

**City of Tacoma**  
**Families First Coronavirus Response Act Policy**

**Expanded FMLA Coverage**  
**City Paid Emergency Leave/Federal Emergency Sick Leave**

This policy provides City employees with temporary protected leave and paid leave benefits for certain absences arising from the COVID-19 outbreak, in accordance with the federal Families First Coronavirus Response Act (FFCRA). The benefits available under this policy are available from April 1, 2020 to December 31, 2020, and will be administered in accordance with the federal law, applicable regulations, and interpretive guidance.

The FFCRA provides for two categories of leave:

1. **Public Health Emergency Leave (“PHEL/FMLA”)** expands existing Family Medical Leave Act (FMLA) coverage to provide up to 12 weeks of partially-paid leave for eligible employees forced to miss work due to closure of their child’s school or the unavailability of the child’s childcare provider for reasons related to COVID-19.
2. **Federal Emergency Sick Leave** provides eligible employees with up to 10 days of Emergency Sick Leave for various reasons related to COVID-19.

The City is providing a Paid Emergency Leave program, effective April 1 through June 21, 2020; this program will meet, and in some respects exceed, the federal program. However, the Federal Emergency Sick Leave program is effective April 1 through December 31, 2020. During the time that the two programs overlap (April 1 through June 21, 2020) employees may receive a maximum of two weeks of paid emergency leave under either the City’s Paid Emergency Leave program or under the Federal Emergency Sick Leave program. In other words, an employee who receives two weeks of leave under one program will not be eligible to receive leave under the other program.

Details regarding each category of leave are provided in the sections below.

**1. Federal Public Health Emergency Leave (PHEL/FMLA)**

Eligibility. Employees who have worked for the City for at least 30 calendar days are eligible for PHEL/FMLA leave under the FFCRA. An employee need not meet the eligibility requirements for regular FMLA (12 months of employment and 1250 hours worked in the prior year) to be eligible for PHEL/FMLA.

Leave Entitlement. An eligible employee may take up to 12 weeks of protected leave if the employee is unable to work, or telework, based on a need to care for the

employee's child under age 18 because the child's school or place of care has been closed, or the child's child care provider is unavailable due to a public health emergency. A public health emergency means an emergency with respect to COVID-19 declared by a federal, state, or local authority. PHEL/FMLA may be taken intermittently only if approved by the City.

PHEL/FMLA is part of an employee's regular FMLA leave entitlement. Accordingly, if an employee has already used FMLA for other purposes during the FMLA leave year, the amount of available PHEL/FMLA will be reduced by the amount of FMLA leave already taken. PHEL/FMLA leave will be available through December 31, 2020.

Partial Pay Entitlement. The first 10 days<sup>1</sup> of PHEL/FMLA will be unpaid, although employees may elect to use accrued leave or Emergency Sick Leave during this period. For leave beyond the first 10 days, the City will pay two-thirds of the employee's regular pay, up to a maximum of \$200 per day or \$10,000 in the aggregate.<sup>2</sup> Pay is calculated based on the number of hours an employee would otherwise have been scheduled to work. For employees with variable hours, hours will be determined based on the average number of hours scheduled over the six-month period preceding the leave (including paid leave hours) or on a reasonable expectation at the time of hire as to the hours per day the employee would normally be scheduled to work.

Notification; Verification. Employees who need to take PHEL/FMLA leave should notify Human Resources as soon as practicable after the need for leave arises. An employee seeking PHEL/FMLA leave must submit documentation establishing a school closure or unavailability of child care (which may include a post from a school district website, email from a school or provider, etc.).

Other. This policy will be administered consistent with the City's existing Family and Medical Leave (FMLA) policy, except as modified by the FFCRA.

## **2. EMERGENCY SICK LEAVE.**

### **A. Federal Emergency Sick Leave**

Eligibility. All City employees are eligible for up to 80 hours of Federal Emergency Sick Leave. Federal Emergency Sick Leave may be fully paid or partially paid, depending on the reason for taking leave (see below).

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<sup>1</sup> For PHEL, the City will apply "10 days" as a 2-week equivalent according to a City employee's regular schedule, to ensure fair application among employees who work 8 to 10 hour days, or 12 or 24-hour shifts.

<sup>2</sup> The City will calculate this rate at a maximum of \$25 per hour in order to address differing schedules. For example, an employee who regularly works a 24-hour shift would be eligible for up to \$600 per shift, up to \$1,000 a week maximum benefit.

Covered Reasons for Using Emergency Sick Leave: Employees are entitled to use Emergency Sick Leave when they are unable to work, or telework, for any of the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. Please note: the Department of Labor has advised that a state or local “stay at home” or “shelter in place” order does not qualify under this reason (1); however, such orders may become covered under reason (6) below pending further guidance from the federal government. The City will continue to monitor federal guidance on this issue and administer this policy consistent with current guidance.
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 is seeking a medical diagnosis.
4. To care for an individual who is self-isolating for one of the reasons described in (1) or (2) above.
5. To care for the employee’s child under age 18 due to closure of the child’s school or unavailability of the child’s childcare provider due to COVID-19 precautions. A “child” is defined the same as under the FMLA; *i.e.*, a biological, adopted, de facto, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability at the time leave is to commence.
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.

Paid Leave Entitlement. Full-time employees are entitled to up to 80 hours of Federal Emergency Sick Leave. Part-time employees are entitled to the Emergency Sick Leave equal to number of hours they typically work over a two-week period. For employees with variable hours, hours will be determined based on the average number of hours scheduled over the six-month period preceding the leave (including paid leave hours) or on a reasonable expectation at the time of hire as to the hours per day the employee would normally be scheduled to work. Any Federal Emergency Sick Leave available under this policy is in addition to accrued leave to which an employee was already entitled under existing City policies or labor agreements.

