

Epidemic and Pandemics

EPIDEMICS AND PANDEMICS

Epidemics and pandemics, although related, are different. The Centers for Disease Control and Prevention (CDC) defines an epidemic as "an increase, often sudden, in the number of cases of a disease above what is normally expected in that population in that area," and a pandemic as "an epidemic that has spread over several countries or continents, usually affecting a large number of people."

The Board of Education of the Pulaski Community School District recognizes that critical incidents and crises will occur that may have a significant impact on the educational community. The Board believes that organization and preparedness are components that are necessary to ensure an effective, efficient, reasonable, and compassionate response when such events occur.

To address epidemics and pandemics, the District Administrator shall establish an Epidemic/Pandemic Response Team ("EPRT") to develop an Epidemic/Pandemic Plan in coordination with local government and law enforcement officials. The EPRT may work as part of or in coordination with facilities and other environmental health services.

District administration is granted authority to take appropriate action as required in any instance where the District's plan is inadequate or does not cover the particular situation, and the urgency of the situation dictates the necessity for immediate decisive action.

The Epidemic/Pandemic Plan should include:

- A. a communication method for school schedule changes, busing changes, and school closures;
- B. the district administrator or designee is responsible for communicating with the Wisconsin Department of Public Instruction. The school nurses are responsible for communication with the Wisconsin Department of Health Services and Student Services will communicate with other government entities.
- C. an educational pandemic prevention program for staff and students;

- D. provision for the business office to maintain continuity of operations during an epidemic or pandemic;
- E. provision for distance-based learning for students (i.e., Internet instruction, devices) to maintain continuity of education; a continuum of options for continued learning;
- F. procedures for preventing the spread of infectious diseases during an epidemic or pandemic, including routine cleaning of school sites;
- G. procedures for staff and student absences and extended leaves of absence due to an epidemic or pandemic;
- H. procedures for isolation and possible transportation of students and staff who become ill at school due to an epidemic or pandemic;
- I. a plan of communication regarding epidemic and pandemic status to students, parents, and staff, including any restrictions imposed on staff or students upon travel to affected areas, which may include quarantine periods if recommended by authoritative health agencies;
- J. a plan for operating the District with less staff due to an epidemic or pandemic;
- K. a designee responsible for establishing timelines within the Epidemic/Pandemic Plan and ensuring that such timelines are met and implementation of the plan occurs;
- L. other emergency procedures necessary for the District to deal with an epidemic or pandemic;
- M. a plan for determining whether to cancel any planned staff or student travel, including field trips, competitions or performances, study abroad programs, or other travel that may involve travel to affected areas.

The Epidemic/Pandemic Plan should be reviewed annually by the EPRT and updated as appropriate. The district will work to have an emergency supply of Personal Protective Equipment.

The district will follow any legal directives or provisions set by the state and federal government. An example includes:

Family First Coronavirus Response ACT

In response to the Coronavirus/COVID-19 pandemic, Congress recently passed the Family First Coronavirus Response Act ("FFCRA"). The provisions addressed in this Legal Alert - the Emergency Paid Sick Leave Act ("EPSLA") and the Emergency Family and Medical Leave Expansion Act ("Expanded FMLA") - apply to all public sector employers, including public school districts. The FFCRA's provisions are applicable to leave taken between April 1, 2020,

and December 31, 2020.

Emergency Paid Sick Leave Act

The EPSLA requires employers to provide employees with emergency paid sick leave for a period of up to 80-hours for full-time employees and the number of hours a part-time employee worked, on average, over a two-week period. "Employee" is defined as a person who has worked for the employer, regardless of the duration of that employment (i.e., one-day or more). Emergency paid sick leave ("EPSL") is available for the period of time the employee is unable to work (or telework) because:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider (i.e., a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA) to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order as described above in Paragraph (1) or has been advised as described above in Paragraph (2).
- (5) The employee is caring for his/her child if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions.
- (6) The employee is experiencing any other substantially similar condition that may arise, as specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

EPSL is paid at the employee's regular rate of pay (not to exceed \$511 per day or \$5,110 total) for reasons (1), (2) and (3), and at 2/3 of the employee's regular rate of pay (not to exceed \$200 per day or \$2,000 total) for reasons (4), (5) and (6).

The employer may not require an employee to exhaust other paid leave provided by the employer before receiving EPSL. Likewise, EPSL is in addition to other leave provided under Federal, State, or local law, an applicable collective bargaining agreement, or an employer's existing leave policy.

Additionally, the employer may not require an employee to find a replacement for him/her as a condition of receiving EPSL. The employer, however, may require an employee seeking to take EPSL to provide the employer with appropriate documentation to support the reason for the leave - e.g., the employee's name, qualifying reason for requesting leave, statement that the employee is unable to work (including telework) for that reason, and the dates for which leave is requested. The employee may also be required to provide documentation of the reason for the leave - e.g., the source of any quarantine or isolation order, or the name of the health care provider who has advised the employee to self-quarantine.

