

# **ADMINISTRATIVE POLICY AND PROTOCOLS FOR EMPLOYEE LEAVE AND COMPENSATION UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

## **I. Preamble**

The purpose of the Families First Coronavirus Response Act (“FFCRA”) is to provide employees with paid sick leave and expanded family and medical leave for reasons related to COVID-19. (Public Law No. 116-127.)

Subsequent to the enactment of the FFCRA, the Department of Labor (“DOL”) promulgated temporary regulations to implement expanded family and medical leave under Title I of the Family and Medical Leave Act (“FMLA”) and emergency paid sick leave to assist working families facing public health emergencies. The DOL also published a correction in the Federal Register to make certain technical corrections to the regulatory text. The DOL has also provided informal guidance concerning the implementation of the emergency paid sick leave and expanded family and medical leave provisions.

This policy is intended to provide City of Clearlake employees with the emergency paid sick leave and expanded family and medical leave to which they are entitled under FFCRA.

## **II. Statement of Policy**

The City of Clearlake will provide eligible employees with leave pursuant to the Emergency Paid Sick Leave Act (“EPSLA”) (*i.e.*, Emergency Paid Sick Leave) and Emergency Family and Medical Leave Expansion Act (“EMFLEA”) (*i.e.*, Emergency Family and Medical Leave) as required under the Families First Coronavirus Response Act (“FFCRA” or the “Act”). The following provisions set forth certain rights and obligations with respect to said leave.

## **III. Compliance**

The City of Clearlake will fully and faithfully comply with the requirements set forth in the FFCRA and the regulations promulgated by the DOL in its administration of this policy.

## **IV. Policy**

### ***Section 1. Effective Dates***

The Administrative Policy and Protocols for Employee Leave and Compensation Under the FFCRA shall expire on December 31, 2020 or when the EPSLA or

EMFLEA provisions of the FFCRA are no longer effective under the law, whichever is later.

## **Section 2. Definitions**

- A. “Child Care Provider” means a provider who receives compensation for providing child care services on a regular basis. The term includes a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under State law; and satisfies the State and local requirements. However, under the FFCRA, the eligible child care provider *need not be compensated or licensed* if he or she is a family member or friend, such as a neighbor, who regularly cares for the Employee’s child.
- B. “Emergency Family and Medical Leave” means leave provided under the EMFLEA (Sec. 3101, et seq. of the FFCRA).
- C. “Emergency Paid Sick Leave” means leave provided under the EPSLA (Sec. 5101, et seq. of the FFCRA).
- D. “Emergency responder” means the following for the purposes of employees who may be exempted from Emergency Paid Sick Leave and Emergency Family and Medical Leave: (1) Anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19; or (2) Anyone who serves in the military or national guard, or as a law enforcement officer, correctional institution personnel, fire fighter, emergency medical services personnel, physician, nurse, public health personnel, emergency medical technician, paramedic, emergency management personnel, 911 operator, child welfare worker and service provider, 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.
- E. “Health care provider” means the following for the purposes of employees who may be exempted from Emergency Paid Sick Leave and Emergency Family and Medical Leave: (1) Anyone employed at any doctor’s office, hospital, health care center, clinic, postsecondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity; or (2) Any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual’s services support the operation of the facility. This also includes

anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

- F. "Individual" for the purpose of Section 3.D. above means an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined. "Individual" does not include persons with whom the Employee has no personal relationship.
- G. "Son or Daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability. (29 U.S.C. 2611; 29 CFR 826.10(a).)
- H. "Subject to a Quarantine or Isolation Order" means a quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the employee to be unable to work even though his or her Employer has work that the employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of employees to be unable to work even though their employers have work for them.

### **Section 3. Emergency Paid Sick Leave**

#### **Qualifying Reasons for Emergency Paid Sick Leave:**

Emergency Paid Sick Leave is only permitted for the following reasons:

- A. The employee is Subject to a Quarantine or Isolation Order related to COVID-19.
- B. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- C. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- D. The employee is caring for an individual who is Subject to a Quarantine or Isolation Order or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

- E. The employee is caring for the employee's son or daughter if the child's school or place of care has been closed, or the child's childcare provider is unavailable, due to COVID-19 precautions.
- F. 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.

