



## CITY OF GREEN BAY PERSONNEL POLICY

<b>Policy Title</b> Families First Coronavirus Response Act	<b>Policy Reference</b> Chapter 23, Section 2
<b>Policy Source</b> Human Resources Department	<b>Legal Review Date</b> March 30, 2020
<b>Personnel Committee Approval</b> April 8, 2020	<b>City Council Approval</b> April 1, 2020

23.2.1 **PURPOSE.** The purpose of this policy is to provide an overview of the Emergency Paid Sick Leave Act (EPSLA) and Emergency Family and Medical Leave Expansion Act (EFMLEA) for employees while the employee or his/her family members are impacted by COVID-19. The EPSLA and EFMLEA are both within the scope of what is known as the Families First Coronavirus Response Act (the “Act”). The Act and this policy will both take effect on April 1, 2020, with a sunset date of December 31, 2020.

23.2.2 **The Emergency Paid Sick Leave Act (EPSLA).** Provides a limited term emergency paid sick leave benefit outside of the FMLA or EFMLEA. This Emergency Paid Sick Leave is in addition to the employee’s current sick leave accrual.

a. **Employee eligibility.** All employees actively employed by the City. Pursuant to the Act, the City may exclude Emergency First Responders from this benefit. Emergency first responders will be excluded from this benefit, but allowed to receive City benefits as outlined in 23.2.4.

b. **Qualifications.** The employee must be unable to work or telecommute because:

- 1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 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 the COVID-19 virus and is seeking medical diagnosis from an appropriate health care provider;

- 4) The employee is caring for an individual who is subject to an order as described in subparagraph 1) or has been advised as described in subparagraph 2).
- 5) The employee is caring for a son or daughter of such employee because the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Service in consultation with the Secretary of the Treasury and the Secretary of Labor.

c. Pay During Leave. The amount of Emergency Paid Sick Leave available to employees is limited as follows:

- 1) Full-time employees will be eligible for 80 hours of Emergency Paid Sick Leave.
- 2) Regular, Part-time employees will be pro-rated based upon their regular hours of work.
- 3) Employees who work a variable work schedule, the average bi-weekly hours of work over the preceding six month period will be utilized.

The actual pay to which an employee will be entitled will depend on the reason for the absence.

1. If absent due to reasons identified in subparagraphs 1), 2), or 3) under Section 23.2.2.b. Qualifications. , the employee will be entitled to:
  - a. 100% of his/her regular hourly rate of pay (as long as in excess of minimum wage) for the hours of work missed, and
  - b. Subject to the cap of \$511 per day, to a maximum aggregate payment of \$5,110.
2. If absent due to reasons identified in subparagraphs 4), 5), or 6) under Section 23.2.2.b. Qualifications. , the employee will be entitled to:
  - a. 2/3 of the employee's regular rate of pay or minimum wage, whichever is greater, and

- b. Subject to the cap of \$200 per day, \$2,000 in the aggregate.
- d. Supplementing Emergency Paid Sick Leave. Employees may be eligible to supplement Emergency Paid Sick Leave to receive their full weekly pay by using their own sick, vacation, personal, or comp time if available. The use of an employee's sick, vacation, personal, or comp time will not be considered actual hours worked for the purposes of determining eligibility for overtime.
- e. Benefits During Leave. Benefits for an employee on Emergency Paid Sick Leave will continue as if the employee is actively working.
- f. Procedures for Requesting Leave and Certification. The Emergency Paid Sick Leave Act requires that the employee give notice to the employer of the desire to use the available Emergency Paid Sick Leave. Notice must be given to the employer no later than the first workday (or portion of such workday) that the employee receives Emergency Paid Sick Leave.

Please refer to the procedures as set forth in Section 23.2.3.f. Procedure for Requesting Leave and Certification.

- f. Return to Work. Employees will not be required to provide a return-to-work notice unless specifically requested by the Human Resources Department. Employees who experience COVID-19 virus symptoms should be symptom free for 72-hours prior to returning to work and may be asked to not return until seven (7) days have passed since the first symptoms occurred.
- g. Enforcement. Nothing in this provision shall be construed in any way to diminish the rights or benefits that an employee is entitled to under any law, collective bargaining agreement, or existing City policy. An employee is encouraged to consult with the Human Resources Department regarding any questions or concerns.

An employee may not carry over any unused Emergency Paid Sick Leave. Further, upon an employee's separation from employment, any unused Emergency Paid Sick Leave is forfeited. Emergency Paid Sick Leave expires December 31, 2020.

### 23.2.3 Emergency Family and Medical Leave Expansion Act (EFMLEA)

- a. Employee eligibility. Employed by the City for at least 30 calendar days prior to taking leave. Pursuant to the Act, the City may exclude Emergency First Responders from this benefit. Emergency first responders will be excluded from this benefit, but allowed to receive City benefits as outlined in 23.2.4.
- b. Qualifications. Employee is unable to work or telecommute in order to care for a

son or daughter of such employee because the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID -19 precautions.

