



Brighton Central School District

COVID-19 Staff Frequently Answered Questions

Accommodations Under the Law

1. What are my options if I have a medical condition that impacts my ability to return?

This is a complicated question as there are many nuances. Prior to the onset of COVID-19, we already had the Family Medical Leave Act and the Americans with Disabilities Act. The FMLA allows for up to 12 weeks of leave for your own significant health issues, to be a primary support for a family member with significant a health issue, or upon the birth of a child. The Americans with Disabilities Act allows an employee, with a disability impacting a major life function, to request a reasonable accommodation from the employer. Both laws require the employee and the employer to engage in a specific process where the employee must provide the necessary information to allow the employer to process the request and make a determination if the employee qualifies for the leave or accommodation. This includes providing reasonably detailed medical information.

With the onset of COVID-19, the federal and state governments enacted additional temporary leave acts. These are the Emergency Family Medical Leave Act (EFMLA) and the Paid Sick Leave Act (PSLA). These acts also require the employee and employer to engage in a specific process to allow the employer to determine whether the employee is eligible for a leave. We have provided more detailed information about these various acts below.

A critical takeaway is that to qualify for the leave or accommodation, the employee must meet the legal requirements.

For the FMLA, EFMLA and PSLA there is a limited amount of time that the leave applies. For the PSLA it is two weeks and for FMLA and EFMLA it is a maximum of 12 weeks. In any case, regardless of the combination, the total amount of time would not be more than 12 weeks in a rolling 12-month period.

2. What is the “Families First Coronavirus Response Act” (FFCRA)?

The Families First Coronavirus Response Act (hereinafter referred to as “FFCRA”) is a newly enacted federal law to address employee’s use of leave time in relation to the COVID-19 pandemic. There are two (2) components of the FFCRA, the Emergency Family and Medical Leave Expansion Act (hereinafter referred to as “EFMLA”) and the Paid Sick Leave Act (hereinafter referred to as “PSLA”). These new laws apply to public sector employers including public school districts. These laws are effective April 1, 2020 and will sunset on December 31, 2020, unless extended by further legislation

3. Who is covered under the “Emergency Family and Medical Leave Expansion Act” (EFMLA)?

EFMLA provides leave for a covered employee, defined as having been employed on the district’s payroll for at least thirty (30) calendar days prior to the date of the requested leave. For example, an employee requesting leave to begin on September 1, 2020 would have to appear on the district’s payroll as of August 1, 2020. The criteria used to determine if an employee is eligible for FMLA leave, that is,

has worked for 12 months and at least 1,250 hours in the previous year (as defined by district policy) do not apply if the employee is requesting EFMLA leave. The covered employee is allowed a combined total of twelve (12) weeks of leave under both FMLA and EFMLA.

4. What is covered under the EFMLA?

EFMLA leave applies to an employee who cannot work or telework because the employee son's or daughter's school (where the son or daughter is under 18 years of age and in an elementary and/or secondary school) or their place of child care has been closed, or the child care provider of such child is unavailable as declared by a federal, State or local authority due to a COVID-19 related reason. There must also be no other suitable person available to care for the child during the period of requested leave. This means if the employee can telework, then the provisions under this law do not apply. The definition of son or daughter is the same definition used under the FMLA provisions. FMLA defines son or daughter as a biological, adopted, or foster child; a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of 'self-care' because of a mental or physical disability" at the time that leave is to commence.

5. What is telework?

The district is responsible to determine if the employee can perform the duties through telework. The employee can telework if the employee can perform the duties while at home even if not during the employee's normal work hours. If an employee can care for their child and telework at the same time, then the employee is not eligible for the EFMLA leave.

6. What allowances will the employee receive, if approved, for EFMLA leave?

The employee is allowed to take ten (10) unpaid days under EFMLA leave. The employee can choose to substitute paid sick, medical, personal or vacation leave for the ten (10) unpaid days. However, the district cannot require the employee to use these days to substitute paid leave for the EFMLA unpaid leave.

