**Template Company Correspondence**

**Families First Coronavirus Response Act Leave Policies**

On March 18, 2020, the President signed the Families First Coronavirus Response Act (“FFCRA”), which among other things, expanded the Family and Medical Leave Act to provide for leave in certain additional circumstances through the Emergency Family and Medical Leave Expansion Act (“Emergency FMLA Expansion Act”), and also provides for paid sick leave for eligible employees in certain circumstances through the Emergency Paid Sick Leave Act (“EPSLA”).

Employees of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Company”) may be eligible for leave under either, or both, the Emergency FMLA Expansion Act and the EPSLA, as described below. Employees will be eligible for the leaves described below beginning on April 1, 2020. These two leave policies may be amended or modified based on further guidance from the U.S. Department of Labor and/or other government agencies as to their interpretation and implementation. Any modification or amendment to these policies will be communicated to employees in writing. If you have any questions, please contact [Human Resources].

Both the Emergency FMLA Expansion Act and the EPLSA will remain in effect until December 31, 2020, at which time they will expire and employees will no longer be eligible for leave under either the FMLA Expansion Act or the EPLSA or this policy.

**Emergency FMLA Expansion Act Leave**

***Eligibility***. In accordance with the Emergency FMLA Expansion Act, the Company will grant a leave of absence of up to twelve (12) weeks to any employee who has been employed by the Company for at least thirty (30) calendar days because of a qualifying need related to a public health emergency (a “Qualifying Need”). Employees on furlough will not be eligible for leave under this policy. Please note that employees who may not have qualified for leave under FMLA generally (because they did not meet the service or other eligibility requirements) may still qualify for leave under the FMLA Expansion Act.

For employees who qualify for FMLA leave generally, leave taken under the Emergency FMLA Expansion Act will “count” against the employee’s twelve (12) week leave entitlement under FMLA, and any FMLA leave taken in the relevant FMLA leave year will “count” against the twelve (12) week leave entitlement provided under the Emergency FMLA Expansion Act.

***Qualifying Need – Definition.*** An employee will have a Qualifying Need for leave under this policy only if the employee is unable to work (or telework) due to a need to care for a son or daughter of the employee under 18 years of age (or a child age 18 or older who is incapable of self-care because of mental or physical disability) if the school or place of care of such son or daughter has been closed, or the child care provider of an employee’s son or daughter is closed, in either event, due to a public health emergency. A “public health emergency” is an emergency with respect to COVID-19 declared by a Federal, State, or local authority. You are considered to be unable to work if the Company has work for you and, because of a Qualifying Need, you are unable to perform that work, either under normal circumstances at your normal worksite or by means of telework. (Please note that an inability to perform your duties via telework because your job duties require your onsite presence is not a Qualifying Need.)

[An employee who is otherwise eligible for leave under this policy for a Qualifying Need may not be permitted to take such leave if the Company determines that any of the below are true as a result of the employee or employees taking leave under this policy:

1. The provision of leave under this policy would result in the Company’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting such leave would entail a substantial risk to the financial health or operational capabilities of the Company because of the employee or employees specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting leave under this policy, and these labor or services are needed for the Company to operate at minimal capacity.]

***Scheduling Leave***. If the need for leave is foreseeable, such as advance notice of the closure of a school or the unavailability of child care provider due to a public health emergency, an employee must provide the Company with as much advance notice as is practicable. [Leave under this policy may not be taken on an intermittent basis.] OR [If necessary, an employee may consult with the Company to determine whether intermittent leave is feasible. The Company will work with an employee on an intermittent leave schedule that works for both the employee and the Company. If no such schedule can be agreed upon, the employee may not be permitted to take intermittent leave under this policy.]

***Certification of the Need for Leave***. An employee who is eligible for leave under this policy must provide the Company with appropriate documentation supporting the need for leave. An employee who wishes to take leave under this policy must make a written request to the Company that contains the following information:

* The employee’s name;
* The dates for which leave is requested;
* A statement that the employee is unable to work (including telework), due to a need to care for a son or daughter of the employee under 18 years of age because the school or place of care of such son or daughter has been closed, or the child care provider of the employee’s son or daughter is closed, in either event, due to a public health emergency;
* The name and age of the child (or children) to be cared for;
* The name of the school that has closed or place of care that is unavailable;
* A representation that no other person will be providing care for the child during the period for which the employee is receiving leave under this policy; and
* If the need for leave is for the employee to provide care during daylight hours for a child older than fourteen (14) years of age, a statement that special circumstances exist requiring the employee to provide care for the child and that the employee is unable to work or (telework).

The certification required to substantiate a need for leave under this policy may be modified based on further guidance from the U.S. Department of Labor, Internal Revenue Service, and/or other government agencies as to their interpretation and implementation. An employee may be required to provide additional documentation in accordance with such guidance even if the employee has already been granted leave under this policy in order to continue receiving the leave benefits provided by this policy.

