

# **Camden County Developmental Disability Resources (CCDDR) Families First Coronavirus Response Act Policy: Paid Sick Leave and Expanded FMLA Leave (“FFCRA Policy”)**

**Effective Dates of Policy:** April 1, 2020 – December 31, 2020

## **Introduction**

The Families First Coronavirus Response Act (“FFCRA”) creates two new types of leave to which eligible employees may be entitled if they are unable to work due to COVID-19 related reasons: **Paid Sick Leave** and **Expanded FMLA Leave**. Information regarding both types of leave is set forth below. Further information regarding the FFCRA, as well as a CCDDR Request for FFCRA Leave Form, can be obtained from CCDDR’s Human Resource Officer.

## **Unable to Work**

For purposes of both types of leave under this policy, an employee is considered “unable to work” if CCDDR has work for the employee and one of the Qualifying Reasons (as defined herein) prevents the employee from being able to perform that work, either under normal circumstances at the employee’s normal worksite or by means of telework. CCDDR may approve an employee to work an adjusted schedule (aka “Flex” time), in which case an employee who has been approved to work an adjusted schedule is not “unable to work” unless one of the Qualifying Reasons prevents the employee from working the adjusted schedule and there are no extenuating circumstances that prevent the employee from performing that work.

## **Paid Sick Leave Under the FFCRA**

### **Eligible Employees**

All employees, regardless of length of employment with CCDDR, are eligible for Paid Sick Leave. However, CCDDR may choose not to permit an employee to take Expanded FMLA Leave where the employee’s use of Expanded FMLA Leave would jeopardize the viability of the business as a going concern.

### **Qualifying Reasons for Paid Sick Leave**

An employee is entitled to take Paid Sick Leave when the employee is unable to work because the employee:

- Is subject to a federal, state, or local quarantine or isolation order due to COVID-19 (“Quarantine Order”)<sup>1</sup>

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<sup>1</sup> A quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority.

- Has been advised by a healthcare professional to self-quarantine due to COVID-19 (i.e., based on the health care provider’s belief that the employee has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19 (“Quarantine Recommendation”))
- Is experiencing symptoms of COVID-19 (such as fever, dry cough, shortness of breath, or other COVID-19 symptoms identified by the U.S. Centers for Disease Control and Prevention [CDC]).and is seeking medical diagnosis (“COVID-19 Symptoms”)
- Is caring for a qualified individual<sup>2</sup> who is under a Quarantine Order or Quarantine Recommendation (“Quarantine Care”)
- Is caring for the employee’s son or daughter, because the son or daughter’s school or childcare provider is closed/unavailable due to COVID-19 precautions (“Child Care”)<sup>3</sup>
- Is experiencing any other substantially similar condition specified by the Secretary of the Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor (“Other Symptoms”)

Amount of Paid Sick Leave:<sup>4</sup>

Employees who are full-time status are entitled to a maximum of 80 hours of Paid Sick Leave.

Employees who are part-time status are entitled to a maximum number of hours of Paid Sick Leave that is equal to the average number of hours that such employee works over a two-week period. Special rules may apply to part-time employees who work varying schedules.

Amount of Pay for Paid Sick Leave

For Paid Sick Leave due to reasons as set forth herein, leave will be paid at the employee’s regular rate of pay.

Relation of Paid Sick Leave to Other Paid Leave

Paid Sick Leave is in addition to any other paid leave which may be available to employees under the CCDDR’s other paid time off (PTO) policies. Employees are not required to first use PTO under any other CCDDR policy before using Paid Sick Leave.

Paid Sick Leave is in addition to any other paid leave which may be available to employees under applicable Federal, state, or local law.

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<sup>2</sup> A qualified individual is someone who is: (a) an employee’s immediate family member, roommate, or similar person with whom the employee has a relationship that creates an expectation of care; and (b) in need of genuine care from the employee.

<sup>3</sup> Paid Sick Leave for Child Care may be used only when no other suitable person will be caring for the employee’s son or daughter during the period for which the employee is requesting leave.

<sup>4</sup> The amount of Paid Sick Leave available under this FFCRA Policy to an employee who becomes employed by the Company after April 1, 2020, will be reduced by the amount of Paid Sick Leave, if any, such employee used while working for any prior employer.

## Employee Notice and Documentation Requirements

Employees are requested to provide notice of their need for Paid Sick Leave as soon as the need for leave becomes known. In all cases, however, an employee must give notice of the employee's need for Paid Sick Leave as soon as practicable after the first workday (or portion thereof) for which an employee takes Paid Sick Leave. Employees may provide initial notice of the need for leave either orally or in writing to CCDDR's Human Resource Officer. However, employees thereafter must provide an appropriate statement and supporting documentation demonstrating the need for Paid Sick Leave. A CCDDR Request for FFCRA Leave Form for this purpose must be obtained from, and submitted to, CCDDR's Human Resource Officer.

