

Association of County Commissions of Alabama Guidance Highway Department Continuity of Operations Plan COVID-19 (Coronavirus)

Highway Department Operations Plan Considerations:

- *Transition work orders to be submitted by phone, email or other means of remote communication;*
- *Consider implementation of procedures for monitoring temperatures of employees reporting to work at the start of each workday, whether reporting to highway department or directly to job site;*
- *Implement county transportation policy of one employee per county vehicle;*
- *Consider limiting highway department office hours for employees and implementing shift schedules to reduce in-person employee interactions, including teleconferencing staff meetings;*
- *Implement procedures to ensure consistent lines of communication are available for all essential staff and county departments;*
- *Educate employees on various scenarios with public and staff interactions to ensure understanding of social distancing measures and temporary workplace policies and procedures;*
- *Implement enhanced sanitation policies to be used by employees for personal interactions and use of equipment and facilities;*
- *Implement specific equipment use sanitation policies for employees, including use of protective personal equipment (e.g., use of gloves) before, during and after operation of county vehicles and equipment (e.g., Wheel loaders, motorgraders, dump trucks).*
- *Prepare specific procedures to backfill positions for circumstances in which employees are absent;*

Other Considerations:

- *Maintain consistent lines of communication with local EMA Director, County Health Department, and local stakeholders for daily COVID-19 updates.*
- *Prepare Highway Department Plan for scenarios in which county commission modifies COVID-19 resolutions, including closure of highway department to employees.*
- *Identify current capabilities for specific employees to work remotely and carry out necessary communication with various county departments and the public.*

FAQ: COVID-19 Personnel Considerations:

- *Coordinate with the County Administrator and Human Resource Officer in cases where employees are exhibiting flu-like symptoms or have been in “close contact”*

with individuals exposed to COVID-19 or exhibiting COVID-19 and/or flu-like symptoms.

- *Communicate with the County Administrator and Human Resource Officer to determine proper disciplinary actions in cases where employees are not adhering to implemented policies, procedures, and guidelines.*
- *Please review the attached FAQ: Personnel & COVID-19: Families First Coronavirus Response Act Update. (Updated as of March 19, 2020.)*

CDC and ADPH Best Practices with Employees include:

- *Minimizing face-to-face contact;*
- *No handshaking;*
- *Minimizing meetings with large numbers of people;*
- *Using email, phones and teleconferencing/webinars rather than face-to-face contact;*
- *Effectively handling materials and citizens that could be contaminated;*
- *Washing hands often and practicing other sanitary means to prevent the spread of germs;*
- *If an employee is diagnosed/confirmed positive with the virus, shutting down and disinfecting the workplace and all equipment in contact with the diagnosed employee before allowing other employees to return;*
- *Reminding employees to use respiratory etiquette, such as covering coughs and sneezes;*
- *Discouraging employees from using other employees' phones, computers, desks, or other work tools or equipment unless necessary;*
- *Requiring employees to keep their work stations and work areas clean without leftover food, drink, drinking cups, etc.*

Helpful Links:

Association of County Commissions of Alabama COVID-19 Resources

<https://www.alabamacounties.org/coronavirus/>

Alabama Department of Public Health

<http://www.alabamapublichealth.gov/infectiousdiseases/2019-coronavirus.html>

National Association of Counties COVID-19 Resources

<https://www.naco.org/resources/featured/coronavirus-disease-2019>

FAQs Regarding Personnel & COVID-19: Families First Coronavirus Response Act Update

3/19/2020

*On March 18, 2020, President Trump signed the “Families First Coronavirus Response Act” into law. This law amends the Family Medical Leave Act (FMLA) by expanding its applicability and adding an additional provision for leave to care for minor children. It also provides for emergency paid sick leave for all employees, regardless of how long they have been employed. The Act is designed to encourage employers to allow employees to work remotely, as employees who can telework are not entitled to all of the new forms of leave. The administrative regulations giving further guidance on the Act – INCLUDING A NEW MANDATORY ADVISORY POSTER - will be issued in the next few days, so please continue to pay attention to updates. There are still quite a few questions unanswered at this point regarding the administration of this law. **This law goes into effect no later than fifteen days from being signed into law (April 2, 2020) and will be effective until December 31, 2020. Until it goes into effect, the previous guidance regarding the FMLA is still applicable.***

(1) What kind of information can I ask my employees about their health?

