

Notice of Policy Change

Policy: Emergency Family and Medical Leave Expansion Act Policy
Issue Date: March 31, 2020
Effective Date: April 1, 2020
Expires: December 31, 2020
Distribution: All City of Pocatello employees

Approved: Signature on file

Brian Blad, Mayor

Section 1 – Purpose

Implementation of an Emergency Family and Medical Leave Expansion Act to comply with new federal law. This law was signed into effect following the nCov19/coronavirus pandemic. (03/18/2020 Public Law No: 116-127)

Section 2 – Summary

This Emergency Family and Medical Leave Expansion Act is expressly targeted at the coronavirus and requires leave to be granted when an employee is unable to work (or telework) due to the need to care for a daughter or son under the age of 18, if that child’s elementary school, secondary school, or place of care has been closed, or if the paid “child care provider” of such son or daughter is unavailable, due to COVID-19.

The Emergency Family Medical Leave Expansion Act is 2 weeks of unpaid leave, followed by up to 10 weeks of paid Emergency FMLA leave, at 2/3 the employees regular rate of paid. However, paid Emergency FMLA leave is capped at \$200/day and \$10,000 in total.

Section 3 – Duration of Policy

Starting on April 1, 2020 employees will have Emergency Family and Medical Leave Expansion Act Policy immediately available for use. The Emergency Family and Medical Leave Expansion Act ends on December 31, 2020 and does not carry over into 2021. There is no payout benefit for an employee who does not utilize the leave by the end of the year or at termination of employment.

Section 4 - Eligibility

Any employee who has worked for the City of Pocatello for a minimum of 30 days is eligible to take leave under this policy. An employee is considered to have been employed by the City for at least 30 calendar days if they have been on the payroll for the 30 calendar days immediately prior to the day your leave would begin. For example, if you want to take leave on April 1, 2020, you would need to have been on your employer’s payroll as of March 2, 2020.

The City of Pocatello does employ emergency responder designated positions and at any time the Mayor may elect to exclude employees designated as emergency responders from this policy, this is in compliance with federal guidelines. The definition of emergency responder is listed in Section 9.

If you have already utilized FMLA leave in 2020 we will apply Department of Labor standards for length of eligibility on Emergency Family Medical Leave.

Section 5 - Costs

If an employee is taking expanded family and medical leave, the employee may take the emergency paid sick leave for the first ten working days of that leave period, or they may substitute any accrued vacation leave, comp time, admin time, or sick leave they have in accordance with City of Pocatello policy.

For the last ten weeks, the employee will be paid for their time off at an amount no less than 2/3 of your regular rate of pay for the hours they would be normally scheduled to work.

Definition of Regular Time:

The City of Pocatello will comply with the Department of Labor definition of regular time. A Fact Sheet can be found online at: <https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate>

The formula to compute the regular rate is: Total compensation in the workweek (except for statutory exclusions) ÷ Total hours worked in the workweek = Regular Rate for the workweek

Section 6 – Employee Pay Maximums

An employee will not receive more than \$200 per day or \$12,000 for the twelve weeks that include both paid sick leave and expanded family and medical leave when you are on leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

Section 7 – Policy

If you are unable to work or telework because you need to care for a son or daughter under the age of 18 because the child’s school or place of care has been closed, or the child care provider for the child is unavailable due to a public health emergency. You can take up to 12 weeks of leave.

The first 10 days of emergency FMLA is unpaid. The employee may substitute any paid time off that you have available for use, including the new Emergency Paid Sick Leave.

After the first 10 days of unpaid leave, an employee will be paid two-thirds (2/3) of their regular rate of pay under the Fair Labor Standards Act (FLSA) for the amount of hours they would have normally been scheduled to work during the week you take leave. Pay under the leave is capped at \$200 per day, and a total of \$10,000 overall. The employee may bring their pay to 100% of their regular pay by using personal accruals to supplement the 2/3.

Employees Who Work a Variable Schedule:

If your scheduled hours vary, we will use one of the following methods to determine the potential hours to be paid:

1. The average number of hours you are scheduled per day over the previous 6-month period ending on the date you requested to start leave. The average number of hours would include all paid time off taken during those 6 months.
2. If you haven’t worked for the company for 6 months, then you will be paid the average number of hours of work per day that was reasonably expected at the time the you were hired.

Impact on City Accrued Leave Pools:

Utilization Emergency FMLA will not impact leave accrual rates. The employee will continue to accrue sick leave and vacation while utilizing Emergency FMLA.

Impact on Health Benefits:

When the employee returns from leave under this policy, they will return to the same job, or one that is nearly identical (equivalent). The City will also continue health insurance benefits while the employee is on leave, paying the City's portion, the employee will still be responsible for their part of the premium.

Request Process and Documentation Required:

The City will require an employee to provide additional support for utilizing the expanded family and medical leave taken to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons.

For example, this may include a notice of closure or unavailability from the child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider. The City employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

An employee will need to request the Emergency FMLA time, HR will check eligibility and respond back to the employee. The form is available online at:

<https://pocatello.seamlessdocs.com/f/HRemergencyfmla>

Completion of the form will require an employee to designate:

- 1) if they are taking the first 2 weeks without pay or if they are using other accruals to bring their pay up the regular rate
- 2) starting week 3 the employee will designate if they are taking the 2/3, or applicable maximum, OR if they wish to supplement with other leave (which they will designate on the form)

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA if required by your employer.

Section 8: Definition of child, childcare provider, and school

- "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:
 - under 18 years of age; or
 - 18 years of age or older and incapable of self-care because of a mental or physical disability.
- "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.

Section 9: Definition of an emergency responder

If you are a health care provider or an emergency responder, the City may deny you leave under this policy.

- Health Care Provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.
 - This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions 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.
- 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.
- To minimize the spread of the virus associated with COVID-19, the company will be judicious when using this definition to exempt health care providers and emergency responders from the provisions of the FFCRA.