

MEMORANDUM

Date: April 9, 2020

To: All City Employees

From:  Aaron Donato, Labor Relations Manager

Re: **Effective April 11, 2020, Emergency Paid Sick Leave, Emergency Family Medical Leave Act, and Discontinuation of EML**

Dear City Employees:

For the past four weeks, in an effort to protect our workforce and minimize exposure to COVID-19, City management identified job duties and positions as “essential” and “non-essential.” Both essential and non-essential employees whose job duties lent themselves to telecommuting from home were encouraged to do so thus allowing them to work in the safety of home isolation.

Employees whose duties were deemed non-essential and who could not telecommute, and employees whose duties were deemed essential but met certain criteria, were not required to utilize their own personal accrued leave balances and instead authorized to utilize City-paid Emergency Medical Leave (EML).

The City would be remiss by failing to thank our employees deemed essential and who have continued to report to work during these unprecedented times. These employees continue to report to work each day to ensure that the essential services the City provides to its residents and the community continue uninterrupted. Personnel who continue to report to work are owed a debt of gratitude for their service. Thank you.

The COVID-19 crisis continues to grip the nation and the globe, and with the extension of Sacramento County’s Shelter in Place Order (SIP), a new normal is emerging. The City must adjust its response with regard to staffing and the authorization of EML. In these uncertain times, the City’s continued use of EML is unsustainable. The information below provides an explanation of new federal paid leave laws and the employees to whom they may be available.

If you have questions regarding the contents of this memorandum, please submit them through your chain of command.

Emergency Leave (EML)

Effective Saturday, April 11, 2020, employees are no longer authorized to utilize the pay code EML.

Employees who were utilizing EML may utilize any of the applicable options below. Similarly, employees whose duties have been determined to be non-essential and who cannot perform those duties by telecommuting, pursuant to the shelter in place order, are not permitted to return to work. These employees may also utilize the applicable options below.

Federal Emergency Paid Sick Leave (EPSL)

The United States Congress passed a law, HR 6201, allowing employees to utilize up to eighty (80) hours of EPSL for certain COVID-19 related reasons through December 31, 2020. EPSL is paid for by the City and utilizing it does not affect your accrued leave balances.

For qualifying reasons other than childcare or the care of an individual related to COVID-19, this benefit pays 100% of the employee's wage up to \$511/day or \$5,110 total.

For qualifying reasons related to childcare or the care of an individual related to COVID-19, this benefit pays 2/3 of the employee's wage up to \$200/day or \$2,000 total.

A Frequently Asked Questions (FAQ) guide is attached to this memo that provides comprehensive information regarding authorized criteria for the use of EPSL. Prior to making inquiries through their chain of command, employees who need to utilize EPSL should review the FAQ. There are daily wage caps on the use of EPSL. For employees that elect to do so, they may supplement EPSL with accrued leave balances. Additional information on the use of supplemental leave balances will be provided.

Extended Family Medical Leave Act (EFMLA)

In addition to EPSL, employees who need to care for their dependent child(ren) and are unable to report to work or telecommute due to a COVID-19 related school or childcare closure may request EFMLA. EFMLA is only authorized for the care of a dependent child due to a school or childcare closure.

Employees requesting to utilize EFMLA must have been employed with the City for at least thirty (30) days and must not have previously exhausted their eligible FMLA leave during the rolling 12-month period.

EFMLA authorizes up to 12-weeks of leave. The first two (2) weeks are unpaid and the remaining ten (10) weeks are paid at 2/3 of the employee's daily wage, up to \$200/day; \$10,000 total. During the first two weeks of unpaid EFMLA, employees may use available accrued leave balances, including EPSL.

While EFMLA does not require an employee to utilize their own accrued leave balances, an employee may utilize their own accrued leave balances to make up the remaining 1/3 of their daily wage if they so choose. Additional information on the use of supplemental leave balances will be provided.

