

**SCHOOL DISTRICT DECISION TREE:  
EMPLOYEE REQUESTS FOR LEAVE AND/OR REASONABLE ACCOMMODATIONS**  
August 11, 2020

The following outlines recommended steps to appropriately analyze the various accommodation/leave requests that school districts are likely to receive from staff members. Section 1 sets forth the potentially applicable statutes. Section 2 provides a decision tree outline depending on the type of request received.

**I - APPLICABLE LAWS**

**1. Emergency Paid Sick Leave (EPSL) under FFCRA** – 10 full or partially paid leave days for the following circumstances:

Full Pay, not to exceed \$511/day:

- a) Federal, State, or local quarantine or isolation order relating to COVID-19;
- b) Advised by health care provider to self-quarantine because of COVID-19;
- c) Experiencing COVID-19 symptoms and seeking medical diagnosis;

2/3 Pay, not to exceed \$200/day:

- d) Caring for an individual subject to an isolation order (a or b above); or
- e) Caring for son/daughter whose school or day care is closed for COVID-19-related reasons. (*Note:* Employees eligible for leave to care for son/daughter under (e) are likely eligible for up to an additional 10 weeks of leave under Emergency Family and Medical Expansion Act).

**2. Emergency Family and Medical Expansion Act (EFMLEA) under FFCRA** – up to 12 weeks of leave to care for the employee’s son/daughter whose school or day care is closed (or whose child care provider is otherwise unavailable) for COVID-19 related reasons if employee has been employed for at least 30 days and has not otherwise exhausted FMLA leave. First two weeks are unpaid and remainder of leave is paid at 2/3 pay (not to exceed \$200/day or \$10,000 in the aggregate).

**3. Family and Medical Leave Act (Federal)** – 12 weeks of unpaid leave for qualifying reasons, including the employee’s own serious health condition or to care for a family member with serious health condition, if employee has been employed for at least 12 months, worked at least 1,250 hours in the preceding 12, and has not otherwise exhausted FMLA leave.

4. **Family and Medical Leave Act (State)** – 10 weeks of unpaid leave for the employee’s own serious health condition or to care for family member with serious health condition.
5. **Americans with Disabilities Act (ADA)/Maine Human Rights Act (MHRA)** – Qualified individuals with a disability, and individuals seeking accommodations due to a pregnancy-related condition,<sup>1</sup> are entitled to reasonable accommodations that allow them to perform the essential functions of their job. Employers are required to engage in an interactive process with such individuals to determine whether such a reasonable accommodation exists.

(Note: This assumes that the ability to report to work in person on days when students are in school is an essential function for all or most positions within the district.)

## **II - REQUEST PROCESSING DECISION TREE**

**First:** Identify requests for reasonable accommodations or flexible working arrangements (i.e., “I can work if you modify where or how I perform my job”) from request for leave (i.e., “I cannot work.”)

**Second:** Determine the basis for each request in accordance with the “buckets” outlined below

### **1. Requests for Reasonable Accommodation / Flexible Working Arrangements**

Determine which “bucket” each employee’s request falls in based on the basis for the request:

- a) Employee’s own disability or pregnancy related condition (*see A below*);
- b) Employee’s need to care for his or her child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19 (*see B below*);
- c) Employee’s own non-disabling circumstances that place them at high risk (such as age or obesity) or employee’s association with an individual who is considered high-risk (such as an employee whose spouse has an autoimmune disease) (*see C below*); or
- d) Employee’s fear of contracting COVID-19 without reference to any of the above circumstances (*see C below*).

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<sup>1</sup> "Pregnancy-related condition" means a known limitation of an employee's ability to perform the functions of a job due to pregnancy, childbirth or related medical conditions, including but not limited to lactation. 5 M.R.S.A § 4553 (8-e).

A. Request for Reasonable Accommodation due to Employee's Own Disability or Pregnancy

A request for a reasonable accommodation related to the employee's own disability or pregnancy-related condition is protected under the ADA/MHRA. The district must engage in an interactive process to determine if a reasonable accommodation exists that would allow the employee to perform the essential functions of their job.

1. If necessary, request medical information to confirm disability/pregnancy-related condition, restrictions, and explore potential reasonable accommodations.
2. Based on information gathered, engage in interactive process (i.e., discussions with employee) to determine whether any accommodation (such as a policy change, job site modification, etc.) would allow them to perform the essential functions of the job.
  - a. If no reasonable accommodation exists that would allow the employee to report to work, but they are able to perform their job remotely, telework may be considered. If the work cannot be performed remotely, districts should consider providing a definite period of leave as an accommodation. In such event, districts should consider other leaves available, as outlined below.
  - b. Remember that the law does not obligate any employer to remove an essential function of the position.

B. Request for Telework due to Childcare Issues

Employers are not required to agree to provide remote work or flexible working arrangements for employees that cannot come to work due to lack of childcare caused by a COVID-related school or childcare closure/unavailability. However, districts may consider doing so. If provided, such arrangements must be provided on a non-discriminatory basis and may require consultation with the union. If a flexible work arrangement is not provided, the district should initiate a leave discussion as outlined below.

