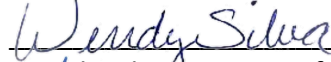


REPORT TO CITY COUNCIL

Approved by:



Wendy Silva, Director of Human Resources



Arnaldo Rodriguez, City Manager

Council Meeting of: April 6, 2022

Agenda Number: B-6

SUBJECT:

Ratification of Revisions to COVID-19 Emergency Policy No. 2

RECOMMENDATION:

Adopt a Minute Order ratifying issuance of Revised COVID-19 Emergency Policy No. 2: COVID-19 Paid Leave by the City Manager in his role as Director of Emergency Services

SUMMARY:

In his role as Director of Emergency Services, the City Manager has issued revisions to COVID-19 Emergency Policy No. 2: COVID-19 Paid Leave in compliance with California Senate Bill (SB) 114. The policy has been updated to provide City employees with Supplemental Paid Sick Leave for COVID-related leaves for the time period of January 1, 2022, through September 30, 2022. The requested action is for Council to ratify the revised policy.

DISCUSSION:

As the global COVID-19 pandemic continues, legislation has changed to adapt to the needs of employers and employees. Most recently, Governor Newsome signed into law SB 114, reauthorizing COVID-19 Supplemental Paid Sick Leave (SPSL). SPSL was originally required under SB 95 in 2021, which sunsetted September 30, 2021. SB 114 is the 2022 version of SPSL. The City is referring to leave provided under SB 114 as SPSL-22 to avoid confusion with the expired original SPSL benefits.

The new SPSL-22 became effective February 19, 2022. In summary, SB 114 provides the following paid leave benefits for individuals who are required to be absent from work for COVID-related reasons.

- SPSL-22 is retroactive to January 1, 2022, and will sunset September 30, 2022

- SPSL-22 provides up to forty (40) hours of leave for full time employees and up to the equivalent of one (1) normally scheduled work week for part time employees for COVID-related leave reasons other than being COVID positive
- SPSL-22 provides up to forty (40) hours of leave for full time employees and up to the equivalent of one (1) normally scheduled work week for part time employees if the individual tests positive for COVID
- The City may request test results or medical certification to verify the reason for leave
- The City may require testing on or after day five (5) for COVID positive individuals to determine their ability to return to work

As written, SB 114 provides two (2) leave banks, one if an employee tests positive for COVID and one for all other types of COVID-related leave. In analyzing implementation of the program, staff reviewed requirements to set-up SPSL-22 in the City’s payroll system and management of documentation related to SPSL-22 leave. Staff further reviewed SPSL use from 2021. In reviewing the 2021 data for employees that were eligible for the leave, it was found that the majority of employees did not use the full allotment of SPSL available to them. In fact, a majority of employees did not use any of the SPSL time that was available. The City’s support of remote work being made available to those whose jobs can be accomplished through such arrangements played a large part to support employees in completing work from home in a manner that reduced workplace exposures and minimized lost work time and the need to use leave. Utilization of the 2021 SPSL benefit is summarized in Table 1.

Table 1. 2021 SPSL Usage		
<i>Hours Used</i>	<i>Employee Count</i>	<i>Percent of Employees</i>
80 (maximum)	9	3%
>40 to <80	16	6%
>0 to 40	53	20%
No hours used	191	71%

Based on this analysis, it was recommended that rather than setting up two separate leave banks that an employee would potentially move between depending on their reason for leave, along with document management processes to track the information, the leave would be consolidated into one bank available for all reasons allowed for SPSL-22 leave under SB 114. Revised COVID-19 Emergency Policy 2 provides for this consolidated single leave bank and is provided as Attachment 1 to this report.