Prior to making inquiries regarding EFMLA through their chain of command, employees should review the FAQ.

Accrued Leave Balances

Employees are authorized to utilize any of their accrued leave balances for authorized reasons related to COVID-19.

Absent Without Pay

Employees who do not have accrued leave balances but need to be off work due to COVID-19 related reasons, including the shelter in place order, may request an unpaid leave of absence or utilize Absent Without Pay (AWP) without the penalty of discipline.

If the request for an unpaid leave of absence is approved and protected under state or federal law, the City will continue to make the employee's health insurance premium contributions on the employee's behalf. These employees are responsible to repay the City for 100% of the employee out-of-pocket contribution and a repayment arrangement will be sent to the employee.

If the request for an unpaid leave of absence is not protected (e.g., personal leave of absence), the City shall disenroll the employee from the City's group medical coverage in accordance with the employee's labor agreement. These employees are eligible to purchase health insurance through the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Families First Coronavirus Response Act

Frequently Asked Questions

In response to the COVID-19 pandemic, the United States Congress passed the Families First Coronavirus Response Act (FFCRA) requiring certain employers to provide employees with paid sick leave or expanded family and medical leave benefits for specified reasons related to COVID-19 from April 1, 2020, through December 31, 2020.

Definitions:

“Business Day” – means Monday through Friday, excluding recognized City holidays.

“Child” – means a son or daughter who is 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 and incapable of self-care because of a mental or physical disability. The employee must provide day-to-day responsibilities to care for or financially support a child.

“Expanded family and medical leave” – means paid leave under the Emergency Family and Medical Leave Expansion Act.

“Individual” – means the 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. For this purpose, “individual” does not include persons with whom the Employee has no personal relationship.

“EPSL” – means paid leave under the Emergency Paid Sick Leave Act.

“Regular rate of pay” – means hourly equivalent of all straight time compensation received by an employee for work performed.

Emergency Paid Sick Leave Act

1. Who is eligible for EPSL?

All full-time and part-time employees **who are unable to work at their physical work location or telework from a remote location** due to one or more of the following reasons are eligible for EPSL:

- 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 related to COVID-19.
- 3) The employee is experiencing COVID-19 symptoms and is 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 their child whose school or place of care has been closed, or the child-care provider of such child is unavailable, due to reasons related to COVID-19. This includes a child that over the age of 18 that is incapable of self-care because of a mental or physical disability.
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

2. What is the rate of pay I will receive for EPSL?

Employees taking leave for reasons 1-3 above, will receive paid sick leave at the employee's regular rate of pay.

Employees taking leave for reasons 4-6 above will be compensated at two-thirds their regular rate of pay.

However, EPSL cannot exceed:

- \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above.
- \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

Employees can elect to supplement the maximum wages allowed under EPSL with their accrued paid leaves to achieve 100% of their regular rate of pay.

3. If I am eligible for EPSL, what amount of paid leave will I receive?

Full-time employees will receive up to 80 hours of paid leave to use for the qualifying reasons above. Part-time employees working a normal weekly schedule are entitled to the number of hours the employee is normally scheduled to work over a two-week period. If a part-time employee lacks a normal weekly schedule, the employee is entitled to leave based on the average number of hours the employee was scheduled to work per two-week pay period over the last six months, including paid leave time.

4. May I take 80 hours of EPSL for my self-quarantine and then another 80 hours of EPSL for another reason provided under the Emergency Paid Sick Leave Act?

No. Full-time employees may take up to 80 hours of EPSL. Part-time employees may take the number of hours equal to the average number of hours that the employee works over a typical two-week period of paid sick leave for any combination of the qualifying bases listed above.

Employees who have need for additional leave may be eligible to use their own accrued leave balances or be permitted to go into an “absence without pay” status. Eligibility for leaves of this type will be subject to supervisory approval.

5. What documents do I need to provide to the City to receive EPSL?

The required documentation needed for EPSL, is based on the employee’s need for leave.

