

**CLARK COUNTY EMERGENCY FAMILY AND MEDICAL LEAVE  
EXPANSION ACT POLICY  
(ADDENDUM TO CLARK 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.

Clark County will comply with all applicable state and federal laws concerning family and medical leave (FMLA) and emergency family and medical leave expansion act (EFMLEA). As a result of the Public Health Emergency, this addendum outlines Clark County’s administration of EFMLEA only. Clark County retains the right to modify this policy and EFMLEA administration contingent on pending guidance from United State Department of Labor.

The Emergency Family and Medical Leave Expansion Act period begins on April 1, 2020 and ends on December 31, 2020.

To qualify for EMFLEA, an employee must be employed for at least 30 calendar days by Clark County.

Employees should direct any questions regarding EMFLEA leave to the Personnel Manager. Taking EMLEA leave will not be used against an employee in any employment decision contrary to law. Employees on EFMLEA with Clark County may not engage in any other employment that is inconsistent with the reason for the employee’s EMFLEA request.

**GENERAL LEAVE RIGHTS**

The employee must be unable to work or telecommute.

EMFLEA leave only applies if the employee needs to care for the employee’s son or daughter who is under 18 years of age if the school or place of care has closed OR the child care provider is unavailable due to a COVID-19 emergency declared by the federal, state, or local government. School means an elementary school or secondary school. Child care provider means a provider who receives compensation for providing child care services on a regular basis.

Health care providers are exempt from this act, effective April 7, 2020. A “health care provider” is any Clark County employee employed at the Clark County Rehab & Living Center.

EFMLEA is not additional time from the current FMLA requirements (i.e. no expansion of the 12-week FMLA allotment) and previous FMLA taken limits the amount of EFMLEA. In other words, the EFMLEA for childcare purposes is automatically reduced by the amount of FMLA an employee has already taken in the current administrative year, without regard to the reason for the previous leave.

An employee may be eligible for regular FMLA 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.

**Clark County will calculate the federal FMLA 12-month period as a rolling 12-month period measured forward from the date an employee uses any leave under this policy.** The Wisconsin FMLA entitlement runs on a calendar-year basis.

#### **NOTIFICATION AND CERTIFICATION**

Whenever possible, employees must provide notice to the county as early as practicable if leave is foreseeable.

We will inform employees who have requested leave whether they are eligible for leave, specify any additional information needed, and inform the employee of his/her rights and responsibilities. If the employee is not eligible for leave, we will provide a reason for the ineligibility.

We will also inform eligible employees whether requested leave will or will not be designated as EFMLEA leave and the amount of leave that will be counted against the employee’s leave entitlement.

Clark County may also designate any qualifying absences as EFMLEA usage. The employee will be notified of this designation.

#### **INTERMITTENT LEAVE**

An employee does not need to use EFMLEA entitlement in one block. An employee may be eligible to take intermittent leave or reduced schedule leave if necessary.

#### **SUBSTITUTING EARNED TIME OFF**

The EFMLEA provides job protected time away from work for up to 12 weeks. The first ten (10) days of EFMLEA is unpaid; however, employees may elect to use other accrued leave during the unpaid leave period, including, but not limited to, Emergency Paid Sick Leave (see COVID-19 Emergency Paid Sick Leave Act addendum for details).

Starting on the eleventh (11) day of EMFLEA, the county will pay leave at two-thirds of the employee's regular rate of pay, or minimum wage, whichever is greater AND at the number of hours the employee is normally scheduled to work. For employees with variable schedules, the county shall use the average number of hours that the employee was scheduled per day over the previous 6-months ending on the date the employee takes the leave and including the hours the employee took leave of any type; if unknown, what the employee expected for work hours at the time of hire. Employees can supplement paid EMFLEA with another paid leave for full payment. Paid leave cannot exceed \$200 per day and \$10,000 in aggregate.

### **BENEFITS DURING LEAVE**

An employee's coverage under our group health plans (i.e., group health and dental coverage) will be maintained during the period of an EFMLEA leave as required by the Wisconsin and federal FMLA laws and in accordance with the applicable terms of the plans.

Employees who normally pay a portion of the premium for insurance coverage must continue to do so during the period of EFMLEA leave. If paid leave is substituted for unpaid leave, the employee's portion of the premium will be deducted from the employee's paycheck. For those employees on unpaid leave, payment arrangements must be made prior to the start of the leave, or as soon as practicable. A 30-day grace period will apply to premium payments, however, if payment has not been made timely, the employee's group health/dental insurance may be terminated.

If Clark County maintains the employee's insurance during an EFMLEA leave, and the employee does not return from EFMLEA leave, under certain circumstances, Clark County will have the right to recover the total cost of the insurance premiums paid during the employee's leave, as allowed by law.

Use of EFMLEA cannot result in the loss of any employment benefit that accrued prior to the start of the employee's leave. Other benefit accruals may be suspended during the period of the leave and will resume upon return to active employment. Check with the Assistant Comptroller or the Personnel Manager regarding other benefit continuation provisions.

### **BENEFIT ACCRUALS**

Under both the federal and state versions of the Family and Medical Leave Acts, longevity and benefits do not accrue while on unpaid leave *unless so provided for by policy or labor contracts*. Health insurance will remain in effect during the term of the leave subject to the employee continuing to pay his/her share of the monthly premium(s).

### **FAILURE TO MEET POLICY REQUIREMENTS**

If the employee fails to meet the requirements of this policy for EFMLEA, the request for leave will be denied until the requirements are met.

Failure to comply with this policy may result in employee discipline.

## **FAILURE TO RETURN TO WORK AT END OF EFMLEA-PROTECTED LEAVE**

Employees will not be required to provide a return-to-work notice under EFMLEA.

If the employee does not return to work at the end of his/her EFMLEA protected leave, the employee's rights under the federal and state FMLA laws, including the right to reinstatement, will no longer be in effect. In such a case, the employee's employment may be terminated.

## **EMPLOYER'S DUTIES AND ENFORCEMENT**

It is unlawful for Clark County to interfere with, restrain, or deny the exercise of any right provided under EFMLEA or to discharge or discriminate against any person for opposing any practice made unlawful by EFMLEA or for involvement in any proceeding under or relating to EFMLEA.

### **Revision History Table**

<b>Date</b>	<b>Change Summary</b>
<b>April 6, 2020</b>	Updated "General Leave Rights" to include exemption of health care providers employed at CCRLC, effective April 7, 2020.