

County of Santa Clara

Employee Services Agency

Agency Administration

County Government Center, East Wing
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San Jose, California 95110-1705



DATE: April 6, 2020

TO: Agency/Department Heads
Executive Leadership Group
Departmental Human Resources Liaisons
Departmental Timekeepers

FROM: John P. Mills, Director, Employee Services Agency

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SUBJECT: UPDATED COVID-19 GUIDANCE FOR LEAVES AND TIMEKEEPING

The County of Santa Clara will continue to provide vital services to ensure the health and safety of the community, while also addressing the needs of County employees serving the public at this most critical time. Just one month ago, no one could have predicted the impact of this unprecedented world event, and the extraordinary measures that would be necessary from everyone to meet this challenge head on.

As the situation continues to evolve and new information becomes available, the County workforce will need to adapt. The following guidance supersedes previous guidance regarding employee timekeeping and optional benefits for eligible employees. This guidance addresses the Families First Corona Virus Response Act (FFCRA), which provides for two new types of paid leave: Emergency Paid Sick Leave and Expanded Family and Medical Leave.

Emergency Paid Sick Leave

In conformance with the FFCRA (HR 6201) provisions related to Emergency Paid Sick Leave, the County is providing the following benefits, which in many circumstances exceed the requirements of the FFCRA. The County shall provide eligible employees with 80 hours of Emergency Paid Sick Leave pursuant to this policy. This leave will not be capped by dollar amount nor by reason for use. In other words, no per day caps of \$511 or \$200, and no reduction to two-thirds of pay for use, will apply. Part-time and Extra Help employees should not be permitted to use more Emergency Paid Sick Leave than their normally scheduled hours during any pay period. For example, a twenty-hour part-time employee should receive twenty of their 80 hours each week for four weeks.

If not used for a qualifying purpose, the 80 hours of Emergency Paid Sick Leave will expire on December 31, 2020. These hours are not subject to sick leave payout provisions as part of any labor agreements or County Ordinance Code.

All active employees, including healthcare providers and emergency responders, will be provided with 80 hours of Emergency Paid Sick Leave for the reasons set forth below.

When is an Employee Entitled to Use County Emergency Paid Sick Leave?

County employees are eligible for Emergency Paid Sick Leave for the following reasons:

- An employee tests positive for COVID-19 and has not yet been deemed released to return to work;
- An employee under a COVID-19-related quarantine order when experiencing symptoms;
- An employee under a COVID-19-related quarantine order due to exposure;
- An employee under a COVID-19-related quarantine order due to underlying health conditions;
- When the County sends an employee home because the employee was potentially exposed to COVID-19, so that the employee can self-quarantine and seek medical care if necessary;
- When an employee is experiencing symptoms of COVID-19 and is seeking medical care;
- To provide childcare to the employee's minor children due to closure of schools or childcare facilities, when telecommuting/working from home is not feasible. The County has contracted with childcare facilities to provide childcare services, which essential employees are encouraged to utilize.

Medical verification/copies of quarantine orders or other verification will be required.

Can Emergency Paid Sick Leave be integrated with State Disability Insurance (SDI)?

Yes, employees receiving SDI for a COVID-19-related reason may integrate their 80 available hours of Emergency Paid Sick Leave. Employees should contact their Employee Service Center to determine the appropriate number of hours to integrate each pay period.

Will Part-time and Extra Help/Temporary employees receive Emergency Paid Sick Leave?

Yes, all active employees, regardless of code status, will receive 80 hours that may be used for COVID-19-related absences.

What if an employee is absent for a reason unrelated to COVID-19?

Employees should use other appropriate accrued leave to cover absences not related to COVID-19. Pursuant to the County Executive's previous guidance, Departments should not grant certain leave requests—for example, a discretionary vacation—during the pandemic outbreak. If you are unsure if your request for leave is related to COVID-19, you should ask your manager/supervisor or contact your department's Employee Service Center.

Expanded Paid Family & Medical Leave Under the FFCRA

As amended, the Expanded Paid Family & Medical Leave Act (EPFMLA) adds a new qualifying reason for leave: the need to care for a child under age 18 because of school and daycare closures related to COVID-19. Eligible employees may access 12 weeks of paid leave, which

includes (i.e., runs concurrently with) the Emergency Paid Sick Leave for the first two weeks. For the remaining 10 weeks of eligibility, per the provisions of amended EPFMLA, the employee will receive two-thirds of their rate of pay for their regular schedule, with caps of \$200 per day and \$10,000 total. In recognition of the amended EPFMLA, the County will implement this two-thirds paid leave but will allow integration of leave to achieve full pay. The benefits under the amended EPFMLA expire on December 31, 2020.

Who is eligible for benefits under the Expanded Paid Family and Medical Leave Act (EPFMLA) leave?