**Employees Eligible for Emergency Paid Sick Leave:**

- A. Subject to Sections B and C, below, all City of Clearlake employees are potentially eligible for Emergency Paid Sick Leave.
- B. Employees are not eligible for Emergency Paid Sick Leave if the City of Clearlake determines that the employee's duties and services are not needed during all or part of the period of requested Emergency Paid Sick Leave (for example, because the City of Clearlake has temporarily stopped providing the services that the employee would otherwise provide). In this circumstance, the City of Clearlake may deem that the employee is not working due to lack of work.
- C. The City of Clearlake may elect to exempt from the receipt of Emergency Paid Sick Leave any employee or class of employees who qualify as a "Health care provider" or "Emergency responder" as defined in Section 2.D. and E., above. If the City elects at such time to exclude emergency responders, the City will meet and confer with the affected bargaining unit(s) within a reasonable amount of time after implementing said exclusion.

**Amount of Emergency Paid Sick Leave:**

- Leave taken as Emergency Paid Sick Leave is in addition to any other statutory or contractual leave to which the employee is entitled.
- Full time employees working 40 hours per week may take up to 80 hours of Emergency Paid Sick Leave.
- Part time employees may take up to the average number of hours that they work over a two-week period as determined by reviewing the six-month period prior to the usage of leave. If the employee has been employed by the City of Clearlake for fewer than six months, the City of Clearlake will calculate the leave entitlement based on the entire period the employee has been employed.
- Employees hired on or after April 1, 2020 who took the full 80 hours of Emergency Paid Sick Leave when employed by another employer are not entitled to take any additional Emergency Paid Sick Leave with the City of

Clearlake. An employee who has taken some, but not all, of the Emergency Paid Sick Leave to which they are entitled when they were employed by another employer, is entitled only to the remaining portion of such leave from the City of Clearlake.

- An employee who is laid off or otherwise terminated on or after March 1, 2020 and who is rehired on or before December 31, 2020 will be eligible for unused Emergency Paid Sick Leave for the qualifying reasons set forth in Section 3.

### **Employee Benefits While on Emergency Paid Sick Leave:**

The benefit amount varies based on the reason for the leave as follows:

- A. Employees are entitled to Emergency Paid Sick Leave at their regular rate of pay, subject to a cap of \$511 per day and \$5,110 in the aggregate, if they are unable to work or telework for one of the following reasons:
  1. The employee is Subject to a 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; or,
  3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  
- B. Employees are entitled to Emergency Paid Sick Leave at two-thirds (2/3) of their regular rate of pay, subject to a cap of \$200 per day and \$2,000 in the aggregate, if they are unable to work or telework for one of the following reasons:
  1. The employee is caring for an individual who is Subject to a Quarantine or Isolation Order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  2. The employee is caring for the employee's son or daughter if the child's school or place of care has been closed, or the child's childcare provider is unavailable, due to COVID-19 precautions; or
  3. 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.

### **Supplementation of Paid Accrued Leaves:**

Employees may supplement the compensation they receive if taking Emergency

Paid Sick Leave (paid up to the specified limitations under the FFCRA) with their earned or accrued leaves in order to achieve 100% of the pay the employee would normally receive in a given week for working their regularly scheduled hours.]

### **Intermittent Leave**

Generally, an employee must use the permitted days of Emergency Paid Sick Leave consecutively until the employee no longer has a qualifying reason to take the leave. An employee may request Emergency Paid Sick Leave on an intermittent basis only if the employee obtains the City's prior approval to do so, *and*:

- (1) The employee is not working *and* qualifies for use of Emergency Paid Sick Leave; or
- (2) The employee is teleworking; or
- (3) The employee is reporting to the worksite *and* has requested Emergency Paid Sick Leave to care for their son or daughter if the child's school or place of care has been closed, or the child's child care provider is unavailable, due to COVID-19 precautions.

The City of Clearlake will evaluate such request to determine if such leave is operationally feasible.

### **Restoration to Prior Position:**

An employee who uses Emergency Paid Sick Leave is entitled to reinstatement to their prior or an equivalent position, unless the employee's employment would have ended regardless of whether he or she took leave.

