

*AS A CITY EMPLOYEE, HOW AM I EFFECTED BY REDUCED CITY SERVICES, EMERGENCY PAID SICK
LEAVE
AND FMLA LEAVE EXPANSION?*



Questions & Answers

1. **IS THE CITY OF SANTA ANA CURRENTLY UNDER OR SUBJECT TO A FEDERAL, STATE, OR LOCAL QUARANTINE OF ISOLATION ORDER RELATED TO COVID-19?** **No.** In the interest of public and employee health and safety, in an effort to slow the spread and not expose employees or the public to the virus, the City has closed to the public and is only performing essential functions. **The Department of Labor has defined that this must be a valid qualifying reason based on an employee's own health or situation and caring for an individual who is subject based on their own health or situation.**
2. **WHAT IS THE PURPOSE OF THESE NEW LEAVES?** The purpose of the Families First Coronavirus Response Act (FFCRA) and to assist employees affected by the COVID-19 outbreak with emergency paid sick leave and job-protected leave.
 - a. Effective from April 1, 2020 until December 31, 2020.
 - b. There are two types of leave under the FFCRA:
 - i. **EMERGENCY PAID SICK LEAVE** - creating a new paid leave entitlement for employees who satisfy one of six qualifying reasons.
 - ii. **EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION** - provides one additional qualifying reason for leave under the FMLA and provides for paid leave during the period specified.
 - c. **HOW DOES THIS RELATE TO CURRENT FMLA?** Existing FMLA leave policy still applies to the reasons for leave covered under that policy. Leave provided under the Emergency Family and Medical Leave Expansion will run concurrent to the leave entitlements provided under the FMLA.
3. **DEFINITIONS – JUST TO BE CLEAR:**
 - a. **"CHILD"** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.
 - b. **"CHILDCARE PROVIDER"** means a provider who receives compensation for providing childcare services on a regular basis, including:
 - 1) a center-based childcare provider
 - 2) a group home childcare provider
 - 3) 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)
 - 4) other licensed¹ provider of childcare services for compensation
 - 5) 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.
 - c. **"SCHOOL"** means any public or nonprofit private school of high school grade or under and any public or licensed nonprofit private residential childcare institution.
4. **WHAT IS EMERGENCY PAID SICK LEAVE AND WHO IS ELIGIBLE TO RECEIVE IT?**
 - a. This leave applies to all City employees except those who qualify as "emergency responders" and/or "health care providers".
 - b. All eligible employees who are unable to work (or telework) due to one of the following qualifying reasons are entitled to Emergency Paid Sick Leave:
 - 1) The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19, **for the employee's own health or situation.**

¹ Regulated, or registered under State law as described in section 9858(c)(2)(F) of USC Title 42- The Public Health and Welfare, Chapter 105-Community Services Programs Subchapter II-B-Child Care and Development Block Grant

- 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, **for their own health or situation** 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 (or 18 and over and incapable of self-care because of a mental or physical disability) 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. *(To date the Department of Labor has not been notified of a similar condition that has been specified).*

5. HOW MUCH PAID SICK LEAVE COULD I RECEIVE?

- a. All eligible full-time employees are entitled up to 80 hours of paid sick leave available to use exclusively for the qualifying reasons provided above.
- b. Eligible part-time employees are entitled to an amount of leave based on the average number of hours worked during a two-week period as determined by a six-month look back.
- c. Eligible employees with varying schedules are entitled to an amount of leave based on the average number of hours worked per day over the prior six-months multiplied by fourteen (14).

6. WHAT WOULD MY PAY BE UNDER THIS LEAVE? Except for those who qualify as “emergency responders” and/or “health care providers”:

- a. For leave taken for reasons 1-3 described above, paid emergency sick leave will be paid at the employee's regular rate of pay, subject to the limits described below.
- b. For leave taken for reasons 4-6 described above, paid emergency sick leave will be paid at two-thirds the regular rate of pay.
- c. Pay will not exceed:
 - 1) \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above; and
 - 2) \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

7. HOW DOES THIS WORK WITH MY OTHER LEAVE ACCRUALS? 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 expanded FMLA leave, which is unpaid.

