



REPORT TO CITY COUNCIL

Approved by:

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Wendy Silva, Director of Human Resources

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Arnaldo Rodriguez, City Manager

Council Meeting of: April 1, 2020

Agenda Number: _____

SUBJECT:

Consideration of Adopting a Minute Order Ratifying Actions Taken by the City Manager in his Role as Director of Emergency Services Relating to Employee Leave and Benefit Modifications to Support Employees During the COVID-19 Public Health Emergency

RECOMMENDATION:

It is recommended that the City Council (Council) by Minute Order ratify actions taken by the City Manager in his role as Director of Emergency Services relating to employee leave and benefits.

SUMMARY:

Recognizing that City employees are disaster service workers and must continue to provide critical services to our community during these uncertain times, the City Manager took action in his role as Director of Emergency Services to provide both economic and leave benefit modifications to support our employees. The requested action is for Council to ratify these policies and programs in support and recognition of the City's dedicated workforce.

DISCUSSION:

The City of Madera (City) recognizes that pandemics and other disasters may occur from time to time that require flexibility related to the City's various Memorandum of Understanding between labor groups and/or Personnel Rules and Regulations. The emergence of the novel coronavirus (COVID-19) in December 2019 has elicited a major, worldwide response, and it was deemed a pandemic by the World Health Organization on March 11, 2020. The City Council of the City of Madera declared a local state of emergency March 18, 2020.

The City realizes the potential for COVID-19 to impact its workforce, including employees:

- Becoming sick or being exposed to the virus
- Having to care for a sick family member

- Having to care for children who are not sick, but cannot attend school or daycare
- Being ordered by a doctor or public health official to self-quarantine or isolate
- Experiencing increased personal expenditures due to any of the above, as well as supply chain disruptions

Our employees are important to the functions of our local government. Simply put, the City of Madera cannot provide the services it does without the employees who show their commitment to the citizens of Madera every day. The City understands that local, state, and national emergencies, all of which exist right now, can take a significant toll on individuals and families. While government employment comes with many benefits, it also comes with an oath to serve our community above ourselves. This is both a huge responsibility and burden for our employees and their families.

The existence of COVID-19 in and of itself is a challenge for everyone. Coupled with shelter-in-place orders, unexpected business closures, supply chain disruptions, and unanticipated school closures, our employees are facing many challenges and uncertainties while continuing to serve their community. In an effort to help mitigate these challenges and support our dedicated employees as they respond to this emergency, on March 25, 2020, the City Manager, acting as the Director of Emergency Services, issued and implemented two internal policies, COVID-19 Emergency Policies 1 and 2. Additionally, action was also taken to implement a loan program on the City's 457 Deferred Compensation Plan. These actions were necessary and time-sensitive with respect to supporting our vital workforce.

COVID-19 Emergency Policy 1: Temporary COVID-19 Special Sick & Vacation Leave Policies

This policy makes three modifications to existing City policies in an effort to support our dedicated employees. The intent of these modifications is to help employees who are sick or caring for sick relatives and to assist in alleviating financial burdens this emergency has caused. The three modifications are:

1. Emergency Vacation Leave Cash-Out Program

Different bargaining units have different provisions for leave cash-out, however many of these programs are limited to specific times of year. The City recognizes that COVID-19 has and will continue to expose our employees to unanticipated expenditures that may not coincide with existing leave cash-out programs. The COVID-19 Emergency Vacation Leave Cash-Out Program will allow full time employees to cash out up to 40 hours of vacation one time during the period of the local emergency. The employee must maintain a minimum balance after cash-out of 120 hours vacation leave.

2. Sick Leave Borrow Program

The Sick Leave Borrow Program will allow full time employees to borrow up to 40 hours of sick leave should they have insufficient time accrued to cover their need for leave related to COVID-19. The borrowed time will be repaid through either future accruals or unpaid furlough days spread over up to 5 months' time. The program is only for absences specific to COVID-19.