- c. Pay During Leave. The EFMLEA provides for time away from work for up to 12 weeks. The first ten (10) work days of EFMLEA leave is unpaid, unless the employee has available accrued vacation, personal or sick leave (including sick leave under EPSLA under Section 23.2.2) which can be substituted for the otherwise unpaid time. The employee will not be required to substitute pay for the first 10 days of unpaid leave. After the 10th unpaid work day, the employee will be eligible for pay from the City equal to 2/3 of the employee's regular rate of pay for the remainder of the available FMLA leave associated with the qualifying COVID-19 reason, not to exceed a daily cap of \$200 or aggregate cap of \$12,000, per person.

For full time employees, the paid leave opportunity will be based on the regular rate of pay of the employee for the hours the employee would normally work. Part-time employees pay eligibility will be based on their regular hours worked per week – or if variable – the average hours worked in the preceding six months.

An employee may be eligible for regular FMLA leave if they have a COVID-19 diagnosis and they meet the normal requirements of the FMLA. An employee who is not ill but merely quarantined because of coming into contact with COVID-19 would not be eligible for EFMLEA or regular FMLA.

Employer Paid FMLA leave is allowed **only** for the reason of closure of the child's school or childcare and need to provide child care due to the public health emergency and not allowed for other FMLA reasons.

It is important to note that while an employee is entitled to 12 weeks of leave under the EFMLEA, the length of the leave is reduced by any FMLA Leave previously taken by the employee – this is not a separate 12 week entitlement. In other words, the Emergency Leave for childcare purposes is automatically reduced by the amount of leave an employee has already taken in the current administrative year, without regard to the reason for the previous leave.

- d. Supplementing EFMLEA Leave. Employees may be eligible to supplement EFMLEA Leave to receive their full weekly pay by using their own sick, vacation, personal, or comp time if available. The supplemental use of an employee's sick, vacation, personal, or comp time will not be considered actual hours worked for the purposes of determining eligibility for overtime.

- e. Benefits During Leave. Benefits for an employee using EFMLEA leave will be applied in the same manner as benefits under Federal and State Family and Medical Leave.
- f. Employee Status after Leave. The FMLA's job protected leave requirements and anti-retaliation provisions apply to EFMLEA scenarios.
- g. Procedure for Requesting Leave and Certification. Employees shall complete a FFCRA Personnel Leave Request Form. Forms can be requested by calling Human Resources at 920-448-3013, emailing [humanresources@greenbaywi.gov](mailto:humanresources@greenbaywi.gov), or printing the form from the City website. In compliance with the recommended social distancing, please do not physically go to the Human Resources Department.  
  
The City will require additional documentation in support of your EFMLEA leave by asking for a notice of closure or unavailability from your child's school, place of care, or childcare 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.
- h. Return to Work. Employees will not be required to provide a return-to-work notice unless specifically requested by Human Resources.
- i. Enforcement. Nothing in this provision shall be construed to in any way to diminish the rights or benefits that an employee is entitled to under any law, collective bargaining agreement, or existing City policy. An employee is encouraged to consult with Human Resources regarding any questions or concern.

23.2.4 Emergency First Responders Paid Sick Leave Bank. The City is excluding Emergency First Responders from the Family First Coronavirus Response Act benefits provided under Sections 23.2.2 and 23.2.3, but in order to balance the needs of our Emergency First Responders and the need to serve the public the City is creating a paid sick leave bank for Emergency First Responders.

- a. Emergency First Responders. Emergency First Responders are defined as all sworn fire personnel and sworn police officers.
- b. Qualifications. Emergency First Responders must be unable to work or telecommute because:
  - 1) The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis from an appropriate health care provider;
  - 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or

- 3) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Service in consultation with the Secretary of the Treasury and the Secretary of Labor.
- c. Paid Sick Leave. The amount of Paid Sick Leave available to Emergency First Responders who meet the qualifications set forth in Section 23.2.4.b. is limited to:
- 1) Full-time employees will be eligible for up to two weeks of their regular hours of work.
  - 2) Regular, Part-time employees will be pro-rated based upon their regular hours of work and up to two weeks of the pro-rated leave.
  - 3) Employees who work a variable work schedule, the average bi-weekly hours of work over the preceding six month period will be utilized.
  - 4) Emergency First Responders will be asked to return as soon as they are cleared from a medical provider or based upon the guidelines of a public health official to return which may cause the amount of leave to be less than the Emergency First Responder's regular hours, or the prorated and variable amount over a two week period.

An Emergency First Responder may be eligible for regular FMLA leave if they have a COVID-19 diagnosis or to care for an immediate family member with COVID-19 and they meet the normal requirements of the FMLA.

