

Administrative Regulation 7.1 Extension of Emergency Family and Medical Leave Due to COVID-19

1. Introduction. Under the Emergency Family and Medical Leave Expansion Act of 2020 (EFMLEA), public health emergency leave of up to 12 weeks may be taken by employees with a qualifying need related to the COVID-19 public health emergency. **This regulation expires March 31, 2021.**
2. Entitlement to Leave. An employee who has been employed by MCCCCD for at least 30 calendar days shall be entitled to job-protected public health emergency leave for up to 12 weeks when the employee is unable to work (or telework) due to one of the following qualifying needs:
 - a. To care for the employee's son or daughter under 18 years of age when the child's school or place of care has been closed due to a public health emergency;
 - b. The child care provider of the employee's son or daughter is unavailable, due to a public health emergency; or
 - c. The employee is experiencing severe symptoms as a reaction to the COVID-19 vaccination.
 - d. For an employee to be eligible to take leave under the EFMLEA on April 1, 2020, the employee must have been on MCCCCD's payroll as of March 2, 2020. The eligible employee must have at least worked one day for MCCCCD.
3. Definitions. As used in this policy:
 - a. For the purposes of the EFMLEA, the term "Employee" has the same meaning given as the term in section 3(e) of the Fair Labor Standards Act. An Employee is considered to have been employed by MCCCCD for at least thirty calendar days if:
 1. MCCCCD had the employee on its payroll for the thirty calendar days immediately prior to the day that the employee's leave would begin; or
 2. The employee was laid off or otherwise terminated by MCCCCD on or after March 1, 2020, and rehired or otherwise reemployed by MCCCCD on or before March 31, 2021, provided that the employee had been on the MCCCCD's payroll for thirty or more of the sixty

calendar days prior to the date the employee was laid off or otherwise terminated.

- b. For the purposes of the EFMLEA, the term “Eligible Employee” means an Employee who has been employed for at least 30 calendar days by MCCCCD.
- c. A full-time employee, for the purposes of the EFMLEA, is considered to be a full-time employee if:
 - 1. The employee is normally scheduled to work at least 40 hours each workweek.
 - 2. The average number of hours per work week that the employee was scheduled to work, including hours for which the employee took leave of any type, is at least 40 hours per workweek over a period of time that is the lesser of:
 - i. The six-month period ending on the date on which the employee takes paid sick leave;
 - ii. The entire period of the employee’s employment.
- d. A part-time employee for the purposes of the EFMLEA, is considered to be a part-time employee if:
 - 1. The part-time employee has a normal weekly schedule that lacks 40 hours and
 - 2. The employee is entitled to up to the number of hours of paid sick leave equal to the number of hours that the employee is normally scheduled to work over two work weeks.
- e. For the purposes of the EFMLEA, the term “son or daughter” as defined in the Family Medical Leave Act of 1993 (FMLA), includes children 18 years of age or older that are incapable of self-care because of a mental or physical disability.
- f. For the purposes of the EFMLEA, the term “child care provider” under the Families First Coronavirus Response Act (FFCRA), 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.
- g. The term “public health emergency” means an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

- h. For the purposes of the EFMLEA, the term “Place of Care” means a physical location in which care is provided for the Employee’s child while the employee works for MCCCCD.
- i. For the purposes of the EFMLEA, the term “School” means an “elementary school” or “secondary school” as such terms are defined below:
 - 1. “Elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.
 - 2. “Secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.
- j. For the purposes of EFMLEA, the term “Telework” means work that MCCCCD permits or allows an employee to perform while the employee is at home or at a location other than the Employee’s normal workplace. An Employee is able to Telework if:
 - 1. MCCCCD has work for the employee;
 - 2. MCCCCD permits the employee to work from the employee’s supervisor approved location; and
 - 3. There are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the employee from performing that work.
 - i. Telework may be performed during normal hours or at other times agreed by MCCCCD and the employee.
 - ii. The wages for telework, to include overtime will be paid in accordance with the Fair Labor Standards Act as required by applicable law and is not compensated as paid leave under the EFMLEA.
- k. For the purposes of the EFMLEA, intermittent leave allows an employee to take Expanded Family and Medical Leave intermittently (i.e., in separate periods of time, rather than one continuous period) only if MCCCCD and the employee agree. MCCCCD and the employee may memorialize in writing any agreement under this section, but a clear and mutual understanding between the parties is sufficient.

1. MCCCCD and the employee agree that the latter may take expanded family and medical leave intermittently, they also must agree on the increments of time in which leave may be taken.

4. Use of Public Health Emergency Leave.

- a. First Ten Days. The first 10 days for which an employee takes public health emergency leave under this policy shall be unpaid or substituted with any accrued MCCCCD vacation or sick leave.
- b. Subsequent Days. After the initial 10 days (two work weeks), MCCCCD shall provide paid public health emergency leave for each day of such leave taken, up to ten weeks.
- c. Calculation. Paid leave for an employee shall be calculated at the rate of the employee's regular rate of pay.
- d. Varying Schedule Hours Calculation. In the case of a part-time employee whose schedule varies from week to week, the public health emergency leave calculation shall be based on the average number of hours that the employee was scheduled per day over the six-month period ending on the date on which the employee takes the public health emergency leave. This calculation shall include hours for which the employee took leave of any type.