- If the employee is unable to work or telework because of a Federal, State, or local quarantine or isolation order related to COVID-19, no documentation is required. If an employee has any questions regarding their ability to report to work or telework, they should check with their supervisor.
- If the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, including self-quarantine due to their age or immunocompromised status, the employee should provide a note or other written documentation from the health care provider. If no such documentation is available, the employee shall provide a self-certification identifying the health care provider that advised the employee to quarantine. If the employee has been tested for COVID-19, the employee shall provide the test results.
- If the employee is suffering from COVID-19 symptoms and seeking a diagnosis, the employee shall provide any available documentation indicating the symptoms and the employee’s efforts to obtain a diagnosis or treatment. If no such documents exist, the employee may provide a self-certification identifying the health care provider from whom they are seeking a diagnosis or treatment and the steps taken to obtain that diagnosis and treatment.

- If the employee is caring for a sick or quarantined individual related to COVID-19, the employee should fill out a self-certification identifying the health care provider of the individual requiring care and the individual's relationship to the employee.
- If the employee's child's school or child-care provider is closed due to COVID-19 and the employee needs time off to provide this care personally, the employee should provide a self-certification providing the name of the child, the name of the closed school or care facility and a statement indicating that there is no other suitable person to provide the care. In addition, the employee shall provide documentation of the school or child-care closure (e.g., email, letter, website screenshot).

6. If I am not working (or teleworking), what time reporting codes do I use on my time sheet to utilize EPSL or otherwise receive paid leave?

Employees must use the applicable time reporting code on their timesheet, as follows (timesheet code provided in parenthesis):

(CSR) COVID-Shelter in Place – if an employee is designated “non-essential” and subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

(CSK) COVID-Sick – anyone advised by a health care provider to self-quarantine related to COVID-19 or is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

(CSF) COVID - Sick Family Care – if an employee is designated “essential” or authorized to telecommute, but is unable to work due to caring for an individual who is subject to a quarantine or isolation order or has been advised by health care provider to self-quarantine due to COVID-19.

(CSC) COVID-School/Daycare Closures – if an employee is designated “essential” or authorized to telecommute, but is unable to work due to caring for the employee's child whose school or place of care is closed for reasons related to COVID-19.

(CSI) COVID - 65+ or Immuno-compromised – anyone 65 years of age or older or immunocompromised.

7. Does EPSL carry over beyond December 31, 2020?

No. Any unused EPSL will not carry over beyond December 31, 2020.

8. Am I entitled to reimbursement for unused paid sick leave?

No. Employees may not cash out unused EPSL, nor does it carry over to the following year. Any unused leave expires on December 31, 2020.

9. Can I take my paid sick leave intermittently?

If an employee is required to report to the employee's regular worksite and is not eligible to telework, the employee can only use EPSL leave intermittently to care for the employee's child whose school or child-care provider has been closed due to reasons related to COVID-19.

If an employee is eligible to telework, the employee may (with supervisory approval) utilize EPSL intermittently if the employee needs to work a reduced schedule due to any qualifying COVID-19 related-reason.

Expanded Family and Medical Leave Act

10. Who is eligible for the Expanded Family and Medical Leave Act?

Employees who have worked for the City of Sacramento for at least 30 calendar days are eligible.

11. Who qualifies for leave under the Expanded Family and Medical Leave Act?

An employee qualifies for expanded family leave if the employee is caring for their child whose school or place of care has been closed, or the child-care provider of such child is unavailable, due to reasons related to COVID-19.

12. How much time can I take off under the Expanded Family and Medical Leave Act?

Employees may take up to a total of 12 workweeks of job-protected leave for FMLA or expanded family and medical leave reasons during a 12-month period. Eligibility for expanded family and medical leave depends on how much FMLA leave an employee has already taken in the preceding 12-month period. If an employee has taken some, but not all, 12 workweeks of leave under FMLA during the past 12-month period, the employee may take the remaining portion of leave available. If an employee has already taken 12 workweeks of FMLA leave during this 12-month period, the employee may not take additional expanded family and medical leave. Any employee with questions regarding their available FMLA leave balances should communicate with Human Resources.

