



# MEMORANDUM

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**DATE:** April 1, 2020

**TO:** All City Employees

**FROM:** Michael J. Ortega, PE  
City Manager

**SUBJECT:** COVID-19 Pandemic Human Resources Guidelines – Part II

On March 30, 2020, Governor Ducey issued a Stay-at-Home, Stay Healthy, and Stay Connected Order for the State of Arizona effective Tuesday, March 31, 2020, at 5:00 p.m., stating that people should only leave their homes if related to essential services. This action, in conjunction with Families First Coronavirus Response Act and in accordance with Administrative Directives recently approved, has the effect of enabling certain leave benefits provided to City of Tucson employees. This memorandum serves to advise City employees and their supervisors about the different types of leave that are available for use during the COVID-19 pandemic; and the responsibilities of the Department Directors to identify Essential and Non-Essential positions in order to provide essential City services during the pandemic.

#### Paid Negative Sick Leave - Previously Approved

Sick Leave AD 2.01-7B Section E (4) was approved on March 16, 2020, before the federal act (FFRCA, discussed below) was passed. This AD revision allowed a sick leave deficit in the form of Paid Negative Sick Leave of up to 104 hours in the event an employee has exhausted all accrued leave options (including but not limited to: sick, personal, vacation, compensatory time, floating holiday, administrative leave) due to COVID-19 related reasons. The Paid Negative Sick Leave is now amended and revised, and is now called Pandemic Paid Emergency Leave, described in more detail below. In sum, rather than allow employees to use up to 104 hours of “negative leave,” the City will provide employees with 80 hours of paid emergency leave plus 24 hours of negative leave (see below).

#### Pandemic Paid Emergency Leave - NEW

City employees will be provided with an additional 80 hours (pro-rated for part-time and certain non-permanent employees) of what is called Pandemic Paid Emergency Leave. Effective April 1, 2020, employees will be allowed up to 80 hours of this Paid Emergency Leave. These 80 hours can be retroactively applied to leave taken since March 16, 2020 for COVID-19 related reasons. This leave is allowed for the following qualifying events:

1. The employee is subject to a government quarantine or isolation order related to COVID-19. Because the Governor’s March 31, 2020 Order constitutes an isolation order for Non-Essential positions/employees, this qualifying event is in place for those positions/employees.
2. The employee is advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
3. The employee experiences symptoms of COVID-19 (fever, cough, upper respiratory distress, shortness of breath) and is seeking medical diagnosis;

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4. The employee is caring for an individual subject to an order as described in (1) or a self-quarantine as described in (2);
5. The employee is caring for his or her child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 reasons; or
6. The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

The Pandemic Paid Emergency Leave can also be used for other COVID-19 related issues that prevent the employee from working if approved by the employee's supervisor.

This Leave will be paid at 100% of the employee's regular rate of pay.

In addition to the 80 hours of leave that will be allowed as Pandemic Paid Emergency Leave, employees who exhaust all available leave will be allowed up to 24 hours of negative leave, as previously described in AD 2.01-7B Section E (4) that was approved on March 16, 2020

#### Families First Coronavirus Response Act (FFRCA)

The federal government recently approved H.R. 6201, signed into law on March 18, 2020. This Act entitled, "Families First Coronavirus Response Act" (FFCRA), is effective April 1, 2020, and provides leave in addition to the City of Tucson's Pandemic Paid Leave. Please see attached Notice to Employees regarding FFCRA.

The guidance on FFCRA leave availability and usage may change over time and is subject to federal updates. Updates will be posted to the City of Tucson's employee information site. (<https://www.tucsonaz.gov/covid-19/city-employee-information-covid-19>)

One of the components of FFCRA is the Federal Emergency Paid Sick Leave (FEPSL). FEPSL is available to City employees beginning April 1, 2020, and is in addition to other City leaves, including Pandemic Paid Emergency Leave. Under FEPSL:

1. An employee is authorized up to 80 hours (pro-rated for part-time employees) of Federal Emergency Paid Sick Leave, up to a cap of \$5110\* total, for employees who are unable to work or telework because:
  - a. The employee is subject to a government quarantine or isolation order related to COVID-19. Because the Governor's March 31, 2020 Order constitutes an isolation order for Non-Essential positions/employees, this qualifying event is in place for those positions/employees.
  - b. The employee is advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
  - c. The employee experiences symptoms of COVID-19 (fever, cough, upper respiratory distress, shortness of breath) and is seeking medical diagnosis;
2. An employee is authorized up to 80 hours (pro-rated for part-time employees) of Federal Emergency Paid Sick Leave, up to a cap of \$2,000\* total, for employees who are unable to work or telework because:
  - a. The employee is caring for an individual subject to an order as described in (1) or a self-quarantine as described in (2);
  - b. The employee is caring for his or her child whose school or place of care is

- closed (or childcare provider is unavailable) due to COVID-19 reasons; or
- c. The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

\*City of Tucson will not cap – please see attached Employee Notice

The FFRCA also includes provisions for expanded Emergency Family and Medical Leave for employees who are caring for a minor child. Details about the expanded FMLA leave will be provided separately.