Expanded FMLA

The FFCRA temporarily amends the FMLA to establish a new category of protected leave – leave due to a qualifying need related to a public health emergency. Specifically, an employee may take expanded FMLA leave because "the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed or the child care provider of such son or daughter is unavailable, due to a public health emergency."

With respect to the Expanded FMLA, "employee" is defined as a person who has been employed for at least 30 calendar days by the employer."

Pursuant to these amendments, the first 10-days of the public health emergency are unpaid, unless the employee elects to substitute any accrued vacation leave, personal leave, or sick leave for unpaid leave. Employees also may use EPSL during this period (see reason (5) above).

Subsequently, the employer must provide additional paid health emergency leave at the rate of not less than 2/3 of the employee's regular rate of pay (not to exceed \$200 per day or \$10,000 total). The public health emergency leave shall end 12 weeks after the date on which the employee's leave commenced or when the public health emergency concludes, whichever occurs first.

An employer may require an employee seeking to take expanded FMLA leave to provide the employer with appropriate documentation to support such leave, to the extent permitted under the certification rules for conventional FMLA leave requests – e.g., a notice of closure or unavailability from the employee's child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to the employee from an employee or official of the school, place of care, or child care provider. This requirement is also applicable when the first two weeks of unpaid leave run concurrently with EPSL taken for the same reason.

Intermittent Leave

An employee who is teleworking may take EPSL or expanded FMLA leave intermittently if the employer and employee mutually agree. The intermittent leave may be taken in any increment, provided the employer and employee agree.

An employee who is working at his/her usual worksite (as opposed to teleworking) may not take EPSL on an intermittent basis unless the reason for leave is that which is specified in (5) above (i.e., the employee is taking EPSL to care for the employee's child whose school or place of care is closed, or whose child care provider is unavailable) and the employer and employee mutually agree to it.

Further, unless the employee is teleworking, once the employee begins taking EPSL he/she must continue to take paid sick leave each day until the employee either (a) uses the full amount of EPSL, or (b) no longer has a qualifying reason for taking paid leave. If the employee no longer has a qualifying reason for taking EPSL and has not yet exhausted his/her EPSL entitlement, the employee may take any remaining EPSL at a later time, until December 31, 2020, if another qualifying reason occurs.

An employee who is not teleworking may take intermittent expanded FMLA leave if the employer and employee mutually agree upon a schedule.

Maintenance of Health Insurance

An employee who is on EPSL or expanded FMLA leave is entitled to continue his/her participation in the employer-provided group health coverage while on the federally protected leave, on the same terms as if the employee continued to work. The employee, however, must continue to make any normal contributions to the cost of his/her health coverage.

Restoration of Employment

In most circumstances, an employee is entitled to be restored to the same or an equivalent position upon return from EPSL or expanded FMLA leave. Employees, however, are not protected from employment actions - such as layoffs or termination – that would have affected the employee regardless of whether he/she took EPSL or expanded FMLA leave. An employee may not fire, discipline or otherwise discriminate against an employee who takes EPSL or expanded FMLA leave.

Impact of Prior Use of FMLA Leave

An eligible employee is entitled to EPSL regardless of how much FMLA leave the individual has taken during the 12-month period used by the employer for FMLA leave.

With respect to the Expanded FMLA, an employee's eligibility for expanded FMLA leave is dependent upon how much FMLA leave the employee has already taken during the 12-month period used by the employer for FMLA leave. In other words, an employee is only entitled to a total of 12 workweeks for FMLA leave or expanded FMLA leave during a 12-month period.

Mandatory Posting

Employers must post the Department of Labor's model notice in conspicuous places on the employer's premises where notices to employees are typically or customarily posted.

Additionally, given that most of school district employees are at home or not at their normal worksite due to Governor DeWine's March 12, 2020 Order closing schools to students, we recommend employers email or direct mail this notice to their employees or otherwise post it on the district's internal intranet and/or external website (under employee resources).

If you have any questions or concerns related to implementation of the FFCRA, please contact your local legal counsel.

A full-time employee under the EPSLA is an employee who is normally scheduled to work 40 or more hours per week. Correspondingly, a part-time employee under the EPSLA is an employee who is normally scheduled to work fewer than 40 hours per week.

If the employee's normal hours scheduled are unknown, or the part-time employee's schedule varies, the employer should use a six-month average to calculate the average daily hours. Alternatively, if the employee has not worked for the employer for six months, the employer should use the number of hours the employer and employee agreed the employee would work upon being hired. Finally, if there is no such agreement, the employer should calculate the appropriate number of hours of leave based on the average hours worked per day the employee was scheduled to work over the entire time of his/her employment.

The Expanded FMLA does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week will impact the amount of pay the employee is eligible to receive.

Legal References:

H.R.6201 - Families First Coronavirus Response Act

School Board Policies:

GBE- Employee Life Threatening Communicable Diseases

JB- Equal Educational Opportunities

JBB- Section 504 Equal Educational Opportunities

JHCC- Student Life Threatening/Communicable Diseases