## Use of Paid Sick Leave

All employees are able to telework, but for those employees who are unable to telework during their normally scheduled hours (including any adjusted schedule agreed to by CCDDR) due to a Qualifying Reason for Paid Sick Leave may take Paid Sick Leave intermittently while teleworking, subject to CCDDR's approval of both: (a) the use of intermittent Paid Sick Leave; and (b) the increment(s) or schedule in which Paid Sick Leave will be used. Employees must discuss requests for intermittent Paid Sick Leave with the Human Resource Officer and their supervisor.

## No Replacement Requirement

Employees are not required to find a replacement to cover any part of their work schedule while using Paid Sick Leave.

## Exhaustion of Paid Sick Leave

If an employee exhausts Paid Sick Leave entitlement but still needs leave for COVID-19 related reasons, the employee should communicate with CCDDR's Human Resource Officer to determine whether another type of leave is available.

## Return to Work from Paid Sick Leave

An employee who has taken Paid Sick Leave should notify CCDDR's Human Resource Officer promptly when the employee's need for Paid Sick Leave has ended. The employee's Paid Sick Leave ends as of the next immediately scheduled workday following the conclusion of the employee's need for Paid Sick Leave. CCDDR's Human Resource Officer will work with the employee to return the employee to work from leave, including informing the employee of any return-to-work certification from employee's health care provider that may be required when Paid Sick Leave has been taken due to Quarantine Order, Quarantine Recommendation, COVID-19 Symptoms, Quarantine Care, or Other Symptoms.

## **Expanded FMLA Leave Under the FFCRA**

### **Eligible Employees**

All employees who have been employed by CCDDR for at least 30 calendar days as of the date the Expanded FMLA Leave is to begin are eligible for Expanded FMLA Leave. Employees who have recently been rehired by CCDDR should consult with Human Resources to determine when they are eligible for Expanded FMLA Leave. However, CCDDR may choose not to permit an employee to take Expanded FMLA Leave where the employee's use of Expanded FMLA Leave would jeopardize the viability of the business as a going concern.

### **Qualifying Reason for Expanded FMLA Leave**

An employee is entitled to take Expanded FMLA Leave when the employee is unable to work (including telework) because the employee is caring for the employee's son or daughter because the son or daughter's school or child care provider is closed/unavailable due to and related to COVID-19 as declared by the federal, state, or local authority (a "Public Health Emergency"). Expanded FMLA Leave may be used only when no other suitable person will be caring for the employee's son or daughter during the period for which the employee is requesting leave.

### **Amount of Expanded FMLA Leave**

For those employees who are eligible for FMLA leave, the Expanded FMLA Leave entitlement under the FFCRA does not provide for an additional amount of FMLA leave, but instead simply provides an *additional qualifying reason* for which FMLA leave may be taken (as set forth herein). Thus, employees who are eligible for both Expanded FMLA Leave and for FMLA leave under FMLA are entitled to take up to a combined total of 12 weeks of FMLA leave (or up to 26 weeks of military caregiver leave), including Expanded FMLA Leave and other types of FMLA leave, within the applicable 12-month period (as defined). Regardless of how the 12-month period is defined, in no event may an employee take more than 12 weeks of Expanded FMLA Leave during the period of April 1, 2020 to December 31, 2020.

For example, if you have already taken some, but not all, of your 12 workweeks of FMLA leave during the applicable 12-month period, you may take some or all of the remaining portion of the 12 workweeks as Expanded FMLA Leave (subject to the terms set forth herein). However, if you have already taken 12 workweeks of FMLA Leave during the applicable 12-month period, you may not take additional Expanded FMLA Leave during the applicable 12-month period.

Employees who are eligible for Expanded FMLA Leave but who are not eligible for FMLA leave (due to length of employment, hours worked, or number of employees at work location) are entitled to take up to 12 weeks of Expanded FMLA Leave. If such employees subsequently become eligible for FMLA leave, their 12-week FMLA entitlement may be reduced by the amount of Expanded FMLA Leave they have already taken in the applicable 12-month period, and in no event may they take more than 12 weeks of Expanded FMLA during the period of April 1, 2020 to December 31, 2020.