Healthcare Providers and Emergency Responders are exempt from EPFMLA that is contained in the federal Families First Corona Virus Response Act (FFCRA). Please note, however, that any employee may be eligible for regular FMLA (which is not paid) if they are sick with COVID-19 or are caring for a qualified family member who is sick with COVID-19, since symptomatic COVID-19 may be a “serious health condition.” Employees are only eligible to receive a total of 12 weeks of FMLA, regardless of the qualifying reason for leave. The EPFMLA does not provide for an additional 12 weeks of leave.

Who is a Healthcare Provider?

For the purposes of employees who may be exempted from expanded family and medical leave by their employer under the FFCRA, a healthcare provider is anyone employed at any doctor’s office, hospital, healthcare center, clinic, post-secondary educational institution offering healthcare instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home healthcare provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes not only medical professionals, but other workers who are needed to keep hospitals and similar health facilities well supplied and operational. This also includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to those provided at hospitals and other such health facilities.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19-related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

Who is an Emergency Responder?

For the purposes of employees who may be excluded from expanded family and medical leave by their employer under the FFCRA, 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. 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.

How does the County determine who is eligible?

Please see the attached list of classifications that are exempt from the expanded family and medical leave provisions. Classifications/positions not included on this list will be reviewed on a case-by-case basis.

If an employee already used 12 weeks of FMLA in the last 12 months, are they eligible for benefits under expanded FMLA?

No, employees who have exhausted 12 weeks of FMLA leave in the last 12 months are not eligible for expanded FMLA but are eligible for Emergency Paid Sick Leave.

If an employee used a portion of the 12 weeks of FMLA in the last 12 months, are they eligible for benefits under expanded FMLA?

Yes, employees who have exhausted only a portion of the 12 weeks of FMLA leave in the last 12 months are eligible, but only for the remaining hours/the balance of the 12 weeks remaining for this benefit. Similarly, going forward, use of FMLA now (for any qualifying reason) limits future eligibility for FMLA depending on how many hours the employee has used of the 12-week benefit.

Can the expanded FMLA be used intermittently?

The expanded FMLA benefits may be used intermittently only for a regularly occurring weekly schedule mutually agreed upon between the employee and the manager/supervisor that meets the needs of the employee and the operational needs of the Department. The Department has discretion to approve use of intermittent leave, but must do so fairly and equitably, and must not treat similarly situated employees differently. For example, if a Department has two workers in the same job classification working remotely, the Department should not grant one person use of part-time intermittent leave and deny another's request for the same, absent a legitimate, non-discriminatory reason for doing so. Departments should agree with the employee on a schedule of intermittent leave (i.e., particular hours in the day) for use it approves.

How do employees apply for the new benefits under the expanded FMLA?

Employees should charge sick leave on their timecard through the normal process, subject to approval by their manager/supervisor. For use of the expanded FMLA benefit, employees should consult with their manager/supervisor and their department's Employee Service Center.

Medical verification/copies of quarantine orders or other verification will be required.

What options are available for employees who are not eligible for expanded FMLA but cannot work due to closure of schools or daycare facilities?

Childcare is being offered by the County for those employees who are continuing to provide essential services to the community.

Effective Monday, April 6, 2020:

- Extra Help/Temporary employees who exhaust all paid leave, including Emergency Paid Sick Leave, may be furloughed without pay, as determined by the Department Head. These employees should be advised to apply for Unemployment Insurance benefits through the State of California Employment Development Department (EDD).
- Eligible employees who are absent from work for childcare purposes and cannot telecommute/work from home should:
 - Utilize Emergency Paid Sick Leave allowance
 - Apply for expanded FMLA
 - Utilize the free childcare services provided by the County
 - Apply for Unemployment Insurance
- Employees who are under COVID-19 related quarantine/self-quarantine, or who are experiencing symptoms or have received a positive test result and are not otherwise cleared to return to work, should:
 - Utilize Emergency Paid Sick Leave allowance
 - Apply for FMLA
 - Apply for SDI
 - Submit a Workers' Compensation claim, if illness is work related
- Employees who fail to provide appropriate medical documentation of COVID-19-related reasons to quarantine/self-quarantine/experiencing symptoms and/or positive test result, and are not otherwise cleared to return to work, or who do not provide documentation verifying school/daycare closure, may be required to use existing leave accruals to remain in paid status during any absences.
- Absences due to illness or injury unrelated to COVID-19 should be treated as normal requests for leave (sick accruals, FMLA, etc.).
- Requests for time off for personal reasons should be treated as normal requests for leave (vacation, comp-time, Personal Leave, PTO, etc.), subject to the operational needs of the Department.

Attachment: Healthcare Provider and Emergency Responder Classifications Exempted from Expanded Paid Family and Medical Leave