Reduced Benefit for Certain Leaves; Cap on Sick Leave Amount. Where Federal Emergency Sick Leave is taken for reasons (1), (2), or (3) above (which cover leave due to the employee’s own health or quarantine), the paid sick leave benefit is equal to the employee’s regular rate of pay for the missed work time, provided that Emergency Sick

Leave is capped at \$511 per day and \$5,110 in the aggregate when leave is taken for these reasons. Where leave is taken for reasons (4), (5), or (6) above (to care for another, to care for a child due to a school closure or unavailability of childcare, or where the employee is experiencing a substantially similar condition), the paid sick leave benefit is two-thirds of the employee's regular rate of pay, provided that Federal Emergency Sick Leave is capped at \$200 per day and \$2,000 in the aggregate when leave is taken for one of these reasons.

**Expanded City Paid Emergency Leave:** (effective April 1 to June 21, 2020 only)

From April 1, 2020 to June 21, 2020 only, the City will provide up to 2 weeks of paid emergency leave to each employee who meets one of the following criteria. Paid Emergency Leave under this section will be prorated based on the employee's regularly assigned work schedule (generally up to 80 hours for a full time employee). Employees can take City Paid Emergency Leave intermittently in one-tenth of an hour increment for non-exempt employees and in full-day increments for exempt employees.

1. They are ill with symptoms associated with COVID-19 (e.g. fever, cough, or shortness of breath) and are unable to work or telework because of their illness.
2. They are under quarantine or self-isolation because they:
  - a. have a known exposure to COVID-19, or
  - b. they are a member of the COVID-19 vulnerable population due to age, medical status, or pregnancy, or
  - c. they need to care for an individual that is in a vulnerable population, and, in each instance, they are unable to telework due to the nature of their job.
3. They have childcare issues due to emergency school closures and are unable to telework due to the nature of their job. *Note: Employees who have worked for the City of Tacoma for at least 30 days are eligible to apply for Public Health Emergency Leave (PHEL).*
4. They are assigned to home and are unable to telework due to the nature of their job.

*Disclaimer: This expansion of the City's paid leave programs is in direct response to the COVID-19 pandemic and the City, State, and National declarations of emergency. This emergency enhancement of benefits is taken with the understanding that these are extenuating circumstances and will not be continued in the long term. The City reserves the right to discontinue or amend at any time those elements of this program which are more generous than required by law, should the emergency conditions change or if critical staffing levels are jeopardized.*

Use of Paid Sick Leave; Sequencing with Other Leave; Intermittent Use. Subject to the applicable conditions, employees may access Emergency Sick Leave for a covered reason before exhausting other accrued leaves. If an absence is covered by either the Emergency Sick Leave and the PHEL/FMLA policy above, the employee may elect to use Emergency Sick Leave during the first 10 days of PHEL/FMLA in order to remain in paid status.

If an employee is using Emergency Sick Leave intermittently due to a closure of a child's school or unavailability of the childcare provider, the employee may take leave intermittently only upon City approval. An employee may also use Emergency Sick Leave intermittently, upon City approval, if unable to telework their normal schedule of hours due to a qualifying reason (for example, if an employee can telework in the morning, but needs to care for a child in the afternoon due to a school closure).

Federal Emergency Sick Leave is not allowed on an intermittent basis when leave is taken for reasons (1), (2), (3), (4), or (6) above. In such cases, Federal Emergency Sick Leave must be taken in full-day increments, and once leave is initiated for one of these reasons, the employee must continue to use federal Emergency Sick Leave until either (i) the full amount of Emergency Sick Leave has been used; or (ii) the employee no longer has a qualifying reason for taking Emergency Sick Leave. The Department of Labor has explained that this requirement is imposed because if an employee is actually or possibly sick with COVID-19, or is caring for someone who is sick or possibly sick with COVID-19, the intent of the law is to provide paid leave to prevent the spread of the virus.

Carryover; Termination of Benefit. The City's Paid Emergency Leave program expires June 21, 2020. The Federal Emergency Sick Leave program expires on December 31, 2020. Any unused emergency sick leave will not be carried over to the next calendar year or merged into other leave banks. Additionally, the entitlement to either Emergency Sick Leave ceases beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick leave. However, to the extent an employee subsequently needed additional time off for another covered reason prior to December 31, 2020, the employee could use any remaining Emergency Sick Leave available for a qualifying condition.

Notification. An employee who needs to take any Emergency Sick Leave should notify their supervisor as soon as practicable. After the first workday (or portion thereof) that an employee takes Emergency Sick Leave, the employee must follow the notice requirements required for use of regular sick leave imposed by their Department or the Tacoma Municipal Code.

Verification. An employee requesting any Emergency Sick Leave must: complete the Emergency Leave Request Form and (a) specify the qualifying reason for requesting leave; (b) state that the employee is unable to work or telework, for that specified

reason; (c) provide the date(s) for which leave is requested, and (d) provide documentation supporting the leave request, if requested. (Documentation may include, for example, a copy of the federal, state or local quarantine or isolation order related to COVID-19; written documentation from a health care provider advising the individual to self-quarantine due to COVID-19; or documentation from the employee's child's school or childcare provider of closure (such as website posting or email)).

Note for Healthcare Workers and First Responders: the State of Washington Department of Labor & Industries ("L&I") is changing its policy around workers compensation coverage for healthcare workers and first responders who are quarantined by a physician or public health officer. Under the clarified policy, L&I will provide benefits to these workers during the time they're quarantined after being exposed to COVID-19 on the job.