An employee whose FMLA leave and Expanded FMLA Leave exceeds the amount of leave available under this policy within the applicable 12-month period will not be guaranteed a job upon return from the leave, unless otherwise required by law. Employees may submit a request for other unpaid leave; however, each situation shall be assessed on a case by case basis. Such leave of absence requests must be approved by the Executive Director and may require additional documentation.

#### Unpaid vs. Paid Expanded FMLA Leave

The first 2 weeks (10 workdays) of Expanded FMLA Leave is unpaid. However, an employee may elect to use Paid Sick Leave under this policy (if available) or currently available paid leave under CCDDR's PTO policies during this two-week period. If the employee elects to do so, then such leave will run concurrently with the unpaid Expanded FMLA Leave and will be paid in accordance with the applicable policy.

Any remaining Expanded FMLA Leave taken after the first two weeks (10 workdays) of Expanded FMLA Leave will be paid at 2/3 of the employee's regular rate of pay, i.e., 2/3 employee's regular rate of pay multiplied by the number of hours that the employee would otherwise be scheduled to work during the period of the leave. Subject to applicable federal or state law, employees may choose to use any currently available paid leave under CCDDR's PTO policies to supplement pay during this period of paid Expanded FMLA Leave so that the employees receive the full amount of their normal pay (e.g. the employee may substitute one-third hour of accrued paid leave for each hour of Expanded FMLA Leave), which is approximately 13.2 PTO hours for each 40-hour workweek. For each day of leave, the employee receives compensation based on the number of hours the employee would otherwise be normally scheduled to work, although special rules may apply to employees with varying schedules.

#### Employee Notice and Documentation Requirements

Employees are requested to provide notice of their need for Expanded FMLA Leave as soon as the need for leave becomes known. In all cases, however, an employee must give notice of the employee's need for Expanded FMLA Leave as soon as practicable after the first workday (or portion thereof) for which an employee takes Expanded FMLA Leave. Employees may provide initial notice of the need for leave either orally or in writing to CCDDR's Human Resource Officer. However, employees thereafter must provide an appropriate statement and supporting documentation demonstrating the need for Expanded FMLA Leave. A CCDDR Request for FFCRA Leave Form for this purpose must be obtained from, and submitted to, CCDDR's Human Resource Officer.

#### Employer Notice

After receiving an initial request for Expanded FMLA Leave, CCDDR will inform the employee of the employee's eligibility status for taking leave. If the employee is not eligible for Expanded FMLA Leave, CCDDR will provide a reason for the ineligibility. If the employee is eligible for Expanded FMLA Leave, CCDDR will notify the employee of the employee's rights and responsibilities under the FMLA, including any additional information that may be required of the employee.

After sufficient information is obtained to determine whether the leave will be designated as FMLA-protected, CCDDR will notify the employee as to whether the leave has been designated as Expanded FMLA Leave. If known at that time, CCDDR will also notify the employee of the amount of leave to be counted against the employee's leave entitlement. If not known at that time, CCDDR will notify the employee of the amount of leave counted against the employee's leave entitlement upon request, but no more often than once in a 30-day period during which leave was taken.

#### Use of Expanded FMLA Leave

All employees are able to telework, but for those employees who are unable to telework during their normally scheduled hours (including any adjusted schedule agreed to by CCDDR) due to a Qualifying Reason for Expanded FMLA Leave may take Expanded FMLA Leave intermittently while teleworking, subject to CCDDR approval of both: (a) the use of intermittent Expanded FMLA Leave; and (b) the increment(s)/schedule in which Expanded FMLA Leave will be used. Employees must discuss requests for intermittent Expanded FMLA Leave with the Human Resource Officer and their supervisor.

#### **Provisions Applicable to Both Paid Sick Leave and Expanded FMLA Leave under this FFCRA Policy**

##### Son or Daughter

For purposes of both Paid Sick Leave and Expanded FMLA Leave, a "son or daughter" includes the employee's: biological, adopted, foster or step child; legal ward; or a child for whom the employee is standing *in loco parentis* (i.e., the employee has day-to-day responsibilities to care for or financially support the child). A "son or daughter" also includes an employee's adult son or daughter (i.e., one who is 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.

##### Continuation of Benefits

Employees will remain eligible for CCDDR-paid employee-only coverage under CCDDR's health insurance plan. To continue family, spouse, and/or dependent coverage, the employee must continue to make any contributions (e.g., premium payments) that the employee made to the plan before taking leave. The employee may also choose not to continue family, spouse, and/or dependent coverage while on leave, and upon returning from such leave, shall be entitled to be reinstated on the same terms as prior to taking the leave. If CCDDR changes or provides new benefits during the period of Paid Sick Leave and/or Expanded FMLA Leave, the employee will be entitled to the new or changed benefits to the same extent as if the employee was not on leave. The employee will also receive all notices of an opportunity to change benefits (e.g., open enrollment) and any such election to change benefits will be honored.

