EMERGENCY FOR 2020,
INCLUDING THE EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION
ACT AND EMERGENCY PAID SICK LEAVE ACT: EMERGENCY POLICY

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4-493.01 Authority and Purpose.

A. Authority.

1. On March 19, 2020, the County Board adopted Resolution No. 102-03/20, Declaring a State of Emergency in Walworth County as a Result of the COVID-19 Virus. Said Resolution incorporated the “Walworth County, Wisconsin, COVID-19 Operations Response Plan, Version 3-19-20(1) (hereafter “the Plan”) and extended “additional authority to the County Administrator with the acknowledgement and intent that such authorizations may expand upon or conflict with existing ordinances and policies, which actions are necessary for the execution of the duties and emergency management responsibilities authorized herein.”
2. The Plan “authorizes the County Administrator to temporarily amend or suspend leave benefit policies as set forth in the Walworth County Code of Ordinances retroactive up to March 16, 2020, and for the duration of the period of the Emergency Declaration in a manner and form as he shall determine is appropriate.”
3. The authorization in the Plan also anticipated that if the Federal government expands employee benefits these actions would ensure “the County will be prepared to address and incorporate them, as appropriate.”

B. Purpose.

1. This Administrative Procedure and Policy addresses requirements established by recent federal action. 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. These 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”).

2. During the period of the Emergency Declaration, including and extension as may occur, and in accordance with the authority outlined above, this policy shall supersede any conflicting Administrative Procedure or Ordinance in Chapter 15 of the Walworth County Code of Ordinances. This policy, however, shall not be interpreted to create new policy through unintended conflicts in wording not necessary for implementation of the components of the Act.

4-496.02 Definitions. (Reserved)

- A. “Son or daughter” is the employee’s own child, which includes the employee’s biological, adopted, foster child, stepchild, 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. It is also an adult (18 years of age or older) son or daughter who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

4-493.03 Term.

- A. Consistent with the Act, this policy will take effect April 1, 2020. Consistent with the declaration of a State of Emergency, this policy will expire “ninety (90) days from the effective date of” the declaration of a State of Emergency, “unless sooner terminated or extended by further resolution of the County Board.
- B. The Act expires December 31, 2020; therefore, anyone reading this policy should anticipate that the items herein will be separately incorporated into the County Code of Ordinances prior to or effective upon the termination of the declaration of a State of Emergency so that the requirements of the Act will remain in place to the extent required.
- C. This policy remains subject and subservient to subsequent modifications to Chapter 15 of the Code of Ordinances by the County Board.

4-493.04 Changes due to the Emergency Family and Medical Leave Expansion Act (EFMLEA)

- A. **Application and Eligibility.**
 1. Except as excluded per 2. below, the benefit applies
 - a. To active employees who have been employed by the County for at least 30 calendar days; and
 - b. If the employee is unable to work (or unable to telework, as determined by the County, upon sufficient documentation provided

to and approved by the Human Resources Department on a case-by-case basis) due to a documented need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to the COVID-19 public health emergency.

2. Consistent with the Act and upon expanded definitional guidance provided by the U. S. Department of Labor, employees in the following “health care provider” and “emergency responder” positions are excluded from eligibility for this benefit. This list may continue to be modified by the County Administrator as determined necessary.
 - a. Sheriff’s Office: All positions in all divisions or sections of the department.
 - b. Medical Examiner’s Office: The Medical Examiner and Deputy Medical Examiners.
 - c. The County Administrator and Department Heads.
 - d. Health and Human Services (HHS): All positions listed below.

Deputy Director- HHS	HS Manager - Behavioral Health,
HS Manager - Children & Families	HS- Manager- Long Term Care
HS Supervisor- Access/ Initial Assessment	
HS Manager- Public Health	
HS Supervisor - Behavioral Health Case Management	
HS Supervisor - Behavioral Health	HS Supervisor - CPS on-going
HS Supervisor - Crisis Intervention	HS Supervisor - Public Health
HS Supervisor - Aging and Nutrition	HS Supervisor - Fiscal Support
HS Supervisor - Compliance and Medical Records	
HS Supervisor - WIC	Finance Senior Accountant
Nutrition Site Worker	Receptionist/Clerk
Administrative Clerk III	Physician Support Assistant
Accounting Clerk	Administrative Assistant
Child and Family Case Aide	Nutrition Lead Worker
Aging Services Case Manager	RN- Public Health
Birth to Three Service Coordinator	Birth to Three Teacher
Dementia Care Specialist	Prevention Specialist
PH Specialist	WIC Nutritionist
Behavioral Health Case Manager	Crisis Case Manager
Children and Families Case Manager	Crisis Intervention Specialist
Behavioral Health Clinician	RN-Mental health
Crisis Intervention Lead Worker	Occupational Therapist
Speech Therapist	Physical Therapist
HS Manager - Administrative Services	

- e. Lakeland Health Care Center: All positions in all divisions or sections of the Lakeland Health Care Center.
- f. Information Technology: All positions in all divisions or sections of the department.
- g. Finance: All positions in all divisions or sections of the department.