- d. Eligibility and Qualifications for Leave Due to Childcare. Emergency First Responders who are unable to work or telecommute to care for a minor child if the child's school or childcare has been closed or is unavailable due to a public health emergency (COVID-19) may be eligible for leave. The Fire or Police Chief or their designee has the discretion to approve Leave Due to Childcare on a case-by-case basis based on the circumstances of the request and the needs of the department. The amount of leave is up to four weeks of paid sick leave and is calculated the same as in 23.2.4.c for full time, regular part time, and regular employees who work a variable work schedule.

The City will require additional documentation in support of your leave by asking for a notice of closure or unavailability from your child's school, place of care, or childcare 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.

- e. Procedure for Requesting Leave and Certification. Employees shall complete a FFCRA Personnel Leave Request Form. Forms can be requested by calling Human Resources at 920-448-3013, emailing [humanresources@greenbaywi.gov](mailto:humanresources@greenbaywi.gov), or printing the form from the City website. In compliance with the recommended social distancing, please do not physically go to the Human Resources Department.
- f. Return to Work. Employees will not be required to provide a return-to-work notice unless specifically requested by Human Resources. The return to work will be based on being cleared by a medical provider or based upon the guidelines of a public health official to return to work.
- g. Duration of Emergency First Responder Paid Sick Leave Benefit. The duration of this benefit will run through June 15, 2020. This benefit may be amended or removed at any time with Common Council approval.
- h. Enforcement. Nothing in this provision shall be construed in any way to diminish the rights or benefits that an employee is entitled to under any law, collective bargaining agreement, or existing City policy. An employee is encouraged to consult with Human Resources regarding any questions or concern.

## FAQs ON FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND FMLA LEAVE

The Federal Government enacted the Families First Coronavirus Response Act that goes into effect April 1, 2020. This Act includes two provisions: Emergency Paid Sick Leave and Emergency Family and Medical Expansion Act. This sheet provides an overview of the Emergency Paid Sick Leave and the Emergency Family and Medical Expansion Act for all employees other than sworn fire personnel and sworn police officers.

This document also addresses some frequently asked questions about how sick leave and FMLA related to COVID-19 will be addressed for the month of March through April 1, 2020.

### 1. Effective April 1, 2020 what type of leave is provided under the Emergency Paid Sick Leave and the Emergency Family and Medical Leave Expansion Act?

- 1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; **Governor Evers State Order and the Federal Social Distancing Order does not qualify for this type of leave.**
- 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; **An underlying condition does not qualify for this leave. Please see FAQ #9 below.**
- 3) The employee is experiencing symptoms of the COVID-19 virus and is seeking medical diagnosis from an appropriate health care provider;
- 4) The employee is caring for an individual who is subject to an order as described in subparagraph 1) or has been advised as described in subparagraph 2).
- 5) The employee is caring for a son or daughter of such employee because the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Service in consultation with the Secretary of the Treasury and the Secretary of Labor.

### 2. Who is eligible for Emergency Paid Sick Leave and the Emergency Family and Medical Leave Expansion Act?

All regular employees are eligible for 80 hours of paid sick leave for the qualifying leaves listed above (1-6). This emergency paid sick leave is in addition to the employee's current sick leave accrual.

Employees who were employed with the City on March 2, 2020 or employed with the City for 30 days prior to their leave, are eligible for the Emergency Family and Medical Leave Expansion Act which is an additional ten weeks of leave for the qualifying leave #5. Please visit FAQ #7 for more guidance on how the Emergency Paid Sick Leave and Emergency Family and Medical leave interact with each other.

**3. How is the paid sick leave calculated for one of the six leaves listed above?**

If you qualify for 1), 2), or 3), then you are eligible for 80 hours of sick leave paid at your regular rate. This is capped at \$511 per day to a maximum aggregate of \$5,110. If you are a part time employee or work a variable schedule, then your leave time will be pro-rated based on the number of hours you work over a two week period.

If you qualify for 4) 5) or 6), then you are eligible for two weeks of paid sick leave at 2/3 of your regular rate of pay subject to \$200 per day and \$2,000 in the aggregate.

If you qualify for 5) then you are also eligible for up to 12 weeks of Emergency Family and Medical Leave. You are eligible to have this paid at 2/3 of your regular rate of pay subject to \$200 per day and \$12,000 in the aggregate. Please visit FAQ #7 for more guidance on how the Emergency Paid Sick Leave and Emergency Family and Medical leave interact with each other.

**4. What documentation must I provide for Emergency Paid Sick Leave or Emergency Family and Medical Leave (childcare)?**

The City must receive medical documentation in support of your paid sick leave request the same as it would under FMLA leave.

If you qualify for leave to take care of your child whose school is closed or daycare is closed, then you must provide documentation as well. This documentation may include a notice of closure or unavailability from your 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.

