EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

It is the policy of the City of San Jose ("City") to comply with the provisions of the Federal Emergency Family and Medical Leave Expansion Act. Rights and obligations which are not specifically addressed in this policy are incorporated in by reference.

AUTHORITIES

Emergency Family and Medical Leave Expansion Act

This expansion of the Family and Medical Leave Act is effective April 1, 2020 and ends on December 31, 2020.

Definitions

Public Health Emergency: The term “public health emergency” means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

Child Care Provider: The term “child care provider” means a provider who receives compensation for providing child care services on a regular basis. This term includes a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that is licenses, regulated, or registered under State law. Under the Families First Coronavirus Response Act, the eligible child care 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 an employee’s child.

School: The term “school” means an elementary school or secondary school as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

POLICY

A. Eligibility

Pursuant to the federal Emergency Family Medical Leave Expansion Act ("EFMLA"), an employee is eligible for leave of up to twelve (12) workweeks in a twelve (12) month period if the employee has been employed for at least thirty (30) calendar days by the City of San Jose.

The City of San Jose may elect to exclude an emergency responder from the application of the provisions in the Emergency Family and Medical Leave Expansion Act and each application from an emergency responder will be evaluated on a case by case basis. Pursuant to the Act, an emergency responder is:

[A]nyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to 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, and others as necessary as determined by the City.
personnel, 911 operators, child welfare workers and service providers, 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 whom 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.

B. Reason for EFMLA Leave

Eligible Employees may take leave if the employee is unable to work (or work remotely) due to a need to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to a public health emergency declared by either a Federal, State, or local authority.

EFMLA leave is a type of FMLA leave and is not in addition to any other FMLA leave. The benefits provided under the Emergency Sick Leave Act run concurrently with those provided under the EFMLA.

Employees who require leave for their own or a qualifying relative’s serious health condition must apply for Family Medical Leave as per the City’s Leaves of Absence Policy, CPM Section 4.2.1, and not this policy.

C. Intermittent Leave

An employee may take EFMLA only if the City approves an employee’s request to do so. The City will review requests and determine the feasibility of each request based on the employee’s job duties/assignment. For intermittent leave to be considered, the leave must be taken in whole-day increments.

D. Employee Notice and Documentation of Leave

If the need for leave for under this Policy is foreseeable, the employee shall provide the City of San Jose with notice of leave as is practicable. An Emergency Family and Medical Leave Application is required for any EFMLA leave that shall be returned to the Office of Employee Relations.

E. Unpaid and Paid Leave During EFMLA Leave

Unpaid Leave for Initial Ten (10) Days
The first ten (10) days of EFMLA may consist of unpaid leave. An employee may elect to substitute any accrued vacation leave, personal leave, or sick leave for this period of unpaid leave, including Emergency Paid Sick Leave as set forth in the LOA – Emergency Paid Sick Leave Policy, CPM Section 4.2.15.
LOA – Emergency Family and Medical Leave Expansion Act 4.2.16

Paid Leave After Initial Ten (10) Days
After the initial ten (10) days, the City of San Jose shall provide paid leave as follows:

1. an amount that is not less than two-thirds of the employee’s regular rate of pay; and

2. the number of hours the employee would otherwise be normally scheduled to work.

In no event shall the paid leave exceed $200 per day and $10,000 in the aggregate for the ten (10) weeks. Employees may supplement the two-thirds pay with their accrued leaves to achieve 100% of their regular rate of pay.*

*City’s Additional Benefit:
While the Emergency Family and Medical Leave Expansion Act allows employees to supplement their partial pay provided under the Act from accrued leave balances, the City will provide the extra benefit of administrative leave at each employee’s full pay from April 5, 2020 through June 27, 2020, for benefited employees and through May 3, 2020, for part-time unbenefted and temporary employees. In other words, employees will not need to use their accrued leave balances to make them whole during this time. The first 14-days used during this time will be designated as Emergency Paid Sick Leave. Any additional administrative leave coded will be designated as EFMLA for those who are eligible for EFMLA. Additional information regarding timekeeping is available in the Frequently Asked Questions for EPSLA and EFMLA document.

If an employee elects to supplement his or her employer paid leave for EMFLA, the order in which leave will be supplemented will be as follows: compensatory time off, vacation, personal/executive leave. Employees will only be permitted to supplement leave to make themselves whole and will not be permitted to supplement smaller amounts except in the event the employee has exhausted all available leave.

In the case an employee whose schedule varies from week to week or is less than 40 hours per week, a number equal to the average number of hours that the employee was scheduled per day over a six-month period shall be determined by the City pursuant to the Emergency Family and Medical Leave Expansion Act.

In the event that an individual employee receives more administrative leave than he or she is entitled under the City Manager’s grant of administrative leave, a timecard adjustment will be processed and any available accrued leave will be substituted, as appropriate and depending on the reason for the leave.

F. Health Benefits and Insurance Premiums

While an employee is on EFMLA 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 continued to work. The employee is responsible for his or her portion of health benefits and insurance premiums.

If accrued vacation leave, accrued sick leave, personal leave, executive leave and/or compensatory time, Emergency Sick Leave or Paid Leave as provided in this Policy are used...
during an EFMLA leave, the City will make payroll deductions to collect the employee’s portion of health benefits and insurance premiums.

Once an employee has exhausted EFMLA leave, and continues to be out on unpaid leave, the terms and conditions set forth in the Other Leaves Without Pay section of this Policy will apply to such leave.

G. Restoration to Position

Employees that take leave under this Policy are entitled to reinstatement to their prior position unless the position held by the employee does not exist due to economic conditions or other changes in operating conditions caused by a public health emergency during the period of leave.

PROCEDURES

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<thead>
<tr>
<th>Role</th>
<th>Action</th>
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<tbody>
<tr>
<td>Employee</td>
<td>Complete the <a href="mailto:employee.relations@sanjoseca.gov">Expanded Family Medical Leave Application</a>. Electronic signatures as indicated by /s/ plus the employee’s first and last name will be accepted.</td>
</tr>
<tr>
<td>Office of Employee Relations</td>
<td>Determine eligibility for leave.</td>
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<td></td>
<td>Notify employee’s timekeeper and the Finance Department’s Payroll Division.</td>
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<tr>
<td>Department Timekeeper</td>
<td>Enter appropriate leave as indicated by the Office of Employee Relations on the employee’s timecard.</td>
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Approved:

/s/ Jennifer Schembri  
Director of Employee Relations  
Director of Human Resources  
July 6, 2020  
Date

Approved for posting:

/s/ Jennifer Maguire  
Assistant City Manager  
July 6, 2020  
Date