



TO: Mayor and Councilmembers

FROM: Kristine Schmidt, Assistant City Manager

SUBJECT: FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy for City Employees

RECOMMENDATION:

Approve the temporary FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy applicable to City of Goleta employees.

BACKGROUND:

The Families First Coronavirus Response Act (H.R. 6201) took effect on March 31, 2020. Its two primary employment provisions expand eligibility for Family and Medical Leave Act (FMLA) leave for COVID-19 childcare related reasons and make emergency paid sick leave available for certain COVID-19 related absences. These provisions will remain in effect until December 31, 2020.

Generally, employers covered under the Act must provide employees with up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% of pay for qualifying reasons #1-3 below (employee quarantine and illness), up to \$511 daily and \$5,110 total;
- 2/3 of pay for qualifying reasons #4 and 6 below (providing care to a quarantined or ill person, or certain other reasons), up to \$200 daily and \$2,000 total; and
- 2/3 of pay for qualifying reason #5 below (childcare related), plus up to an additional 10 weeks (up to 12 weeks total) of paid sick leave at 2/3 of pay for this purpose, up to \$200 daily and \$12,000 total.

Employees of private sector employers with fewer than 500 employees, and employees of certain public sector employers, including cities of all sizes, are eligible for the 80 hours of paid sick leave. Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 (childcare) below.

There are six reasons for COVID-19 leave. An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because 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 to self-quarantine related to COVID-19;
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. Is caring for his or her child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons; or
6. Is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services. (not yet defined)

DISCUSSION:

The proposed policy implements the requirements of the Families First Coronavirus Response Act. In several ways, the proposed policy is more advantageous to employees than required under federal law. First, the City's policy will extend to all employees, regardless of whether they have been employed for 30 days, since our newest employees are no less impacted than established employees. It also allows the City Manager to approve the full allotment of COVID-19 childcare leave even if the employee has already taken all or part of their FMLA leave for the year, such as for pregnancy or parental leave, or for a serious health condition. Finally, the City will provide up to 100% or 2/3 of pay, depending on the reason, without respect to the caps established under the federal law (\$510 or \$200 per day), as those income levels mean something very different in the rest of the country than in coastal California.

It should be noted that some types of protected leave, such as leave for quarantine and childcare, only apply if the employee is not able to telecommute from home. Most City employees, except Public Works maintenance staff, are able to telecommute and would generally not qualify for those leaves absent special circumstances.

As this leave is only a temporary provision, it is not recommended for inclusion in the City's official Personnel Rules document.

FISCAL IMPACTS:

There will be no budget impacts related to this leave, because employee salaries are already fully accounted for in the budget. However, employees will be able to avoid or delay drawing down their own sick and other leave banks or taking unpaid leave for COVID-19 related absences. There is currently no plan for reimbursement to local agencies for the cost of providing additional paid leave, though the National League of Cities is pursuing such reimbursement. Should such reimbursement come through, it would likely be limited to the federal caps.

ALTERNATIVES:

Council could decline to adopt this policy; in which case the City would still need to comply with federal requirements.

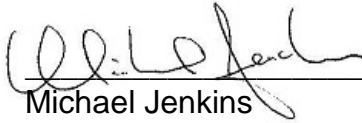
Reviewed By:

Legal Review By:

Approved By:



Kristine Schmidt
Assistant City Manager



Michael Jenkins
City Attorney



Michelle Greene
City Manager

ATTACHMENTS:

1. Proposed FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy

ATTACHMENT 1

Proposed FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy

<p style="text-align: center;">City of Goleta Temporary Personnel Policy</p>
<p style="text-align: center;">FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy (Coronavirus)</p>

Purpose

The purpose of this policy is to comply with the Families First Coronavirus Response Act and to assist employees affected by the COVID-19 outbreak with job-protected leave for childcare and with emergency paid sick leave. This policy will be in effect from April 1, 2020, until December 31, 2020.

The existing Family and Medical Leave and Pregnancy Disability Leave policies (which cover protections for pregnancy and parental leaves, leave for an employee's own serious health condition, leave to care for an eligible dependent with a serious health condition, and leave related to certain military family circumstances) still apply to all other reasons for leave outside of this policy. See Section 9.8 and 9.9 of the Personnel Rules for these policies.

Emergency Paid Sick Leave

Eligibility

All full- and part-time employees unable to work (and unable to telecommute) due to one of the following reasons for leave:

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 seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for his or her child if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions.
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. It isn't yet clear what these conditions might be, so employees should contact Human Resources if they have a condition they believe might qualify.

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is-

- (A) under 18 years of age; or
- (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

[Note: A definition for “individual” will be provided as soon as more guidance is available.]

