

ADMINISTRATIVE POLICY

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Program: No
Policy: Yes
Procedure: Yes
Form: Yes

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Purpose

The Families First Coronavirus Response Act (the Act) was passed on March 18, 2020 in response to the COVID-19 pandemic. The Act approves two provisions designed to help reduce the impact of the virus on families. These provisions include the Emergency Family Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA). These provisions go into effect prospectively as of April 1, 2020 and remain in effect until December 31, 2020.

Policy

The policy of the City of Davis is to allow employees to take leave from the worksite to ensure that when the employee is at work the employee is rested, healthy, and mentally available to perform duties in a professional manner and to comply with any state or federal regulations regarding authorized leave. The City of Davis' leave policy is described in the Administrative Policy 5.1 – Leave Policies. Specifically, the City of Davis complies with the Federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Eligibility for FMLA and CFRA is the same and in most cases, the two leaves run concurrently. The FMLA (and CFRA) provides 12 weeks of unpaid, job-protected leave per 12-month period to employees to care for themselves or seriously ill family members. Public employees are eligible for FMLA/CFRA leave if they have worked at least 1,250 hours in the preceding 12-month period and are employed within 75 miles of at least 50 other employees of the public agency. "Family member" is defined under the law.

The EFMLEA expands certain provisions of the FMLA, but does not provide additional time beyond the 12 total weeks available for FMLA leave. Eligibility applies to both regular and temporary employees who are currently scheduled working hours.

Emergency Responder Exemption

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.

Emergency Family Medical Leave Expansion Act (EFMLEA)

Eligibility

Employees who have been employed with the City for at least thirty (30) calendar days are eligible to receive up to 12 weeks of job-protected leave if they are unable to work (including telework) due to a need to care for the son or daughter whose school or place of care has been closed, or whose care provider is unavailable due to COVID-19 related reasons. "Son or daughter" means the employee's child who is under 18 years of age, or 18 years of age or older and incapable of self-care due to a mental or physical disability. Employee is required to provide reasonable notice of the need for leave.

Duration of Leave

An employee who has not exhausted FMLA during the prior 12 months is eligible to receive up to 12 weeks of job-protected leave.

If an employee has already used FMLA during the prior 12 months preceding need for EFMLEA, their eligibility for EFMLEA is based on the balance available to the employee. For example, if an employee has been using FMLA intermittently during the prior 12 months and has used 4 weeks of FMLA, such employee is eligible for 8 more weeks of leave under FMLA and/or EFMLEA combined. Employees using FMLA for a pre-existing or new medical reason under FMLA, will need to track their time separately relative to leave taking under EFMLEA.

Compensation

Leave under FMLA is unpaid, however, an employee may be required to use accrued leaves. Under EFMLEA, the first 10 regularly scheduled work days of EFMLEA are unpaid. The employee may choose to use any accrued leave (vacation, sick, compensatory time) during this 10-day period. Alternatively, the employee may also use pay under the provisions of EPSLA as described below.

From the 11th day of leave, the employee will be paid 2/3rds of the employee's regular rate of pay as defined under the Fair Labor Standards Act (29 U.S.C. § 207(e)). Part-time employees are entitled to pay based on 2/3rds of their regular pay based on the number of hours they would otherwise have been scheduled to work during the time they are taking leave.

In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if the employee had not taken leave, the employer must use the following criteria:

1. A number equal to 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 commences leave, including hours for which the employee took any type of paid leave; or
2. If the employee did not work over the preceding 6-month period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Pay under the EFMLEA is capped at \$200 per day and \$10,000 in the aggregate

Employees may elect to use accrued leave from any leave bank source to supplement the 2/3rds regular rate being paid while on EFMLEA.

Request Procedure

An employee using Emergency Family Medical Leave must certify the need for the leave in writing at the time of request. Human Resources will provide a Certification of Need for Emergency Family Medical Leave form (page 9 of this document). Completed forms shall be submitted to the employee's supervisor or directly to Human Resources prior to initiating leave. When Emergency Paid Sick Leave is being requested in coordination with Emergency Family Medical Leave, both requests should be submitted together (pages 9 and 10 of this document).