### **Emergency Paid Sick Leave is Protected Leave:**

Emergency Paid Sick Leave is considered protected leave when used for the reasons specified in Section 3. The City of Clearlake shall not discharge, discipline, or in any other manner discriminate against an employee who takes Emergency Paid Sick Leave.

### **Emergency Paid Sick Leave Request:**

The City of Clearlake requests, but does not require that the employee provide notice of the need to use Emergency Paid Sick Leave until after the first workday of usage of such leave. However, an employee may provide notice of the need to use Emergency Paid Sick Leave prior to the usage of such leave.

After the first workday for which an employee takes Emergency Paid Sick Leave, the employee must provide reasonable notice for the usage of such as soon as is practicable thereafter.

An employee may provide notice of the need to use Emergency Paid Sick Leave orally or in writing, and may provide such notice through the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to provide such notice personally.

If an employee fails to provide proper notice, the City of Clearlake will give the employee notice of the failure and provide the employee with an opportunity to provide the required documentation, described below, prior to denying the employee's request for leave.

### **Certification of Emergency Paid Sick Leave:**

An employee who seeks Emergency Paid Sick Leave must provide the following information, orally or in writing, prior to the commencement of the leave or as soon thereafter as practicable:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave; and
- (4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

In addition, the employee must provide the following documentation in support of his/her request for Emergency Paid Sick Leave:

- (1) To take Emergency Paid Sick Leave because the employee is Subject to a Quarantine or Isolation Order related to COVID-19, the employee must provide the name of the government entity that issued the quarantine or isolation order.
- (2) To take Emergency Paid Sick Leave because the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, the employee must provide the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
- (3) To take Emergency Paid Sick Leave because the employee is caring for an individual who is Subject to a Quarantine or Isolation Order related to COVID-19 or who has been advised by a health care provider to self-quarantine due

to concerns related to COVID-19, the employee must provide either: (1) The name of the government entity that issued the Quarantine or Isolation Order to which the individual being cared for is subject; or (2) The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.

- (4) To take Emergency Paid Sick Leave because the employee is caring for the employee's son or daughter if the child's school or place of care has been closed, or the child's child care provider is unavailable, due to COVID-19 precautions, the employee must provide: (1) The name of the son or daughter being cared for; (2) The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and (3) A representation that no other suitable person will be caring for the Son or Daughter during the period for which the employee takes Emergency Paid Sick Leave.

#### **Emergency Paid Sick Leave Carry-Over:**

Unused Emergency Paid Sick Leave will carryover for any employee who after termination, resignation, retirement, or other separation from employment is rehired prior to the expiration described in Section 13 below. Under no circumstances will unused Emergency Paid Sick Leave carry over after the expiration described in Section 13 below.

#### **No Emergency Paid Sick Leave Cash-Out or Conversion to Service Credits:**

Unused Emergency Paid Sick Leave may not be cashed out upon termination, resignation, retirement, or other separation from employment.

Unused Emergency Paid Sick Leave may not be converted to retirement service credits.

### ***Section 4. Emergency Family and Medical Leave***

#### **Reasons for Emergency Family and Medical Leave:**

Emergency Family and Medical Leave is only permitted for the leave due to an inability to work (or telework) because the employee needs to provide care for the employee's son or daughter under the Emergency Family and Medical Leave Expansion Act. (FMLA Sec. 110 (a)(2)(A).)

#### **Employees Eligible for Emergency Family and Medical Leave:**

- A. Employees are entitled to up to 12 weeks of job-protected Emergency Family and Medical Leave if the employee satisfies the following requirements:
1. The employee has worked for the City of Clearlake for at least 30 calendar days;
  2. The employee is unable to work (or telework) due to a need to care for the employee's son or daughter whose school or place of care has been closed, or whose child care provider is unavailable due to a COVID-19 emergency declared by either a Federal, State, or local authority;
  3. The employee has not used all available FMLA leave. Emergency Family and Medical Leave is a form of FMLA leave, and is not in addition to any other FMLA leave;
  4. There is no other suitable person (such as a co-parent, co-guardian, or usual child care provider) available to care for the employee's son or daughter during the period for which the employee takes Emergency Family and Medical Leave; and
  5. The City of Clearlake did not exempt the employee as either a "Health care provider" or "Emergency responder."
- B. Employees are not eligible for Emergency Family and Medical Leave if the City of Clearlake determines that the employee's duties and services are not needed during the period of requested Emergency Family and Medical Leave (for example, because the City of Clearlake has ceased offering the services that would otherwise be provided by the employee). In this instance, the City of Clearlake may deem that the employee is not working due to lack of work.
- C. The City of Clearlake may elect to exempt from the receipt of Emergency Family and Medical Leave any employee or class of employees who qualify as a "Health care provider" or "Emergency responder" as defined in Section 2.D. and E., above. If the City elects at such time to exclude emergency responders, the City will meet and confer with the affected bargaining unit(s) within a reasonable amount of time after implementing said exclusion.
- D. An employee who is laid off or otherwise terminated on or after March 1, 2020 and who is rehired on or before December 31, 2020 will be eligible for unused Emergency Family and Medical Leave provide that the employee had been on City's payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise terminated.

