



MONROE CITY COUNCIL

Agenda Bill No. 20-060

SUBJECT:	<i>Families First Coronavirus Response Act Policy</i>
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
4/28/2020	HR	Ben Warthan	Ben Warthan	New Business #1

Discussion: 4/28/2020

- Attachments:**
1. Public Health Emergency Leave Draft Policy
 2. Appendix to Public Health Emergency Leave Policy

REQUESTED ACTION: Provide direction to the Mayor to have City staff implement policy regarding Public Health Emergency Leave.

POLICY CONSIDERATIONS

On March 24, 2020, Governor Jay Inslee issued Proclamation 20-28, relating to the Open Public Meetings Act and Public Records Act; the proclamation restricted the ability of public agencies to take action to only those actions that are necessary and routine, or to respond to the COVID-19 outbreak and public health emergency. The proclamation was effective through April 23, 2020 and subsequently extended through May 4, 2020.

City Council is responsible for policy. This is for Council consideration, review, discuss, and provide direction to City staff regarding the Washington State Family First Coronavirus Act. The adoption of this policy is necessary because the City has until the end of April to adopt this policy.

DESCRIPTION/BACKGROUND:

The Families First Coronavirus Response Act (FFCRA), which is an economic stimulus plan to address the impact of the COVID-19 pandemic, was signed into law on March 18, 2020, and took effect April 1, 2020.

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). 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.

FISCAL IMPACTS

Partial Pay Entitlement:

City of Monroe will pay two-thirds of the employee’s regular pay, up to a maximum of \$200 per day or \$10,000 in the aggregate

Emergency Paid Leave:

Sick Leave is capped at \$511 per day and \$5,110 in the aggregate when leave is taken for qualifying reasons. (1-3)



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Leave is capped at \$200 per day and \$2,000 in the aggregate when leave is taken for alternative qualifying reasons. (4-6)

TIME CONSTRAINTS

Family First Coronavirus Response Act came into effect April 1, 2020, The City has thirty (30) days to enact policy and provide the expansion of the Family Medical Leave Act to employees.

ALTERNATIVES

Attached Appendix has potential alternatives to draft language

Section 2.1 - Optional alternative based upon eligibility for Public Health Emergency Leave if invoking exemption for certain employees. (Emergency Responders)

Section 2.5 - Optional alternative based upon eligibility for Emergency Sick Leave if invoking exemption for certain employees. (Emergency Responders)

CITY OF MONROE

POLICY SUBJECT: Family First Coronavirus Response Act Policy

REFERENCE NUMBER #2020-XXX

EFFECTIVE DATE: _____

APPROVED:

____ Mayor ____ City Administrator

Date: _____

RECEIVED:

____ Police ____ Human Resources

____ Clerk ____ Public Works

____ Finance ____ City Attorney

____ Community Development

____ Parks & Recreation

The statements contained in this policy are guiding and summaries. They do not bind the City of Monroe. The City reserves the right to change, revoke or make exceptions to the city policies at any time and at its sole discretion.

1.0 PURPOSE

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 through December 31, 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.

2.0 GENERAL PROVISIONS

All provisions below will be in accordance with will Department of Labor regulation and definitions.

2.1 Eligibility

Subject to certain exemptions described below, Employees of the City of Monroe who have worked for the City of Monroe 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.

2.2 Leave Entitlement

An eligible employee may take up to 12 weeks of protected leave if the employee is unable to work, or telework, 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 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.

2.3 Partial Pay Entitlement

The first 10 days of PHEL/FMLA will be unpaid, although employees may elect to use accrued leave or Emergency Sick Leave, in accordance with section 2.5 of this document, during this period. For leave beyond the first 10 days, the City of Monroe will pay two-thirds of the employee's regular pay, up to a maximum of \$200 per day or \$10,000 in the aggregate. 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. Employees may elect to supplement the PHEL/FMLA paid benefit with their accrued leave.

2.4 Notification; Documentation

Employees who need to take PHEL/FMLA leave should notify Human Resources as soon as practicable after the need for leave arises.