8. HOW DO I REQUEST TO USE THIS 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 initially, but employees will need to provide documentation in support of leave, and must include a signed statement containing the following information:

- a. the employee's name;
- b. the date(s) for which leave is requested;
- c. the COVID-19 qualifying reason for leave; and
- d. a statement representing that the employee is unable to work (or telework) because of the COVID-19 qualifying reason.

Additional documentation may be required depending on the COVID-19 qualifying reason.

9. WHAT IS FAMILY AND MEDICAL LEAVE EXPANSION AND WHO IS ELIGIBLE TO RECEIVE IT?

- a. This leave applies to all City employees who have been employed by the City for at least 30 calendar days prior to making the request to use such leave, except employees who qualify as “emergency responders” and/or “health care providers”.

- b. 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 (or 18 and over and incapable of self-care because of a mental or physical disability) 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.
- c. Emergency Responders as classified by the Department of Labor are excluded from this leave as stated below.

"...an emergency responder is 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."²

10. HOW LONG DOES THIS LEAVE LAST? Employees will have up to 12 weeks of leave to use from April 1, 2020 through December 31, 2020, for the qualifying reason described above. This is an additional qualifying reason for leave, and not an additional leave entitlement. Therefore, this leave runs concurrent with regular FMLA leave usage, and does not supplement the 12 weeks to which employees are entitled under the FMLA. If you have already used 12 weeks of FMLA in the 12-month period, you are not eligible to use this leave until such time as you have additional FMLA leave.

11. WHAT IS THE PAY RATE AND CAN I USE MY REGULAR LEAVE ACCRUALS TO MAKE A FULL PAY CHECK? 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. During this time, the employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act, as explained above. 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.

12. WILL I STILL BE ABLE TO USE MY MEDICAL BENEFITS? 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 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.

13. HOW DO I REQUEST TO USE THIS LEAVE? All employees requesting FMLA leave must contact BASIC FMLA (City's third party FMLA provider) of the need for leave to HR as soon as practicable. Employees must call the automated IVR line **1-877-720-6032** or access <https://absence.basiconline.com> and provide the **IVR# 877-720-6032** and the **employee's City ID** number. BASIC FMLA will comply with the legal requirements of providing the employee with any Department of Labor (DOL) required notices. Verbal notification will be accepted by BASIC initially, but employees will need to provide documentation in support of leave, and must include a signed statement containing the following information:

- a. the employee's name;
- b. the date(s) for which leave is requested;
- c. the COVID-19 qualifying reason for leave; and
- d. a statement representing that the employee is unable to work (or telework) because of the COVID-19 qualifying reason.

Additional documentation may be required depending on the COVID-19 qualifying reason and the FMLA reason for such leave.

² 3/31/2020 - Families First Coronavirus Response Act: Questions and Answers | U.S. Department of Labor

14. WHAT WILL MY JOB BE WHEN I RETURN FROM 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.

15. IS THERE ANOTHER WAY THAT I CAN GET PAID WHILE I'M OFF FROM WORK DURING THIS TIME? You may be eligible to collect Unemployment or Underemployment through the State of California. The links below will take you to the Employment Development Department (EDD) website for more information.

- General Information: <https://www.edd.ca.gov/unemployment/>
- Eligibility Information: <https://www.edd.ca.gov/unemployment/Eligibility.htm>
- How to file a claim: https://www.edd.ca.gov/unemployment/Filing_a_Claim.htm

In addition, due to the call volume that the EDD is currently receiving, your best bet is to file your claim on-line by using the UI Online link below.

- UI Online: https://www.edd.ca.gov/Unemployment/UI_Online.htm

The City will continue to update this Q&A should the U.S. Department of Labor issue rules and provides direction relevant to the effective administration of the FFCRA's paid leave requirements.

Department of Labor FFCRA Resources:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

<https://www.dol.gov/agencies/whd/fmla/pandemic>

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Webinar:

<https://dolwhd.cosocloud.com>