In general, employers can only seek information about an employee's health if the information is "job-related and consistent with business necessity," meaning that there is objective evidence that either 1) the employee's ability to perform essential job functions will be impaired by a medical condition or 2) the employee will pose a direct threat due to a medical condition. Information about an employee's risk for COVID-19 meets this test even if the employee is not personally showing symptoms, since the virus may be contagious even without the employee feeling sick.

At this point, it is recommended that employees be instructed that they are not to come to work if they or anybody with whom they have been in "close contact" – in other words, less than six feet away from – exhibit flu-like symptoms. Employers may require regular temperature checks and may affirmatively ask employees about their health and the health of their contacts. This change does not necessarily need a formal policy adoption; it can be an administrative directive. ANY INFORMATION ABOUT AN EMPLOYEE'S HEALTH, OR THE HEALTH OF THE EMPLOYEE'S FAMILY, SHOULD BE KEPT SEPARATELY FROM THEIR NORMAL PERSONNEL FILE. Employee health records are *not* public records. They should be kept in a separate, secured file with limited access. Other employees should only be notified of a suspected or confirmed COVID-19 diagnosis if ordered by medical professionals and/or the public health authorities. If medical professionals or authorities recommend that co-employees be quarantined specifically because of their interaction with the affected co-worker, they should be placed on emergency paid administrative leave, which should not be counted against their leave balances.

(2) Our courthouse and/or other facilities are remaining open. How will the changes to the FMLA affect our operations?

The FMLA previously applied only to employees who have worked at least 1,250 hours in the last year. Under the new law, any employee who has been employed for **at least thirty calendar days** is entitled to leave relating to “a qualifying need related to a public health emergency”, which is defined as follows:

The term ‘qualifying need related to a public health emergency’, with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

A “school” is defined as an elementary or secondary school. A child care provider is anyone who receives compensation for child care on a regular basis, i.e., daycare, after-school care, nanny/babysitter, etc. So the bottom line is **that any employee who (1) has worked for at least thirty days (2) cannot work remotely and (3) needs to care for a child under the age of 18 while their normal school, daycare, or other childcare is unavailable is now entitled to up to twelve weeks of leave through the end of December 31, 2020, or until all emergency declarations related to COVID-19 have been lifted.**

The first ten days of this new FFCRA/FMLA leave are to be unpaid, although an employee may – but cannot be forced to – choose to substitute any form of paid, accrued leave during this time. An employee must be paid for the remainder of the leave in an amount at least equal to 2/3 of their “regular rate” (which is defined for hourly employees as their base pay for the purposes of calculating time-and-a-half and is most often simply their normal hourly rate) times the normal number of hours for which they are scheduled. This amount cannot exceed \$200 per day, or \$10,000 total. As with all other forms of protected leave, health insurance coverage must be maintained during this time. Employees may be required to continue to pay their share of coverage.

If the need for leave is foreseeable, employees must give “such notice of leave as is practicable.” This term has not been further defined in this law; however, based on similar language in other laws, it most likely will be construed to mean that employers cannot insist on any certain deadline for calling in, as long as notice is given before the start of a shift.

Emergency Family and Medical Leave Expansion Act ("Emergency FMLA")	
(i) Who Qualifies for the Emergency FMLA:	An employee who is unable to work (or telework) <u>due to a need for leave to care for the son or daughter under 18 years of age of such employee</u> if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency*.
(ii) *What is a Public Health Emergency	An emergency with respect to COVID-19 declared by a Federal, State, or local authority.
(iii) Eligible Employee Under Emergency FMLA†	An employee of the County who has been employed for at least 30 calendar days by the County and who qualifies for Emergency FMLA under Item(i).
(iv) Initial 10 Days under Emergency FMLA	The first 10 days for which an employee takes leave under the Emergency FMLA may consist of unpaid leave.
	Option for Employee: The employee may elect to substitute any accrued annual leave, sick leave, compensatory time, holidays earned or floating holidays for unpaid leave.
(v) Paid Leave for Subsequent Days under Emergency FMLA	An employer shall provide paid leave for each day of leave under the Emergency FMLA that an employee takes after taking leave under this section for the initial 10 days stated above.
	Rate of Pay: The amount of pay during this period under the Emergency FMLA is equal to two-thirds (2/3) of an employee's regular rate of pay, not to exceed \$200 per day and \$10,000 in the aggregate.
(vi) Job-Protected Leave:	Eligible full-time employees and part-time employees are entitled to 12 weeks of job-protected leave under this Act.
(vii) Notice by Employee:	When the need for leave is foreseeable under the Emergency FMLA, an eligible employee shall provide the County notice of leave as is practicable.
(viii) Effective Date:	The Emergency FMLA shall take effect not later than 15 days after the date of enactment of the Act. Therefore, the current effective date, according to the federal government, is April 2, 2020, and the federal government may make it effective sooner.
(ix) †Special Rule for Health Care and First Responders	An employer of an employee who is a health care provider or an emergency responder, which includes deputy sheriffs, may elect to exclude such employee from the application of the provisions of the Emergency FMLA.