**Amount of Emergency Family and Medical Leave:**

An eligible employee is entitled to a maximum of twelve workweeks of Emergency Family and Medical Leave during the period in which the leave may be taken (between April 1, 2020 to December 31, 2020) even if the twelve workweeks spans two twelve-month leave periods under the FMLA.

## **Employee Benefits While on Emergency Family and Medical Leave; Supplementation of Paid Accrued Leaves:**

### **A. First Ten Days of Emergency Family and Medical Leave**

The first ten (10) days of Emergency Family and Medical Leave are unpaid.

During this period, the employee may elect to use Emergency Paid Sick Leave, as described above, if the employee has not exhausted such leave through use at the City of Clearlake or prior employer. If the employee has exhausted the Emergency Paid Sick Leave, an employee may use their earned and accrued leaves to supplement the unpaid Emergency Family and Medical Leave in order to achieve up to 100% of the pay they would normally receive in a given week for working their regularly scheduled hours. Use of such accrued and unused leave will run concurrently with use of Emergency Family and Medical Leave.

### **B. Emergency Family and Medical Leave After the First Ten Days**

After the tenth day, and for the remaining up to ten (10) weeks of Emergency Family and Medical Leave, an employee is entitled to compensation for such leave at two-thirds (2/3) of the employee's regular rate of pay, subject to a cap of \$200 per day and \$10,000 total.

During this period, employees may supplement the Emergency Family and Medical Leave (paid up to the specified limitations under the FFCRA) with their earned or accrued leave provided by the City of Clearlake in order to achieve 100% of the pay the employee would normally receive in a given week for working their regularly scheduled hours.

## **Intermittent Leave:**

An employee may request Emergency Family and Medical Leave on an intermittent basis and the City of Clearlake will evaluate such request to determine if such leave is operationally feasible.

## **Employee Notice of Emergency Family and Medical Leave:**

Where the need to use Emergency Family and Medical Leave is foreseeable, the employee shall provide the City of Clearlake with such notice as soon as practicable.

The City of Clearlake requests, but does not require, that the employee provide notice of the need to use Emergency Family and Medical Leave unit after the first workday of the usage of such leave.

After the first workday for which an employee takes Emergency Family and Medical Leave, the employee must provide reasonable notice for the usage of such as soon as is practicable thereafter.

An employee may provide notice of the need to use Emergency Family and Medical Leave orally or in writing, and may provide such notice through the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to provide such notice personally.

If an employee fails to provide proper notice, the City of Clearlake will give the employee notice of the failure and provide the employee an opportunity to provide the required documentation, described below, prior to denying the request for leave.

### **Certification of Emergency Family and Medical Leave:**

An employee who seeks Emergency Family and Medical Leave must provide the following information prior to taking leave or as soon thereafter as practicable:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave;
- (4) Oral or written statement that the employee is unable to work because of the qualified reason for leave;
- (5) The name of the son or daughter being cared for;
- (6) The name of the school, place of care, or child care provider that has closed or become unavailable; and
- (7) A representation that no other suitable person (such as a co-parent, co-guardian, or usual child care provider) will be caring for the son or daughter during the period for which the Employee takes Emergency Family and Medical Leave.

### **Reinstatement Upon Return:**

An employee who uses Emergency Family and Medical Leave is entitled to reinstatement to their prior or an equivalent position, unless the employee's employment would have ended regardless of whether he or she took leave.