3. Additional Reasons for Sick Leave

In addition to any reasons an employee may use personal sick leave as defined in the Personnel Rules and Regulations or applicable Memorandum of Understanding, employees may use sick leave to:

- a. Care for children who are not necessarily sick, but who require parental supervision due to school or child care cancellation.
- b. Care for an immediate family member who is sick with COVID-19. Immediate family member is as defined in existing policy.
- c. The Employee or immediate family member is ordered to isolate or quarantine by Public Health Officials or a treating physician.

COVID-19 Emergency Policy 2: Families First Coronavirus Response Act

This policy recognizes the two new federal paid leave provisions enacted by the Families First Coronavirus Response Act (the Act). The Act created Family Medical Leave Act Public Health Emergency Leave (E-FMLA) and Emergency Paid Sick Leave (E-PSL), as outlined below. Both E-FMLA and E-PSL will go into effect April 2, 2020, however adoption of an internal policy prior to the effective date was critical to help employees understand the leave provisions and make choices for their families.

1. E-FMLA

- Eligibility: Employee has been employed for at least 30 days and has not already exhausted FMLA leave
- Employee is eligible for up to 12 weeks of leave if they cannot be at work or telework due to a school or child care closure caused by a public health emergency
- 10 day waiting period where an employee may use their own leave banks or E-PSL
- After waiting period, up to 10 additional weeks of leave at 2/3 pay, not to exceed \$200/day and \$10,000 total

2. E-PSL

- Any employee is eligible for 2 weeks of paid Emergency Sick Leave starting their first day of work
- Full pay for those:
 - In isolation
 - Health-care provider places in self-quarantine
 - Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis
- 2/3 pay for those:
 - Caring for an individual who is quarantined or in isolation
 - Caring for a child whose school or child care is closed because of COVID-19 precautions
 - Any other substantially similar situation

457 Deferred Compensation Loan Program

The City offers a 457 Deferred Compensation Plan (457 Plan) for employees to participate in to provide supplementary retirement income. The 457 Plan allows for pre-tax contributions that are

taxed upon withdrawal. 457 Plans are governed by the Internal Revenue Service (IRS). The IRS allows for three types of disbursements for 457 Plans:

1. Withdrawal any time after separation from service, with no age limitations
2. Emergency withdrawal while employed for such things as imminent foreclosure or eviction due to non-payment, catastrophic loss not covered by insurance, or unexpected medical costs not covered by insurance. These withdrawals are not repaid.
3. Loans to an individual from their own account. These loans must be repaid. The employee borrows money from their own personal 457 account and must repay the loan with interest.

The City's plan does not currently have the loan option. In an effort to assist employees with increased expenses cause by the emergency, including potential unemployment of spouses or close family, unexpected leaves of absence or illness, and unexpected merchandise price fluctuations, it was imperative to move quickly to begin implementation of the loan program and add this benefit as an option. Employees will be allowed only one outstanding loan at any given time.

FINANCIAL IMPACT:

Many of the enacted provisions relate to leave from work. Any financial impact will be through loss of work time for the City. This is not quantifiable at this time, however the City will track the amount of leave specific to the policy provisions. Accurate information will be dependent on employees correctly coding their timesheets.

The vacation leave cash-out provision will have a financial impact, but the magnitude depends on the number of employees who participate. Approximately half of the City's full time workforce currently have a leave balance that meets the 120 hour minimum threshold, and not all of those who qualify with the minimum balance have a full 40 hours above the minimum to cash-out. Additionally, not everyone will participate. Staff will track these specific leave cash-outs so that the program can be quantified. At this time, it is anticipated that there are sufficient salary savings from vacancies to cover the expenses related to this program.

The 457 Plan loan program creates no administrative burden on the City besides initial forms to complete implementation of the programs. After implementation, the programs are managed by the plan provider. Employees are borrowing their own money and responsible for their own repayments. Repayments will be processed through payroll deductions, however they are processed very similar to existing plan contributions, so there is no anticipated quantifiable burden that will be created.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The information contained herein is not addressed by the Vision Madera 2025 plan, nor is the information in conflict with that plan.