(2)(b) What about employees who request FMLA leave for other reasons?

Subject to the provisions of the Emergency Paid Sick Leave Act, all other FMLA requirements remain the same. In other words, the old rules still apply to an employee who requests time off for any FMLA qualifying reason that is not related to COVID-19, like the birth of a child or other medical/surgical procedure.

(2)(c) Are employees entitled to additional leave?

In addition to the FFCRA/FMLA leave provisions, ALL employees – regardless of how long they have been working for an employer – are now entitled to extra emergency leave under the following conditions:

- (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.
- (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 of such employee 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 Secretary of the Treasury and the Secretary of Labor. (No such conditions have been defined yet.)

Full-time employees are entitled to eighty (80) hours of leave. Part-time employees are entitled to leave equaling the average amount of hours they work over a two-week period. **This leave must be used first; the employer cannot require the exhaustion of any other form of paid leave first.** An employee can decide to use their emergency sick leave during the first 10 unpaid days of their FFCRA/FMLA leave. If an employee requires additional FFCRA/FMLA leave beyond the initial 10-day period, or requires FMLA leave for their own COVID-19 health related condition, the employer can apply the emergency paid leave first. Leave granted under this section will not carry over to the next benefit year, and an employee is not entitled to be reimbursed for any unused leave if they are terminated.

Employers cannot condition this leave on an employee finding someone to cover their shift.

Emergency Paid Sick Leave Act		
Items	Category A	Category B
<u>(i) Reason Employee is unable to Work or Telework:</u>	(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19	(4) The employee is caring for an individual who is subject to an order as described in Category A(1) or has been advised as described Category A(2).
	(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19	(5) The employee is caring for a son or daughter of such employee 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.
	(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.	(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.
<u>(ii) Rate of Paid Sick Time:</u>	The Employee's regular rate of pay, not to exceed \$511 per day	Two-Thirds (2/3) of the employee's regular rate of pay, not to exceed \$200 per day
Common to Both Categories		
<u>(iii) Who is an Employee for Purpose of Leave†:</u>	Each full-time and part-time employee, regardless of how long the employee has been employed with the County, if the employee is unable to work or telework because of one of the reasons listed above in Item (i).	
<u>(iv) How Much Paid Sick Leave Time :</u>	Full-Time Employees = 80 hours Part-time Employees = number of hours equal to the number of hours that employee works, on average, over a 2-week period	
<u>(v) Effective Date of Act:</u>	The Emergency Paid Sick Leave Act shall take effect not later than 15 days after the date of enactment of the Act. Therefore, the current effective date, according to the federal government, is April 2, 2020, and the federal government may make it effective sooner.	
<u>(vi) †Special Rule for Health Care and First Responders</u>	An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions of the Emergency FMLA.	

(2)(d) How much must an employee be paid for this sick leave?

An employee who is entitled to leave because they are personally ill or have been either ordered or advised to remain in quarantine should be paid their “regular rate of pay” (again, this is most often their normal base hourly rate), up to a maximum of \$511/day or \$5,110 in the aggregate. An employee who is entitled to leave to take care of another person or their child, or because of some other as-yet-defined “substantially similar condition,” is entitled to receive 2/3 of their regular rate of pay, up to a maximum of \$200 per day, or \$2,000 in the aggregate. Additional guidelines will be issued in the next fifteen days.

(2)(e) Will we receive reimbursement for this leave?

Unfortunately, the payroll tax credit that is available to reimburse the cost of qualified sick leave wages does not currently apply to any public employer.

(2)(f) What kind of proof may we request from employees?

This issue will hopefully be addressed with more certainty in the expected regulations. It currently appears that employers may use the same FMLA certification forms for either an employee's own illness or to care for others, to be returned in the same time period as regularly required. Many school systems and childcare providers have made public closure announcements; however, if an employee cannot point to such an announcement, employers may request certification in writing from the childcare provider within a reasonable time period. In order to reduce the burden on the health care system, it is currently being recommended that employers choose to waive full FMLA certification forms and instead accept either a written statement by the employee, subject to the understanding that falsification may lead to immediate termination, or a simpler statement by a health care provider that the employee or their family member is under care and has been advised to remain isolated for some period of time.

