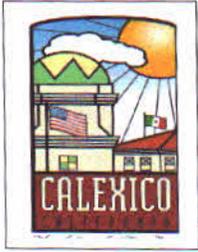


**AGENDA  
ITEM**

**11**



# CITY COUNCIL AGENDA STAFF REPORT

**DATE:** June 3, 2020

**TO:** Mayor and City Council

**APPROVED BY:** David B. Dale, City Manager *DD*

**PREPARED BY:** Denise Garcia, HR/RM Manager *DG*

**SUBJECT:** Adopt Resolution 20-\_\_\_\_ Adopting the FMLA Leave Expansion and  
Emergency Paid Sick Leave Policy in Accordance with Federal Guidelines

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## Recommendation:

Adopt Resolution adopting the FMLA Leave Expansion and Emergency Paid Sick Leave Policy in Accordance with Federal Guidelines.

## Background:

On April 1, 2020, the U.S. Department of Labor announced new action regarding how American workers and employers will benefit from the protections and relief offered by the Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Act, both part of the Families First Coronavirus Response Act (FFCRA). The law enables employers to keep their employees on their payrolls, while at the same time ensuring that employees are not forced to choose between their paychecks and the public health measures needed to combat the virus.

The leave provisions were created with a time-limited statutory authority established under the FFCRA and operational on April 1, 2020, with some technical corrections to the regulatory text, and set to expire on December 31, 2020.

## Discussion & Analysis:

In this temporary rule the Emergency Paid Sick Leave Act (EPSLA) requires that the City provide up to 80 hours of paid sick leave to employees who need to take leave from work for certain specified reasons related to COVID-19. These reasons may include the following:

- the employee or someone the employee is caring for is subject to a government quarantine order or has been advised by a health care provider to self-quarantine;
- the employee is experiencing COVID-19 symptoms and is seeking medical attention; or



- the employee is caring for his or her son or daughter whose school or place of care is closed or whose childcare provider is unavailable for reasons related to COVID-19.

Additional leave protections are provided in the Emergency Family and Medical Leave Expansion Act (EFMLEA), which requires the City to provide up to 10 weeks of paid, and 2 weeks unpaid, emergency family and medical leave to eligible employees if the employee is caring for his or her son or daughter whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19.

In conjunction with the Department of Labor's FFCRA poster distributed to staff on March 26, 2020, this policy is intended to provide personnel with guidance where statutory requirements are to be implemented. Human Resources is tracking both the EFMLEA and the EPSLA leaves in the same manner as other paid leaves. The Human Resources Department continues to follow the guidance ordered by the Imperial County Health Officer and the CDC with regards to reducing the spread of COVID-19 in an abundance of caution and concern for City staff.

**Fiscal Impact:** Estimated fiscal impact is unknown at this time and dependent on the number of employees utilizing the leaves through December 31, 2020. It has not been determined if the City will be able to seek reimbursement for a portion of these costs under FEMA and/or CalOES to offset the impact.

**Alternative:** Do not adopt the FMLA Leave Expansion and Emergency Paid Sick Leave Policy in accordance with Federal Guidelines.

**Coordinated With:**

**Attachments:**

FMLA Leave Expansion and Emergency Paid Sick Leave Policy (Coronavirus)  
Resolution 20-XX Adopting the FMLA Leave Expansion and Emergency Paid Sick Leave Policy

# **CITY OF CALEXICO FMLA Leave Expansion & Emergency Paid Sick Leave Policy (Coronavirus)**

## **Purpose**

The purpose of this temporary policy is 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 will be in effect from April 1, 2020 until December 31, 2020. The rights and entitlements provided in this policy will sunset as of December 31, 2020.

The FFCRA contains both the Emergency Family and Medical Leave Expansion Act, providing an additional reason for leave under the FMLA and making related changes, and the Emergency Paid Sick Leave Act, creating a new paid leave entitlement. The existing FMLA leave policy still applies to all other reasons for leave outside of this policy, as well as other applicable leave policies. At this time, the Department of Labor (DOL) is expected to issue regulations to provide additional guidance on implementing the FFCRA. Therefore, this policy may be updated based on additional guidance from the DOL.

## **I. FMLA Leave Expansion for Childcare Issues Arising From School Closures**

### **Employee Eligibility**

All employees who have been employed with EMPLOYER for at least 30 calendar days. (EXCLUDING EMERGENCY RESPONDERS)

### **Qualifying Reason for Leave**

Eligible employees who are unable to work (or telework) due to a need to care for a child who is under 18 years of age because 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.

“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 leave to use from April 1, 2020 through December 31, 2020, for a qualifying reason for leave, stated above. This entitlement to leave is an

## **CITY OF CALEXICO FMLA Leave Expansion & Emergency Paid Sick Leave Policy (Coronavirus)**

additional qualifying reason for leave and not an additional leave entitlement. Therefore, employees will be entitled to a total of 12 weeks in a 12 month period (as measured in the established FMLA Policy) for all qualifying reasons.