- h. Human Resources: All positions in all divisions or sections of the department.
- i. Department of Public Works: All positions in all divisions or sections of the department, including facilities management.

B. The EFMLEA Benefit.

1. The leave must be granted for eligible employees, as described above, caring for the employee's son or daughter under the age of 18 if the child's school or place of childcare has been closed or is unavailable due to a public health emergency.
 - a. Special considerations and examples.
 - i. An employee is not eligible for leave under the EFMLEA if they have a COVID-19 diagnosis, but the employee may be eligible for regular FMLA if they meet the normal requirements of the FMLA.
 - ii. 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.
 - iii. 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 calendar year, without regard to the reason for the previous leave. Similarly, if EFMLEA is used by an employee, it would also limit available FMLA leave available during the remainder of the year to that employee.
 - b. Under the EFMLEA, a qualifying employee will not be eligible for pay from the employer for the first ten (10) work days of EFMLEA leave unless the employee has available accrued vacation, personal, or sick leave (including the extended sick leave bank) which can be substituted for the otherwise unpaid time.
 - c. The County will not require the employee to substitute accrued paid leave which the employee may have for the 10 unpaid work day period.
 - d. The employee may substitute accrued paid leave which the employee may have for up to the equivalent of 100 percent of the employee's regularly scheduled time. (Example up to 80 hours for the 10 unpaid work days if the person regularly works a 40-hour week.)
2. After the 10-work-day period, recorded in the aggregate as paid or unpaid, the employee will be eligible for pay from the County equal to two-thirds of the employee's regular rate of pay for the remainder of the available FMLA leave associated with the qualifying COVID-19 reason.

- a. For eligible full-time employees, the paid leave opportunity will be based on the regular rate of pay of the employee for the hours the employee would normally work.
 - b. For eligible employees less than full-time, the paid leave opportunity will be based on their regular hours worked per week or if variable over a period, such as from week to week, on the average hours worked in the preceding six months.
 - c. Paid EFMLEA leave is limited to a total of \$200 per day or \$10,000 in the aggregate, per person.
 - d. Note that consistent with authority granted in the Emergency Declaration, an employee is not allowed to use other leave types to supplement the two-thirds pay after the initial ten-work-day period.
3. Miscellaneous
 - a. EFMLEA leave may be taken intermittently in conjunction with a pre-approved plan.
 - b. EFMLEA does not extend to or cover a period during which the employee should have no expectation of work.
 4. It is important to note that while an employee may be 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 from traditional FMLA leave. In other words, the emergency leave for childcare purposes is automatically reduced by the amount of FMLA leave an employee has already taken in the current calendar year, without regard to the reason for the previous leave. Similarly, if EFMLEA is used by an employee, it would also limit available FMLA leave available during the remainder of the year to that employee.

4-493.05 Changes due to the Emergency Paid Sick Leave Act (EPSLA)

A. Application and Eligibility.

1. Except as excluded per 2. below, the following benefit applies
 - a. To active employees without regard to a minimum term of employment; and
 - b. If the employee is unable to work (or unable to telework, as determined by the County, upon sufficient documentation of need provided to and approved by the Human Resources Department on a case-by-case basis) because of COVID-19, as defined further in 3. below; and
2. Consistent with the Act and upon expanded definitional guidance provided by the U. S. Department of Labor, employees in the following “health care provider” and “emergency responder” positions are excluded. This list may continue to be modified by the County Administrator as determined necessary.
 - a. Sheriff’s Office: All positions in all divisions or sections of the department.

- b. Medical Examiner's Office: The Medical Examiner and Deputy Medical Examiners.
- c. The County Administrator and Department Heads
- d. Lakeland Health Care Center: All positions in all divisions or sections of the Lakeland Health Care Center.
- e. Information Technology: All positions in all divisions or sections of the department.
- f. Finance: All positions in all divisions or sections of the department.
- g. Human Resources: All positions in all divisions or sections of the department.
- h. Department of Public Works: All positions in all divisions or sections of the department, including facilities management.
- i. Health and Human Services (HHS): All positions listed below.

Deputy Director- HHS	HS Manager - Behavioral Health,
HS Manager - Children & Families	HS- Manager- Long Term Care
HS Supervisor- Access/ Initial Assessment	
HS Manager- Public Health	
HS Supervisor - Behavioral Health Case Management	
HS Supervisor - Behavioral Health	HS Supervisor - CPS on-going
HS Supervisor - Crisis Intervention	HS Supervisor - Public Health
HS Supervisor - Aging and Nutrition	HS Supervisor - Fiscal Support
HS Supervisor - Compliance and Medical Records	
HS Supervisor – Children and Families, Youth Justice	
HS Supervisor - WIC	Finance Senior Accountant
Nutrition Site Worker	Receptionist/Clerk
Administrative Clerk III	Physician Support Assistant
Accounting Clerk	Administrative Assistant
Child and Family Case Aide	Nutrition Lead Worker
Aging Services Case Manager	RN- Public Health
Birth to Three Service Coordinator	Birth to Three Teacher
Dementia Care Specialist	Prevention Specialist
PH Specialist	WIC Nutritionist
Behavioral Health Case Manager	Crisis Case Manager
Children and Families Case Manager	Crisis Intervention Specialist
Behavioral Health Clinician	RN-Mental health
Crisis Intervention Lead Worker	Occupational Therapist
Speech Therapist	Physical Therapist
HS Manager - Administrative Service.	

