

ADMINISTRATIVE POLICY 3-33 Family and Medical Leave Expansion Policy

SUBJECT: Emergency Family and Medical Leave Expansion Act (hereinafter, "Act")

PURPOSE: To establish leave policy and procedures in accordance with the Act.

I. PURPOSE OF THE ACT

The Act identifies a new reason for eligible employees to take job-protected FMLA leave. Specifically, eligible employees who are unable to work (including telework) may take leave for the purpose of caring for a son or daughter under 18 years of age whose school or childcare provider has been closed or is unavailable due to the COVID-19 emergency.

II. EFFECTIVE DATES OF THE ACT

The Act is effective April 1, 2020 through December 31, 2020.

III. ELIGIBILITY REQUIREMENTS

Eligible employee means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested. **Eligible employee does not include certain health care providers and emergency responders.**

NOTE: For purposes of the Act, the United States Department of Labor has provided guidance regarding which employees are emergency responders, and thus excluded from expanded family and medical leave by their employer under the Act. Such exclusions are as follows: an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

Public Health Emergency means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

Son or daughter: For purposes of the Act, the United States Department of Labor has provided guidance stating that under the Act, a "son or daughter" is the employee's own child, which includes the employee's biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee is standing in loco parentis (meaning someone with day-to-day responsibilities to care for or financially support a child).

In light of Congressional direction to interpret definitions consistently, the USDOL has also clarified that under the Act, a "son or daughter" is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability. *Note: If your situation is "in loco parentis" or caring for an adult son or daughter under the above-referenced conditions, please contact Human Resources for further clarification of eligibility under the Act.*

Childcare provider means a provider who receives compensation for providing child-care services on a regular basis, including an eligible childcare provider.

School means an elementary school or secondary school.

IV. NOTICE AND DESIGNATION OF FMLA

In any case where the necessity for leave is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.

V. EFFECT ON PAY AND ACCRUED LEAVE

- A. *Unpaid Leave for Initial 10 days.* The first 10 days for which an employee takes leave may consist of unpaid leave. An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave but may not be required to do so.
- B. *Paid Leave for Subsequent Days.* An employer shall provide paid leave to an employee after the initial 10-day period outlined in paragraph (A) above. Employer will then provide up to ten (10) weeks total paid leave beyond the initial 10 days. Paid leave shall be calculated based on:
 1. An amount that is not less than two-thirds (2/3) of an employee's regular rate of pay; and
 2. The number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under (c) below); and
 3. **In no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.**
- C. *Varying Schedule Hours Calculation.* 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 such employee had not taken leave, the employer shall use the following in place of such number:
 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 takes such leave, including hours for which the employee took leave of any type.
 2. If the employee did not work over such 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.

VI. DOCUMENTATION

The employer may require the employee to provide documentation in support of the employee's expanded family and medical leave taken to care for the employee's son or daughter whose school or place of care is closed, or child care provider is unavailable due to COVID-19 related reasons. The employer may also require additional documentation as required to certify any condition related to the use of leave under this policy and the Act.

VII. RETURN FROM FAMILY/MEDICAL EXPANSION LEAVE

Employees returning from FMLA leave generally have the right to return to the same or an equivalent position.

VIII. ADDITIONAL INFORMATION

This policy and/or the Act does not entitle an employee to benefits in the event the employee is furloughed.

This policy is intended to provide guidance regarding an employee's use of leave under the Emergency Family and Medical Leave Expansion Act. Employees are encouraged to read the Act for further guidance and/or to read the United States Department of Labor's guidance regarding rights and obligations of employers and employees. Employees are also encouraged to read the Emergency Paid Sick Leave Policy and Telework Policy.

An employee may take a TOTAL of 12 workweeks leave for FMLA and expanded family and medical leave reasons during a 12-month period. Any leave taken under this policy and the Act will count against the employee's TOTAL entitlement to FMLA leave.

REFERENCES: Emergency Family and Medical Leave Expansion Act; United States Department of Labor Guidance

RECISSION: No previous version of this policy has been published.

EFFECTIVE DATE: April 1, 2020



Michael Cleghorn
City Manager