



Administrative Policy & Protocols For Employee Leave and Compensation Under the Families First Coronavirus Response Act

I. Preamble

The Families First Coronavirus Response Act (“FFCRA”) was passed by Congress on March 18, 2020 in response to the COVID-19 pandemic. 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.) The FFCRA took effect April 1, 2020 and by its own terms will remain in effect until December 31, 2020.

This policy is intended to provide City of Oakley 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 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 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 became effective on April 1, 2020 and 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. “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.

- F. "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).)
- G. "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 Oakley employees are potentially eligible for Emergency Paid Sick Leave.
- B. Employees are not eligible for Emergency Paid Sick Leave if the City of Oakley 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 has temporarily stopped providing the services that the employee would otherwise provide). In this circumstance, the City may deem that the employee is not working due to lack of work.
- C. The City may elect to exempt from the receipt of Emergency Paid Sick Leave any employee or class of employees who qualify as an "Emergency responder" as defined in Section 2.D. above.

1. The City has designated the following job classifications as "emergency responders":

Police Officer
Police Sergeant
Police Lieutenant
Police Chief

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 to 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 for fewer than six months, the City will calculate the leave entitlement based on the entire period the employee has been employed.

- An employee who is laid off or otherwise separated from employment on or after April 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 City will provide employees the 80 hours of EPSL leave, or prorated amount for part-time employees at each employee's regular rate of pay for all hours of leave the employee takes. While the FFCRA provides that the employer may cap these amounts, the City has opted not to utilize the caps and to provide employees with their full pay for eligible hours of leave. Employees may use the EPSL if eligible consistent with the section 3 above.

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.
- (4) The employee is working a reduced schedule as a result of the City temporarily stopping or reducing the provision of services, consistent with a shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government and would like to use Emergency Paid Sick Leave to augment worked hours

The City 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 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 employee can access the Request for Emergency Paid Sick Leave form on the City's webpage, Human Resources page, Employee Only, COVID-19 Information Page. The Request for Emergency Paid Sick Leave must be submitted to the Human Resources Division prior to commencement of the leave.

In the event of a medical emergency where the employee is unable to provide the form prior to initiating leave, such form shall be submitted as soon as reasonably practicable.

If an employee fails to provide proper notice, the City 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.

An employee using Emergency Paid Sick Leave must certify the reason for the leave and provide supporting documentation if possible. The Human Resources Department will provide information about certification and supporting documentation on the form to request leaves.

Emergency Paid Sick Leave Carry-Over:

Under no circumstances will unused Emergency Paid Sick Leave carry over after the December 31, 2020 expiration date of this leave unless otherwise required by law.

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 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 did not exempt the employee as an "Emergency responder."

- B. Employees are not eligible for Emergency Family and Medical Leave if the City 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 has ceased offering the services that would

otherwise be provided by the employee). In this instance, the City may deem that the employee is not working due to lack of work.

- C. The City may elect to exempt from the receipt of Emergency Family and Medical Leave any employee or class of employees who qualify as an “Emergency responder” as defined in Section 2D above.
 - a. See Attachment A for the list of job classifications the City has designated as “emergency responders”.

- 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 the 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).

**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 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 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:

Employees may request to take Emergency Family and Medical Leave on the following basis, the examples provided commence after the tenth day (two weeks):

100% Leave: The employee takes a leave of absence with no intent to perform any work and will receive compensation for the leave at two-thirds (2/3) of the employee's regular rate of pay, up to \$200 per day and \$10,000 total

Example:

Employee who earns \$28/hour, typically works 40 hours and typically earns \$252/day (9 hours x \$28). Under this option, the employee would be on 100% leave and earn \$167.83/day ($\$252 \times .666 = \167.83)

50% Leave: The employee works half of their regularly scheduled hours and is compensated for those as hours worked, the remainder of their pay is augmented by the EFMLA benefit (would receive up to the two-thirds (2/3) of the employee's regular rate of pay, up to \$200 per day and \$10,000 total).

Example:

Employee who earns \$28/hour, typically works 40 hours and typically earns \$252/day. Under this option, the employee would be on 50% leave and work 20 hours per week and earn \$126/day (4.5 hours x \$28) for regular hours worked and \$126/day as FFCRA leave compensation.

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 with such notice as soon as practicable.

The employee can access the Request for Emergency Family and Medical Leave form on the City's webpage, Human Resources page, Employee Only, COVID-19 Information Page. The Request for Emergency Family and Medical Leave shall be submitted to the Human Resources Division prior to initiating leave.

In the event of a medical emergency where the employee is unable to provide the form prior to initiating leave, such form shall be submitted as soon as reasonably practicable. An employee using Emergency Paid Sick Leave must certify the reason for the leave and provide supporting documentation if possible. The Human Resources Division will provide information about certification and supporting documentation on the form to request leaves.

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.

Attachment A

COVID-19 Emergency Responder Positions

The Department of Labor has provided guidance relative to defining “emergency responder” to include any employee who is necessary for the provision of transport, care, comfort, and nutrition of 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.

Specific 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 COVID-19. Currently, the City Manager has designated the following classifications as Emergency Responders:

Classifications:

- Administrative Specialist (Public Works)
- Building Inspector I
- Building Inspector II
- Capital Projects Coordinator
- City Clerk
- Code Enforcement Officer
- Community Development Director
- Economic Development Manager
- Facilities Maintenance Custodian
- Finance Director
- Human Resources Management Analyst
- Human Resources Manager

- Parks & Landscape Maintenance Superintendent
- Parks & Landscape Maintenance Crew Leader
- Police Chief
- Police Lieutenant
- Police Officer
- Police Sergeant
- Police Services Assistant
- Principal Engineer
- Public Works Director/City Engineer
- Recreation Manager
- Senior Accountant
- Senior Accounting Technician
- Streets Maintenance Foreman
- Police Officer
- Police Sergeant
- Police Lieutenant
- Police Chief