MCCCCD may allow the employee to take intermittent leave on less than a full work day when taking paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the Department is supportive of such voluntary arrangements.

1. Where an employee has already taken some FMLA leave in the current twelve-month rolling calendar year, the maximum twelve weeks of EFMLEA leave is reduced by the amount of the FMLA leave entitlement taken in the rolling calendar year. If an employee has exhausted his or her twelve workweeks of FMLA or EFMLEA leave, an employee may apply for a Personal Leave.
- e. An employee who is self-quarantining is able to telework, and therefore may not take EFMLEA leave for this reason, if
 - i. MCCCCD has work for the employee to perform;
 - ii. MCCCCD permits the employee to perform that work from the location where the employee is self-quarantining; and

- iii. There are no extenuating circumstances, such as serious COVID-19 symptoms, that prevent the employee from performing that work.
 - f. 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.
5. Notice. In any case where the necessity for leave pertaining to this policy is foreseeable, an employee shall provide MCCCCD with as much advance notice as possible.
6. Relationship to Other Policies.
- a. Nothing in this policy shall be construed to diminish the rights or benefits to which an employee is entitled under MCCCCD’s existing policies or any Federal, State, or local law. Without limiting the foregoing, MCCCCD’s policy on Family and Medical Leave shall govern benefit accrual, maintenance of employee’s health insurance (if applicable), payment of insurance premiums, notices, and reinstatement relating to an employee who takes public health emergency leave under this policy.
 - b. Employees who are not eligible for public health emergency leave under this policy may be otherwise eligible under the Family Medical Leave Act (FMLA) for unpaid leave to care for themselves or a family member in accordance with the MCCCCD policy on Family Medical Leave.
 - c. Employees do not have any right or entitlement to use expanded family and medical leave retroactively for any unpaid or partially paid leave taken before April 1, 2020.
7. Documentation. Prior to taking their EMFLEA leave, an employee must provide MCCCCD with documentation in support of their leave containing the following information prior to taking public leave under the EFMLEA:
- a. Employee’s name;
 - b. Date(s) for which leave is requested;
 - c. Qualifying reason for the leave; and
 - d. Oral or written statement that the employee is unable to work because of the qualified reason for leave.

1. To take leave for a qualifying COVID-19 related reason under the EFMLEA, the employee must additionally provide MCCCCD with:
 - i. The name of the Son or Daughter being cared for;
 - ii. The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and
 - iii. A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Expanded Family and Medical Leave.
- e. MCCCCD will require employees to follow the notice procedures as soon as practicable after the first workday is missed for EFMLEA as referred to in the MCCCCD Family Medical Leave policy (B-9).
- f. MCCCCD will require the employee to provide documentation for leave as described above within 15 calendar days of returning to work.

8. Retaliation Prohibited.

- a. An employee who takes public health emergency leave in accordance with this policy, or initiates or testifies in any proceeding to enforce this policy or the EFMLEA, shall not be discharged, disciplined, or subject to discrimination or other retaliation because of having taken such action. A violation of this subsection may lead to progressive discipline up to and including involuntary termination of employment.
- b. MCCCCD is prohibited from interfering with, restraining, or denying an employee's exercise of or attempt to exercise any right under the FMLA, including the EFMLEA; discriminating against an employee for opposing any practice made unlawful by the FMLA, including the EFMLEA; or interfering with proceedings initiated under the FMLA, including the EFMLEA.
- c. This policy does not protect an employee from employment actions that would have affected the employee regardless of whether the leave was taken.

- d. MCCCCD may not deny an employee expanded family and medical leave on the grounds that the employee has already taken another type of leave or taken leave from another source, including leave taken for reasons related to COVID-19.
9. Returning to Work. An employee is entitled to be restored to the same or an equivalent position upon return from expanded family and medical leave in the same manner that an employee would be returned to work after FMLA leave.

Rationale for New Administrative Regulation

To provide all eligible MCCCCD full-time and part-time employees, including all faculty, who have a qualifying need related to the COVID-19 pandemic with paid, job-protected leave. This policy extends and modifies those benefits provided by MCCCCD pursuant to the federal Families First Coronavirus Response Act, which expired December 31, 2020. Upon adoption, this regulation will replace the existing policy B-9A. The language will reside in Section 7 of the Administrative Regulations, which serves as the section for emergency policies adopted in response to the COVID-19 Pandemic, the approval authority of which resides in the Chancellor pursuant to the Governing Board's March 2020 resolution. The regulation is effective as of January 1, 2021.

ADOPTED by Direct Approval of the Chancellor, January 22, 2021