***Reinstatement*.** If an employee and his or her manager have agreed on a definite date of return, the employee will be reinstated on that date if he or she notifies the manager in advance that he or she will be able to return. If the length of the leave has not been established, or if it is less than the approved leave, the employee will be returned to work within two (2) business days after notifying the Company. Failure to report to work upon expiration of leave will be deemed a voluntary termination.

Employees will be reinstated to the position they held before beginning a leave, or will be placed in an equivalent position.

**The Company may refuse to reinstate an employee in certain limited circumstances following a leave of absence if the employee is an exempt employee who is among the highest paid ten percent (10%) of all employees (both exempt and nonexempt) employed at or within seventy-five (75) miles of the worksite (a “key employee”). The Company will advise an employee if he or she is a key employee at the time leave is requested.**

[In addition, the Company may refuse to reinstate an employee who takes leave under this policy if:

1. The position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the Company that: (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave;
2. The Company has made reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment; and
3. If such reasonable efforts described in (2) above fail, the Company has made reasonable efforts during the “Contact Period” to contact the employee if an equivalent position becomes available.

The Contact Period is the one (1) year period beginning on the earlier of: (i) the date on which the Qualifying Need concludes; or (ii) the date that is twelve (12) weeks after the date on which an employee’s leave under this policy commences.]

***Compensation and Benefits***. The first two (2) weeks of leave under this policy will be unpaid. However, employees may elect to substitute accrued but unused, vacation, personal, medical or sick leave benefits, including benefits under the Emergency Paid Sick Leave, as described below, to receive compensation during the first two (2) weeks of leave under this policy.

Any leave in excess of two (2) weeks under this section, up to ten (10) weeks, will be paid. Paid leave under this policy will be calculated based on:

* An employee’s regular rate of pay; and
* The number of hours the employee would otherwise be normally scheduled to work (including any scheduled overtime hours that are part of that normal schedule).

For purposes of compensation under this policy, an employee’s regular rate is the average regular rate over the six (6) month period prior to date on which an employee takes leave under this policy. If an employee has not worked for the Company for six months prior to taking leave under this policy, the regular rate is the average regular rate for each week the employee has worked for the Company. Commissions, tips, or piece rates will be incorporated into the regular rate calculation.

For employees whose schedule may vary from week to week, such employees’ normal hours will be calculated based on: (i) the average number of hours the employee was scheduled per workday over the six (6) month period ending on the date in which the employee takes leave under this policy, including hours for which the employee took any type of leave; or (ii) if an employee has been employed for less than six (6) months, the reasonable expectation of the employee at the time of hiring of the average number of hours per workday that the employee would normally be scheduled to work

**In no event will the paid portion of this leave exceed $200 per day and $10,000 in the aggregate**.

Subject to the terms, conditions and limitations of the applicable plans, during leave under this policy, group medical plan coverage for the employee and his or her dependents will be maintained at the level and under the conditions coverage would have been provided if the employee had remained continuously employed. The obligation continues up to a maximum of twelve (12) workweeks. Thereafter, an employee may elect to continue coverage pursuant to COBRA.

**Emergency Paid** **Sick Leave Act (“EPSLA”)**

Beginning April 1, 2020, all employees of the Company are eligible for paid sick leave if they are unable to 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 (such as a belief that the employee has COVID-19, may have COVID-19, or is particularly vulnerable 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 described in (1) or has been advised to self-quarantine as described in (2) (an individual must be someone with whom the employee has a personal relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined, such an immediate family member, roommate, or similar person);
5. The employee is caring for his or her son or daughter if the school or place of care of the employee’s son or daughter has been closed, or the child care provider of the employee’s son or daughter is unavailable, in either event, due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

You are considered to be unable to work if the Company has work for you and, because of one of the reasons listed above, you are unable to perform that work, either under normal circumstances at your normal worksite or by means of telework. The Department of Labor has stated that if an employee does not have work to perform (either because of the employer has closed a work location or the employer has reduced working hours due to a reduction in business demand or need) sick leave under this policy is not applicable to such absences or reduced working hours. For those absences, employees may use their accrued regular accrued sick, vacation or paid time off and/or may apply for unemployment insurance benefits for support when incurring an income loss. Employees on furlough will not be eligible for leave under this policy.

[An employee who is otherwise eligible for leave under this policy for the reason set forth in (5), above, may not be permitted to take such leave if the Company determines that any of the below are true as a result of the employee or employees taking leave under this policy:

1. The provision of leave under this policy would result in the Company’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting such leave would entail a substantial risk to the financial health or operational capabilities of the Company because of the employee or employees specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting leave under this policy, and these labor or services are needed for the Company to operate at minimal capacity.]

