



TOWN OF FAIRFAX

STAFF REPORT

January 20, 2021

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Authorize the extension of the deadline for employees to use the Federal COVID-19 Emergency Family and Medical Leave to September 1, 2021

RECOMMENDATION

Authorize the Town Manager to extend the deadline for employees to use the Federal COVID-19 Emergency Family and Medical Leave to September 1, 2021 with the ability of the Town Manager to extend the leave to December 31, 2021 if conditions warrant it.

DISCUSSION

In 2020, Congress adopted the Families First Coronavirus Response Act (FFCRA) which created temporary federal regulations to assist employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. These temporary policies were in effect from April 1, 2020 through December 31, 2020. The FFCRA contained both the Emergency Family and Medical Leave Expansion Act (FMLA), 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 Town leave policies.

For reference, attached is the memo distributed to Town employees in April 2020 regarding the federal policy. In summary, the policy expands FMLA to allow employees to have up to 12 weeks of leave to use and/or provides for up to 80 hours of paid emergency sick leave. Employees must meet one of the qualifying reasons in order to use either leave, such as being quarantined or caring for a child under 18 because their school or childcare facility closed. These emergency leave policies expired December 31, 2020.

While a few part-time and/or full-time employees have used some or all of this emergency sick leave available to them, most employees have not used the leave, and only one has used the expanded FMLA leave. Given that COVID-19 conditions that led to the creation of the temporary federal policies still exist, we are recommending the extension of the temporary policy until September 1, 2021 with the ability of the Town Manager to administratively extend the deadline until December 31, 2021, if conditions warrant it. We chose September 1, 2021 as the expiration date because presumably school would be back in session by September.

The recommendation does not increase the number of emergency leave hours available to staff. It only extends the expiration date from December 31, 2020 to September 1, 2021. In other words, those staff who have used all or a portion of the emergency sick leave would not receive an additional allocation of leave. The Town has the ability grant additional leave. If the Council desires do so, staff would return in February with such authorization. Many other Marin agencies have extended the use of the leave, but did not allocate additional hours.

FISCAL IMPACT

This leave is in addition to other leave (e.g., sick, vacation) available for use by staff. Some staff have minimal sick and vacation leave balances, and this leave allows staff to be paid for leave taken for one of the qualifying reasons such as being quarantined. Due to the unpredictable nature of COVID-19, it is difficult to estimate the potential impacts of extending the leave.

ATTACHMENT

Memorandum dated April 1, 2020



TOWN OF FAIRFAX

Memorandum

April 1, 2020

FMLA Leave Expansion and 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 of the Town of Fairfax (“the Town”) will be in effect from April 1, 2020 until December 31, 2020. The FFCRA contained 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 Town 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.

Family and Medical Leave Expansion

Employee Eligibility

All employees who have been employed with the Town for at least 30 calendar days.

- A. *This FMLA policy does not apply to* Town law enforcement personnel (both sworn and non-worn).
- B. The Town reserves the right to disallow the use of this leave by an employee who is designated, by the Town Manager, an Essential Disaster Service Worker, who has a skill needed to provide aid in a declared emergency or to maintain vital Town services and that no other Town employee can perform the task in the manner and time required by the declared emergency or to maintain the vital Town service.

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.

Pay During Leave

Leave will be unpaid for the first 10 days of leave; however, employees may use any accrued paid vacation, sick, compensatory time off, special Covid-19 administrative leave, floating holidays, or administrative 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. Employees may at their option elect to supplement leave with any available accrued paid leave, up to their full pay.

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 Town 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 Town 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 Town 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.

Please contact the HR department with any questions.

Emergency Paid Sick Leave

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

Eligibility

All full- 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.

Town law enforcement personnel (both sworn and non-sworn) are only eligible to use this Emergency Paid Sick Leave for reasons 1 through 3 as stated above.

The Town reserves the right to restrict the use of this leave to an Essential Disaster Service Worker, as defined in this memo, to only reasons 1 through 3 above.

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,
- 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.

Employees, at their option, can supplement with accrued paid leave (including sick leave, vacation, compensatory time off, floating holidays, special Covid-19 administrative leave, and administrative leave)

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/Town Manager with any questions regarding this memorandum.