- j. The exclusion shall apply only to eligibility under 3.c., 3.d., 3.e., and 3.f. below and to eligibility under 3.a. and 3.b. where the employee did not exhibit or participate in a high risk practice or behavior that potentially contributed to falling into categories 3.a. and 3.b., as solely determined by the County. In summary and for the purpose of explanation, if an exempted employee did not exhibit risky behavior and still contracts COVID-19 or is ordered by a health care provider to self-quarantine, the added EPSLA sick leave bank will likely be available.

- i. An initial exclusion under 3.c. below may be retroactively corrected if the employee is subsequently qualified under 3.a. or 3.b. and did not exhibit or participate in a high risk practice or behavior that potentially contributed to falling into categories 3.a. and 3.b.
 - ii. Eligibility for the benefit under 3.a. or 3.b. for otherwise excluded employees, requires approval by the Human Resources Director and requires sufficient documentation, as determined solely at the discretion of the Human Resources Director or County Administrator. It is incumbent upon each employee excluded from this benefit to satisfactorily provide documentation evidencing that they did not exhibit or participate in a high risk practice if requesting to be considered for eligibility for the benefit under 3.a. and/or 3.b.
 - iii. If such partial or limited exclusion is determined not to be allowed under the Act, the exclusions in A.2., above, shall be all-inclusive of the categories and positions as shown in A.2., leave balances shall be retro-actively adjusted accordingly, and the remaining portions of this policy shall not be invalidated.
 3. To be entitled to EPSLA employer paid sick leave, the employee must be unable to work (or tele-work, as per above), because
 - a. The employee is subject to a federal, State or local quarantine or isolation order relative to the COVID-19 virus;
 - b. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - c. The employee is experiencing symptoms of the COVID-19 and is seeking medical diagnosis from an appropriate health provider;
 - d. The employee is caring for a family member subject to a federal, state or local order (quarantine or isolation) related to COVID-19 or subject to advisement by a health care provider to self-quarantine due to concerns related to COVID-19;
 - e. The employee is caring for a son or daughter whose school or place of care is closed or child care provider is unavailable for reasons related to COVID-19; or
 - f. The employee is experiencing a substantially similar condition to COVID-19 that has been identified by the Secretary of Health and Human Services.

B. The EPSLA Benefit.

1. The amount of Emergency Paid Sick Leave available to employees is limited.
 - a. Full-time employees will be eligible for 80 hours of Emergency Paid Sick Leave.
 - b. This 80-hour entitlement is pro-rated for employees working less than full-time based upon their regular hours of work. For eligible employees working less than full-time, the paid leave opportunity will be based on their regular hours worked per week or if variable

- over a period, such as from week to week, on the average hours worked in the preceding six months.
- c. The entitlement in a. and b. above is the total aggregate entitlement for 2020.
2. An employee may not carry over any unused EPSLA Leave beyond December 31, 2020. Further, upon an employee's separation from employment, any unused Emergency Paid Sick Leave is forfeited, *i.e.*, not paid out.
 3. The actual pay to which an employee will be entitled will depend on the reason for the absence.
 - a. If absent due to reasons identified under a., b., or c. above (generally arising from the employee's quarantine), the employee will be entitled to 100% of his/her regular hourly rate of pay (as long as it is in excess of minimum wage) for the hours of work missed (subject to the cap discussed below).
 - b. For all other qualifying reasons for absence, the employee will be entitled to two-thirds of the employee's regular rate of pay or minimum wage, whichever is greater.
 - i. Note that consistent with authority granted in the Emergency Declaration, an employee is not allowed to use other leave types to supplement the two-thirds pay.
 4. The entitlements to Emergency Paid Sick Leave are limited to \$511 per day, to a maximum aggregate payment of \$5,110, where the leave is for a., b., or c. above. For the remaining opportunities for Emergency Paid Sick Leave the employee will be paid at a maximum of \$200 per day, \$2,000 in the aggregate, for the qualifying period of absence.
 5. The employee must give notice to the County of the desire to use the available paid time. Notice must be given to the County no later than the first workday (or portion of such workday) that the employee receives Emergency Paid Sick Leave. The County will establish a reasonable notice process for qualifying employees. In order to ensure consistent application of the law, approval for EPSLA will be administered and issued by the Human Resources Department.
 6. An employee is not required to use other paid leave provided by the County before using Emergency Paid Sick Leave.