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. Forms shall be submitted by way of fax to Human Resources (530) 753-1224 or via email to H@cityofdavis.org.

Leave may be requested on an intermittent or part time schedule and may be approved based on coordination with the needs of City operations.

City Response to Leave Requests

The City will confirm an employee's eligibility for leave, or provide an explanation as to why they are not eligible.

Reinstatement

Employees out on Emergency Family and Medical Leave are entitled to reinstatement to their prior position.

Reinstatement may, in certain circumstances set forth by statute, be denied to certain "highly compensated" positions. Such employees will be notified of this possibility at the time the request for leave is processed.

Emergency Paid Sick Leave Act (EPSLA)

Eligibility

All employees are eligible for EPSLA regardless of how long they have been employed with the agency if:

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 (requires note from health care provider).
3. The employee is experiencing symptoms of COVID-19 and is seeking a diagnosis.
4. The employee is caring for an individual under quarantine or isolation order, or advised by a health care professional to self-quarantine.
5. The employee is caring for a son or daughter due to the closure of school or place of care, or unavailability of the son or daughter's care provider due to COVID-19.
6. The employee is "experiencing any substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and Secretary of Labor." The statute does not provide any guidance on what this language means. It is believed Congress intended to insert a placeholder to expand eligibility later if an unexpected need arises, therefore eligibility under this item is subject to future update and clarification by Congress.

Eligibility is based on any of the above reasons, however any one employee may only use their total allotted EPSLA time once, even if used for different reasons.

Compensation and Duration of Leave

Leave taken as Emergency Paid Leave is in addition to any other leave accrued and does not accrue beyond 80 hours. Unused leave does not carry over after December 31, 2020 for any employees.

For leave taken under paragraphs (1), (2), or (3), full time employees are entitled to 80 hours of paid leave at their regular rate of pay, subject to a \$511 per day and \$5,110 aggregate cap. Part-time employees are entitled to paid leave for the average number of hours worked over a 2-week period at their regular rate of pay, subject to the same cap.

For leave taken under paragraphs (4), (5), or (6), full time employees are entitled to 80 hours of paid leave at 2/3 their regular rate of pay, subject to a \$200 per day and \$2,000 aggregate cap. Part-time employees are entitled to paid leave for the average number of hours worked over a 2-week period at 2/3 their regular rate of pay, subject to the same cap.

Employees are not required to use other available paid leave (such as leave accruals available to the employee) before using sick leave under EPSLA. Employees are not required to find replacements to cover their duties during use of leave. Employers are prohibited from

discharging or discriminating against any employee for requesting or taking paid sick leave under the EPSLA.

Employees may elect to use accrued leave from any leave bank source to supplement the 2/3rds regular rate being paid while on EPSLA under reasons (4), (5), or (6).

Coordination with EFMLEA

An employee requesting leave under EFMLEA will qualify for paid leave (EPSLA) under reason #5 and therefore, such employee may use EPSLA during the initial 10-day, unpaid period of EFMLEA. Such employee is not required to use EPSLA for that purpose.

An employee requesting leave under EPSLA for reasons other than #5, may be eligible for regular medical leave in accordance with FMLA/CFRA. FMLA and CFRA are unpaid, however, an employee may use their own accrued leave or EPSLA in accordance with current policy.

If an employee is requesting leave under EPSLA for reason #4, EPSLA is available to employees for the care of an individual. "Individual" 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.

Request Procedure

An employee using Emergency Paid Sick Leave must certify the reason for the leave. Human Resources will provide a Certification of Need for Emergency Paid leave form (page 10 of this document). Completed forms shall be submitted to the employee's supervisor or directly to Human Resources prior to initiating leave. When EPSLA is being requested in coordination with EFMLEA, both requests (page 9 and 10) should be submitted together.

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. Forms shall be submitted by way of fax to Human Resources (530)753-1224 or via email to H@cityofdavis.org.