FINANCIAL IMPACT:

The financial impact of SPSL-22 paid leave will not be fully known until the leave type sunsets in September 2022. To date the City has processed thirty-one (31) requests for retroactive adjustments ranging from twelve (12) to eighty (80) hours. Most retroactive adjustment requests are for the time period immediately after the holidays when the Omicron variant was prevalent,

and a significant number of individuals were subject to quarantine or isolation orders. With the adjustments made in January 2022 to quarantine and isolation requirements by the California Department of Public Health and the California Division of Occupational Safety and Health, the City will likely experience reduced exposure to the need for leave as we continue to navigate the pandemic.

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:

Council could direct staff to further revise the policy. Any revisions not required by law would potentially be subject to meet and confer with represented bargaining units.

ATTACHMENTS:

1. Revised COVID-19 Emergency Policy No. 2: COVID-19 Paid Leave

CITY OF MADERA COVID-19 Emergency Policy	Policy No. 2
	Date Adopted: 3/25/2020
	Date(s) Revised: 2/10/2021; 3/5/2021; 7/23/2021; 02/27/2022
Subject: COVID-19 Paid Leave	

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 (City) declared a local state of emergency March 18, 2020.

As the global pandemic reached the second year, Governor Newsome signed Senate Bill (SB) 95, codifying at Labor Code § 248.2 on March 19, 2021, which expanded paid sick leave to employees for certain COVID-19 related reasons. SB 95 has since expired. On February 9, 2022, Governor Newsom signed SB 114 which adds Sections 248.6 and 248.7 to the California Labor Code effective February 19, 2022, to provide additional COVID-19 Supplemental Paid Sick Leave. The City of Madera has adopted this policy in order to provide qualified employees the appropriate leave types to which they are entitled and to otherwise comply with all relevant and applicable requirements provided under Labor Code § 248.6 and § 248.7.

Supplemental Paid Sick Leave (SPSL)

Applicability

As a result of SB 114, the City of Madera is providing new COVID-19 related paid sick leave, known as Supplemental Paid Sick Leave 2022 (SPSL-22) to City employees as further explained in this policy.

Term

The policy is effective immediately upon adoption. Retroactive to January 1, 2022, SPSL-22 is available through September 30, 2022.

Eligibility and Use of Leave

City of Madera employees are eligible for SPSL-22 regardless of how long the employee has worked for the City. The City will meet and/or exceed any requirements issued by the State of California in administering SPSL-22.

The City shall not require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the City to the covered employee before the covered employee uses SPSL-22 or in lieu of SPSL-22.

The City shall not require a covered employee to first exhaust their SPSL-22 leave before satisfying any requirement to provide paid leave for reasons related to COVID-19 under any Cal-OSHA COVID-19 Emergency Temporary Standards, including, but not limited to, Sections 3205 to 3205.4, inclusive, of Title 8 of the California Code of Regulations or the Cal-OSHA Aerosol Transmissible Diseases Standard at Section 5199 of Title 8 of the California Code of Regulations.

As defined in the labor code, a “covered employee” is an employee who is unable to work or telework for a reason listed below. Covered employees are entitled to SPSL-22 at their regular rate of pay, subject to limits as identified in the *Limits* section. Reasons for taking SPSL-22 include:

- (1) The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidance of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use SPSL-22 for the minimum quarantine or isolation period under the order or guidance that provides for the longest such minimum period, not to exceed total hours available as defined in the *Limits* section of this policy.
- (2) The covered employee has been advised by a health care provider to isolate or quarantine due to COVID-19.
- (3) The covered employee is attending an appointment for themselves or a family member¹ to receive a vaccine or a vaccine booster for protection against COVID-19, subject to the limitation in clause (ii) of subparagraph (4) below.
- (4)
 - (i) The covered employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster that prevents the employee from being able to work or telework.
 - (ii) For each vaccination or vaccine booster, an employer may limit the total SPSL-22 to 3 days or 24 hours unless the employee provides verification from a health care provider that the covered employee or their family member is continuing to experience symptoms related to a COVID-19 vaccine or vaccine booster. The 3-day or 24-hour limitation applied to each vaccine or vaccine booster includes the time used under subparagraph (3) above to get the vaccine or vaccine booster.
- (5) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

¹ *Family member* means any of the following: (1) A child, which for purposes of this policy means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status, (2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child, (3) A spouse, (4) A registered domestic partner, (5) A grandparent, (6) A grandchild, (7) A sibling.