During any period of sick leave under this policy, medical care coverage for the employee and his or her dependents will continue at the same level.

Employees of the Company will be entitled to the following amounts of sick leave:

* Employees who regularly work forty (40) or more hours per week will be entitled to 80 hours of sick leave.
* Employees who regularly work less than forty (40) hours per week will be entitled to sick leave in an amount based on the number of hours the employee would otherwise be scheduled to work over a two-week period.
* For employees whose schedule may vary from week to week, such employees’ sick leave will be calculated based on: (i) fourteen (14) times the average number of hours the employee was scheduled per calendar day over the six (6) month period ending on the date in which the employee takes leave under this policy, including hours for which the employee took any type of leave; or (ii) if an employee has been employed for less than six (6) months, fourteen (14) times the reasonable expectation of the employee at the time of hiring of the average number of hours per calendar day that the employee would normally be scheduled to work.

Paid sick leave under the EPSLA will be paid at the greater of:

* An employee’s regular rate of pay; or
* The minimum wage rate under federal, state, or local law for the locality in which an employee is employed.

For purposes of compensation under this policy, an employee’s regular rate is the average regular rate over the six (6) month period prior to date on which an employee takes leave under this policy. If an employee has not worked for the Company for six months prior to taking leave under this policy, the regular rate is the average regular rate for each week the employee has worked for the Company. Commissions, tips, or piece rates will be incorporated into the regular rate calculation.

For any employee who is using paid sick leave under this policy for the reasons set forth in (4)-(6) above, such employee’s compensation will be two-thirds (2/3) of the greater of the employee’s regular rate of pay or the minimum wage rate under federal, state, or local law for the locality in which an employee is employed.

**In no event will paid sick leave under this policy exceed $511 per day, or $5,110 in the aggregate if used for the reasons set forth in (1)-(3) above. If paid sick leave is used for the reasons set forth in (4)-(6) above, in no event will paid sick leave exceed $200 per day, or $2,000 in the aggregate.**

In order to be eligible for sick leave provided by this policy, an employee must make a written request to the Company with the following information:

* The employee’s name;
* The date or dates for which leave is requested;
* The qualifying reason (as identified above) for requesting leave; and
* A statement that the employee is unable to work (including telework), for that qualifying reason;

In the case of a leave request based on a quarantine order or self-quarantine advice, the written request must include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person’s name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the written request must also include the following information:

* The name and age of the child (or children) to be cared for;
* The name of the school that has closed or place of care that is unavailable;
* A representation that no other person will be providing care for the child during the period for which the employee is receiving leave under this policy; and
* If the need for leave is for the employee to provide care during daylight hours for a child older than fourteen (14) years of age, a statement that special circumstances exist requiring the employee to provide care for the child and that the employee is unable to work or (telework).

An employee must provide the above information in order to receive paid sick leave under this policy. The certification required to substantiate a need for leave under this policy may be modified based on further guidance from the U.S. Department of Labor, Internal Revenue Service, and/or other government agencies as to their interpretation and implementation. An employee may be required to provide additional documentation in accordance with such guidance even if the employee has already been granted leave under this policy in order to continue receiving the leave benefits provided by this policy.

An employee receiving paid sick leave under this policy must provide reasonable notice of the need to continue receiving paid sick leave under this policy after the first workday (or portion thereof), that such employee receives paid sick leave.

[Leave under this policy may not be taken on an intermittent basis, and must be taken in full day increments.] OR [If necessary, an employee may consult with the Company to determine whether intermittent leave is feasible if the employee is unable to telework and requires leave under this policy for any of the above reasons. The Company will work with an employee on an intermittent leave schedule that works for both the employee and the Company. If no such schedule can be agreed upon, the employee may not be permitted to take intermittent leave under this policy. If an employee is not teleworking, but rather is still performing work onsite, intermittent leave is only permitted if the employee requires leave to care for his or her son or daughter if their school or place of care has been closed, or the child care provider of the employee’s son or daughter is unavailable, in either event, due to COVID-19 precautions. In all other circumstances, employees who continue to perform services onsite may only take leave under this policy in full day increments.]

Employees are **not required** to use any other paid leave provided by the Company before using paid sick leave provided under this policy. The Company will not discharge, discipline, or in any manner discriminate against any employee as a result of having taken leave under this policy or filed a complaint, or instituted or caused to be instituted any proceeding relating to this policy, or who has testified or is about to testify in any such proceeding.

Nothing in this policy should be construed to in any way diminish the rights or benefits that an employee is entitled to under any Federal, State, or local law, [collective bargaining agreement,] or existing Company policy.

Unused sick leave under this policy has no cash value and will not be paid to an employee upon termination of employment. Sick leave under this policy will expire on December 31, 2020 and will not be carried over or applied to any other paid leave off or sick leave accrued by an employee under a separate Company policy.