Leave may be requested on an intermittent or part time schedule when leave is taken for the care of a son or daughter (reason #5), and may be approved based on coordination with the needs of City operations. Under limited circumstances, leave may be available in increments of less than two weeks, in accordance with the FFCRA regulations.

City Response to Leave Requests

The City will confirm an employee's eligibility for leave, or provide an explanation as to why they are not eligible.

Reinstatement

Upon return from an approved EPSLA, an employee will be reinstated to the employee's original position or to a comparable position with equivalent pay, benefits, and other employment terms and conditions for which the employee is qualified. However, an employee

has no greater rights to any benefit or position of employment than if the employee had been continuously working rather than on leave.

If EPSLA was due to a reason related to reasons 1, 2, 3, or 4 (employee's own symptoms or possible exposure), the employee shall submit an *Employee Certification to Return to Work After Exhibiting Symptoms of COVID-19* form (page 11 of this document) in order to return to work or may provide a note from the employee's treating physician.

Approval signature



City Manager Mike Webb

8-13-2020

Date

Attachments:

Definitions (page 7)

Families First Coronavirus Response Act- Summary Reference Chart (page 8)

Employee Certification of Need for Emergency Family and Medical Leave (page 9)

Employee Certification of Need for Paid Emergency Sick Leave (page 10)

Employee Certification to Return to Work (page 11)

FAMILIES FIRST CORONAVIRUS RESPONSE ACT DEFINITIONS

Family and Medical Leave Act (“FMLA”) definitions prevail unless specific definitions were included in the FCCRA.

For purposes of Emergency Paid Sick Leave Act (EPSLA) –

“Son or daughter” for purposes of child care leave means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person acting in place of a parent, 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. Eligibility applies when the employee needs to, and actually is, caring for the child.

“Quarantine or isolation order” includes quarantine, isolation, containment, shelter in place, or stay-at-home orders issued by any federal, state, or local authority that causes the employee to be unable to work even though the employer has work for the employee to perform. Advice to categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place or stay at home are considered quarantine and isolation orders triggering eligibility for emergency paid sick leave. A person is considered to be under quarantine or isolation order for purposes of the EPSLA if a health care provider has advised the employee to self-quarantine based on known or suspected COVID-19 infection, or a particular vulnerability to COVID-19. Note: the employee is not eligible for EPSLA if the employee is able to telework in that the employee is able to comply with a stay-at-home order while teleworking. The self-quarantining must prevent the employee from working.

“Individual” – Eligibility reason #4 indicates “care for an individual” 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 the person were quarantined. “Individual” does not include persons with whom the employee has not personal relationship.

For purposes of FFCRA –

“Eligibility” – employees who are not working because the employer does not have work for them to perform, whether such lack of work is related to a general shelter in place or stay-at-home order, other COVID-19 related reasons, or circumstances unrelated to COVID-19, are not eligible for any kind of leave under FFCRA. This is because the employee would be unable to work even if the employee were not required to comply with the quarantine or isolation order.

“Intermittent Leave” (i.e., in separate periods of time, rather than one continuous period) – may be taken for purposes of child care leave if agreed to by the employer. Employees may not take intermittent leave under the EPSLA if the leave is for any reason other than child care with the following exception: EPSLA may be available on an intermittent basis when taken for purposes of illness or exposure if the worksite risk is eliminated due to teleworking. *Example:* Employee is teleworking and becomes ill, requiring one week of EPSLA leave. After one week the employee feels better and wants to return to teleworking. A few weeks later, someone in the employee’s household becomes sick; the employee can then use the second week of EPSLA to care for that person.

