

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 (under 18 years of age) 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. 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 which will be available on the City's intranet as well as the City's webpage, Human Resources page, Policy tab. 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.

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.

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-19.¹
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.
5. The employee is caring for a child due to school closure or unavailability of the child'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, 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.

¹ Quarantine and isolation orders are defined by the CDC and does not include "shelter in place" orders: <https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html>

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 under #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, which is undefined. Upon conclusion of EPSLA, eligibility for FMLA/CFRA is in accordance with the law, which defines eligibility for a family member.

Request Procedure

An employee using Emergency Paid Sick Leave must certify the reason for the leave and provide supporting documentation if possible. Human Resources will provide a Certification of Need for Emergency Paid leave form which will be available on the City's intranet as well as the City's webpage, Human Resources page, Policy tab. 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 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.

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.

Approval signature



City Manager Mike Webb

April 1, 2020

Date

Attachments:

Employee Certification of Need for Emergency Family and Medical Leave

Employee Certification of Need for Paid Emergency Sick Leave

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.

I, _____, certify that I have a child who is under the age of 18, 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. 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: _____

Signature: _____ Date: _____

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. <i>(Quarantine and isolation orders are defined by the CDC and does not include "shelter in place" orders.)</i>
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)</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 (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. Part time employees are entitled to leave based on 2/3rds the average number of hours worked over a 2-week period. Pay for leave taken under section (4), (5), or (6) may be supplemented by using your accrued leaves. Initial your election below:

I do not wish to supplement EPSLA pay. _____

I wish to supplement EPSLA 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 if leave is under section (5), otherwise indicate hours are EPSLA.

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: _____

HR Use

Approved _____ Denied (reason) _____

Process Notes