

City of Edmonds
Families First Coronavirus Response Act Policy

This policy provides 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 beginning on April 1, 2020. This policy will be administered in accordance with the FFCRA statute and forthcoming federal regulations and guidance.

The FFCRA provides for two categories of leave. The first expands existing FMLA coverage to provide up to 12 weeks of partially-paid Public Health Emergency Leave (“PHEL/FMLA”) 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. The second provides up to 10 days of Emergency Sick Leave for various reasons related to the COVID-19 outbreak. Details regarding each category of leave are provided in the sections below.

Public Health Emergency Leave (PHEL/FMLA)

Eligibility. Employees who have worked for the Employer for at least 30 calendar days are eligible for PHEL/FMLA leave. 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 (See Telework Assessment at the end of this policy), 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 Employer.

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.

Pay Entitlement. The first 10 days 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 law requires that Employers pay two-thirds of the employee’s regular pay, up to a maximum of \$200 per day or \$10,000 in the aggregate. The City of Edmonds has chosen to pay this benefit at 100% and will not apply caps to the benefit.

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.

Emergency Sick Leave

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

Covered Reasons for Using Emergency Sick Leave: Employees are entitled to use Emergency Sick Leave when they are unable to work, or telework (See Telework Assessment at the end of this policy), 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 updated the advisement that a state or local "stay at home" or "shelter in place" order does qualify under this reason. For the purposes of Emergency Sick Leave, a quarantine or isolation order includes quarantine, isolation, containment, **shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order.***
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. Per DOL regulations "individual" means an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined. For this purpose, "individual" does not include persons with whom the employee has no personal relationship.
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, 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 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 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.

Pay Entitlement and Caps on Benefit: The law states that where leave is taken for reasons (4), (5), and (6) listed above, the benefit may be limited to no less than two-thirds the employee’s regular rate of pay and where 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. The City has chosen to provide this benefit at 100% of the employee’s regular rate of pay for all reasons covered by this law. Accordingly, the City will not be applying the daily and aggregate caps to this benefit.

Use of Paid Sick Leave; Sequencing with Other Leave; Intermittent Use. Employees may access Emergency Sick Leave for a covered reason before exhausting other accrued leaves. If an absence is covered by this Emergency Sick Leave policy 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 with the City’s approval. An employee may also use Emergency Sick Leave intermittently with Employer approval if unable to telework his/her 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). Per Department of Labor guidance, where an employee is not teleworking, intermittent use of Emergency Sick Leave is not permitted when leave is taken for reasons (1), (2), (3), (4), or (6) above. In such cases, 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 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 Emergency Sick Leave Benefit 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 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.

Notification. An employee who needs to take Emergency Sick Leave should notify Human Resources as soon as practicable. After the first workday (or portion thereof) that an employee takes Emergency Sick Leave, the employee must follow departmental notice requirements required for continued use of regular sick leave.

Verification. An employee requesting Emergency Sick Leave must: specify the qualifying reason for requesting leave; state that the employee is unable to work or telework, for that specified reason; and provide the date(s) for which leave is requested. The Department of Labor also requires that the City obtain documentation supporting the leave request. 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).

Documentation for both Public Health Emergency Leave and Emergency Paid Sick Leave. DOL regulations state that an employee seeking PHEL/FMLA or EPSL leave must provide the employer with documentation containing: (i) the employee's name; (ii) date(s) for which leave is requested; (iii) qualifying reason for the leave; and (iv) an oral or written statement that the employee is unable to work due to the qualifying reason. Depending on the type of leave being requested, DOL regulations require that an employee provide the following additional information to substantiate the leave request:

- o Where ESPL is requested due to a quarantine or isolation order, the name of the government entity issuing the order;
- o Where EPSL is requested due to the recommendation of a health care provider to self-quarantine, the name of the health care provider making the recommendation; or
- o For PHEL/FMLA leave or where EPSL is used to care for a child due to a school closure or the unavailability of a childcare provider, the employee must also provide:
 - name of the son or daughter being cared for;
 - name of the school, place of care or childcare provider that has closed or become unavailable; and
 - a representation that no other suitable person will be caring for the child during the period for which the employee is taking leave.

If the child needing care is older than 14 and the care is during daylight hours, a

statement that “special circumstances” exist requiring the employee to care for the child is required.

Telework Assessment for both Public Health Emergency Leave and Emergency Paid Sick Leave. According to DOL regulations, an employee is able to telework if: “(a) his or her Employer has work for the Employee; (b) the Employer permits the Employee to work from the Employee’s location; and (c) there are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the Employee from performing that work. **Extenuating circumstances include the need to care for a child where the child’s school or place of daycare is closed and the child being at home precludes the employee from effectively performing work remotely. In such situations the ability of the employee to work intermittently will be explored prior to any approval of a block of time off.** Telework may be performed during normal hours or at other times agreed by the Employer and Employee.”