NEW MEXICO COMMISSION FOR THE BLIND

POLICY FOR APPROVAL OF FFCRA PAID LEAVE FOR EXEMPT EMPLOYEES

Adopted: April 16, 2020

PURPOSE

The purpose of this Policy is to establish written policies and procedures for the awarding of leave under the Families First Coronavirus Response Act (Public Law 116-127) that complies with the provisions of 2 CFR 200.430(a)(1), and with the terms of the Fact Sheet issued by the U.S. Department of Education on April 8, 2020.

BACKGROUND

On March 11, Governor Michelle Lujan Grisham declared a public health emergency in New Mexico due to the Coronavirus and COVID-19. On March 31, 2020, the New Mexico State Personnel Office issued Updated General Memorandum 2020-001, which “authorize paid administrative leave for certain employees subject to the Personnel Act who are unable to work from home or telework and have one or more of COVID-19-related conditions.” Because Updated General Memorandum 2020-001 only covers “certain employees subject to the Personnel Act” and does not apply to exempt employees, the Commission for the Blind (Commission) must adopt written policies that authorizes paid administrative leave for those exempt employees who are entitled to the leave under the Families First Coronavirus Response Act (FFCRA).

The Commission has a significant number of exempt employees who are designated as EXOT. The majority of these EXOT employees provide reasonable accommodation services to Commission employees who are blind or visually impaired in compliance with the Americans with Disabilities Act of 1990 (ADA). The Commission also employs EXOT employees in positions designed to meet the safety and educational needs of the Commission’s Students in Transition to Employment Program (STEP), which is operated each summer in Alamogordo and Albuquerque. Finally, the Commission also employs EXOT employees who enable the Commission to comply with the mandate contained at 34 CFR 361.65(a)(3) to reserve and spend at least 15 percent of the vocational rehabilitation funds on the provision of Pre-Employment Transition Services (Pre-ETS).

PROCEDURE

1. The Commission shall comply with all applicable provisions of the Families First Coronavirus Response Act, including the implementing regulations at 29 CFR 826. The Commission shall also comply with all other applicable State and Federal laws and regulations, including the Emergency Family and Medical Leave Expansion Act, the Coronavirus Aid, Relief, and Economic Security Act, the All Hazard Emergency Management Act, and the Public Health Emergency Response Act.

2. Due to the Coronavirus emergency, and to more efficiently and consistently authorize paid leave under the FFCRA, the Commission shall enter into a Memorandum of Understanding (MOU) with the State Personnel Office (SPO) whereby the Commission and SPO shall agree to process paid leave requests from EXOT employees in the same manner as the paid leave requests of employees who are subject to the Personnel Act.

3. As set forth in the US Department of Education Fact Sheet issued on April 8, 2020, a Commission employee who is paid with Federal or State funds while the Commission’s activities are closed in whole or in part due to the Coronavirus emergency may not also be paid by another organization for working on other activities that are not closed down.

4. For intermittent leave requests made pursuant to 29 CFR 826.50, the Commission shall use the Intermittent Leave Agreement, which is included and incorporated into this Policy for Approval of FFCRA Paid Leave for Exempt Employees as Attachment A.

THE FOREGOING POLICY FOR APPROVAL OF FFCRA PAID LEAVE FOR EXEMPT EMPLOYEES WAS APPROVED BY THE COMMISSION FOR THE BLIND DURING A DULY NOTICED SPECIAL MEETING HELD THIS 16TH DAY OF APRIL, 2020.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Arthur A. Schreiber

Chairman

New Mexico Commission for the Blind

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Greg D. Trapp, JD

Executive Director

New Mexico Commission for the Blind

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Kevin C. Romero

Chief Financial Officer

New Mexico Commission for the Blind

Attachment A

INTERMITTENT LEAVE AGREEMENT

THE PARTIES

This Intermittent Leave Agreement (Agreement) is entered into by and between the identified employee and the New Mexico Commission for the Blind.

PURPOSE

The purpose of this Agreement is to provide for employees who are tele-working or working from home to take intermittent leave pursuant to the Families First Coronavirus Response Act, implementing the provisions of 29 CFR § 826.50.

 TERMS

1. The intermittent leave is to be taken Monday through Friday, from \_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_. The employee is to engage in tele-work from \_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_.

2. The employee may take intermittent leave in such increments of time as may otherwise be agreed upon between the employee and the supervisor, provided that there is a clear and mutual understanding as to when the leave is to be taken.

3. Only the amount of leave actually taken may be counted toward the employee’s leave entitlement.

4. The employee shall accurately report all times worked and all leave taken, and shall accurately and timely enter leave and work time into SHARE as directed. Failure to accurately report and enter times will result in this Agreement being terminated. If this Agreement is terminated, the Employee must use the permitted days of leave consecutively until the Employee no longer has a qualifying reason to take Paid Sick Leave.

5. An employee who is paid with Federal or State funds while the Commission’s activities are closed in whole or in part due to the Coronavirus emergency may not also be paid by another organization for working on other activities that are not closed down.

6. The employee shall not report to a Commission office or worksite while the employee is taking intermittent leave. The only exception is for an employee whose qualifying condition is solely to care for a son or daughter whose school or place of care is closed, or whose child care provider is unavailable due to COVID-19. The employee may report to the worksite in such cases because the employee presents minimal risk of spreading COVID-19. However, should the employee also have or incur any of the other COVID-19 qualifying conditions, the employee shall not report to the worksite. Specifically, the employee shall not report to the worksite if the employee (1) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) has been advised by a health care provider or the Executive Director to self-quarantine due to concerns related to COVID-19; (3) is experiencing symptoms of COVID-19 and is taking leave to obtain a medical diagnosis; (4) is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (5) is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services. If the employee has or incurs any of these five qualifying conditions, the Employee must use the permitted days of leave consecutively until the Employee no longer has any of these five qualifying conditions, or until the employee no longer has a qualifying reason to take Paid Sick Leave.

ENDORSEMENT AND VALIDITY

The Parties may physically sign this Agreement, or the Parties may electronically sign by sending an email evidencing agreement to the terms set forth herein. A scanned, emailed, or other true and correct copy of this Agreement shall be as valid as an original.

Employee

Kevin Romero, Chief Financial Officer

New Mexico Commission for the Blind

Greg Trapp, Executive Director

New Mexico Commission for the Blind