(2)(g) What is the punishment for violating this new law?

Employers who violate the new law either by unlawfully interfering with an employee's rights or by retaliating against an employee in any form for seeking to exercise these rights will be subject to enhanced damages and may be liable for attorneys' fees and costs.

(2)(h) What if the employee is out of leave?

The FMLA's provisions regarding the definition of the leave year have not changed, although additional guidance may well be issued. Employers still have the discretion the eligibility period in several different ways, as follows: 1) The calendar year; 2) Any fixed 12-month period (e.g., the fiscal year); 3) The 12-month period measured forward from the date FMLA leave begins; or 4) A "rolling" 12 month period measured backward from the date of leave use. If an employer does not specify a particular year, the default is whichever definition is most beneficial for the employee. You cannot currently change your current policy without at least 60 days' notice to employees, so you should plan on continuing to use the same definition.

If an employee has exhausted or will exhaust all of his or her FMLA leave before the current crisis passes (for example, if an employee had already used their available leave because of a surgery), they would still be eligible for the emergency sick leave. It appears that this emergency sick leave has the same relationship to the FMLA as any other form of accrued, paid leave, meaning that they would be entitled to the emergency sick leave, if eligible, regardless of whether they also are entitled to some form of leave under the FMLA.

After an employee exhausts their FMLA entitlement as well as any other form of leave, the employer should next look to any policy that might exist regarding extended leaves of absence and/or reasonable accommodation under the Americans with Disabilities Act. A brief, unpaid leave of absence may be a "reasonable accommodation" under the ADA; however, employers are not required to extend leave indefinitely.

Be aware when dealing with unpaid leave that exempt (or "salaried") employees must receive a full day's wage for any day in which they have worked, or they will lose their exempt status. In other words, an exempt employee who gets sent home early and is out of paid leave must still be paid for the entire day.

(2)(i) What if an employee is either sick or has a known risk of being sick, but refuses to stay home?

Supervisors with authority to approve and direct leave (whose identity will vary based on policy) may affirmatively direct employees who are either sick or have a known risk of being sick, and thus infecting others, to stay home until they have been cleared by a medical professional and/or for at least the current recommended period (most often thought to be fourteen days) after the cessation of symptoms. Additional information may be required for medical releases from employees with on-going symptoms. For example, if an employee reports on Monday with a return-to-work certification dated Friday, but still has a terrible cough, you may ask the employee to provide you with additional information about whether the cough is new (possibly suggesting a new infection) or whether the doctor diagnosed the cough as a lingering, harmless symptom of seasonal allergies. You can also ask the employee to sign a release allowing direct contact with their physician's office.

Failure to obey an order to keep away from the workplace may be treated as grounds for disciplinary action under your current policies (i.e., insubordination)

(2)(j) We are open and short-staffed; do I have to honor previously approved vacation leave requests?

No. Vacation or annual leave is a benefit that is administered in accordance with employer policy; in the absence of a specific contract with an individual employee, no employee is entitled to take paid leave at any specific time. The current declaration of a national emergency justifies rescinding previously granted leave.

(2)(k) Do I have to let my employees use compensatory time earned in lieu of overtime pay as requested?

Not necessarily. Public employers may adopt policies allowing non-exempt (or hourly) employees to accrue up to 480 hours of compensatory leave, which is earned at time-and-a-half. The Fair Labor Standards Act (FLSA) requires that employees be allowed to take this leave in a reasonably timely fashion, depending on the employers' needs. In an emergency situation, you are not required to approve compensatory time requests; however, earned compensatory time may be substituted for other forms of paid or unpaid leave depending on your FLSA and FMLA policies. Care must be taken to ensure that employees do not accrue too much additional compensatory time during this emergency. Overtime pay may need to be substituted if an employee begins to approach this limit.

(2)(l) We have had or expect to have employees on leave for COVID-19 related reasons prior to April 2. Can any of the new forms of leave be applied retroactively?

The general rule is that FMLA leave cannot be applied retroactively except for in certain emergency situations. We do not yet know how the new FFCRA/FMLA provisions will be interpreted – in other words, if any and/or all forms of leave occurring prior to April 2 (administrative, accrued paid leave, or unpaid leave) can be retroactively deemed FMLA leave. We also do not know if the new emergency paid sick leave can be applied retroactively. The Department of Labor is expected to issue administrative guidance implementing the new Act before April 2; we encourage counties to review this guidance upon its release and stay aware of developments as they happen.

(3) We have decided to close the courthouse and/or other facilities. Do we need to follow normal FMLA or sick/annual leave procedures?

