

TOWN OF DUNSTABLE

EMERGENCY FAMILY AND MEDICAL LEAVE POLICY

A. INTRODUCTION

As a result of the Coronavirus pandemic, the United States Congress has enacted the Families First Coronavirus Response Act (“FFCRA”), which includes the Emergency Family and Medical Leave Expansion Act (“EFMLA”). Under the EFMLA, eligible employees of public employers, including the federal government, state governments, and political subdivisions thereof, and also to private employers with fewer than 500 employees are entitled to take job-protected leave if the employee is caring for his/her son or daughter whose school or place of care is closed (or paid child care provider is unavailable) for reasons related to COVID-19.¹

The following Emergency Family and Medical Leave Policy (the “Policy”) provides for up to a maximum of twelve weeks of EFMLA for the reason specified in **Section C**, subject to the terms and conditions noted below.

B. ELIGIBILITY

To be eligible for EFMLA with the TOWN OF DUNSTABLE (the “Company”, “Municipality”, or other short-hand reference as applicable), an employee must be employed by the **Municipality** at least 30 calendar days. An employee is considered to have been employed by the **Municipality** for at least 30 calendar days if the **Municipality** had the employee on its payroll for the 30 calendar days immediately prior to the day the employee’s leave would begin.

C. LEAVE ENTITLEMENT

Section 1. The **Municipality**, will grant an eligible employee up to a total of twelve (12) work weeks of EFMLA between April 1, 2020 and December 31, 2020 if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

[INSERT THIS PARAGRAPH IF THE EMPLOYER IS OTHERWISE COVERED BY THE FMLA. IF NOT, DELETE THIS PARAGRAPH.]

¹ For purposes of this Policy, “Son or daughter” shall mean the employee’s own child, which includes his/her biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee is standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child. A “son or daughter” is also an adult son or daughter (i.e., one who is over 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.

An employee's eligibility for EFMLA depends upon how much FMLA leave the employee has already taken during the 12-month period as described in the **Municipality's** FMLA Policy. Employees are entitled to take a total of 12 workweeks for FMLA or EFMLA during a 12-month period. If an employee has taken some, but not all, 12 workweeks of leave under the FMLA during the current 12-month period under the **Municipality's** FMLA policy, the employee is entitled to take the remaining portion of leave available under this Policy. An employee who has already exhausted his/her FMLA leave during the 12-month period may not take additional EFMLA.

Example: An employee eligible for preexisting FMLA leave took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. The employee has 10 weeks of FMLA leave remaining. Because EFMLA leave is a type of FMLA leave, the employee is entitled to take up to 10 weeks of EFMLA, rather than 12 weeks. Any EFMLA an employee takes would count against the employee's entitlement to preexisting FMLA leave.

Example: An employee eligible for EFMLA in April 2020 takes four weeks to care for his/her child whose school is closed due to a COVID-19 related reason. These four weeks count against the employee's entitlement to 12 weeks of FMLA leave in a 12-month period. Thus, if the employee needs to take FMLA leave in August for a serious health condition, the employee would be entitled to take up to eight weeks of FMLA leave.

D. CALCULATION OF EFMLA BENEFITS

(a) The first ten workdays of EFMLA are unpaid. However, during this time, an employee may be eligible to receive Emergency Paid Sick Leave under the FFCRA (see the Emergency Paid Sick Leave Policy). Alternatively, an employee may elect to use existing vacation, personal, or medical or sick leave under the **Municipality's** other policies as applicable.

(b) After the first ten workdays of EFMLA have elapsed, employees will receive two-thirds of their regular rate of pay for the hours they would have been scheduled to work during the subsequent weeks they are eligible to take EFMLA. In no event, however, shall an employee's entitlement to EFMLA benefits exceed \$200 per day and \$10,000 in the aggregate.

Example: If an employee's regular hourly rate is \$20 per hour, and is regularly scheduled to work five days per week, and 40 hours in total, the employee is entitled to \$106.64 per day ($2/3 \times \$20 = \13.33 . $\$13.33 \times 8$ hours per day = \$106.64.)

Example: If an employee earns \$60 per hour, and is regularly scheduled to work five days per week at 8 hours per day, the employee will be entitled to a maximum of \$200 per day (despite the 2/3rds calculation of the regular rate multiplied by 8 hours equaling \$240 ($2/3 \times \$60 \times 8 = \240).)

E. MAINTENANCE OF HEALTH BENEFITS

The **Municipality** will maintain group health insurance coverage for an employee on EFMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. The employee will make arrangements with the **Municipality** to pay his or her share of health insurance premiums while on leave. The **Municipality** may recover premiums it paid to maintain health coverage for an employee who fails to return to work from EFMLA leave.

F. EMPLOYEE REQUESTS TO USE EFMLA

An employee requesting to use EFMLA leave must contact the **Municipality's** Town Administrator. Where the need for EFMLA is foreseeable, the employee shall provide as much prior notice as is practicable. When the need for EFMLA is not foreseeable, the employee should provide notice as soon as reasonably possible.

To be eligible for EFMLA, all employees are required to provide the **Municipality** with documentation as specified in applicable IRS forms, instructions, and information.

[THE IRS HAS NOT YET RELEASED FORMS, INSTRUCTIONS AND INFORMATION ON THE DOCUMENTATION REQUIRED. WHEN IT DOES, WE WILL UPDATE THIS PROVISION OF THE POLICY.]

In addition to the foregoing documentation required pursuant to IRS guidance, the **Municipality** may require employees seeking EFMLA to provide evidence of their need for such leave, which may include the following documentation: 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.

The **Municipality's** Town Administrator will retain any written notice or documentation an employee provides in support of his/her need for EFMLA.

G. RETURN TO WORK FROM EFMLA

Upon completion of an employee's EFMLA leave, the **Municipality** will strive to restore the employee to the position he/she held at the start of their EFMLA leave. However, in the event the employee's position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of employee's leave, the **Municipality** will make reasonable efforts to restore the employee to an equivalent position, with equivalent pay, benefits, and other employment terms and conditions.

If the **Municipality** does not have an equivalent position available, the **Municipality** will make reasonable efforts to contact the employee – for a one year period beginning on the earlier of the date the leave related to COVID-19 reasons concludes or the date 12 weeks after the employee's leave began – if an equivalent position later with the **Municipality** becomes available.

H. OTHER PROVISIONS

This Policy shall at all times be interpreted in a manner consistent with the Department of Labor's Regulations pertaining to the EFMLA.

The **Municipality** will comply with all federal and state laws enacted to address the Coronavirus pandemic. In the event of any conflict between this Policy and the FFCRA or any other leave laws enacted in response to the Coronavirus crisis, the terms of any such applicable federal or state law(s) that conflict(s) with or supersedes this Policy shall apply.

I. EFFECTIVE DATE

This Policy shall take effect on April 1, 2020 and any rights to EFMLA shall expire on December 31, 2020, or earlier upon written notice from the **Municipality**.

J. ADMINISTRATIVE PROCEDURES

The **Municipality** may establish administrative procedures to implement this Policy.