

CITY OF EL CERRITO

NUMBER: II A 29

DATE: April 1, 2020 – December 31, 2020

ADMINISTRATIVE POLICY/PROCEDURE

AUTHORITY: City Manager

SUBJECT: EMERGENCY PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE ACT



Karen Pinkos

PURPOSE: This Administrative Policy establishes guidelines and procedures for employee leaves in accordance with the Families First Coronavirus Response Act (FFCRA) of 2020.

POLICY:

It is the policy of the City of El Cerrito to allow employees to take leave in order to maintain a healthy, safe, and productive workforce and to prevent the spread of COVID-19, and to comply with any state or federal regulations regarding employee leave entitlements.

This policy shall supersede any and all interim policy guidelines related to Emergency Paid Sick Leave and Family and Medical Leave issued during the City’s declared local health emergency prior to April 1, 2020.

DURATION:

This policy will be in effect from April 1, 2020 to December 31, 2020. Additional guidance may be issued as the situation unfolds and employees will be notified in advance.

A. Emergency Paid Sick Leave

Eligibility

All City employees are eligible for Emergency Paid Sick Leave if the employee is unable to work (or unable to telework) due to a need for leave because:

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 is seeking medical diagnosis;

4. The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order 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 childcare provider of such son or daughter is unavailable, due to COVID-19 precautions; and,
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.

Except for leave taken under sections (1), (2), or (3) listed above, the City may deny leave to *Emergency Responders* whose services are necessary for emergency response operations. In addition, Emergency Responders may be called back to service after being approved for leave if emergency conditions change and the Emergency Responder's service is required. **For further information regarding emergency responder designations, see Appendix A.**

Amount of Leave

Full-time employees are eligible for 80 hours of Emergency Paid Sick Leave. For employees on alternative work schedules, the number of hours shall be based on the employee's regularly scheduled hours within a two-week period.

Part-time employees are eligible for the number of the employee's regularly scheduled hours during a two-week period. For employees with variable schedules, whose regularly scheduled hours cannot be reasonably determined, the number of hours shall be calculated based on the average number of hours that the employee was scheduled per day over the preceding 6-month period ending on the date on which the employee commences leave, including hours for which the employee took any type of paid leave.

Pursuant to the FFCRA, employees are eligible for up to 80 hours (or equivalent to two weeks) of leave beginning on April 1, 2020. Any Emergency Paid Sick Leave granted by the City that had been utilized prior to April 1, 2020 shall not count against the employee's 80-hour/two-week leave limit.

Compensation

The City will compensate the employee at the employee's full regular rate of pay for Emergency Paid Sick Leave up to a maximum of \$511 per day or \$5,110 total for the total 80 hours if the qualifying use is taken under sections (1), (2) or (3) as listed above.

The City will compensate the employee at two-thirds the regular rate of pay for Emergency Paid Sick Leave up to a maximum of \$200 per day or \$2,000 for the total 80 hours if the qualifying use is taken under (4), (5), or (6) as listed above.

Employees may elect to use any type of accrued leave to make up the difference in pay.

Procedures

Employees are not required to utilize any other accrued leaves prior to utilizing Emergency Paid Sick Leave. A health care provider's certification is not required for Emergency Paid Sick Leave use; however, employees are required to complete a self-certification form **(Attachment 1)**.

In the event that leave is denied due to the employee's designation as an *Emergency Responder*, the City shall notify the employee in writing.

Emergency Paid Sick leave may be used intermittently. Generally, this would not apply in cases where the employee is subject to a 14-day quarantine or isolation period (i.e., reasons 1, 2 and 3 listed above), unless the employee is able to work remotely for a portion of their schedule.

In the event that an employee has exhausted their Emergency Paid Sick Leave and continues to be unable to work due to reasons (1), (2), (3), or (4) above, the employee may utilize regular accrued sick leave or other available accrued leaves. The employee may also be eligible for FMLA/CFRA leave. In the event that an employee has exhausted their Emergency Paid Sick Leave and continues to be unable to work due to reason (5) above, the employee may qualify for Expanded Family and Medical Leave as described below.

Emergency Paid Sick Leave may not be cashed out at any time nor applied towards CalPERS service credit, and leave shall not be carried over beyond the term of this policy.

