



Explanation of the Board Resolution on COVID-19 Leave Version 2 (Capping EPSL and COVID Leave to 10 Days Total In the School Year)

MSBA is aware that some districts are extending the federal leave mandated under the Emergency Paid Sick Leave Act (EPSL) because that leave expires December 31, 2020, and there is no guarantee that Congress will extend the law to the end of the school year. MSBA is not necessarily recommending this practice. However, if a district is considering doing so MSBA encourages the district to examine carefully whether it would be in the best interest of the district to expand all of the law or just key portions of the law.

MSBA does not recommend that districts amend Board policy for a temporary need because the Board will need to later rescind that same policy. Instead, MSBA recommends that the Board act by resolution with a clear expiration date. MSBA has drafted this sample resolution as an example for school boards to consider if they are interested in extending additional paid leave at the district's expense.

Please read this resolution carefully. This language is optional, and your district may want to make additional changes to customize this resolution. The COVID Leave created by this resolution:

- Is reduced by any amount of EPSL an employee used in the fall.
- Does not apply to all the types of absences that an employee could use under the EPSL and does not include the Emergency Family and Medical Leave, which also expires December 31.
- Does not cover absences:
 - to care for a child whose school or daycare is closed;
 - for persons who are particularly vulnerable to the virus, but who have not been exposed; and
 - due to illnesses “substantially similar” to COVID-19.
- Only applies to employees who are caring for their spouse, child or parent as defined under the Family and Medical Leave Act (FMLA)
- Excludes substitute employees.
- Requires employees to use at least three days of their accumulated paid leave (sick leave, personal leave, paid time off) before the employee is eligible for the COVID Leave.
- Allows the district to require more documentation of the absence than was allowed under federal law.
- Allows for the superintendent or designee to deny the use of leave in circumstances where employees are not following district protocol or are violating an isolation order or recommendation or other local, state or federal health order.

Board Resolution on COVID-19 Leave

Whereas, the Governor of Missouri has issued Executive Order 20-02 and subsequent orders declaring a state of emergency pursuant to §§ 44.100 *et seq.* relating to the COVID-19 pandemic; and

Whereas, the federal Families First Coronavirus Response Act mandated additional paid leave for COVID-19 related reasons, including the Emergency Paid Sick Leave (EPSL), but that leave expires December 31, 2020; and

Whereas, the Centers for Disease Control (CDC) recommends that employers review leave policies to encourage employees who may be ill to remain at home;

Now Therefore Be It Resolved:

1. **Qualifying Conditions for COVID-19 Leave (COVID Leave):** If an employee did not use some or all of the Emergency Paid Sick Leave (EPSL) provided under the Families First Coronavirus Response Act by the time it expired on December 31, 2020, beginning January 1, 2021 the Board will provide leave to employees who are unable to work or telework because the employee:
 - a. Is subject to a federal, state or local quarantine or isolation order related to the COVID -19 virus;
 - b. Has been advised by a healthcare provider to self-quarantine because the employee has or may have COVID-19;
 - c. Is experiencing symptoms of COVID-19 and is seeking a diagnosis from a healthcare provider; or
 - d. Is caring for a spouse, child or parent who is subject to a quarantine or isolation order or has been advised to self-quarantine by a healthcare provider because the individual has or may have the COVID-19 virus. For the purposes of this resolution, the term “spouse, child or parent” has the same meaning as these terms are given under the Family and Medical Leave Act (FMLA).
2. **Amount of Leave:** Full-time employees will receive up to ten days of COVID Leave for the 2020-21 school year. The Board will extend up to the equivalent of two weeks of COVID Leave to any regular, part-time employee based on the number of hours worked, on average, over ten business days (two weeks). If an employee received EPSL, the amount of COVID Leave they are entitled to receive will be reduced by the amount of EPSL the employee has already received. Employees who exhausted the (EPSL) by December 31, 2020, are not eligible for any COVID Leave.
3. **Part-time Employees with Varying Hours:** For part-time employees with varying hours, one of two methods for computing the number of hours that will be used:
 - a. If the employee has worked six months or more, the average number of hours that the employee was scheduled per day over the six-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type.
 - b. If the employee has worked less than six months, the expected number of hours to be scheduled per day at the time of hire.
4. **Substitute Employees:** Substitute employees do not qualify for COVID Leave.

5. **Use of Leave:** COVID Leave cannot be used intermittently or on a reduced schedule but must be taken in a single block of time during a qualifying condition. Until exhausted, COVID Leave may be used for subsequent qualifying conditions.
6. **Payment:** COVID Leave will be paid at the employee's regular rate of pay for the qualifying reasons listed in 1a. – c., not to exceed \$511 per day or \$5,100 in total. For leave based on 1.d., the employee will be compensated at 2/3 their regular rate of pay, not to exceed \$200 per day or \$2,000 in total. Employees may not use other district-paid leave to supplement COVID Leave.
7. **Interaction with Other Paid Leave:** In order to use COVID Leave, the employee must first use at least three days of district-provided paid leave such as compensatory time, sick leave, personal leave, vacation or paid time off for one of the reasons listed in number 1. If there is no paid leave available, the employee must take three days of unpaid leave prior to becoming eligible for COVID Leave. Employees have the option of using other accumulated paid leave prior to using COVID Leave but must notify the district in writing if that is their choice.
8. **Interaction with FMLA Leave:** When an employee is eligible for FMLA leave and is absent due to a qualifying condition under FMLA, the district will apply FMLA concurrently with COVID Leave. The Emergency Family and Medical Leave Act (EFMLA) will not be available in 2021.
9. **Expiration:** COVID Leave will be available on January 1, 2021, will expire on June 30, 2021 and will not apply to absences from duties related to summer school. Employees will not be compensated for unused COVID Leave.
10. **Documentation:** Employees taking COVID Leave may be required to provide documentation verifying that the absence is due to a qualifying COVID-19 as determined appropriate by the superintendent or designee.
11. **Communication:** The district may require an employee who uses COVID Leave to communicate periodically with the district regarding his or her ability to return to work or telework.
12. **Good Faith:** If the district becomes aware that an employee is not following district rules such as wearing masks, social distancing, sanitizing or other precautionary measures while at work; that the employee is violating quarantine or isolation orders or recommendations; or is violating local, state, or federal health orders, the superintendent or designee may deny the use of COVID Leave and the employee will be required to use his or her applicable accumulated leave or take unpaid leave. The district reserves the right to take additional disciplinary action, including termination, for these violations.
13. **Additional Procedures:** The Board delegates to the superintendent the responsibility for creating appropriate administrative procedures to assist employees in using COVID Leave and to protect the district. The superintendent or designee is directed to collect data on the use of COVID Leave, as well as the cost associated with this leave and to seek reimbursement from appropriate local, state or federal funds if available.

14. **Amendment or Termination:** The Board reserves the right to amend or terminate COVID Leave or any part of this resolution at any time. The administrative staff will provide regular information to the Board regarding the use of COVID Leave. The Board may reconsider or terminate COVID Leave if Congress extends the federal EPSL or otherwise requires employers to provide additional paid leave to employees, or the state requires districts to extend additional leave to employees.

ADOPTED THIS THE _____ DAY OF _____, 2020

BOARD PRESIDENT

ATTEST:

SECRETARY OF THE BOARD OF EDUCATION