The employee may take an additional ten (10) weeks of paid leave paid at two-thirds the employee's regular rate of pay. For each day of leave, the employee receives compensation based on the number of hours he or she would otherwise be normally scheduled to work, although special rules may apply to employees with varying schedules. A part-time employee is entitled to leave based upon his or her average number of hours worked in a two-week period. Hours of leave for a part-time employee are calculated based upon the average number of hours the employee is normally scheduled to work. If a part-time employee's hours vary, then an employer can use a six-month average in order to calculate the employee's leave.

Leave during this ten (10) week period should run concurrently with any other paid leave time such as vacation, personal leave.

The total EFMLA payment per employee for this ten-week period is capped at \$200 per day and \$10,000 in the aggregate, for a total of no more than \$12,000.

7. What documentation is needed to request the EFMLA?

The district has the right to request reasonable documentation to substantiate as proof for the employees need to take the leave. Please see the attached “Families First Coronavirus Act (FFCRA) Request Form.

8. How is my health insurance affected, if approved under EFMLA?

The District must maintain the employee’s same level of health insurance while the employee is on an EFMLA leave.

9. Can intermittent leave be taken under EFMLA?

An employee may take intermittent EFMLA leave. An employee may take intermittent leave in any increment, provided the request is approved applying the same criteria as continuous leave. With an approved leave request, the District will work with you to first modify the assigned schedule in order to make a reasonable adjustment to accommodate the intermittent leave times requested. The district and the employee may agree to take paid sick leave intermittently while teleworking. The DOL questions and answers indicate if the employee is prevented from teleworking a normal schedule of hours because of the need to care for a child whose school or place of care is closed, or child care provider is unavailable because of COVID-19 related reasons, the employee may take EFMLA leave intermittently while teleworking.

10. Who is covered under the “Emergency Paid Sick Leave Act” (PSLA)?

PSLA provides leave for a covered employee, defined as working for the district as a full-time and part-time employee regardless of the amount of time having worked for the district. PSLA is not considered part of FMLA law and, as a result, the eligibility requirements under FMLA do not apply to an employee taking this leave.

11. What is covered under the PSLA?

PSLA provides for 80 hours of paid leave for full-time and part-time employees. The 80 hours of paid leave has been interpreted as two work weeks, that is ten (10) work days. A full-time employee is defined as working forty (40) hours a week. A part-time employee is entitled to leave based upon his or her average number of hours worked in a two-week period. Hours of leave for a part-time employee are calculated based upon the average number of hours the employee is normally scheduled to work. If a part-time employee's hours vary, then an employer can use a six-month average in order to calculate the employee's leave. In a school district the part-time workers hours do not typically vary.

12. What allowances will the employee receive, if approved, for PSLA leave?

The employee is entitled to this ten (10) paid days of leave if the employee cannot work or telework due to any combination of the following reasons, noting there is a total cap of 80 paid hours. Therefore, if the employee requests PSLA leave on two different occasions for two different reasons, or for two different reasons that apply on one occasion, the employee is only entitled to a total of 80 hours of paid leave. If the employee can telework, the provisions of this leave do not apply. The reasons are as follows:

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. (A health care provider is defined as a medical doctor or nurse practitioner or other health care provider authorized to issue a certification under FMLA).

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 in subparagraph (1) or has been advised as described in paragraph (2).

5. The employee is caring for a 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.

6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Labor and Treasury.

If the employee is taking leave for reasons 1-3, the employee would be paid two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay capped at \$511 per day or \$5,110 in total.

If the employee is taking leave for reasons 4-6, the employee would be paid two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay, capped at \$200 per day or \$2000 in total.

After receiving the ten (10) paid days of PSLA leave, if the employee is in further need of leave for reason 5 (childcare) above, the employee could qualify for EFMLA leave, wherein the employee would be paid at 2/3 of the employee's regular rate of pay capped at \$200 per day or \$10,000 in total, not to exceed ten (10) weeks in total and to be used by December 31, 2020.

