



**TO:** Mayor and Councilmembers

**FROM:** Kristine Schmidt, Assistant City Manager

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

**RECOMMENDATION:**

Authorize the City Manager to extend the temporary FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy applicable to City of Goleta employees through June 30, 2021.

**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 remained in effect until December 31, 2020.

On April 7, 2020 Council approved the FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy for City Employees. The approved policy is more advantageous to employees than required under federal law. First, the City's policy extends 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 provides 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.

**DISCUSSION:**

On December 27, 2020, the Consolidated Appropriations Act (CAA 2021) was signed into law. The CAA 2021 allows FFCRA-covered employers to voluntarily extend two types of emergency paid leaves through March 31, 2021 that were originally mandated between April 1, 2020 and December 31, 2020 by the Families First Coronavirus Response Act

(FFCRA). These FFCRA leaves are Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave (EFMLA).

The March 30, 2021 date is of primary importance to private sector employers because they can claim tax credits for leave used on or before that date. It is reasonably foreseeable, based on current vaccine timeline estimates, that the need for leave could extend beyond that date. The proposed policy extension for Goleta further extends these important leave programs through June 30, 2021, in response to the continuing impacts to staff resulting from the COVID-19 emergency.

This extension will not increase the amount of paid leave available under the policy, only the period during which it can be used.

#### **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 various local government advocates continue to pursue such reimbursement.

#### **ALTERNATIVES:**

Council could decline to authorize the extension to this policy; in which case the FFCRA leave provisions will remain terminated effective December 31, 2020.

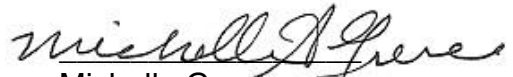
#### **Reviewed By:**

  
Kristine Schmidt  
Assistant City Manager

#### **Legal Review By:**

  
Michael Jenkins  
City Attorney

#### **Approved By:**

  
Michelle Greene  
City Manager

#### **ATTACHMENTS:**

1. FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy (As adopted April 7, 2020)

Attachment 1

FMLA LEAVE EXPANSION AND EMERGENCY PAID SICK LEAVE POLICY (AS  
ADOPTED APRIL 7, 2020)

<b>City of Goleta</b>
<b>Temporary Personnel Policy</b>
<b>FMLA Childcare Leave Expansion and Emergency Paid Sick Leave Policy (Coronavirus)</b>

**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.