



May 13, 2020

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CAROLYN EMERY
EXECUTIVE OFFICER

TO: Local Agency Formation Commission

FROM: Executive Officer
Legal Counsel

SUBJECT: OC LAFCO Policy for the Emergency Family and Medical Leave Act and Emergency Paid Sick Leave

BACKGROUND

On March 18, 2020, the President of the United States signed into law the Families First Coronavirus Response Act (FFCRA). Effective April 1, 2020, the FFCRA provides Emergency Paid Sick Leave (EPSL) and expanded paid leave under the Family and Medical Leave Act (FMLA) for COVID-19 related absences through December 31, 2020. The FFCRA provides the following:

- **Emergency Family and Medical Leave Act (EFMLA)** - Employees with 30 days of service are entitled to 12 weeks of EFMLA, the final ten weeks of which will be paid at two-thirds of the employee's regular rate of pay, if an employee is off work to care for a child whose school or childcare facility is closed because of COVID-19.
- **Emergency Paid Sick Leave (EPSL)** - Full-time employees are entitled to 80 hours of paid sick leave. Employees shall receive their regular rate of pay when quarantined or seeking a COVID-19 diagnosis, and employers have the option of capping such pay at \$511 per day, and a \$5,110 total maximum. Employees shall receive two-thirds of their regular rate of pay when caring for someone quarantined or when caring for a child whose school or childcare facility is closed because of COVID-19, and employers have the option of capping such pay at \$200 a day, and a \$2,000 total maximum.

DISCUSSION

To ensure that OC LAFCO is complying with this recently enacted federal law, a temporary policy has been prepared by the agency's legal

counsel, in consultation with the Executive Officer (Attachment A). The policy is intended to assist OC LAFCO employees affected by specific circumstances of the COVID-19 pandemic with job-protected leave and emergency paid leave. The proposed policy includes the following key recommendations for the Commission's consideration:

Emergency Family and Medical Leave Act (EFMLA)

- Eligible employees who qualify for EFMLA under the FFCRA shall receive twelve weeks of EFMLA due to a need to care for a child whose school or childcare facility is closed, and there is no suitable person available to care for the child because of COVID-19. The first two weeks shall be unpaid, and the final ten weeks will be paid at two-thirds of the employee's regular rate of pay.
- The leave may be used from April 1, 2020 through December 31, 2020, and employees may use their accrued leave during the first two weeks and to address any difference between the two-thirds of pay and their regular rate of pay during this time. Employees may also use the paid leave provided under the Emergency Paid Sick Leave Act.
- Other than limiting pay to two-thirds of the employee's regular rate, OC LAFCO will not apply the daily and aggregate capping options provided for in the FFCRA for EFMLA. Not applying the capping options and allowing the use of accrued leave will allow for equity to all employees that are directly impacted by the circumstances of COVID-19. Currently, telecommuting is available to all OC LAFCO employees, and employees will be encouraged to telecommute when possible instead of using accrued leave.

Emergency Paid Sick Leave (EPSL)

- Eligible full-time employees shall receive 80 hours of EPSL at their regular rate of pay for any EPSL qualifying leave (e.g., quarantine, to care for a child whose school has closed).
- Extra-Help employees will receive an amount of EPSL hours tied to their regular work schedule, as determined by the FFCRA and at their regular rate of pay for any EPSL qualifying leave.
- OC LAFCO will not apply the two-third pay for leave for certain EPSL reasons or the daily and aggregate financial caps provided by the FFCRA for EPSL due to the complexity of the County Auditor-Controller's administering of the cap as the Commission's payroll agent. This is consistent with how the County is administering these leaves for its employees. Any EPSL granted to employees is in addition to any existing leave balances.
- The terms and conditions of EPSL will otherwise be governed by the FFCRA and any relevant regulations.

If the Commission approves this policy, the Executive Officer will coordinate with the County Auditor-Controller on establishing the necessary systems for processing any approved requests involving EFMLA and EPSL as provided by the FRCRA, Commission policy and any other relevant regulations.

RECOMMENDATION

Staff recommends that the Commission:

1. Approve the OC LAFCO Policy for the Emergency Family and Medical Leave Act and Emergency Paid Sick Leave

Respectfully submitted,



CAROLYN EMERY



SCOTT C. SMITH

Attachment A: OC LAFCO Policy for the Emergency Family and Medical Leave Act
and Emergency Paid Sick Leave



FMLA Leave Expansion and Emergency Paid Sick Leave Policy **(Coronavirus)**

(Adopted: May__, 2020)

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 FFCRA contained both the Emergency Family and Medical Leave Expansion Act, expanding and providing an additional reason for leave under the FMLA, and the Emergency Paid Sick Leave Act, creating a new paid leave entitlement. All other applicable leave policies still apply. This policy may be updated based on additional guidance from the Department of Labor (DOL).