- **Notification:** An employee who needs to take Emergency Sick Leave should notify Human Resources, by email, as soon as practicable. After the first workday (or portion thereof) that an employee takes Emergency Sick Leave, the employee must follow the notice requirements required for use of regular sick leave. On a case-by-case basis, the employer may require documentation to verify that leave is being taken for a FFCRA-covered reason.
- **Documentation:** DOL regulations state that an employee seeking PHEL/FMLA leave must provide the City of Monroe with documentation containing:

- the employee's name;
- date(s) for which leave is requested;
- qualifying reason for the leave; and
- a 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, at the request of the City of Monroe, provide the following additional information to substantiate the leave request:

- the name of the son or daughter being cared for;
 - the 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.
- **Other:** This policy will be administered consistent with the City of Monroe's existing Family and Medical Leave (FMLA) policy, except as modified by the FFCRA. This leave is not in addition to the 12 weeks allowed under FMLA, but it provides more qualifying events, until December 31, 2020, in which to use the current FMLA program. Any hours that have been used under FMLA in a rolling calendar year will be considered in determining the number of eligible hours for this program

2.5 Emergency Paid Sick Leave

- **Eligibility:** All employees of the City of Monroe are eligible for up to 80 hours of Emergency Sick Leave. 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, 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.
 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.
 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 of Monroe policies or labor agreements.
- Reduced Benefit for Certain Leaves; Cap on Sick Leave Amount: 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 for the missed work time, provided that Emergency Sick Leave is capped at \$511 per day and \$5,110 in the aggregate when leave is taken for these reasons. Where leave is taken for reasons (4), (5), or (6) above (to care for another, to care for a child due to a school closure or unavailability of childcare, or where the employee is experiencing a substantially similar condition), the paid sick leave benefit is two-thirds of the employee's regular rate of pay, provided that Emergency Sick Leave is capped at \$200 per day and \$2,000 in the aggregate when leave is taken for one of these reasons.
- 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 of Monroe's approval. An employee may also use Emergency Sick Leave intermittently with City of Monroe's 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.

DRAFT

Appendix to Public Health Emergency Leave (PHEL/FMLA)

2.1 Eligibility

[Optional alternative if employer is invoking exemption for certain employees: Subject to certain exceptions described below, Employees who have worked for the Employer for at least 30 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.]

To ensure the Employer's ability to meet the needs of the community during the COVID-19 pandemic, health care providers and emergency responders are not eligible for PHEL/FMLA leave.]

[Drafting note: If an employer is exempting health care providers and/or emergency responders, and will be offering such employees an alternative benefit, that benefit can be described or cross-referenced here.]

2.5 Emergency Paid Sick Leave

[Optional alternative if employer is invoking exemption for certain employees: All employees of the Employer are eligible for up to 80 hours of Emergency Sick Leave, subject to certain exceptions. To ensure the Employer's ability to meet the needs of the community during the COVID-19 pandemic, health care providers and emergency responders are not eligible for Emergency Sick Leave. For those eligible, Emergency Sick Leave may be fully paid or partially paid, depending on the reason for taking leave (see below).]

[Drafting note: If an employer is exempting health care providers and/or emergency responders, and will be offering such employees an alternative benefit, that benefit can be described or cross-referenced here. Additionally, employers can presumably exempt these employees from part but not all of the FFCRA entitlements (e.g., provide paid sick leave for illness, but not for school closures).]

Covered Reasons for Using Emergency Sick Leave

1. *[Optional: (Please note: the Department of Labor has advised that a state or local "stay at home" or "shelter in place" order does not qualify under this reason (1); however, such orders may become covered under reason (6) below pending further guidance from the federal government. The Employer will continue to monitor federal guidance on this issue and administer this policy consistent with current guidance.)]*

Reduced Benefit for Certain Leaves; Cap on Sick Leave Amount:

[Drafting note: Employers may elect to keep employees in fully-paid status rather than providing partial pay when leave is taken for reasons (4)–(6), although the tax credit available to private sector employers would be capped at the statutory benefit level. Also, employers are

likely required to allow employees to supplement a partial Emergency Sick Leave benefit with accrued Washington Paid Sick Leave, and may elect to allow employees to supplement the PHEL/FMLA benefit with other accrued leaves (e.g., vacation). An employer that would prefer to allow supplementation only as to sick leave should revise the above language accordingly.]