For example, if an employee has already taken 6 weeks of FMLA leave, that employee would be eligible for the remaining 6 weeks of FMLA leave for a qualifying reason, including to care for a child 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 below. 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. Pay will not exceed \$200 per day, and \$10,000 in total.

For part-time employees with varying hours to such an extent that the hours worked cannot be determined with certainty, 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 Agency 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 employer will continue to make payroll deductions to collect the employee's share of the premium (if any). During any unpaid portions of leave, the employee must continue to make this payment per instructions from the HR department. These provisions are the same as for all other FMLA leave, as described in the current FMLA Policy.

### **Procedure for Requesting Leave**

All employees requesting FMLA leave must provide written notice, where possible, of the need for leave to HR 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, HR 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. On a basis that does not discriminate against employees on FMLA leave, the City of Calexico may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

# **CITY OF CALEXICO FMLA Leave Expansion & Emergency Paid Sick Leave Policy (Coronavirus)**

## **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.

Please contact the HR department with any questions.

## **II Emergency Paid Sick Leave**

Emergency Paid Sick Leave, is an entitlement *above and beyond* an employee's normal sick leave entitlement. It shall be available first for the reasons set forth herein. As described below will be available for use beginning April 1, 2020.

### **Eligibility**

All full-time and part-time employees unable to work (or telework) 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 under 18 years of age 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.

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* ("as if" the employee was the parent).

### **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. Eligible part-time employees will have the number of hours worked, on average, over a two-week period, of paid sick leave available to use for the qualifying reasons above.

For part-time employees with varying hours, to such an extent that the hours worked cannot be determined with certainty, 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,

## **CITY OF CALEXICO FMLA Leave Expansion & Emergency Paid Sick Leave Policy (Coronavirus)**

- 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 the employee's regular rate of pay, 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.

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 before using any other accrued paid time off for the qualifying reasons stated above.

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 their department manager or HR of the need and specific reason for leave under this policy. A form will be provided to all employees for certifying the leave request. Verbal notification will be accepted until practicable to provide written notice.

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.

**Employees may be requested to provide medical certification or a medical note supporting the need for leave under appropriate circumstances but will not be required when not practicable to obtain.**

### **Carryover**

Paid emergency sick leave under this policy will not be provided beyond December 31, 2020. Any unused emergency paid sick leave 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 use of leave under the policy or any request to use leave under this policy.

Please contact the HR department with any questions.

**RESOLUTION NO. 2020 – \_\_\_\_\_**

**A RESOLUTION ADOPTING THE CITY OF CALEXICO FMLA LEAVE EXPANSION AND EMERGENCY PAID SICK LEAVE POLICY (CORONAVIRUS)**

Resolution adopting the FMLA Leave Expansion and Emergency Paid Sick Leave Policy.

WHEREAS, the U.S. Department of Labor announced new action regarding how American workers and employers will benefit from the protections and relief offered by the Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Act; and

WHEREAS, both the Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Act are part of the Families First Coronavirus Response Act; and

WHEREAS, the law enables employers to keep their workers on their payrolls, while simultaneously ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus; and

WHEREAS, the leave provisions are in effect from April 1, 2020 through December 31, 2020; and

WHEREAS, the Emergency Paid Sick Leave Act (EPSLA) requires that the City provide up to 80 hours of paid sick leave to employees who need to take leave from work for certain specified reasons related to COVID-19 as follows

:

- The employee or someone the employee is caring for is subject to a government quarantine order or has been advised by a health care provider to self-quarantine
- The employee is experiencing COVID-19 symptoms and is seeking medical attention; or
- The employee is caring for his or her son or daughter whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19; and

WHEREAS, additional leave protection is provided in the Emergency Family and Medical Leave Expansion Act (EFMLEA), which requires the City to provide up to ten weeks of paid, and two weeks unpaid, emergency family and medical leave to eligible employees if the employee is caring for his or her son or daughter whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19.

NOW, THEREFORE, BE IT RESOLVED

We, the City of Calexico approve the FMLA Leave Expansion and Emergency Paid Sick Leave Policy in accordance with Federal Guidelines.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Calexico held on June 3, 2020 by the following vote:

AYES:

NOES:

ABSENT:

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BILL HODGE, MAYOR

ATTEST:

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GABRIELA GARCIA, CITY CLERK

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL ) SS.  
CITY OF CALEXICO )

I, GABRIELA GARCIA, CITY CLERK OF THE CITY OF CALEXICO, DO HEREBY CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 2020- \_\_\_\_\_ , WAS DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CALEXICO ON THIS 3<sup>rd</sup> DAY OF JUNE, 2020 BY THE FOLLOWING VOTE TO WIT:

AYES:

NOES:

ABSENT:

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CITY CLERK

SEAL