

TITLE: FAMILIES FIRST CORONAVIRUS RESPONSE ACT

EFFECTIVE DATE: April 1, 2020

REVISION EFFECTIVE DATE: (IF APPLICABLE)

RECEIVED

APR 02 2020

CITY CLERK'S OFFICE

1.0 GENERAL

- 1.1 This policy provides temporary protected leave and paid leave benefits for certain absences arising from the COVID-19 outbreak in accordance with the federal Families First Coronavirus Response Act (FFCRA). The benefits available under this policy are available beginning on April 1, 2020. This policy will be administered in accordance with the FFCRA statute and forthcoming federal regulations and guidance.

The FFCRA provides for two categories of leave. The first expands existing FMLA coverage to provide up to 12 weeks of partially-paid Public Health Emergency Leave ("PHEL/FMLA") for eligible employees forced to miss work due to closure of their child's school or the unavailability of the child's childcare provider for reasons related to COVID-19. The second provides up to 10 days of Emergency Sick Leave for various reasons related to the COVID-19 outbreak. Details regarding each category of leave are provided in the sections below.

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2.0 DEPARTMENTS/DIVISIONS AFFECTED

This policy shall apply to all City divisions and departments. Emergency Responders are exempt from section 5.1 Public Health Emergency Leave (PHEL/FMLA) only.

3.0 REFERENCES

H.R. 6201 – Families First Coronavirus Response Act

4.0 DEFINITIONS

Child/Children (as qualifying for emergency leave benefits): Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis.

Emergency Paid Sick Leave: Two weeks (up to 80 hours) of paid sick leave where an employee is unable to work due to qualifying COVID-19 related reasons.

Emergency Responders: Under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

Health Care Provider: For purposes of relying on advisement to qualify for paid sick leave a health care provider means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

Public Health Emergency Leave (PHEL/FMLA): Up to ten weeks of paid expanded family and medical leave at two-thirds the employee’s regular rate of pay where a qualified employee is unable to work or telework due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Telework: A work arrangement that allows an employee to perform work at an approved alternative worksite.

5.0 POLICY

5.1 Public Health Emergency Leave (PHEL/FMLA)

- a. Eligibility: Subject to certain exceptions described below, Employees who have worked for the City for at least 30 days are

eligible for PHEL/FMLA leave. An employee need not meet the eligibility requirements for regular FMLA (12 months of employment and 1250 hours worked in the prior year) to be eligible for PHEL/FMLA. To ensure the City's ability to meet the needs of the community during the COVID-19 pandemic, Emergency Responders are not eligible for PHEL/FMLA leave.

- b. Leave Entitlement: An eligible employee may take up to 12 weeks of protected leave if the employee is unable to work, or telework, based on a need to care for the employee's child under age 18 because the child's school or place of care has been closed, or the child's child care provider is unavailable due to a public health emergency. A public health emergency means an emergency with respect to COVID-19 declared by a federal, state, or local authority. PHEL/FMLA may be taken intermittently only if approved by the City.
- c. PHEL/FMLA is part of an employee's regular 12 week FMLA leave entitlement. Accordingly, if an employee has already used FMLA for other purposes during the FMLA leave year, the amount of available PHEL/FMLA will be reduced by the amount of FMLA leave already taken. PHEL/FMLA leave will be available through December 31, 2020.
- d. Partial Pay Entitlement: The first 10 days of PHEL/FMLA will be unpaid, although employees may elect to use accrued leave or Emergency Sick Leave, if applicable, during this period. For leave beyond the first 10 days, the City will pay two-thirds of the employee's regular pay, up to a maximum of \$200 per day or \$10,000 in the aggregate. Pay is calculated based on the number of hours an employee would otherwise have been scheduled to work. For employees with variable hours, hours will be determined based on the average number of hours scheduled over the six-month period preceding the leave (including paid leave hours) or on a reasonable expectation at the time of hire as to the hours per day the employee would normally be scheduled to work. Employees may elect to supplement the PHEL/FMLA paid benefit with their accrued leave.
- e. Notification and Verification: Employees who need to take PHEL/FMLA leave should notify Human Resources as soon as practicable after the need for leave arises. An employee seeking PHEL/FMLA leave must submit documentation establishing a school closure or unavailability of child care (which may include a post from a school district website, email from a school or provider, etc.).

- f. This policy will be administered consistent with the City's existing Family and Medical Leave (FMLA) policy, except as modified by the FFCRA.

