



# **Colchester Public Schools and Town of Colchester**

127 Norwich Avenue, Suite 202  
Colchester, CT 06415



**Shannon Ramsby**  
Director of Human Resources

Phone (860) 537-7264  
Fax (860) 537-1252  
[sramsby@colchesterct.org](mailto:sramsby@colchesterct.org)

## **RE: Department of Labor Guidance on COVID-19 Related Use of Paid Sick Leave and Expanded FMLA**

April 7, 2020

Good Morning All,

I have received a number of inquiries from staff concerning the potential use of time away due to the current pandemic. Specific questions have related to child care issues, intermittent leave, and the use of employer provided PTO to either replace or supplement that which is provided by law. I do not expect anyone to have attorney level understanding as these are frankly complicated issues that even have the attorneys confused. That being said, I have reproduced below some of the recent DOL guidance that speaks to scenarios likely to arise; I ask that you read it and consider it before calling to discuss your situation with me.

Thank you and Be Well,

**Shannon Ramsby**  
*Director of Human Resources*  
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**EMPLOYEE SUBSTANTIATION** ▪ Employees must provide the employer with documentation in support of the reasons for paid sick leave which may include a copy of the federal, state, or local quarantine or isolation order related to COVID-19 or written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19.

▪ The employee must provide documentation in support of the expanded family and medical leave taken which may include a notice of closure or unavailability from the child's school, place of care, or childcare 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 employer from an employee or official of the school, place of care, or childcare provider.

**INABILITY TO WORK** To qualify for FFCRA leave, the employee must experience an inability to work. An inability to work means the employer has work for the employee and one of the qualifying reasons prevents the employee from being able to perform that work, either under normal circumstances at the employee's normal worksite or by means of telework.

- **Different Work Hours.** If the employer and employee agree that the normal number of hours will be worked, but outside of the normally scheduled hours (for instance early in the morning or late at night), then the employee is able to work, and leave is not necessary.
- **Reduced Work.** If the employer reduces work hours because it does not have work for the employee to perform, the employee may not use FFCRA leave for the hours that he or she is no longer scheduled to work.
- **Worksite Closure.** If the employer closes while employees are on FFCRA leave, paid leave ceases. This is true even when the employer intends to reopen soon.
- **Furloughs.** If the employer furloughs an employee because it does not have enough work or business, the employee is not entitled to take FFCRA leave.

**INTERMITTENT LEAVE** In general, intermittent leave is only an option while teleworking or for childcare related reasons.

- Intermittent leave while teleworking is allowed if the employer agrees and the employee is unable to telework his or her normal scheduled hours due to one of the qualifying reasons.
- For intermittent leave while not teleworking, paid sick leave is generally not allowed. Qualifying reasons related to COVID-19 must be taken in full-day increments until either (1) the full amount of paid sick leave is used or (2) the employee no longer has a qualifying reason for taking paid sick leave.<sup>3</sup> This limit is imposed because the intent of FFCRA is to provide such paid sick leave as necessary to keep employees from spreading the virus to others.

→ However, if the employer and employee agree, the employee may take paid leave intermittently for childcare-related reasons. For example, if the employee's child is at home because his or her school or place of care is closed, or childcare provider is unavailable, because of COVID-19 related reasons, the employee may take paid sick leave on Mondays, Wednesdays, and Fridays to care for the child.

The DOL encourages employers and employees to collaborate to achieve flexibility and meet mutual needs.

**SUPPLEMENTING SICK LEAVE** Employees may only supplement FFCRA leave with existing employer-provided leave if the employer and employee agree and only up to normal earnings. For example, if the employee is receiving 2/3 of normal earnings under the FFCRA and the employer permits, the employee may use preexisting employer-provided paid leave to receive the additional 1/3 of normal earnings.

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