

## Notice of Leave Eligibility & Designation For Emergency Family and Medical Leave (EFMLA) Under FFCRA

**NOTE TO EMPLOYER:** *The following is a sample employee letter of Notice of Eligibility and Designation for Emergency Family and Medical Leave (EFMLA) under the Families First Coronavirus Response Act (FFCRA).*

*Keep in mind that employers with 50 or more employees also remain subject to traditional FMLA rules and requirements. Employers are recommended to also include a traditional FMLA notice of rights and responsibilities in order to ensure the EFMLA and FMLA run concurrently for the 12 weeks.*

**Updated 3/31/20**

Dear [EMPLOYEE]:

We understand that you are currently experiencing a COVID-19 related event that may qualify for a leave of absence under the Emergency Family and Medical Leave Expansion Act (EFMLA). Under EFMLA, eligible employees unable to work due to caring for their child because the child's school or childcare has been closed, or is unavailable due to the public health emergency, will be provided with a job-protected leave of absence of up to 12 weeks.

We have reviewed your request for leave under the EFMLA received on [DATE] and decided:

**Your EFMLA request is approved. You are eligible for up to 12 weeks of EFMLA during the designated FMLA leave year as outlined below.**

Your EFMLA leave will be taken consecutively between the dates of: [DATE – DATE]

You have already used \_\_\_\_\_ weeks of traditional FMLA during the designated leave year; therefore you have \_\_\_\_\_ weeks of EFMLA remaining before your 12-week EFMLA/traditional FMLA benefit is exhausted.

Your leave will be taken intermittently, scheduled as follows: *(employer must agree to the schedule)*: \_\_\_\_\_.

**Compensation during EFMLA will be handled as follows:**

Your first two weeks of EFMLA are unpaid.

You have elected available paid leave, such as sick time or PTO for the first two weeks.

Your first two weeks of EFMLA have already been paid through emergency paid sick leave to care for your child because of the child's school or childcare provider close or unavailable due to the public health emergency.

After the first 2 weeks, your remaining EFMLA will be paid, up to another 10 weeks (as applicable) through December 31, 2020. You are entitled to receive two-thirds (2/3) of your regular rate of pay at \_\_\_\_\_ hours per day for your remaining EFMLA leave. Your hours are based on your average number of hours worked during the 6 months prior to the start of your leave, up to \$200 per day for up to 10 weeks (\$10,000 total), as applicable. If you have not been employed for at least 6 months, the average number of hours is based on what you normally would be scheduled to work.

You may choose to use existing paid vacation, personal, medical, or sick leave (if applicable) to supplement the amount you receive, up to your normal earnings.

**Your EFMLA request is denied, for the following reason:**

You have exhausted your 12-week traditional FMLA leave benefit for the designated leave year.

Your leave request does not meet the criteria.

Your leave request is lacking supporting documentation.

Your position has been impacted by a temporary or permanent layoff.

You have not been employed for at least 30 calendar days.

You work in a qualified health care provider or emergency responder role, which is excluded from leave under the provisions of the FFCRA.

\_\_\_\_\_ As a small business with fewer than 50 employees, an authorized officer of the business has determined that providing EFMLA would jeopardize the viability of our business.

If you have any questions or concerns regarding your eligibility, rights and responsibilities for EFMLA under FFCRA, please contact Human Resources. Providing false or misleading information regarding the need for EFMLA will be grounds for corrective action, up to and including termination of employment.

\_\_\_\_\_  
Employer Representative Signature

\_\_\_\_\_  
Date

***The information in this box does not apply if your request was denied.***

**Who is eligible for EFMLA?**

Employees who have been employed by the Company for at least 30 days are eligible for EFMLA, regardless of their regular number of work hours.

**Is this different from FMLA and if so, how do both FMLA and EFMLA work together?**

EFMLA is an emergency law expanding FMLA and expires on December 31, 2020. If you qualify for leave under both EFMLA and FMLA, the time off will count concurrently. You are not entitled to more than a total of 12 weeks under both policies (except for qualifying military exigency leave of 26 weeks under FMLA).

**How much notice do I have to give to use my EFMLA?**

You are required to provide reasonable notice. If practicable, we ask that you call in every day unless you have notified us that your EFMLA leave is expected to continue for a certain period of time.

**What type of verification is required?**

You will be required to provide documentation to verify the qualifying reason for the leave, such as a notice of closure of school or childcare provider (i.e. email, notification on website, or news article). Your EFMLA will be expected to end once the school or childcare reopens or returns to normal operations.

**What happens to my insurance while I'm on leave?**

Any group insurance coverage you participate in now will continue under the same terms and conditions. We will continue making payroll deductions to cover your employee portion of the premiums.

**Will I get my job back when I return to work?**

Employees returning to work from EFMLA leave will be restored to the same position they held prior to their leave or an equivalent position. The law provides that an employee has no greater rights upon a return from leave than the individual would have had if s/he had continued to work. Therefore, an employee may be affected by a layoff, reorganization, furlough, change in job duties or other change in employment if the action would have occurred had the employee remained actively at work.

*NOTE: Employers with less than 25 employees can answer the reinstatement question this way:*

*The Practice is not required to restore an employee's job if all four of the following hardship conditions exist:*

- The position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of the leave;*
- The company made reasonable efforts to restore the employee to the same or an equivalent position;*
- The company makes reasonable efforts to contact the employee if an equivalent position becomes available; and*
- The company continues to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after the leave began, whichever is earlier.*

This sample document is only an example and is based on the laws in effect at the time it was written. Fuel Medical Group does not make any representations or warranties regarding the appropriateness or prudence of using this information for any particular individual or situation. Your company should add, delete, or modify the content of this document as needed to suit your purposes. This material is for your information only and should not be construed as legal advice. In some circumstances it may be advisable to have legal counsel review final documents prior to implementation.

Source: <https://www.mranet.org/resource/notice-leave-eligibility-and-designation-emergency-family-and-medical-leave-efmla-under>