No. If the employer exercises its discretionary authority to close their facilities, but chooses not to engage in a formal reduction of force, it is recommended that employees receive emergency paid administrative leave during period of closure. If there is already a policy in place regarding the accrual of leave or other benefits during such times (i.e., for weather closures), it should be followed. Otherwise, the employer must decide on a policy at the time. Employees who are out on other forms of leave at the time the facilities close should be switched to the same emergency leave as other employees.

It is important to note that, if the courthouse and/or other facilities are closed, exempt employees (often referred to as “salaried” employees) must receive full pay for the week if they have performed any work.

(4) We have moved our employees to a rotating schedule (e.g., Group 1 employees report to duty M/W; Group 2 employees T/R) in order to reduce their contact with each other and to allow critical job functions to be performed on-site. When the employees are not on-site, they are not working remotely. How do we treat these employees?

The Commission must determine whether its intent is to modify the work hours and thereby reduce employees’ pay. If so, either the current reduction-in-force policy must be followed, or a new policy specifically applying to the current emergency must be implemented. Please be aware that doing so may affect employees’ benefits entitlement without additional action. Employers should also remember that exempt (salaried) employees should continue to be paid for the entire week if they perform any work, or their exempt status will be jeopardized.

If there is no intent to modify employee work hours, then the employees who are told to stay home for certain periods of time should be placed on paid administrative leave when they are not physically working. This administrative leave will most likely not count against either the employees’ FMLA entitlement or their emergency sick leave balance since they would not otherwise meet the eligibility criteria for these leaves.

(5) How does an employer decide which employees are “essential” in this situation?

Current medical guidance suggests that employees’ physical presence at the workplace should be minimized so that only essential employees should be required to report as normal. Other employees may have job duties that are essential to continuing county operations, but some or all of these duties may be able to be completed from home. This situation is unique and may last longer than the typical weather-related emergency. As with many employment matters, employers have discretion to make such decisions as long as they are not made for any unlawful or discriminatory reason. The key is to make sure that the basis for such decisions is articulated and documented.

Generally, determining which positions, and which duties in those positions, are essential and non-essential – and which duties can be performed remotely – will require a review of job descriptions and office policies. This task may be complicated if job descriptions have not been recently updated. A good place to start may be to have both employees and supervisors undertake a review (this can be done relatively informally) of their job descriptions to make sure that they are accurate and up-to-date. After this review is completed, prioritize duties both by position and by office with the goal of ascertaining what are the most basic tasks needed to ensure continuing operation, how often those tasks need to be completed, and whether those tasks can be done remotely in part or in whole.

(6) Can employees volunteer to perform emergency-related tasks?

An employee can never volunteer to perform duties related to his or her normal job for his or her employer. This rule cannot be waived by an employee. However, in general, employees can volunteer to perform special tasks outside their normal job (i.e., a clerk in the probate office might volunteer to help with a shelter the weekend after a storm), as long as the service is truly voluntary. Given the unique nature of this situation, it is anticipated that healthy employees may be needed to perform tasks outside their normal duties to cover essential functions as other departments become short-staffed. The best practice in such cases is to continue to treat employees as employees even if they are working outside their normal assignment areas.

(7) Can an employer choose to give employees additional benefits?

Yes. The FMLA, ADA, FLSA, and other employment laws set a floor, not a ceiling. Many employers already have procedures allowing for additional call-in pay or the accrual of compensatory time as a benefit outside the FLSA's requirement in situations where an employee may be required to work additional hours in a day (in other words, even if they do not work over forty hours in a week) or to report to work at an unusual time or location. Employers should review any such current policies and consider whether any changes need to be made. Employers also have discretion to extend additional paid or unpaid leaves beyond the law's requirements, as well as the discretion to differentiate between employees who are working and those receiving such additional leave as long as any such incentives are done on a broad and do not discriminate against or in favor of any individuals. For example, a policy may specify that employees who work while others are on emergency leave will continue to accrue leave and/or may accrue annual leave at an accelerated rate during the time of the emergency.

(8) If we have to implement a reduction-in-force or temporary lay-off, can our employees collect unemployment benefits?

Generally, yes. Beginning March 23, 2020, the Alabama Department of Labor has begun implementing new COVID-19 procedures that allow employers to file for partial benefits on behalf of their employees who are laid off due to lack of work caused by the virus and/or to waive their right to contest employee filings in this situation. Additional information, including instructions on how to make this claim, is available at: <https://www.labor.alabama.gov/covid19resources.aspx>.