Amount of Paid Sick Leave

All eligible full-time employees will have up to 80 hours of paid sick leave available to use for the qualifying reasons above. These 80 hours will either be paid at full pay or at 2/3 of pay, depending on the reason for the leave (see “Rate of Pay”, below). Eligible part-time and hourly employees on a fixed schedule are entitled to the number of hours worked, on average, over a two-week period.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

- 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 takes leave, including hours for which the employee took leave of any type. Or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Rate of Pay

Paid emergency sick leave will be compensated at:

- The employee's full regular rate of pay for leave taken for reasons 1-3 above (employee's own quarantine or sickness).
- Two-thirds (2/3) their regular rate of pay, or minimum wage, whichever is greater for leave taken for reasons 4-6* (dependent quarantine or childcare).

Such pay will be provided at the employee's regular rate of pay, irrespective of the income caps applicable to such benefits under the federal law.

*For reasons 4-6 (dependent quarantine or childcare) employees may supplement these 2/3 pay payments with their accrued leave balances to provide up to their regular full-time pay.

Interaction with Other Paid Leave

The employee may use emergency paid sick leave under this policy before using any other accrued paid time off for the qualifying reasons stated above.

As indicated above, employees on expanded FMLA leave under this policy may use their emergency paid sick leave during the first 10 days of normally unpaid FMLA leave.

Procedure for Requesting Emergency Paid Sick Leave

Employees must notify their manager or the HR/Risk Manager of the need and specific reason for leave under this policy. Verbal notification will be accepted until practicable to provide written notice on the form provided by the City for this purpose.

Once emergency paid sick leave has begun, the employee and his or her manager must determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive paid sick time.

Carryover

Paid emergency sick leave under this policy will not be provided beyond December 31, 2020. Any unused paid sick leave provided under this policy will not carry over to the next year or be paid out to employees.

Job Protections

No employee who appropriately utilizes emergency paid sick leave under this policy will be discharged, disciplined or discriminated against for work time missed due to this leave.

Please contact Human Resources with any questions.

Expanded FMLA Leave for COVID-19 Childcare

Employee Eligibility

All employees. Regardless of hours of work or length of service.

Reason for Leave

Eligible employees who are unable to work (and unable to telecommute) due to a need to care for their child when the school or place of care has been closed, or the regular childcare provider is unavailable due to a public health emergency with respect to COVID-19.

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:

- (A) under 18 years of age; or
- (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

"Childcare provider" means a provider who receives compensation for providing childcare services on a regular basis, including:

- a center-based childcare provider
- a group home childcare provider
- a family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence)
- other licensed provider of childcare services for compensation
- a childcare provider that is 18 years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.

"School" means an elementary or secondary school.

Duration of Leave

Employees will have up to 12 weeks of protected FMLA leave to use from April 2, 2020, through December 31, 2020, for the purposes stated above. This time is included in and not in addition to the total FMLA leave entitlement of 12 weeks in a 12-month period. For example, if an employee has already taken 6 weeks of FMLA leave, that employee would be eligible for only another 6 weeks of FMLA leave under this policy.

However, the employee may request up to a full 12 weeks of leave for COVID-19 related childcare purposes under this policy, even if the employee's FMLA entitlement has been exhausted. Such additional leave may be approved or denied at the City Manager's sole discretion.

Pay During Leave

Leave will be unpaid for the first 10 days of leave; however, employees may use any accrued paid sick leave and vacation, holiday, management leave, or compensatory time during this time. During the first 10 days, the employee may also elect to use the additional "Emergency Paid Sick Leave" provided under the Emergency Paid Sick Leave Act at a rate of 2/3 of pay, as detailed above.

After the first 10 days, leave will be paid at two-thirds (2/3) of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work for up to 10 weeks. Any unused portion of this pay will not carry over to the next year. Employees may use sick, vacation, holiday, management leave, or compensatory time balances available under City policy to supplement this payment to achieve 100% of their base salary.

For employees with varying hours (not a fixed schedule), one of two methods for computing the number of hours paid will be used:

- 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 takes leave, including hours for which the employee took leave of any type. Or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Employee Status and Benefits During Leave

While an employee is on leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on paid leave, the City will continue to make payroll deductions to collect the employee's share of the premium. During any unpaid portions of leave, the employee must continue to make this payment per instructions from the Human Resources Office.

If the employee contributes to a life insurance or disability plan, the City will continue making payroll deductions while the employee is on paid leave. During any portion of unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the City may elect to maintain such benefits during the leave

and pay the employee's share of the premium payments. If the employee does not continue these payments, the City may discontinue coverage during the leave. If the City maintains coverage, the City may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

Procedure for Requesting Leave

All employees requesting FMLA leave must provide written notice, where possible, of the need for leave to the HR/Risk Manager on the form provided by the City for this purpose as soon as practicable.

Verbal notice will otherwise be accepted until written notice can be provided. Within five business days after the employee has provided this notice, the HR/Risk Manager will complete and provide the employee with any Department of Labor (DOL) required notices.

The notice the employee provides should include a brief statement as to the reason for leave, and if possible, the expected duration. As with other leaves of absence, the City may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

Employee Status After Leave

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The City may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be given written notice at the time FMLA leave is requested of his or her status as a key employee.

Please contact Human Resources with any questions.