13. Is leave under the Expanded Family and Medical Leave Act paid or unpaid?

Leave will be unpaid the first two weeks. However, an employee may use any of their available leave accruals (i.e. vacation, sick, holiday accrued, etc.) during this time, including any right to utilize EPSL.

After the first two weeks, the City will provide paid leave in an amount not less than two-thirds of an employee's "regular rate of pay" for the number of hours the employee would

normally be scheduled to work during the remaining leave period, up to the maximum amounts provided below. If an employee has questions regarding their available FMLA leave balances, the employee should communicate with Human Resources.

If a part-time employee lacks a normal weekly schedule, the employee is entitled to leave based on the average number of hours the employee was scheduled to work (including paid leave time) per two-week pay period over the last six months prior to taking EPSL or expanded FMLA.

Pay provided pursuant to the expanded FMLA will not exceed \$200 per day or \$10,000 total. Any unused portion of this pay will not carry over beyond December 31, 2020.

14. Can I supplement the two-thirds pay with other leave accruals?

Yes. Employees can supplement the two-thirds pay with their accrued paid leaves to achieve 100% of their regular rate of pay.

15. If I am home with my child because their school or place of care is closed, or child-care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both?

Employees may be eligible for both types of leave, but employees may still need to supplement their use of both with existing leave balances to avoid any pay reduction.

16. May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child-care provider is unavailable, due to COVID-19 related reasons?

Yes, subject to supervisor approval. For example, if an employee's child is at home because their school or place of care is closed, or child-care provider is unavailable, because of COVID-19 related reasons, the employee may utilize expanded FMLA leave on Mondays, Wednesdays, and Fridays to care for the child, but work at the employee's normal worksite or telecommute (if authorized to do so) on Tuesdays and Thursdays.

17. If I elect to take expanded family and medical leave, will the City continue my health coverage?

Yes. An employee's group health insurance coverage(s) will continue during their use of expanded family and medical leave on the same terms as if they continued to work. Employees are responsible for their out-of-pocket costs health insurance premium contributions associated with their health insurance plan(s).

18. How do I request leave under the Expanded Family and Medical Leave Act?

Employees requesting leave must submit an Expanded Family and Medical Leave Request form to their supervisor and documentation of closure, as set forth in FAQ 5, above.

Employees must submit a request to extend their leave, if the school or child-care facility closure extends beyond the date of the original request. For example, if the school closure was through May 3, 2020, but is extended to a later date, the employee must submit a request to extend the leave.

19. When will I be notified if my request has been approved or denied?

Within five (5) business days, the Leave Administration Unit will determine the employee's eligibility and will notify the employee and the department in writing.

20. What time reporting code do I use on my timesheet for Expanded Family and Medical Leave?

Eligible employees will be advised of the appropriate payroll code.

21. What is my status after taking leave under the Expanded Family and Medical Leave Act?

Generally, employees who take FMLA leave are able to return to the same position or a position with equivalent status, pay, benefits, and other employment terms. However, if an employee's position no longer exists due to lay-off or furlough, the employee may not immediately be returned to employment, as described in FAQ 22.

22. If I am laid off or furloughed before I begin, or while I am using, my EPSL or after I have requested expanded FMLA leave, will I still get paid for all of my EPSL or expanded FMLA leave?

No. If an employee is laid off or furloughed they will not receive paid EPSL or expanded family and medical leave, but they may be eligible for unemployment insurance benefits. This is true whether the City closes a worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive. Employees should contact the State of California's EDD unemployment insurance office for specific questions about eligibility.

23. Can I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?

Employees should contact the State of California's EDD office for specific questions regarding eligibility for unemployment benefits.