13. Can the employee choose to substitute paid leave accruals for PSLA?

The employee can choose to substitute paid accrued leaves after the initial ten (10) days of leave but the district cannot require the employee to use paid accrued leaves before using the ten (10) days of paid leave.

14. Can intermittent leave be taken under PSLA?

An employee may use intermittent leave ONLY for reason number five (5) above, that is the employee is caring for a son or daughter if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19 precautions.

15. What documentation is needed to request the PSLA?

The district has the right to request reasonable documentation to substantiate as proof for the employees need to take the leave. Please see the attached "Families First Coronavirus Act (FFCRA) Request Form.

Questions Related to Staff's Return

16. Will staffing assignments be impacted this upcoming school year?

Brighton's school reopening plan will be to have a hybrid model where students will be on campus some days and then learn remotely on the remaining days. To implement these Temporary Learning Models (TLMs), we will need to be flexible in providing staffing to meet instructional needs and to comply with the required safety precautions. While we expect temporary changes, any changes will be in full compliance with our respective collective bargaining agreements (CBA).

In no case, as long as a staff member reports for work as scheduled, will any changes impact salary, benefits, tenure track, seniority or retirement credits.

17. How will the district staff for students that do not return and whose parents will only allow remote learning?

While the primary model of hybrid instruction has been recommended, there will be some students that will not return to campus and will only be learning remotely. The district is in the midst of determining who the specific students will be. Once we know the students involved, we will determine what staffing needs are required to support remote learning. We will work with each collective bargaining unit to develop a process after applications for EMFLA and PSLA are processed and impact of schedules are determined.

18. I have a medical condition that puts me at high risk for COVID-19. Am I able to work remotely?

You would have to go through the ADA process and provide reasonably detailed information about your condition and limitations in order for the district to make a determination of whether an accommodation is reasonable. At minimum, you would need to provide your specific medical diagnosis, and how the disability specifically limits your ability to work your normal job duties. If you were deemed to qualify and it was reasonable, working remotely is a possible accommodation. For example, if a teacher submits a request to work remotely, has an appropriately qualifying condition and doing so would be considered a reasonable accommodation, then allowing the teacher to teach remotely could be considered.

Please note, what could be potentially deemed a reasonable accommodation under the TLMs, may not necessarily be deemed a reasonable accommodation under our regular learning model.

19. What if I do not qualify for an accommodation or leave, or my leave expires but I still do not feel comfortable returning to work?

While this is certainly an understandable concern, at that point, if you are unable to return to work, your options are limited. Please remember, regardless of the district's final plan for reopening, we will need our staff to support our students' education.

There have been some questions of whether staff could work remotely even without a qualifying reason. While this could be requested, it may be unlikely as your position would have to be one that could be done remotely and for which we have a need. Another potential option would be to ask for an unpaid leave. Unpaid leaves are reviewed on a case-by-case basis and would likely only be granted if we had sufficient staff to operate. If granted, during the leave time you would be unpaid, would not accrue seniority and while you can retain your benefits, you would need to pay 100% of any health and dental insurance premiums.

20. My child's school is implementing a hybrid model in which students are not in school every day. Am I able to take leave to care for my child?

If your child's daycare or school is closed for a COVID related reason, you are eligible to take up to 12 weeks of leave. There must be no other suitable person available to care for the child during the period of requested leave.

Should this apply, the first two weeks fall under PSLA and up to ten more fall under EFMLA. You may be able to take intermittent leave to care for your child on days they are unable to go to school during periods of time that the school is traditionally open. In order to allow this to happen you would need to discuss your situation with Human Resources and collaboratively work out a plan for intermittent work. After the leave expires you would need to return to work on your full schedule regardless of whether the school remains in the hybrid model.

21. If I decide to not send my child to school but their school is open, would I qualify for a leave?

You would not qualify for leave as the school is open, but you are choosing not to send your child.

22. Someone in my household has a medical condition that puts them at high risk for COVID-19. Am I able to work remotely to decrease the risk of infecting them?

