



# TOWN OF NEEDHAM

## EMERGENCY PAID SICK 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, among other things, Section 5101, et seq., known as the Emergency Paid Sick Leave Act (the “EPSLA”), which provides for temporary emergency paid sick leave benefits for employees of public employers, including the federal government, state governments, and political subdivisions thereof, and also to private employers with fewer than 500 employees for purposes relating to COVID-19 and its effect on the workplace as set forth below.

The following temporary Emergency Paid Sick Leave Policy (the “Policy”) provides for up to a maximum of two weeks of paid sick leave for the reasons specified below in Section C, which may be used by eligible employees before using other paid leave, if any, provided to such eligible employee by The Town of Needham (the “Town”), subject to the terms and conditions noted below.

### B. ELIGIBILITY

All employees of the Town of Needham are eligible for emergency paid sick leave (“EPSL”) benefits as follows:

- (1) Full-time employees (defined to mean employees who are normally scheduled to work 40 or more hours per week) shall be eligible for up to a maximum of 80 hours of EPSL to be taken from April 1, 2020 through June 30, 2021;
- (2) Part-time employees shall be eligible for a pro-rated amount of EPSL, which amount shall be based on the average number of hours such employee works during a two-week period. (For example, if a part-time employee works an average of 32 hours per week during an ordinary two-week period, such employee shall be eligible to use up to 64 hours of EPSL for the purposes set forth in the EPSLA and this Policy.)
  - a. In the case of a part-time employee described in this section whose schedule varies from week to week to such an extent that the Town is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken paid sick time under the EPSLA, the employer shall use the following in place of such number:
    - (i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of

any type. The employee will then be entitled to use this number of hours per day for up to a two-week period.

- (ii) If the calculation set forth in Section B.(2)a.(i) cannot be made because the employee has not been employed for at least six (6) months, the Town will use the number of hours the Town and the employee agreed that the employee would work upon hire. If there is no such agreement, the Town will calculate the average number of hours per day the employee was scheduled to work over the entire term of his/her employment.

(3) **Intermittent Leave.**

- a. For employees who work at the worksite and are unable to telework, leave provided under this Policy may only be taken consecutively unless the Town and the employee agree to an intermittent leave schedule for the purpose of the employee caring for the employee's son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions (Purpose (5) in Section C. below).
- b. For employees who telework, leave provided under this Policy for any of the enumerated purposes set forth in Section C. below may be taken intermittently if the Town agrees to an intermittent leave schedule.

**C. PURPOSES FOR WHICH EPSL MAY BE TAKEN**

An employee may use EPSL if the employee is unable to either **work or telework** due to a need for leave 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 to self-quarantine due to concerns related to COVID-19. The term "health-care provider" means a licensed Doctor of Medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the Family Medical Leave Act;
- (3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (4) The employee is caring for an individual who either is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

- (5) The employee is caring for the employee's son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the United States Secretary of the Treasury and United States Secretary of Labor.

#### **D. NO CARRYOVER OF EPSL**

EPSL provided under the EPSLA and this Policy shall expire on June 30, 2021 and may not be carried over into the next calendar year.

As noted in Section A. above, EPSL is in addition to any paid sick leave currently provided by the Town to eligible employees.

#### **E. EMPLOYEE REQUESTS TO USE EPSL**

An employee who seeks to use EPSL is directed to contact the Town of Needham's Human Resources Department to request such leave, stating the specific reason for which the leave is requested.

An employee requesting to use EPSL shall be required to submit appropriate documentation confirming the need for such EPSL. Specifically, an employee is required to provide the Employer documentation containing the following information prior to taking Paid Sick Leave under the EPSLA:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave; and
- (4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

In addition, to take Paid Sick Leave for a qualifying COVID-19 related reason under purpose (1) in Section C. above, an employee must also provide the Town with the name of the government entity that issued the Quarantine or Isolation Order.

To take Paid Sick Leave for a qualifying COVID-19 related reason under purpose (2) in Section C. above, an employee must additionally provide the Town with the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.

To take Paid Sick Leave for a qualifying COVID-19 related reason under purpose (3) in Section C. above, an employee must additionally provide the Town with either: (i) the name of the government entity that issued the Quarantine or Isolation Order to which

the individual being care for is subject; or (ii) the name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.

To take Paid Sick Leave for a qualifying COVID-19 related reason under purpose (4) in Section C. above (or Expanded Family and Medical Leave under the corresponding Emergency Medical and Family Leave Policy), an employee must additionally provide: (i) the name of the Son or Daughter being cared for; (ii) the name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and (iii) a representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.

The Town of Needham may also request an employee to provide such additional material as needed for the Town to support a request for tax credits pursuant to the FFCRA. The Town is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided. For more information, please consult <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.

