



Families First Coronavirus Response Act: FMLA Leave Expansion and Emergency Paid Sick Leave Policy (Non-Emergency Responders)

Purpose

To comply with the Families First Coronavirus Response Act (“FFCRA”) and to assist employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. This policy takes effect April 1, 2020 and continues through December 31, 2020.

Emergency Paid Sick Leave

Employee Eligibility

All full-time and part-time employees unable to work (or telework) due to one or more of the following reasons are eligible for the FFCRA leave:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID–19; or
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19; or
3. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis; or
4. The employee is caring for an individual who is subject to either number 1 or 2 above; or
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; or
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.

“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.

Amount of Paid Sick Leave

All eligible full-time employees will qualify up to 80 hours of paid sick leave available to use for the qualifying reason(s) above. Eligible part-time employees are entitled to the number of hours worked, on average, over a two-week period. This leave is in addition to the sick leave provided to employees by the City in Section 5.3 of the *City of Charleston Personnel Rules and Administrative Policies* handbook.

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 paid at 100% of the employee's regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 will be compensated at two-thirds their regular rate of pay, or minimum wage, whichever is greater. Pay will not 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.

Interaction with Other Paid Leave

The employee may use emergency paid sick leave under this policy for the qualifying reasons stated above before using any other accrued paid time off, or they could use other accrued paid time off first and use emergency paid sick leave under this policy later if they still qualify at the time they use the leave.

Employees on expanded FMLA leave under this policy may use emergency paid sick leave during the first 10 days of normally unpaid FMLA leave.

Procedure for Requesting Emergency Paid Sick Leave

Employees must notify both their Department Head and the Human Resources Director of the need and specific reason for leave under this policy and must submit a leave request form to the Human Resources Director. A leave form will be provided to all employees via email and will also be available on the City's intranet and/or in a manner accessible to all. Verbal notification will be accepted until practicable/reasonable to provide the required leave form.

The requesting employee must also provide appropriate documentation to the Human Resources Director identifying the reason for requesting leave. Documentation may include, but is not limited to, quarantine or isolation orders, doctor's written recommendations advising self-quarantine, or a notice of a school or place of care closure (posted on a government, school or daycare website or published in a newspaper or an email from an official of the school, place of care, or child care provider.) The City reserves the right to request further documentation at any time during the leave period.

Once emergency paid sick leave has begun, the Human Resources Director will determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive paid sick time.

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.

Expanded FMLA Leave

Employee Eligibility

All employees who have been employed with the City of Charleston for at least 30 calendar days immediately prior to the day an employee seeks to begin covered leave and who satisfy the reason for leave set forth below. The City's existing FMLA leave policy, found in Section 5.8 of the *City of Charleston Personnel Rules and Administrative Policies* handbook continues to apply to all other reasons for leave outside of the reasons stated in this policy.

Reason for Leave

Eligible employees who are unable to work (or telework) 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 receive up to 12 weeks of leave to use from April 1, 2020, through December 31, 2020, for the purposes stated above. This time is included in, and not in addition to, the total traditional FMLA leave entitlement of 12 weeks in a 12-month period.

For example, if an employee has already taken 6 weeks of traditional FMLA leave, that employee would be eligible for another 6 weeks of FMLA leave under this policy.

Pay During Leave

Leave will be unpaid for the first 10 days of leave; however, employees may use any accrued paid vacation, sick or personal leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act, as further explained in the Emergency Paid Sick Leave section of this policy. After the first 10 days, leave will be paid at two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Pay will not exceed \$200 per day, and \$10,000 in total.

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/agreed upon 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 Department.

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. If the employee does not continue these payments, the City may discontinue coverage during the leave.

Procedure for Requesting Expanded FMLA Leave

Employees must notify both their Department Head and the Human Resources Director of the need and specific reason for leave under this policy and must submit a leave request form to the Human Resources Director. A leave form will be provided to all employees via email and will also be available on the City's intranet and/or in a manner accessible to all. Verbal notification will be accepted until practicable/reasonable to provide the required leave form. Within five business days after the employee has provided this notice, the Human Resources Department will complete and provide the employee with any Department of Labor (DOL) required notices.

The requesting employee must also provide appropriate documentation to the Human Resources Director identifying the reason for requesting leave. Documentation may include, but is not limited to, a notice of a school or place of care closure (posted on a government, school or daycare website or published in a newspaper or an email from an official of the school, place of care, or child care provider.) The City reserves the right to request further documentation at any time during the leave period.

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. Essential employees will be given written notice at the time FMLA leave is requested of his or her status as an essential employee.

Overtime Hours

While overtime hours are included for purposes of calculating the amount of leave available to an employee under both Emergency Paid Sick Leave and Extended FMLA Leave, there is no requirement under the FFCRA that the City pay a premium for such overtime hours.

Carryover

No paid leave provided under this policy will be provided beyond December 31, 2020. Any unused paid sick leave or FMLA leave will not carry over to the next year or be paid out to employees and it cannot be cashed out or used for health insurance payments upon retirement

No retroactivity

Leaves provided by the FFCRA are not retroactive. Any paid leave given to employees prior to the effective date of the FFCRA which would have otherwise qualified under FFCRA leave provisions will not be counted toward the leave requirements under FFCRA.

Incremental Leave

Leave must be taken in full day increments and once an employee begins taking paid leave under either the Emergency Paid Sick Leave and Extended FMLA Leave, the employee must continue to take paid leave each day until the employee *either* (1) uses the full amount of paid sick leave or (2) no longer has a qualifying reason for taking either leave.

Intermittent Leave

The City may permit intermittent leave taken for care of the employee's 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 (see above). Any such intermittent leave shall be at the discretion of the Human Resources Director on a case-by-case basis, in consultation with the City Manager.

Abuse of Policy

Employees may be subject to disciplinary action up to and including termination in connection with abuse of the policy.

Right to Amend

The City reserves the right to amend this policy as further guidance is received from and/or regulations are adopted by the U.S. Department of Labor.

Please contact the HR department with any questions.