- (6) The covered employee is caring for a family member who is subject to an order or guidance described in subparagraph (1) or who has been advised to isolate or quarantine, as described in subparagraph (2) above.
- (7) The covered employee is caring for a child², whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.
- (8) The covered employee tests positive for COVID-19
- (9) A family member for whom the covered employee is providing care tests positive for COVID-19.

Limits

- (1) Full time employees may use up to 80 hours of SPSL-22.
- (2) Employees that do not qualify for 80 hours of SPSL-22 under subparagraph (1) above, are entitled to the following:
 - a. The total number of hours the covered employee is scheduled to work for the City during the applicable time period, not to exceed two weeks (80 hours).
- (3) The total maximum amount of SPSL-22 a covered employee is entitled to pursuant to this section (*Limits*) shall not exceed 80 hours for the period between January 1, 2022, and September 30, 2022.
- (4) The City will not provide a covered employee with more than the total number of hours of SPSL-22 to which the covered employee is entitled pursuant to (2)a above.
- (5) SPSL-22 is provided in addition to any other City-provided paid time off.

Pay Calculation

- (1) For non-FLSA exempt covered employees, each hour of SPSL-22 will be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
- (2) SPSL-22 for FLSA exempt employees shall be calculated in the same manner as the City calculates wages for other forms of paid leave time.

² See *family member* definition above

- (3) Notwithstanding subparagraph (1) or (2) above, the City shall not be required to pay more than five hundred eleven dollars (\$511) per day and five thousand one hundred ten dollars (\$5,110) in the aggregate to a covered employee for SPSL-22 taken by the covered employee unless federal legislation is enacted that increases these amounts beyond the amounts that were included in the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), in which case the new federal dollar amounts shall apply to this section as of the date the new amounts are applicable under the federal law. Nothing in this subparagraph shall prevent a covered employee who has reached the maximum amounts, as set forth herein, from choosing to utilize other paid leave that is available to the covered employee in order to fully compensate the covered employee for leave taken.

- (4) The City will include the number of hours of SPSL used from 1/1/2022 through 9/30/2022 under this policy on the employee's pay stub beginning the next regular pay date after issuance of this policy.

Employee Status While on Leave

The City will compensate employees who use SPSL-22 according to the manner described in this policy and will otherwise treat employees who use SPSL-22 as if they are using paid sick leave according to the City's Sick Leave Policy.

Employee Responsibilities to Request SPSL-22 Pay

Employees must notify the City that they intend to take SPSL-22. The employee may provide such notice either orally or in writing to their supervisor. The employee or supervisor will document the request using the "Request for SPSL-22, Retro Credit or Pay" form, and submitting the form to the City's Human Resources Department.

An employee may determine how many hours of SPSL-22 to use, up to the total number of hours to which the covered employee is entitled pursuant to the *Limits* mentioned above. An employee is not required to use SPSL-22.

Retroactivity

- (1) If an employee was on Leave Without Pay for a reason that would otherwise have qualified as SPSL-22 between January 1, 2022, and the effective date of this policy, in an amount equal or greater to what the employee would have been entitled to under this policy, the employee is eligible for a retroactive payment from the City for such leave. In order to receive payment for such leave, employees must make an oral or written request to be paid for such leave to their supervisor. The employee or employee's

supervisor must submit the request to the City's Human Resources Department using the "Request for SPSL-22, Retro Credit or Pay" form. The City may request documentation if the reason provided for the leave at the time of use was not consistent with those provided in the *Eligibility and Use of Leave* section.