For more information about what constitutes appropriate documentation, contact the Town of Needham's Human Resources Department.

#### **F. EFFECT OF FURLOUGH, LAYOFF, CLOSURE, OR REDUCTION IN WORK HOURS ON EPSL BENEFITS**

(1) If an employee is furloughed, laid off, or otherwise terminated for any reason or if the Town of Needham closes its worksite on or after April 1, 2020 (the effective date of the FFCRA and the EPSLA) but indicates that it will reopen at some time in the future, any such employee shall not be entitled to take emergency paid sick leave while he or she is on furlough, after he or she has been laid off or terminated, or during the period while the worksite is closed, as the case may be.

(2) If the Town reduces an employee's scheduled work hours on or after April 1, 2020, such employee may not use emergency paid sick leave for the hours the employee is no longer scheduled to work.

#### **G. CALCULATION OF EPSL BENEFITS**

(1) When an employee takes EPSL for any of the purposes set forth in Paragraphs (1), (2), or (3) of Section C. of this Policy, such employee shall receive his/her full pay not to exceed \$511 per day and \$5,110 in the aggregate.

- (2) When an employee takes EPSL for any of the purposes set forth in Paragraphs (4), (5), or (6) of Section C. of this Policy, such employee shall receive two-thirds of his/her regular pay up to \$200 per day and \$2,000 in the aggregate.
- (3) Where an employee who is regularly scheduled to work beyond 40 hours in a work week, the total number of hours paid under the EPSLA and this Policy shall be capped at 80. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the EPSLA and this Policy shall be capped at 80.

The use of EPSL does not count as hours worked for purposes of calculating an employee's entitlement to overtime under the Fair Labor Standards Act or Massachusetts law.

#### **H. ELIGIBILITY FOR ADDITIONAL LEAVE PURSUANT TO FFCRA'S EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

In addition to EPSL benefits available under the EPSLA and described in this Policy, employees may be eligible for additional leave for the reasons set forth in the FFCRA'S Emergency Family and Medical Leave Expansion Act. For more information, please review the Town's other personnel policies or collective bargaining agreements as applicable.

#### **I. RETURN TO WORK FROM EPSL**

- (1) Once the purpose for which an employee takes EPSL has concluded, the employee shall return to work on the employee's next regularly scheduled workday or shift, subject to Paragraphs (2) – (4) of this Section I.
- (2) An employee on leave who has tested positive for COVID-19 may not return to work unless and until either:
  - a. such employee has been fever-free without the use of fever-reducing medications **and** has had an improvement in respiratory symptoms (i.e., no longer has a cough or shortness of breath) **and** has negative test results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two (2) consecutive nasopharyngeal swab specimens collected greater than 24 hours apart (total of two negative specimens); or
  - b. the later of 14 days from the date on which an employee has tested positive for COVID-19 or 14 days from the last date on which such employee had any symptoms of COVID-19, including a fever, cough, and/or shortness of breath.
- (3) An employee on leave who has exhibited symptoms consistent with COVID-19 but who has not been tested for COVID-19 may not return to work unless and until at least 14 days from the last date on which such employee had any symptoms of COVID-19, including a fever, cough, and/or shortness of breath.

(4) In any event, for an employee planning to return to work after taking emergency paid sick leave under this Policy, such employee must complete and submit a confidential certification that confirms that such employee does not present a risk of spreading COVID-19 in the workplace.

#### **J. NO NEED TO FIND REPLACEMENT EMPLOYEE**

An employee who takes EPSL pursuant to the EPSLA and this Policy shall not be required to search for or find his/her replacement to cover the hours during which the employee is using paid sick time.

#### **K. EXCLUSION OF EMERGENCY RESPONDERS**

As an employer of emergency responders, the Town of Needham may elect to exclude certain employees (based upon legitimate business needs) from the application of the EPSLA and this Policy. Emergency responders are employees who are necessary for the provision of transport, care, health care, comfort, and nutrition of patients, or whose services are otherwise needed to limit the spread of COVID-19. The term “emergency responder” includes but is not limited to, among others, law enforcement officers, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

#### **EXCLUSION OF HEALTH CARE PROVIDERS**

As an employer of health care providers, the Town of Needham may elect to exclude certain employees (based upon legitimate business needs) from the application of the EPSLA and this Policy. A “health care provider” is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or

treatments. In addition, the definition includes any individual that the highest official of a state or territory determines is a health care provider necessary for that state or territory's response to COVID-19.

#### **L. INTERRELATION WITH OTHER LAWS**

The Town of 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 paid sick 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.

#### **M. EFFECTIVE DATE**

This Policy shall take effect on April 1, 2020 and any rights to EPSL shall expire on June 30, 2021, or earlier upon written notice from the Town of Needham.