Families First Coronavirus Response Act
(Effective April 1, 2020 and expires December 31, 2020)

Type of Leave	# of hours/weeks	Qualification Criteria <i>City has work for employee to perform, but employee is unable to work or telework due to one of the following reasons:</i>	Per day Pay/ Aggregate Total
Emergency Paid Sick Leave (EPSL)	Full-time – up to 80 hours paid leave (10-days/two weeks) Part-time/Temporary – prorated amount of hours based on average hours worked over two weeks	1. Employee received a local agency order of quarantine or isolation	Regular rate - \$511/day or \$5,110 total
		2. Healthcare provider advised self-quarantine	
		3. Employee experiencing COVID-19 symptoms & seeking medical diagnosis	
	Full-time – up to 80 hours paid leave (10-days/two weeks) Part-time/Temporary – prorated amount of hours based on average hours worked over two weeks	4. Caring for an individual subject to an order described in 1 and 2 above	2/3 Regular rate of pay up to \$200/day or \$2,000 total
		5. Caring for child due to school or child care provider unavailable due to COVID-19	
		6. Not applicable yet - EE experiencing any other substantially similar condition specified by the Secretary of HHS - <i>Pending additional guidance from Federal Government</i>	
Emergency Family and Medical Leave Expansion Act (EFMLEA)	Up to 12 weeks, first 10 days/2 weeks is unpaid, but EE may use personal leave, including Emergency Paid Sick Leave described above. May be intermittent based on agreed upon schedule.	Employed for at least 30 calendar days	Weeks 3-12 - 2/3 Regular rate of pay up to \$200/day or \$10,000 total – EEs with variable hours - 6 month avg.
		5. EE unable to work due to child's school closure or child care provider unavailable due to COVID-19	

NOTE: Chart, above, provided for convenience/general summary purposes

Exclusions:

Emergency Paid Sick Leave (EPSL):

- Emergency responders are eligible to take EPSL for criteria #1-4 listed above.*
- Emergency responders are generally excluded from EPSL for criteria #5-6 above. Any request for criteria #5 will be considered on a case-by-case basis.*

Emergency FMLA (EFMLA):

- Emergency responders are generally excluded from EFMLA for criteria #5 above. Any request for criteria #5 will be considered on a case-by-case basis.*

**The city reserves the right to deny leave to an emergency responder or call an employee back from leave to meet staffing and operational needs. Emergency responders are generally not subject to Shelter in Place Orders as they are critical and essential employees.*

"Emergency responders" are defined as the following, which is subject to revision based on emerging needs:

Police – All Staff	Public Works – Water, Wastewater, Stormwater, Streets, Fleet, Facilities
Fire – All sworn and management staff	Others as needed to maintain emergency operations

EMPLOYEE CERTIFICATION OF NEED FOR EMERGENCY FAMILY MEDICAL LEAVE

Print Name: _____ Date: _____

Department: _____ Supervisor: _____

Status: Regular Full Time _____ Regular Part Time _____ Temporary _____

Hire Date: _____ Average Regular Work Schedule (circle): M T W TH F SA SU
Average hours scheduled per week: _____Have you taken leave under FMLA in the past 12 months? Yes _____ No _____
If yes, how many days? _____**Compensation:**First 10 days of Leave is without pay unless the following is designated:*I wish to use the following leave during the first 10 days of EFMLEA:*

Leave without pay _____

Sick _____

Vacation _____

Compensatory Time Off _____

Emergency Paid Sick Leave _____

*If using Emergency Paid Sick Leave, also complete Certification of Need for Emergency Paid Sick Leave form*Pay as of the 11th day of Leave

Pay under EFMLEA is based on 2/3rds of your regular pay. You may elect to supplement with your own accrued leaves. Initial your election below.

I do not wish to supplement EFMLEA pay. _____*I wish to supplement EFMLEA pay with my accrued leaves.* _____*To supplement with accrued leaves, enter hours on your timecard under the appropriate type of leave (vacation, sick, compensatory time). Indicate under "comments" that the hours are EFMLEA. HR will let you know # of hours to use.*

I, _____, certify that I have a son or daughter, whose school or place of care has been closed, or whose are provider is unavailable due to COVID-19 related reasons. Due to the need to care for my child, I am unable to work (or telework). I understand that if my childcare needs change, I must immediately inform my supervisor and the City and I may be directed to report back to work (or telework).