**5. Is all leave under the FMLA now paid leave?**

No. The only type of family and medical leave that is paid leave is the expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This expanded FMLA only applies to leaves that are taken because the employee must care for a child whose school or place of care is closed, or the child care provider is unavailable, due to COVID-19 related reasons.

**6. Is the Emergency Paid Sick Leave and the Emergency Family and Medical Expansion Act in addition to FMLA leave?**

No. Employees are eligible for a maximum of 12 weeks of FMLA in a calendar year. The 12 weeks for childcare is considered FMLA leave and will be counted as part of your 12 weeks of FMLA leave per calendar year. In addition, the length of the expanded FMLA will be reduced by any FMLA leave previously taken by the employee.

An employee may be eligible for regular FMLA leave if they have a COVID-19 diagnosis and they meet the normal requirements of the FMLA. An employee who is not ill but merely quarantined by a health professional/officer because of being exposed to COVID-19, is not eligible for the expanded FMLA or regular FMLA.

**7. If I am home with my child because his or her school or place of care is closed, or childcare provider is unavailable, do I get Emergency Paid Sick Leave, Expanded Family and Medical leave, or both—how do they interact?**

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both Emergency Paid Sick Leave and the Expanded Family and Medical leave to care for your child whose school or place of care is closed, or child care is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave is only available for the first two weeks which otherwise can be taken as unpaid under the Emergency and Family Medical Leave Expansion Act unless you elect to use existing vacation, personal, or sick leave. After the first ten workdays have elapsed, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

**8. If I am on leave that provides for 2/3 pay of my regular rate, is there a way for me to receive my full paycheck?**

Yes. When you are on leave to care for an individual who has COVID-19 or to care for a child because of a school closing or daycare is unavailable due to COVID-19, then you will receive 2/3 of your regular rate of pay (hourly rate) for each hour you use for this leave. If you would like to receive your full pay for the week, then you will need to supplement each hour of your leave time with 1/3 of an hour of your own sick leave. Each employee's wage and care situation is different, so please contact Human Resources or Payroll to explore options that fit your situation.

Currently, sick leave is the only type of leave that is allowed to be used to supplement time because sick leave does not affect overtime for employees. City Staff will be recommending to the Common Council to allow an exception for this policy to allow employees to use vacation, personal, or comp time to supplement their leave time to receive a full paycheck.

**9. What if I have an underlying condition that puts me at high risk if I contract COVID-19 and my doctor does not believe I should be working?**

An underlying condition that may put you at high risk does not qualify for Emergency Paid Sick Leave or the Emergency Family and Medical Leave Expansion Act. However, we will work with you to determine the appropriate accommodation which may include: modifying your work environment, considering social distancing, remote work, leave options, etc. You should start this process by consulting with your doctor; reviewing the information with your supervisor and contacting Human Resources with your medical provider documentation.

**10. Prior to April 1, 2020 I received medical documentation stating I have an underlying condition and am at high risk if I am exposed to COVID-19. How is that paid?**

Clear guidance was not available before the Federal Act was put into effect on how to provide leave for individuals with underlying conditions that may be at higher risk for severe illness from COVID-19. Individuals who have provided medical documentation to be off of work due to an underlying condition will have that time deemed as FMLA and will receive paid sick leave for that time up until March 31, 2020. Effective, April 1, 2020, this time away from work will continue to be deemed as regular FMLA and employees may elect to use sick, personal, or vacation leave.

**11. May I use intermittent leave for the Emergency Paid Sick Leave or the Emergency Family and Medical Leave while teleworking?**

Yes, the City will allow you to take intermittent leave if you are unable to telework your normal work schedule due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you are allowed to use Emergency Paid Sick Leave intermittently while teleworking with approval from your supervisor.

Similarly, if you are prevented from teleworking your normal work schedule because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your supervisor may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, (i.e. ½ hour, 1 hour, ½ day, full day) provided that you and your supervisor agree. The Human Resources Department encourages employees and supervisors to collaborate to achieve flexibility and meet mutual needs.

**12. May I take my emergency paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?**

It depends on why you are taking paid sick leave and whether the City agrees. Unless you are teleworking, emergency paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In addition, if the City agrees, you may take paid sick leave intermittently if you are taking paid sick leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you may take paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

### **13. I was quarantined because of my travel during March. How is that paid?**

The City took an aggressive stance to quarantine individuals who traveled and may have been exposed to COVID-19. Any time that you were off of work for this reason prior to April 3, 2020, this time off will be paid by the City. However, any future travel will not qualify for Emergency Paid Sick Leave. In addition, supervisors have the ability to suspend vacation and travel to ensure appropriate staffing levels.

### **14. Where can I find more information?**

The Department of Labor has two FAQs on the FFCRA located at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> and  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Please reach out to Human Resources if you have any additional questions.