- (2) If an employee used personal leave and was compensated by the City in an amount equal to or greater than the amount of compensation for SPSL-22 to which the covered employee is entitled as set forth under this policy, employees must make an oral or written request to be paid for such leave to their supervisor. The employee or employee's supervisor must submit the request to the City's Human Resources Department using the "Request for SPSL-22, Retro Credit or Pay" form. The employee will be credited for any leave hours used for COVID-specific leave purposes. The City may request documentation if the reason provided for the leave at the time of use was not consistent with those provided in the *Eligibility and Use of Leave* section before providing the leave credits.

For any such retroactive payment or credit to personal leave banks, the number of hours of leave corresponding to the amount of the retroactive payment or credit shall count towards the total number of hours of SPSL-22 that the City is required to provide to the employee.

Retroactive payments and credits will be processed on or before the payday for the next full pay period for which timesheets have not already been submitted after the employee's request is received. The payment/credits will be documented on the employee's pay stub.

REQUEST FOR SPSL-22, RETRO CREDIT OR PAY

Employee Name: _____ EE ID#: _____

Pursuant to Labor Code § 248.6 and § 248.7, I hereby request (circle only one):

1. COVID-19 Supplemental Paid Sick Leave (SPSL-22) (for current leave)
2. SPSL-22 Retroactive Adjustment
 - a. Leave Credit (employee used personal leave during the time period of 1/1/2022 to the effective date of this policy for a qualifying COVID-19 related reason listed below)
 - b. SPSL-22 Retroactive Payment (employee used Leave Without Pay during the time period of 1/1/2022 to the effective date of this policy for a qualifying COVID-19 related reason listed below)

Reason (circle below):

1. Employee subject to quarantine or isolation from a public health official.
2. Healthcare provider advises employee to quarantine or isolate due to COVID-19.
3. Employee is attending an appointment for themselves or a family member to receive a vaccine or a vaccine booster for protection against COVID-19 (limits apply).
4. Employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster that prevents the employee from being able to work or telework (limits apply).
5. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
6. Employee is caring for a family member who is subject to an order or guidance described in #1 above or who has been advised to isolate or quarantine, as described in #2 above.
7. Employee is caring for a child, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.
8. Employee tests positive for COVID-19.
9. A family member for whom the employee is providing care tests positive for COVID-19.

For SPSL-22 pay request for a current leave, provide expected dates of leave:

From ____/____/____ to ____/____/____

For retroactive leave credit/pay, provide the following information:

1. Dates of previous absence

From ____/____/____ to ____/____/____

REQUEST FOR SPSL-22, RETRO CREDIT OR PAY

Retroactive request information, continued.

2. Absence was originally processed as (check all that apply):

- Personal Sick Leave
- Family Sick Leave
- Vacation
- Comp Time
- Holiday Bank Time
- Leave Without Pay

Employee:

I understand SPSL-22 shall not exceed 80 hours, or the equivalent of two (2) weeks of my normal work schedule, prorated for part-time employees, subject to provisions of LC § 248.6 and § 248.7 and the City of Madera' COVID-19 Emergency Policy #2. I certify that all information I have provided is true and correct.

Employee Signature _____ Date _____

Supervisor Review:

I have received a request from the stated employee to use SPSL-22 or process a retroactive adjustment. If this request was received orally, I have completed the form based on information provided to me by the employee to the best of my knowledge.

Supervisor Signature _____ Date _____

Employees may request SPSL-22 leave/credit/pay in writing or orally, but all requests should be processed on this form by the employee's supervisor, and then forwarded to Human Resources. Human Resources may request additional documentation upon receiving this request, such as a copy of a doctor's note, a health department letter regarding a COVID-19 quarantine order, test result, etc. See COVID-19 Emergency Policy #2 for full details and limitations.

How to Submit:

- Email completed forms to hinfo@madera.gov
- Send via interoffice mail to HR
- Drop off at HR in City Hall.

Questions? Call HR at 661-5400, opt. 8 or x8704 from a City phone.