Request Leave Start Date _____ Expected End Date: _____

Schedule notes if requesting intermittent use: _____

Signature: _____ Date: _____

Dept Head: _____

HR Use

Approved _____ Denied (reason) _____

Process Notes _____

EMPLOYEE CERTIFICATION OF NEED FOR PAID EMERGENCY SICK LEAVE

Print Name: _____ Date: _____

Department: _____ Supervisor: _____

Status: Regular Full Time _____ Regular Part Time _____ Temporary _____

I, _____, certify that I am unable to work (or telework) for one of the following reasons:

(initial one)

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 is seeking a diagnosis.
4	The employee is caring for an individual under quarantine or isolation order, or advised by a health care professional to self-quarantine. <i>Relationship to Individual:</i>
5	The employee is caring for a child due to school closure or unavailability of the child's care provider due to COVID-19. <i>(Complete and attach Certification of Need for Emergency Family Medical Leave form, if applicable)</i>
6	The employee is "experiencing any substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and Secretary of Labor." <i>(this section is unavailable until further direction is received from the Health and Human Services department.)</i>

- Leave taken under section (1), (2), or (3) is paid at regular base rate of pay, subject to a cap of \$511 per day: \$5110 aggregate.
- Leave taken under section (4), (5), or (6) is paid at 2/3rds your regular rate of pay, subject to a cap of \$200 per day: \$2,000 aggregate.
- If use of leave results in receiving less than your full regular base pay, you may supplement by using your accrued leaves. Initial your election below:

I wish to supplement EPSLA pay with my accrued leaves. Yes _____ No _____

To supplement with accrued leaves, enter hours on your timecard under the appropriate type of leave (vacation, sick, compensatory time). Indicate under "comments" that the hours are EFMLEA if leave is under section (5), otherwise indicate hours are EPSLA. HR will let you know the # of hours to use.

I understand that if my circumstances change so that I am no longer eligible under one of the qualifying categories, I must immediately inform my supervisor and the City of Davis and I may be directed to report back to work (or telework).

Request Leave Start Date: _____ Expected End Date: _____

Signature: _____ Date: _____

Department Head: _____

HR Use Approved _____ Denied (reason) _____

**EMPLOYEE CERTIFICATION TO RETURN TO WORK AFTER EXHIBITING SYMPTOMS OF COVID-19 OR
HAVING A DIAGNOSIS OF COVID-19**

I, _____, certify under penalty of perjury that I have been free of fever (a “fever” is defined as 100° F [37.8° C] or greater using an oral thermometer), signs of a fever, and any other COVID-19 related symptoms (*e.g.*, cough or shortness of breath) for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (*e.g.*, cough suppressants) **and**, at least 10 days have passed since symptoms first appeared. I understand that I am to continue to self-monitor daily and if I do show further signs of having COVID-19 (*e.g.*, fever, cough, or shortness of breath), I must inform my supervisor immediately and the City of Davis may either direct me to stay away from work or may require me to undergo a fitness for duty examination at the City’s expense and according to the City’s policy regarding fitness for duty examinations.

I understand that any false statement or misrepresentation is grounds for discipline including termination.

Signature

Date

**EMPLOYEE CERTIFICATION TO RETURN TO WORK AFTER HAVING BEEN EXPOSED (OR POSSIBLE
EXPOSURE) TO COVID-19**

I, _____, certify under penalty of perjury that I have completed the appropriate quarantine period following possible exposure to an individual exhibiting symptoms or having a diagnosis of COVID-19 in accordance with the Exposure Guidelines and that I did not develop symptoms related to COVID-19 during this quarantine period. I understand that I am to continue to self-monitor daily and if I do develop symptoms associated with COVID-19, I must inform my supervisor immediately and the City of Davis may either direct me to stay away from work or may require me to undergo a fitness for duty examination at the City’s expense and according to the City’s policy regarding fitness for duty examinations. I understand that any false statement or misrepresentation is grounds for discipline including termination.

Signature

Date

****In lieu of either certification, an employee may submit a note from their treating physician indicating the employee is able to return to work.**