5.2 Emergency Sick Leave

- a. Eligibility: All employees of the City (including Emergency responders) are eligible for up to 80 hours of Emergency Sick Leave. The new law provides this Emergency Sick Leave at partial pay; however, the City has decided to enhance this benefit with pay at the employee's full rate of pay.
- b. Covered Reasons for Using Emergency Sick Leave: Employees are entitled to use Emergency Sick Leave when they are unable to work, or telework, for any of the following reasons:
 1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. The Department of Labor has advised that a quarantine or isolation order includes quarantine, isolation, containment, shelter in place, or stay-at-home orders that cause the employee to be unable to work or telework even though his or her employer has work that the employee could perform but for the order. The City will continue to monitor federal guidance on this issue and administer this policy consistent with current guidance.
 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 is seeking a medical diagnosis.
 4. To care for an individual who is self-isolating for one of the reasons described in (1) or (2) above.
 5. To care for the employee's child under age 18 due to closure of the child's school or unavailability of the child's childcare provider due to COVID-19 precautions. A "child" is defined the same as under the FMLA; *i.e.*, 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 18 years of age or is 18 years of age or older and "incapable of self-care because of a mental or physical disability" at the time leave is to commence.
 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.

- c. Paid Leave Entitlement: Full-time employees are entitled to up to 80 hours of Emergency Sick Leave. Part-time employees are entitled to the Emergency Sick Leave equal to number of hours they typically work over a two-week period. For employees with variable hours, hours will be determined based on the average number of hours scheduled over the six-month period preceding the leave (including paid leave hours) or on a reasonable expectation at the time of hire as to the hours per day the employee would normally be scheduled to work. Any Emergency Sick Leave available under this policy is in addition to accrued leave to which an employee was already entitled under existing Employer policies or labor agreements.

- d. Use of Paid Sick Leave and Sequencing with Other Leave:
Intermittent Use: Employees may access Emergency Sick Leave for a covered reason before exhausting other accrued leaves. If an absence is covered by this Emergency Sick Leave policy and the PHEL/FMLA policy above, the employee may elect to use Emergency Sick Leave during the first 10 days of PHEL/FMLA in order to remain in paid status.

If an employee is using Emergency Sick Leave intermittently due to a closure of a child's school or unavailability of the childcare provider, the employee may take leave intermittently only with the City's approval. An employee may also use Emergency Sick Leave intermittently with City approval if unable to telework his/her normal schedule of hours due to a qualifying reason.

Per Department of Labor guidance, where an employee is not teleworking, intermittent use of Emergency Sick Leave is not permitted when leave is taken for reasons (1), (2), (3), (4), or (6) above. In such cases, Emergency Sick Leave must be taken in full-day increments and once leave is initiated for one of these reasons, the employee must continue to use Emergency Sick Leave until either (i) the full amount of Emergency Sick Leave has been used; or (ii) the employee no longer has a qualifying reason for taking Emergency Sick Leave. The Department of Labor has explained that this requirement is imposed because if an employee is actually or possibly sick with COVID-19, or is caring for someone who is sick or possibly sick with COVID-19, the intent of the law is to provide paid leave to prevent the spread of the virus.

- e. Carryover and Termination of Benefit: The Emergency Sick Leave Benefit expires on December 31, 2020; any unused Emergency Sick Leave will not be carried over to the next calendar year,

merged into other leave banks or cashed out. Additionally, the entitlement to Emergency Sick Leave ceases beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick leave. However, to the extent an employee subsequently needed additional time off for another covered reason prior to December 31, 2020, the employee could use any remaining Emergency Sick Leave available.

- f. Notification: An employee who needs to take Emergency Sick Leave should notify Human Resources as soon as practicable. After the first workday (or portion thereof) that an employee takes Emergency Sick Leave, the employee must follow the notice requirements required for use of regular sick leave.

- g. Verification: An employee requesting Emergency Sick Leave must: specify the qualifying reason for requesting leave; state that the employee is unable to work or telework, for that specified reason; and provide the date(s) for which leave is requested. The Department of Labor also requires that the City obtain documentation supporting the leave request. Documentation may include, for example, a copy of the federal, state or local quarantine or isolation order related to COVID-19; written documentation from a health care provider advising the individual to self-quarantine due to COVID-19; or documentation from the employee's child's school or childcare provider of closure (such as website posting or email). If employees are unable to obtain documentation, they should notify Human Resources. Accommodations may be made on a case by case basis.

6. RESPONSIBILITIES

The Human Resources Department shall administer this policy and procedure. This policy may be amended, modified, or revised at any time given the changes in the law.

APPROVED BY:



Wes Crago, City Administrator

02 APRIL 2020
Date



Meghan Steinolfson, Interim Human Resources Director

4/2/2020
Date

Michael C. Ormsby
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April 2, 2020
Date