B. Expanded Family and Medical Leave Act (EFMLA)

The FMLA provides 12 weeks of unpaid, job-protected leave per 12-month period to employees to care for themselves or seriously ill family members. Employees are eligible for FMLA/CFRA leave if they have worked for the City at least 1,250 hours in the preceding 12-month period.

The EFMLA expands certain eligibility provisions of the FMLA but does not provide additional time beyond the 12 total weeks available for FMLA leave. In addition, the EFMLA provides for Paid Emergency Leave as described below.

Eligibility

Employees are eligible for Expanded FMLA (EFMLA) leave if the following requirements are met:

- (1) The employee has worked for the City for at least 30 calendar days; and
- (2) The employee is unable to work (or telework) due to a need to care for their child (under 18 years of age) whose school or place of care has been closed, or who's child care provider is unavailable due to a COVID-19 emergency declared by either a Federal, State, or local authority.
- (3) The employee provided reasonable notice of the need for the leave.

The City may deny EFMLA leave if the employee is an *Emergency Responder*, whose services are necessary for emergency response operations. For further information regarding emergency responder designations, see **Appendix A**.

Amount of Leave

Pursuant to City's FMLA/CFRA policy, employees are eligible for up to 12 weeks of job-protected FMLA leave during a 12-month period, commencing on the first day the employee takes leave. EFMLA does not provide additional leave beyond this amount, therefore any EFMLA grant shall count toward the total 12 weeks of available FMLA leave within a 12-month period.

Compensation

The first 10 days of Emergency Family Medical Leave shall be unpaid, however the employee may elect to utilize accrued leaves during this period, including Emergency Paid Sick Leave as defined in section A.

After the tenth (10th) day of leave, the employee is entitled to Emergency Paid Leave. Leave shall be paid at two-thirds of the employee's regular rate of pay, up to a cap of \$200 per day and \$10,000 total.

Part-time employees are entitled to pay based two-thirds of their regular pay. Regular pay shall be based on the number of hours they would otherwise have been scheduled to work during the time they are taking leave. For employees with variable schedules, whose future scheduled hours cannot be reasonably determined, regular pay shall be calculated based on the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee commences leave, including hours for which the employee took any type of paid leave.

Procedures

Employees may request Emergency FMLA leave by completing a self-certification form, **Attachment 2**.

In the event that leave is denied due to the employee's designation as an *Emergency Responder*, the City shall notify the employee in writing.

Employees may elect, but are not required, to utilize accrued paid leaves (vacation, comp time, floating holiday, or administrative leave) prior to taking Emergency Paid Leave.

Except where specified by this policy or by Federal regulations, all guidelines, procedures, and terms and conditions of FMLA leave as outlined in City's FMLA/CFRA Administrative Policy/Procedure shall apply to EFMLA leave, where applicable.

Additional Information

Additional information regarding employee rights and employer responsibilities under the FFCRA can be found on the Department of Labor website:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Appendix A: Emergency Responder Designation

Attachment 1: Self-Certification for Emergency Paid Sick Leave

Attachment 2: Self-Certification for Expanded Family and Medical Leave

Appendix A Emergency Responder Designation

Pursuant to guidelines issued by the Department of Labor, an Emergency Responder is defined as:

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 who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual 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.

In order to provide clarity and consistency to the City's designation of Emergency Responders pursuant to this definition, the City has identified two categories of (1) First Responders, (2) Other Disaster Service Workers. In addition to positions within the classifications listed below, leave may be denied where specified by this policy to any position where it is determined that the employee is able to continue perform essential duties by working remotely.

Tier 1: First Responders and Emergency Managers

The following City classifications shall be designated as emergency responders and shall be excluded from leave provisions where specified by this policy:

Fire Battalion Chief	Police Captain
Fire Captain	Police Chief
Fire Chief	Police Corporal
Firefighter	Police Lieutenant
Firefighter/Paramedic	Police Officer
Firefighter Engineer	Police Sergeant
Firefighter Engineer/Paramedic	

Tier 2: Other Positions as Determined by the City Manager

Other classifications may be designated as Emergency Responders if the City Manager determines that such skills are necessary to provide aid to emergency response operations, including efforts to prevent the spread of COVID19, and pursuant to the City's Disaster Service Worker Policy.