Family and Medical Leave Expansion

Employee Eligibility

All employees who have been employed with Orange County Local Agency Formation Commission (OC LAFCO) for at least 30 calendar days.

Qualifying Reason for Expanded FMLA Leave

Eligible employees who are unable to work (or telework) due to a need to care for a child because the school or place of care has been closed, or the regular childcare provider is unavailable due to a public health emergency related to COVID-19, and there is no suitable person available to care for the child.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, a child of a person standing in loco parentis who is under 18, or a child who is 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
- the eligible childcare provider need not be compensated or licensed if he or she is a family member or friend, such as a neighbor, who regularly cares for the employee’s child

“School” means an elementary or secondary school.

**Duration of Expanded FMLA Leave**

Employees will have up to 12 weeks of leave to use from April 1, 2020 through December 31, 2020, for the qualifying reason for leave, stated above.

Pay During Expanded FMLA Leave

Leave will be unpaid for the first 14 calendar days of leave; however, employees may use any accrued 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 14 calendar 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.

For part-time and extra-help 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.

Employees may, at their option, elect to use other available accrued leave on a pro rata basis, to supplement this pay up to full pay.

Employee Status and Benefits During Expanded FMLA Leave

While an employee is on leave, OC LAFCO 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, OC LAFCO 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 County of Orange Payroll department. These provisions are the same as for all other FMLA leave, as described in the current FMLA Policy.

Procedure for Requesting Expanded FMLA Leave

All employees requesting expanded FMLA leave must provide written notice, where possible, of the need for leave to the OC LAFCO Executive Officer as soon as practicable. A form will be provided to all employees for documenting the leave request. Verbal notice will initially be accepted but only until written notice can be provided within a reasonably practicable time.

The notice the employee provides should include: a brief statement as to the reason for leave; the expected duration of leave; the name of the child being cared for; the name of the school, place of



care, or childcare provider that has closed or become unavailable; and a representation that no other suitable person is available to care for your child during the period of leave requested.

On a basis that does not discriminate against employees on expanded FMLA leave, the OC LAFCO Executive Officer may require an employee on expanded FMLA leave to report periodically on the employee's status and intent to return to work.

Employee Status After Expanded FMLA Leave

Generally, an employee who takes expanded FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. However, under certain circumstances if the position no longer exists, the employee would not be entitled to return.

Please contact the OC LAFCO Executive Officer at (714) 640-5100 with any questions.

Emergency Paid Sick Leave

Emergency Paid Sick Leave (EPSL), as described below will be available for use beginning April 1, 2020.

Eligibility

All full-time, part-time and extra-help 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. For this reason, the term "individual" includes an immediate family member, person who regularly lives in the employee's home, or other person with whom the employee has a relationship that creates an expectation that the employee would provide care for that person.
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, for reasons related to COVID-19, and no other suitable person is available to care for the child.
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, or a child who is incapable of self-care because of a mental or physical disability.

In accordance with the FFCRA, an employee is not eligible for and may not take EPSL when there is no work for the employee.

Amount of EPSL

All eligible full-time employees will have up to 80 hours of EPSL available to use for the qualifying reasons above. Eligible part-time and extra-help employees will have the number of hours worked, on average, over a two-week period, of EPSL 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,
- 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

EPSL will be paid at the employee's regular rate of pay.

Interaction with Other Paid Leave

The employee may use EPSL 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 EPSL during the first 14 calendar days of normally unpaid expanded FMLA leave.

Procedure for Requesting EPSL

Employees must notify their supervisor or the Executive Officer of the need and specific reason for leave under this policy. A form will be provided to all employees for documenting the leave request. Verbal notification will be accepted until practicable to provide written notice.

Once EPSL has begun, the employee and his or her supervisor/Executive Officer must determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive EPSL.



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

Carryover

EPSL under this policy will not be provided beyond December 31, 2020. Any unused EPSL will not carry over to the next year or be paid out to employees.

Job Protection

No employee who appropriately utilizes EPSL 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 Executive Officer at (714) 640-5100 with any questions.