##### No Carryover

Any Paid Sick Leave available under this Policy that has not been used by December 31, 2020 may not be carried over to 2021. Similarly, Expanded FMLA Leave is available only until

December 31, 2020; after that, an employee may only take FMLA leave (and only to the extent the employee is eligible and has leave time remaining in the applicable 12-month period). Employees will not be paid for any unused Paid Sick Leave or Expanded FMLA Leave upon the expiration of the FFCRA on December 31, 2020.

#### No Payout on Separation

Employees will not be paid for any unused leave under this Policy upon separation for any reason.

#### Return to Work/Restoration of Position

If an employee's scheduled work hours are reduced due to the lack of work, the employee is not entitled to use Paid Sick Leave or Expanded FMLA Leave for the hours the employee is no longer scheduled to work.

During Paid Sick Leave or Expanded FMLA Leave, CCDDR may require periodic reports from the employee regarding the employee's status and intent to return to work. If an employee is able to return to work sooner than anticipated, the employee is expected to notify CCDDR of the changed circumstances.

At the end of the approved Paid Sick Leave and/or Expanded FMLA Leave, the employee will be offered restoration to the same position held when leave commenced, or to an equivalent position with the same benefits, terms, and conditions of employment.

However, an employee has no greater right to leave under the FFCRA, or to reinstatement or other benefits and conditions of employment under the FFCRA, than if employee had been continuously employed during the leave period. Thus, for example, the right to paid leave (or to continuing paid leave, if leave has already begun) or to restoration may not apply if there has been a worksite closing, layoff, workforce reduction, a reorganization, or similar business change for legitimate business reasons affecting the employee's position before or while the employee was on leave under the FFCRA. In addition, certain highly compensated "key" employees as defined under the FMLA may not be entitled to job restoration.

With respect to employees who have taken Expanded FMLA Leave, if the employee's previous position no longer exists due to CCDDR's economic conditions or other changes in operating conditions that affect employment and are due to COVID-19 related reasons during the period of the leave, then CCDDR will make reasonable efforts, upon the employee's ability to return from Expanded FMLA Leave, to restore the employee to an equivalent position (including equivalent in terms of benefits, pay, and other terms/conditions). In certain circumstances, no reasonable equivalent position may be available; therefore, the employee may not be reinstated. However, for a period of one year (beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after your leave began, whichever is earlier), CCDDR will continue to make reasonable efforts to contact you if an equivalent position becomes available.

### Protecting Employee Rights

It is against CCDDR policy to interfere with, restrain, or deny the exercise of any right provided by the FFCRA, or to discipline, discharge or otherwise discriminate against any person who lawfully takes leave under the FFCRA, files a complaint, or institutes a proceeding under or related to the FFCRA, or intends to testify in any such proceeding.

Employees who have concerns with how their FFCRA leave requests have been handled are encouraged to bring their concerns to the attention of the Human Resource Officer. Employees also may file a complaint with the U.S. Department of Labor, Wage and Hour Division. Additional information may be obtained through the Department of Labor at 1-866-4US-WAGE (1-866-487-9243) (TTY 1-877-889-5627) or [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd).

### Dishonesty or Misuse of FFCRA Leave

Employees are prohibited from engaging in fraud, abuse or misuse in connection with a request for leave under this FFCRA Policy. The submission of false information in support of a request for leave under this FFCRA Policy, or the abuse or misuse of approved leave under the FFCRA, may result in disciplinary action, up to and including immediate termination.

### **Construction of this FFCRA Policy**

This policy is intended to comply with the FFCRA and not expand upon it. As such, this policy shall be construed in all cases consistent with the statutory requirements. The ultimate determination of whether an employee is entitled to leave under the FFCRA or whether any time off by the employee may be deemed to be leave under the FFCRA is not governed by this policy, but rather is governed by the provisions of the FFCRA, as well as any applicable regulations and other law interpreting the FFCRA. In addition, CCDDR will comply with any applicable state or local law or regulation that provides greater leave or related entitlements to employees. Accordingly, this policy is intended to provide employees with a summary of some of the important provisions of the FFCRA.

CCDDR reserves the right to amend any portion of this policy at its sole discretion, and to apply all provisions and defenses set forth in applicable law, whether or not specifically set forth in this policy. This policy is not a contract or a promise of any kind and does not alter CCDDR's employment at-will policy.