ALTERNATIVES:

1. Council could direct staff to review additional benefit provisions.
2. Council could direct staff to modify effective dates of identified programs.
3. Council could direct staff to terminate any implemented programs.

ATTACHMENTS:

1. COVID-19 Emergency Policy 1: Temporary COVID-19 Special Sick & Vacation Leave Policies
2. COVID-19 Emergency Policy 2: Families First Coronavirus Response Act

CITY OF MADERA COVID-19 Emergency Policy	Policy No. 1
	Date Adopted: 3/25/2020
	Date(s) Revised:
Subject: Temporary COVID-19 Special Sick & Vacation Leave Policies	

Introduction

The City of Madera (City) recognizes that pandemics and other disasters may occur from time to time that require flexibility related to the City's various Memorandum of Understanding between labor groups and/or Personnel Rules and Regulations. The emergence of the novel coronavirus (COVID-19) in December 2019 has elicited a major, worldwide response, and it was deemed a pandemic by the World Health Organization on March 11, 2020. The City Council of the City of Madera declared a local state of emergency March 18, 2020.

The City realizes the potential for COVID-19 to impact its workforce, including employees:

- becoming sick or being exposed to the virus
- having to care for a sick family member
- having to care for children who are not sick, but cannot attend school or daycare
- being ordered by a doctor or public health official to self-quarantine or isolate
- experiencing increased personal expenditures due to any of the above, as well as supply chain disruptions

COVID-19 Special Sick & Vacation Leave Policies

For these reasons, the City Council has authorized three special emergency leave provisions to assist employees in navigating COVID-19's effect on their personal life.

1. COVID-19 Emergency Vacation Leave Cash-Out Program

Different bargaining units have different provisions for leave cash-out, however many of these programs are limited to specific times of year. The City recognizes that COVID-19 has and will continue to expose our employees to unanticipated expenditures due to such things as supply shortages, unexpected child care costs for school aged children, or medical care. For this reason, the COVID-19 Emergency Vacation Leave Cash-Out Program will allow full time employees to cash out up to 40 hours of vacation one time during the period of the local emergency. The employee must maintain a minimum balance after cash-out of 120 hours vacation leave. The employee must make the request in writing using the form provided with this policy as Attachment A.

2. Sick Leave Borrow Program

The Sick Leave Borrow Program will allow full time employees to borrow sick leave should they have insufficient time accrued to cover their need for leave related to COVID-19. The employee will be allowed to borrow up to a total of 40 hours and repay those hours through either future accruals or unpaid furlough days spread

over up to 5 months' time. Employees may participate in the Sick Leave Borrow Program for any of the reasons listed in items 3a-3c below, as well as for the employee's own COVID-19 illness. The employee must make a request to participate in this program in writing using the form provided with this policy as Attachment B.

3. Additional Reasons for Using Sick Leave

In addition to any reasons an employee may use sick leave as defined in the Personnel Rules and Regulations or applicable Memorandum of Understanding, employees may use sick leave to:

- a. Care for children who are not necessarily sick, but who require parental supervision due to school or child care cancellation.
- b. Care for an immediate family member who is sick with COVID-19. Immediate family member is as defined in existing policy.
- c. The Employee or immediate family member is ordered to isolate or quarantine by Public Health Officials or a treating physician.

Consistent with existing policy, the City may require medical documentation to support the use of Sick Leave.

Effective Period of this Policy

These emergency leave provisions shall remain in effect for the duration of the City's local COVID-19 emergency declaration and shall sunset at such time that the City Council terminates the local emergency. All other terms and conditions of personnel policies and MOU provisions shall remain in effect.