#### Essential and Non-Essential Positions and Providing Essential Public Services

The City's Department Directors must identify positions or individuals required to ensure delivery of essential City-wide services. For example, essential services the City will continue to provide include, but are not limited to Housing and Community Development, Police, Fire, Environmental Services, Public Safety Communication, Water distribution, Parks, and certain Business Services and Human Resources functions necessary to support City government.

- Essential Positions are defined as functions essential to the effective operation of the City or employees who must be physically present to perform essential jobs, or those employees who are involved in emergency response activities related to the COVID-19 pandemic.
- Non-essential Positions are those not necessary to ensure delivery of City services or, not critical to the functioning of Departments during this period of enhanced physical distancing measures.
- Non-essential positions will be designated by each Department Director

The need for essential employees may change as the need for essential work changes. As a result, employees may be called back to work to perform specific essential functions or telecommuting may be reduced as the workload requiring telecommuting declines. Similarly, if an employee has been directed to remain home because he or she is employed in a non-essential position, if they voluntarily agree to work in another department that has a critical need, the employee may be re-deployed or assigned to that department at their same rate of pay.

Department Directors are required to review and designate essential and non-essential positions. Employees for whom there is no work or who cannot work remotely, and are therefore designated as "non-essential," should be placed on leave, and may use Pandemic Paid Emergency Leave and/or Federal Emergency Paid Sick Leave as previously described, effective April 1, 2020. Department Directors should regularly assess and determine if any positions now designated as essential can be moved to the non-essential category and vice-versa. Because employees employed in a "non-essential" position are directed to isolate under the Governor's March 31st Order, they are immediately qualified to use both the Pandemic Paid Emergency Leave and/or the Federal Emergency Paid Sick Leave.

Finally, essential employees, who are in one or more of the risk categories for COVID-19 should be directed to telecommute or if unable to work remotely, should be placed on leave or allowed an altered work schedule to allow enhanced physical distancing.

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Department Directors should notify employees directly if they are in an essential position. Those who can perform their work remotely are directed to remain home and telecommute beginning Wednesday, April 1, 2020, and remain at home until such a time that the enhanced isolation order is lifted or until the Department Director advises the employee return to work to perform an essential function.

Department Directors should advise employees who cannot work remotely or for whom there is no work that they will be placed on Pandemic Paid Emergency Leave subject to the same criteria set forth under FFCRA, or the employee may take advantage of federal leave options previously described (FESPL) or use their regular leave banks. Employees performing essential functions, including those essential employees who cannot work remotely have access to leave under FFCRA (subject to a qualifying event) and to Pandemic Paid Emergency Leave (subject to the same qualifying events as FFCRA, as described above)

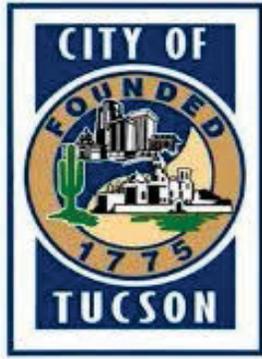
Please continue to monitor the employee resource page on the Internet at the following:<https://www.tucsonaz.gov/covid-19/city-employee-information-covid-19>

It is likely guidance on these issues will change in the future; we will provide any change in federal or state guidance as soon as received.

I would like to thank our employees, managers, administrators, deputies and directors for assisting in providing essential services to the City of Tucson in these stressful and uncertain times. Your public service and dedication are very much appreciated.

Attachments

# Notice to City of Tucson Employees



## Families First Coronavirus Response Act

The *Families First Coronavirus Response Act (FFCRA)* was enacted in response to the spread of the novel coronavirus and illness it causes (COVID-19). FFCRA expands the Family and Medical Leave Act (FMLA) temporarily to cover leave needed due to school and day care closures, and provides families with critical protections to ensure that workers can care for their children without sacrificing their paycheck. Emergency Paid Sick Leave establishes two weeks (up to 80 hours) of paid sick leave for childcare and other leave related to COVID-19.

## Emergency Paid Sick Leave

The *Emergency Paid Sick Leave Act* provides up to 80 hours of emergency paid sick leave to help employees protect their families' financial security and mitigate the spread of COVID-19.

### Who Is Eligible?

- All full-time and part-time employees.
- An employee must have a qualifying event occur where they are unable to work or telework.

