

## **Administrative Regulation 7.2 Extension of Emergency Paid Sick Leave Due to COVID-19**

1. **Introduction.** The federal Emergency Paid Sick Leave Act (EPSLA) provides eligible employees with paid sick leave for immediate use by an MCCCCD employee for the purposes described in subsection C(2)(a)-(e) below. Employees are provided this paid leave regardless of how long the employee has been employed by MCCCCD. This regulation is intended to provide all rights conferred by the EPSLA in response to the COVID-19 pandemic. **This regulation expires March 31, 2021.**
2. **Entitlement to Leave.** MCCCCD shall provide to each employee emergency paid sick leave to the extent that the employee is unable to work (or telework) due to any of the following:
  - a. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
  - b. The employee has been advised by a health care provider or the employee’s supervisor to self-quarantine due to concerns related to COVID–19.
  - c. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
  - d. The employee is caring for an individual who is subject to an order as described in subparagraph (a) or has been advised as described in subparagraph (b).
  - e. The employee is caring for a son or daughter of such an employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions.
  - f. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
  - g. The employee is experiencing serious symptoms as a reaction to the COVID-19 vaccination.

3. Definitions: As used in this regulation:

- a. For the purposes of the EPSLA, 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 EPSLA, the term “Eligible Employee” means an Employee who has been employed for at least 30 calendar days by MCCCCD.
- c. A full-time employee is entitled to up to 80 hours of Paid Sick Leave. For the purposes of the EPSLA, an employee 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; or
    - ii. The entire period of the employee’s employment.
- d. A part-time employee for the purposes of the EPSLA, 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 EPSLA, 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 EPSLA, 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 EPSLA, 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 EPSLA, 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 EPSLA, 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 EPSLA.
- k. For the purposes of the EPSLA, intermittent leave allows an employee to take Paid Sick 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. Where MCCCCD and an employee agree that the latter may take paid sick leave intermittently, they also must agree on the increments of time in which leave may be taken

#### 4. Use of Paid Leave.

- a. Full-time employees are entitled to up to 80 hours of emergency paid sick leave.
- b. Part-time employees are entitled to the average number of hours that the employee works over a 2-week period.
- c. Paid leave for an employee shall be calculated at the rate of the employee's regular rate of pay.

- d. Emergency paid sick leave is available to employees for immediate use; there is no waiting period or length of service requirement.
  - e. After the first workday (or a portion thereof) that an employee uses emergency paid sick leave, MCCCCD may require the employee to follow reasonable notice procedures to continue receiving such leave.
  - f. 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 that is under the age of 18 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.
  - g. MCCCCD will not require, as a condition of providing paid sick time under this Act, that the affected employee search for or find a replacement employee to cover the hours during which the employee is using emergency paid sick leave.
  - h. Emergency paid sick leave under this regulation shall cease beginning with the employee's next scheduled work shift immediately following termination of the qualifying reason under section C(2).
5. Documentation. An employee must provide MCCCCD with documentation in support of their paid sick leave. Such documentation must include a signed statement containing the following information:
- a. The employee's name;
  - b. The date(s) for which leave is requested;
  - c. The COVID-19 qualifying reason for leave; and
  - d. A statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason.
    - i. An employee requesting paid sick leave under Section 2(a) of this regulation must provide the name of the government entity that issued the quarantine or isolation order to which the employee is subject.

- ii. An employee requesting paid sick leave under Section 2(b) of this regulation must provide the name of the health care provider who advised him or her to self-quarantine for COVID-19 related reasons.
- iii. An employee requesting paid sick leave under Section 2(c) of this regulation to care for an individual must provide either 1) the government entity that issued the quarantine or isolation order to which the individual is subject or 2) the name of the health care provider who advised the individual to self-quarantine, depending on the precise reason for the request.
- iv. An employee requesting to take paid sick leave under Section 2(e) of this regulation to care for his or her child must provide the following information:
  - 1. The name of the child being care for;
  - 2. The name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; and
  - 3. A statement representing that no other suitable person is available to care for the child during the period of requested leave.

6. Carry Over; Interaction with Other Paid Leave.

- a. Nothing in this regulation shall be construed to
  - i. Diminish the rights or benefits to which an employee is entitled under MCCCCD's existing policies or any Federal, State, or local law, or
  - ii. Require financial or other reimbursement to an employee from MCCCCD upon the employee's termination, resignation, retirement, or other separation from employment for paid sick time under this regulation that has not been used by such employee.
- b. An employee is not required to use other available paid leave before the employee uses the emergency paid sick leave provided in this regulation.

- c. An employee's entitlement to, or actual use of, paid sick leave is not grounds for diminishment, reduction, or elimination of any other right or benefit to which the employee is entitled under any other federal, state, or local law, or under any MCCCCD regulation that existed prior to April 1, 2020.
  - d. Once an employee takes the maximum 80 hours of paid sick leave, he or she is not entitled to any paid sick leave from a subsequent employer.
  - e. **Emergency paid sick leave cannot be used after March 31, 2021.**
7. Employer Responsibility. Management will ensure that this regulation will be posted in conspicuous places on the premises where notices to employees are customarily posted.
8. Retaliation Prohibited. An employee who takes emergency paid sick leave in accordance with this regulation, or initiates or testifies in any proceeding to enforce this regulation or the EPSLA, 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.

#### Rationale for New Administrative Regulation

*To provide emergency paid sick leave due to COVID-19 to eligible all eligible MCCCCD full-time and part-time employees, including all faculty, who cannot work (or telework) because of an emergency related to coronavirus. This regulation extends and modifies those benefits provided by MCCCCD pursuant to the federal Emergency Paid Sick Leave Act (EPSLA). Upon adoption, the regulation will replace existing the existing policy for sick leave as outlined in B-4B. 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**