You would not qualify under the ADA based on a family member's medical condition. The district has the right to request reasonable documentation to substantiate as proof for the employees need to take the leave. Once all necessary documentation is received, you may have a meeting with Human Resources to discuss your individual situation and to go through an interactive process to see if you would qualify for a leave or accommodation. You may include your union representative in this discussion. Until a final determination is made, it is expected that you would maintain your normal schedule.

While the circumstance may not qualify for ADA, the District will work with each collective bargaining unit to maintain a listing of employees requesting a telework accommodation. While this could be requested, it may be unlikely as your position would have to be one that could be done remotely and for which we have a need.

23. What if I am not in a vulnerable population or high-risk category for COVID-19 but my spouse or parent in the home is in the vulnerable population?

First, the district will consider whether any of the federal laws apply.

1. EFMLA does not apply since this is not the closure of school or a childcare situation.
2. PSLA could apply under category #4, caring for someone required to quarantine. In that instance, the employee would be receiving two-thirds pay for the quarantine period of ten (10) days. However, that is unlikely to occur.
3. The employee could utilize FMLA leave if the spouse's medical condition meets the criteria for a serious health condition. Again, that provides only twelve (12) weeks of leave, which is unpaid, unless accrual times are substituted for the unpaid leave. The spouse's medical condition will unlikely be resolved in twelve (12) weeks and COVID-19 will unlikely be contained in twelve (12) weeks.
4. The employee is not the one with the disability. Therefore, there is no ADA issue and there is no legal basis to require the district to allow telework.

24. What happens if I have a general fear of catching COVID-19 and feel that it is not safe for me to work?

Absent any diagnosed medical condition that may lead to an ADA accommodation, a "general fear" of contracting COVID-19 at the District will not qualify an employee for leave under either the federal or state paid sick leave laws.

If District administration makes the decision not to allow the employee to telework, or if the employee's position is not suited for telework, then an unpaid leave of absence may be considered. If the employee continues to refuse to return to work after being directed to return and there is no underlying medical condition, the District could bring disciplinary charges in accordance with the collective bargaining agreement and applicable labor laws.

NYS Paid Sick Leave Law and Questions Related to Quarantine

25. Can the New York Paid Sick Leave law be used for multiple quarantines?

Yes. The law states that an employee shall be provided "with at least fourteen (14) days of paid sick leave during any mandatory or precautionary order of quarantine or isolation." Thus, based upon a strict interpretation of the law, an employee can use the law for multiple quarantines given the use of the phrase "any" and "at least" in the statute. Federal law, Paid Sick Leave Act is capped at a total of 80 hours. EFMLA is capped at 12 weeks, depending on whether the employee's FMLA been utilized.

26. A personal family situation requires me to travel to a state that is on the quarantine list. Can I work remotely upon my return? If not, will I be paid for the period that I am quarantined?

This area is still evolving. NYS has said that public employees subject to mandatory quarantine as a result of voluntary travel to areas with high infection rates are not entitled to use paid leave during this time. However, the PSLA may apply. It is important to note, that the PSLA can only be used once and counts towards the total 12 weeks for potential leave. The employee will need to provide reasonably detailed information as part of this process.

As to working remotely, your position would have to be one that could be done remotely and for which we have a need. This decision is solely at the discretion of the district.

You should contact your supervisor or Human Resources prior to any travel to a restricted area so you will better know what to expect if you travel to a state on the quarantine list.

27. Is an employee paid when quarantined after visiting a Hotspot state?

Executive Orders 202.45 and 205 issued by Governor Cuomo restricts New York State residents traveling to so-called hotspot states as identified and listed by the New York State Department of Health to self-quarantine for fourteen (14) days. If a person travels prior to June 25, 2020 the person will be paid for days of quarantine under New York State paid sick leave law. If the person travels after June 25, 2020 the person will not be paid during the self-quarantine period of fourteen (14) days per the Executive Order under New York State law. However, in that circumstance the federal law, Paid Sick Leave Act, can be utilized allowing the employee to be paid for the ten (10) days of quarantine without being charged with leave accruals.