REQUEST FOR COVID-19 EMERGENCY LEAVE CASH OUT

Employee Name: _____ EE ID#: _____

I hereby request cash out of _____ hours of vacation. I understand that I may make this request for COVID-19 Emergency Leave Cash Out no more than one time during the local COVID-19 emergency. I further understand that I must maintain a minimum balance of 120 hours in my vacation leave bank after the requested cash out is processed. Additionally, I understand that any leave cash out is subject to applicable taxes in the same manner as normal wages.

Employee Signature

Date

Please submit original request to Human Resources. Requests will be paid in the pay check for the pay period in which the request was received.

AGREEMENT FOR REPAYMENT OF BORROWED SICK LEAVE TIME

Employee Name: _____ EE ID#: _____

I have exhausted my sick leave bank and hereby request to borrow _____ hours of sick leave (maximum borrow amount is 40 hours).

Reason:

- Employee COVID-19 illness
- Loss of childcare
- Immediate Family Member COVID-19 Illness: Relationship _____
- Health official or health care provider requested quarantine/isolation

Repayment option selection (complete the appropriate option).

Option 1—Forego Sick Leave Accrual

Commencing on _____, 20____, I agree to forego my biweekly sick leave accrual until the sick leave advance is repaid.

Option 2—Unpaid furlough days

I understand that the furlough days used to repay my sick leave advance must be done in increments based on my normal work schedule. In order to repay the sick leave advance, I agree to take the following days off as unpaid furlough days (indicate regular hours worked on each of the days):

I understand and fully acknowledge that the number of hours of sick leave borrowed is required to be repaid within 5 months of the date of the borrow being granted. If, for any reason, I leave City employment prior to the full repayment of the sick leave advance, I consent to the withholding of the amount necessary to repay the City for the sick leave advance from my last payroll warrant or direct deposit.

Employee Signature

Date

Department Head Signature

Date

Upon completion, retain one copy for department files and forward the original to Human Resources.

CITY OF MADERA COVID-19 Emergency Policy	Policy No. 2
	Date Adopted: 3/25/2020
	Date(s) Revised:
Subject: Families First Coronavirus Response Act	

Introduction

The emergence of the novel coronavirus (COVID-19) in December 2019 has elicited a major, worldwide response, and it was deemed a pandemic by the World Health Organization on March 11, 2020. The City Council of the City of Madera declared a local state of emergency March 18, 2020. The Federal government has also responded to COVID-19 and on March 18, 2020, the US Senate passed the Families First Coronavirus Response Act (the Act) and president Trump signed the bill into law a few hours later. Among other things, the Act (1) amends the Family Medical Leave Act (FMLA) by providing FMLA Public Health Emergency Leave and (2) provides Emergency Paid Sick Leave to assist employees for certain COVID-19 related reasons. The intent of this policy is to confirm the provisions of the Act related to these two new leave types and their application to City employees.

The Families First Coronavirus Response Act

FMLA Public Health Emergency Leave (E-FMLA)

Summary

Public Health Emergency FMLA (E-FMLA) is an expansion of FMLA to include leave for employees who are unable to work or telework because he/she needs to care for his/her child due to a school or day care closure related to a public health emergency.

Applicability

As a government employer, the City of Madera is required to provide benefits under this new law.

Term

The Act goes into effect April 2, 2020, unless enacted sooner by the Department of Labor, and will sunset December 31, 2020. The benefits granted by the Act apply prospectively upon the effective date of the Act.

Eligibility and Use of Leave

City of Madera employees who have been employed for at least 30 calendar days are eligible for E-FMLA leave.

E-FMLA leave is subject to that employee having FMLA leave available. If an employee has exhausted their FMLA leave within the last 12 months, they do not qualify for E-FMLA leave. However, once the employee is eligible for FMLA leave again, they would be eligible for the E-FMLA leave if they experience a qualifying coronavirus-related event. If an employee has used part of their FMLA leave within the last 12 months, they are entitled to use the remaining balance of their 12-week FMLA entitlement for a qualifying coronavirus-related reason as E-FMLA leave.