C. Request for Flexible Working Arrangement due to Other Factors/Concerns

Employers are not legally required to agree to or consider remote work or flexible working arrangements for employees except as outlined above. However, districts may do so. If provided, such arrangements must be provided on a non-discriminatory basis and will likely require consultation with the union. If flexible work arrangements are not provided, districts may either solicit leave requests or instruct employees to report to work. In doing so, districts should also clearly communicate the health and safety measures the district will be implementing to facilitate in-person instruction and other on-site work and explain what will be expected of staff in the fall. Please note that any instruction to report to work should be done thoughtfully and after consultation with counsel.

## 2. Requests for Leaves of Absence

Determine which “bucket” each employee’s request falls in based on the basis for the request:

- a) Employee’s own medical condition, pregnancy related condition, or quarantine (*see A below*);
- b) Employee’s need to care for his or her child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19 (*see B below*); or,
- c) Employee’s need to care for an individual with a medical condition or subject to a quarantine order (*see C below*).

### A. Request for Leave due to Employee’s Own Medical Condition/Pregnancy/Quarantine

Carefully consider each of the following:

1. *Regular State/Federal FMLA*: Determine if the employee is eligible for regular federal FMLA (employed for 12 months and worked at least 1250 hours in the 12 months preceding the request) and/or regular state FML (employed for at least 12 months preceding request, no minimum hour requirement) due to their own serious health condition. If so, designate FMLA and apply regular policies/contract provisions related to such leave, unless employee is eligible for and opts for EPSL.
2. *EPSL*: Determine if employee is eligible for fully paid EPSL under reasons (a), (b), or (c) listed above in the “Applicable Laws” section. If so, employee is entitled to full pay (up to \$511/day) for up to 80 hours. If elected, employee must be allowed to use EPSL before accrued leave. If employee is also on FMLA, EPSL runs concurrently with FMLA.
3. *Accrued/Contractual Leave Benefits*: Review applicable collective bargaining agreement or policies to determine if employee is eligible for paid or unpaid leave.
4. *Disability Accommodation Analysis*: If no other leave is available or if other leaves are exhausted, and if the employee’s medical condition constitutes a disability (or the employee seeks an accommodation due to a pregnancy-related condition), then engage in the interactive process to determine if a reasonable accommodation can be provided that will allow the employee to perform the essential functions of his or her job (as outlined above).

B. Request for Leave due to Need to Care for Child Whose Childcare Provider/School is Closed

Carefully consider each of the following:

1. *EFMLEA*: Determine if the employee is eligible for EFMLEA (employed for at least 30 days and has not otherwise exhausted 12 weeks of FMLA). If so, designate FMLA. First two weeks of EFMLEA are unpaid (unless EPSL used concurrently or regular accrued leave is used) and remainder (up to 10 weeks) paid at 2/3 pay (up to \$200/day and \$10,000).
2. *EPSL*: Employee is eligible for partially paid EPSL under reason (e) listed above in the “Applicable Laws” section, unless EPSL has been previously exhausted. If available, employee is entitled to 2/3 pay (up to \$200/day and \$2,000) for up to 80 hours. If elected, employee must be allowed to use EPSL before accrued leave. If employee also on EFMLEA, EPSL runs concurrently with EFMLEA.
3. *Accrued/Contractual Leave Benefits*: Review applicable collective bargaining agreement or policies to determine if employee is eligible for paid or unpaid leave.
4. *Discretionary Leave of Absence*: If no other leave is available, the district may, if permitted by applicable contracts and/or policies, but is not obligated to, provide a discretionary leave of absence. If provided, such leaves must be provided on a non-discriminatory basis and will likely require consultation with the union.

C. Request Leave to Care for Family Member with a Medical Condition/Subject to Quarantine

Carefully consider each of the following:

1. *Regular State/Federal FMLA*: Determine if the employee is eligible for regular federal FMLA (employed for 12 months and worked at least 1250 hours in the 12 months preceding the request) and/or regular state FML (employed for at least 12 months preceding request, no minimum hour requirement) to care for the employee’s spouse, child, or parent with a serious health condition. If so, designate FMLA and apply regular policies/contract provisions related to such leave, unless employee is eligible for and opts for EPSL.
2. *EPSL*: Determine if employee is eligible for partially paid EPSL under reasons (d) listed above in the “Applicable Laws” section. If so, employee is entitled to 2/3 pay (up to \$200/day and \$2,000) for up to 80 hours. If elected, employee must be allowed to use EPSL before accrued leave. If the employee is also on FMLA, EPSL runs concurrently with FMLA.
3. *Accrued/Contractual Leave Benefits*: Review applicable collective bargaining agreement or policies to determine if employee is eligible for paid or unpaid leave.

4. *Discretionary Leave of Absence:* If no other leave is available, the district may, if permitted by applicable contracts and/or policies, but is not obligated to, provide a discretionary leave of absence. If provided, such leaves must be provided on a non-discriminatory basis and will likely require consultation with the union.

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*Please note that the guidance provided in this document may change as guidance from the federal and state Departments of Labor or court rulings come down interpreting the several statutes and regulations in play. This guidance should not be treated as legal advice. If you require assistance with legal issues, please contact your school attorney.*