An employee who travels to a safe state that turns into a hotspot after the employee leaves New York State is treated as though they travelled prior to June 25, 2020 and is paid for their time during the self-quarantine without accrual time being charged.

The district could consider allowing the employee to telework if feasible during the quarantine period. In that case, the PSLA would not apply as the employee would be working.

While on quarantine, the employee must be isolated and cannot even take a walk for a breath of fresh air. An employee who passed through a hotspot state while en route to another non-hotspot state is not subject to quarantine. The threshold amount of passing time in that hotspot state is under 24 hours.

We understand from the Governor's office guidance an employee who leaves the state to take a child to college in a hotspot state would have to engage in self-quarantine upon return to New York State, unless the district employee was in the hotspot state for 24 hours or less.

28. What happens when family visits from a Hotspot state?

If a family member visits a New York state employee from a state on the hotspot list, the family member must quarantine for fourteen (14) days. This means the family member(s) must be situated in a separate quarter with a separate bathroom and food must be delivered to the quarters. If the staff member is not in the same facility as the family member (the family member is at a hotel for example), the staff member would be eligible to work without the quarantine restriction. If the family member lives with the staff member but is living in a separate quarter with a separate bathroom, the staff member would be eligible for work. If the staff member is truly taking care of the family member, that is a category under the federal law, paid sick leave act, where the staff member is eligible for two-thirds pay for ten days during quarantine.

29. What if the Hotspot state is removed from the list after the employee returns and is self-quarantined?

If an employee returns from a Hotspot state which is then removed from the list, we believe the employee continues the quarantine because the employee was in that state during the Hotspot time and being exposed to COVID-19 at the time of travel.



Brighton Central School District
Human Resource Office
2035 Monroe Avenue
Rochester NY 14618
(585) 242-5200
(585) 242-5235

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) REQUEST FORM

PLEASE COMPLETE THE FOLLOWING FORM AND RETURN TO THE HUMAN RESOURCES
DEPARTMENT, ATTN: LISA HARTMAN

I. Employee Name: _____

Date(s) for which leave is requested: _____

II. FFCRA QUALIFYING REASON FOR LEAVE

I certify that I am unable to work or telework for the following reason (please check the box):

1. I am subject to Federal, State or local quarantine or isolation order related to COVID-19. - Name of governmental entity that issued the quarantine or isolation order: _____
2. I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Name and title of health care provider - _____ -- _____
3. I am experiencing COVID-19 symptoms and I am seeking medical diagnosis.
4. I am/will be taking care of someone who (a) is subject to Federal, State or local quarantine or isolation order; or (b) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
Name of individual for whom I am providing care: _____
Relationship of individual to me: _____
If applicable, name of governmental entity that issued the quarantine or isolation order: _____
If applicable, name of health care provider who recommended that the individual to whom I am/will be providing care self-quarantine due to concerns related to COVID-19:

- 5. I am/will be caring for my child/children whose school or place of care is closed, or whose childcare provider is unavailable, due to COVID-19 precautions. Employees who need leave for this reason must complete Attachment A.

- 6. I am experiencing a 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. Describe the applicable condition: _____

III. CERTIFICATION I certify that all information in this request for FFCRA leave, including any supporting documentation and information in Attachment A, is true and complete. I further acknowledge and understand that, to the extent permitted by applicable law, any childcare related leave will be counted as FMLA leave towards the FMLA's 12 week leave limit in a 12-month period.

Employee Signature

Date

ATTACHMENT A

ADDITIONAL REQUIREMENTS FOR EMPLOYEES WHO NEED LEAVE TO CARE FOR THEIR CHILD/CHILDREN

A. Names/Ages of Your Child/Children for Whom You Will Be Caring

	Name of Child	Age	Names of School, Place of Care, or Childcare Provider
1.			
2.			
3.			
4.			

B. Certifications

1. **Sole Provider Certification**

I certify that no other suitable person is available to care for my child during the child care related leave; and, that I will be providing care for the child/children described in Part A above during the period for which I am requesting child care related leave.

Employee Signature

Date