An employee may take E-FMLA leave if the employee is unable to work, or “telework,” due to a need for leave to care for a son or daughter under 18 years of age if their school or place of care has been closed, or if the child care provider of such son or daughter is unavailable, due to a public health emergency.

Employees have the right to take up to 12 weeks of job-protected E-FMLA leave. The initial 10 days of leave may consist of unpaid leave. However, an employee may elect to substitute any accrued vacation leave, sick leave, compensatory time off, administrative leave, holiday leave, or floating holiday leave for unpaid leave during the initial 10 days of leave. The employee may also elect to substitute the two weeks of unpaid leave with the Emergency Paid Sick Leave provided under the Act, as further explained later in this Policy.

From the eleventh day of an employee’s E-FMLA leave thereafter, the City will provide paid leave in an amount not less than two-thirds of an employee’s “regular rate of pay” for the number of hours the employee would otherwise be normally scheduled to work during the leave time, not to exceed the Limits as outlined below. If the employee’s schedule has varying hours from week to week, including part-time employees, the hours used for this calculation would be a number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date which the employee takes the E-FMLA leave, including hours used by the employee for leave of any type. The Act permits employees to supplement the two-thirds pay with their accrued leaves to achieve 100% of their regular rate of pay.

Limits

Consistent with the Act, there is a cap on the paid portion of the E-FMLA leave and it will not exceed \$200 per day and \$10,000 in total.

Employee Responsibilities

Employees desiring to take E-FMLA leave must make the request in writing on forms provided by the Human Resources Department.

Emergency Paid Sick Leave Act (E-PSL)

Applicability

As a government employer, the City of Madera is required to provide benefits under this new law.

Term

The Act goes into effect April 2, 2020, unless enacted sooner by the Department of Labor, and will sunset December 31, 2020. The benefits granted by the Act apply prospectively upon the effective date of the Act.

Eligibility and Use of Leave

City of Madera employees are eligible for E-PSL regardless of how long the employee has worked for the City. The Act that was signed into law includes an addition that requires the Secretary of Labor to issue regulations to exclude certain health care providers/emergency responders from the definition of “employee” under the Act. The City will follow any regulations issued by the Department of Labor in administering E-PSL.

Employees are entitled to E-PSL at their regular rate of pay, subject to limits as identified below, if they are unable to work or telework for 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 seeking a medical diagnosis.

Employees are entitled to Emergency Paid Sick Leave at two-thirds of the employee’s regular rate of pay, subject to limits as identified below, if they are unable to work or telework because:

- (4) The employee is caring for an individual who is subject to a Federal, State, or local 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.
- (5) The employee is caring for a son or daughter of such employee if 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 Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

The Act permits employees to supplement the two-thirds pay with their accrued leaves to achieve 100% of their regular rate of pay.

E-PSL is provided in addition to any other City-provided paid time off.

Limits

Consistent with the Act, E-PSL is subject to the following monetary caps:

\$511/Day and \$5,110 in the Aggregate for the Following Employee-Related COVID-19 Absence 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 seeking a medical diagnosis.

\$200/Day and \$2,000 in the Aggregate for the Following Reasons Related to the Employee Taking Leave to Care for an "Individual" or "Son or Daughter"

4. The employee is caring for an individual who is subject to an order by a Federal, State, or local 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.
5. The employee is caring for a son or daughter of such employee if 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 Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

As defined in the Act, "Son or Daughter" has the same definition as it does under the FMLA, and means 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 18 years of age or older and incapable of self-care because of a mental or physical disability.

If an employee seeks to care for an “individual” as stated above, the employee shall provide the type of relationship when certifying the need for leave.

Interaction with E-FMLA Leave

E-PSL will run concurrently with E-FMLA leave if the employee has such leave available.

Employee Responsibilities

Employees desiring to take E-PSL leave must make the request in writing on forms provided by the Human Resources Department.