### What Is An Employee Eligible For?

- Full-time employees are entitled to two weeks (up to 80 hours) of paid time off at their regular rate of pay (up to \$511 per day required by FFCRA| COT will not cap) to seek a medical diagnosis or preventive care, receive treatment, or if advised by a doctor to self-quarantine for COVID-19, or if an employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- Part-time employees are entitled to paid time off at their regular rate of pay (up to \$511 per day; no more than a total of \$5,100 required by FFCRA| COT will not cap) for the average number of hours that they work in a normal two-week period to seek a medical diagnosis or preventive care, receive treatment, or if advised by a doctor to self-quarantine for COVID-19, or if an employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- Full-time employees are entitled to two weeks (up to 80 hours) paid time off at two-thirds of their regular pay (up to \$200 per day; no more than a total of \$2,000 required by FFCRA| COT will not cap) in order to care for a an individual subject to a quarantine order from the Federal, State or local authorities, or from a health care provider, or to care for a child whose school has closed or whose child care provider is unavailable, due to COVID-19, or if the employee is experiencing any other substantially similar condition, as defined by the Secretary of Health and Human Services. An employee is permitted to substitute any accrued leave for unpaid leave time.
- Part-time employees are entitled to the average number of hours that they work in a normal two-week period at two-thirds of their regular pay (up to \$200 per day; no more than a total of \$2,000 required by FFCRA| COT will not cap) in order to care for an individual subject to a quarantine order from the Federal, State or local authorities, or from a health care provider, or to care for a child whose school has closed, or if their child care provider is unavailable, due to COVID-19, or if the employee is experiencing any other substantially similar condition, as defined by the Secretary of Health and Human Services. An employee is permitted to substitute any accrued leave for unpaid leave time.

# Emergency Paid Family Medical Leave

The *Emergency Paid Family Medical Leave Expansion* provides employees with up to 12 weeks of job-protected leave under the Family & Medical Leave Act.

## Who Is Eligible?

- All full-time and part-time employees who have been employed for at least 30 calendar days.
- The only qualifying event for Emergency Paid Family Medical Leave is an employee who is unable to work or telework who needs to care for a minor child due to school or daycare closure or unavailability of childcare provider due to COVID-19.

## What Is an Employee Eligible For?

- An employee is entitled to take up to 12 weeks of job-protected leave under the Family & Medical Leave Act to care for a minor child(ren) in the event of a school or day care closure, or a child care provider is unavailable due to COVID-19.
  - The definition of child follows the definition in the current FMLA regulations, which includes a biological, adopted, or foster child, a stepchild, a legal ward, or of a person standing in loco parentis who is either under age 18 or is at least age 18 and is incapable of self-care due to disability.
- The first two weeks (10 days) are unpaid, but an employee may substitute the 80 hours of Emergency Paid Sick Leave for paid time at two-thirds pay, or substitute any accrued paid leave for the unpaid leave time.
- The following 10 weeks an employee is paid two-thirds of the employee's regular pay. (This paid leave is capped at \$200 per day and \$10,000 total Under FFCRA. | CoT will not cap.) An employee is permitted to substitute any accrued leave for unpaid leave time.
- Employees who needs time off to care for other family members affected by COVID-19 will be able to use regular FMLA leave, which is unpaid (an employee using FMAL may use paid accrued leave which runs concurrent with their FML use).

Below is an example of how Emergency Sick Leave and Emergency Family Medical Leave would be used concurrently by a full-time employee to care for a child:

- The first two weeks off would be Emergency Family Medical Leave time that is unpaid, but an employee may use Emergency Paid Sick Leave and have the two leaves run concurrently being paid two-thirds pay, and an employee is also permitted to substitute any accrued leave for unpaid leave.
- The following 10 weeks would be Emergency Paid Family Medical Leave and paid at two-thirds pay.

The benefits and requirements under the *Emergency Paid Family Medical Leave* is effective April 1, 2020, and expires on December 31, 2020.

# Regular Family Medical Leave

The *Family Medical Leave Act* provides employees with the right to take up to 12 weeks of job-protected leave under the Family & Medical Leave Act of 1993.

## Who Is Eligible?

- All full-time and part-time employees who have been employed for at least 12 months and have worked at least 1250 hours during the 12 month period immediately preceding the commencement of the leave.

## What Is An Employee Eligible For?

- Employees who need time off to care for themselves or other family members affected by COVID-19 will be able to use regular FMLA leave, which is an unpaid leave, but an employee is required to use all forms of accrued paid leave, except accrued compensatory time before going into an unpaid status. Refer to Administrative Directive 2.01-7C, Family and Medical Leave.

## Questions?

Contact the Human Resources Department with any questions regarding any of these leaves.

Although this information is intended to be a useful tool, it does not and cannot override federal and state law, and administrative rules, which may change. While the intent is to periodically update the material to comply with applicable laws, rules, and policies it is incumbent upon the user to use the current and effective laws, rules, and policies. Where in conflict, the applicable law, rule, or policy provision supersedes the information contained herein.

# EMPLOYEE RIGHTS

## PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

### ▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- 2/3 for qualifying reasons #4 and 6 below up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### ▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.*

### ▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

- |   |   |
|---|---|
| <ol style="list-style-type: none"><li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li><li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li><li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li><li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li></ol> | <ol style="list-style-type: none"><li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li><li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li></ol> |
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### ▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

For additional information  
or to file a complaint  
**1-866-487-9243**  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://dol.gov/agencies/whd)



WH1422 REV 03/20