



## **MEMORANDUM**

TO: Department Heads/Designees; County Management Team; Human Resources Staff

FROM: Jill Abel, Human Resources Director

DATE: April 16, 2020

SUBJECT: Information on COVID-19 Leaves and Timekeeping

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On March 18, 2020, the President signed into law the Families First Coronavirus Response Act (FFCRA). The Act requires certain employers to provide an expanded paid family medical leave (FMLA) entitlement and emergency sick leave benefit to certain employees for reasons specific to COVID-19. Over the past couple of weeks, the Department of Labor (DOL) has released additional clarifications and HR has been closely monitoring and gathering information as they've released it.

The County is required to offer our employees the benefits within the Act; however, exemptions are allowed for broadly defined "health care providers" and "emergency responders". In order to ensure continuity of services, the following departments and classifications will be exempt from the expanded FMLA entitlement and reasons (1), (5), and (6) of the emergency sick leave benefit:

- Health and Human Services department employees
- Probation department employees
- Sheriff's department employees
- Emergency Operations Director, Deputy Director and Planner classifications
- Building Maintenance/Custodian/Supervisor/Manager/Director classifications
- Public Works Maintenance Workers/Sr./Supervising/Superintendent classifications

All other eligible employees are entitled to all of the Act's benefits. The Act does define "health care provider" and "emergency responder" very broadly. If needed, the County may apply exemptions to additional departments and/or specified classifications as determined by operational needs and requirements to continue to provide public service.

This memo is to provide general information for management on the FFCRA. This Act is extremely detailed and we have done our best to summarize it. We expect that over the next several weeks new information on this Act will become available. We will continue to monitor the situation and will keep you informed as needed.

## **Emergency Sick Leave Under the FFCRA – General Information**

- Emergency sick leave is effective 4/1/2020 through 12/31/2020.
- It is immediately available to certain employees regardless of how long they've been employed with the County.
- All eligible employees will receive an additional emergency sick leave "bucket" of 80 hours\* (except when hours are pro-rated for employees who don't work full-time).
- If the eligible employee is unable to work or telework, emergency sick leave applies to 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.
  - (4) The employee is caring for an individual who is subject to an order as described in the first bullet or has been advised as described in the second bullet.
  - (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 childcare 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.
- Employees of the Sheriff's, Probation and Health and Human Services departments; Emergency Operations Director, Deputy Director and Planner classifications; Building Maintenance Technicians, Building and Grounds Supervisor, Custodians, Custodian Supervisor, Facilities Manager, Director of Administrative Services classifications; and Public Works Maintenance Workers/Sr./Supervising/Superintendent classifications are not eligible to use emergency sick leave for reasons (1), (5) and (6). Additionally, elected officials are not eligible employees.
- Emergency sick leave is paid at the employee's regular rate of pay, but is capped for reasons (1), (2), and (3) at \$511 daily and \$5,110 aggregate. For reasons (4), (5), and (6) emergency sick leave is paid at 2/3 the employee's regular rate and capped \$200 daily, \$2000 aggregate.
- \*Part-time employees with a regular work schedule, including extra help and reserve employees, will be allowed a number of emergency sick leave hours equal to the number of hours they work, on average, over a 2-week period. For example, a part-time employee who regularly works 20 hours a week, is entitled to 40 hours of emergency sick leave to be used over a 2-week period. For Extra Help and Reserve employees where the work schedule is variable HR will provide the analysis under the FFCRA to determine the number of emergency sick leave hours the part-time employee is eligible for.
- Emergency sick leave does not carry over from 1 year to the next; it expires on 12/31/2020 and is not subject to sick leave payout provisions in the County's labor agreements and/or rules.
- Emergency sick leave will be applied before any other preexisting leave accrual for qualifying COVID-19 related absences. However, the employee can elect to not use it.
- The County cannot require the employee to use existing leave concurrently with emergency sick leave, but if the employee elects, the employee may use preexisting leave accruals to supplement the amount he or she receives from emergency sick leave, up to the employee's normal earnings.
- If an eligible employee is off work due to reasons (2), (3), or (4), the "classic" FMLA/CFRA requirements still apply. Departments must notify HR when an employee will be off work for a workweek or more so we can send the applicable legal notices and communicate benefits with employees.
- Departments should still be asking employees for doctor's notes as needed, but some flexibility may be required.

- Emergency sick leave can be coordinated with disability insurance or paid family leave benefits based on current labor agreements and County rules. The employee cannot receive more than 80 hours of emergency sick leave, and in no instance, shall the combination of emergency sick leave, disability insurance, or paid family leave payments exceed one hundred (100) percent of the employee's monthly salary. Employees should contact Joelyne in the Auditor's office at ext. 7816 for coordination questions.
- If an employee is absent for a reason unrelated to COVID-19, standard practices, procedures and policies are still in effect.
- As a reminder, HR must be immediately notified if an employee will require a workweek or more off work due to illness or injury, whether it's related to COVID-19 or not.
- Per the paid administrative leave orders, employees who are unavailable to work are not eligible for paid admin leave and their leave accruals need to be applied. Leave accruals must be applied consistent with the employees expected schedule; specifically, the schedule at the time the leave is being taken.

### **Expanded Paid Family & Medical Leave (FMLA) Under the FFCRA – General Information**

- Expanded FMLA is effective 4/1/2020 through 12/31/2020.
- As amended, the expanded FMLA adds a new qualifying reason for leave:
  - To care for a son/daughter under 18 years old if the school or place of care (compensated child care) has been closed due to COVID-19.
- The expanded FMLA qualifying reason is available to eligible employees in addition to existing FMLA entitlements. However, eligible employees are still only entitled to a total of 12 workweeks of FMLA. Please note, the County is required to take into consideration the State's California Family Rights Act (CFRA). At this time, CFRA will not run concurrent with the expanded FMLA reason.
- The County will require the employee to provide verification of school closure, name of children being cared for, name of school or childcare provider that is closed and possibly other forms of verification.
- Leave reasons specific to the expanded FMLA (school/childcare closure) are available to eligible employees who have worked for the County for at least 30 calendar days. For example, if an employee wants to take leave on 4/10/2020, he/she must have been employed with the County since 3/11/2020.
- If any employee is requesting FMLA leave that is not related to a school/childcare closure, they still need to meet the existing FMLA eligibility requirements.
- Elected officials; employees of the Sheriff's, Probation and Health and Human Services departments; Emergency Operations Director, Deputy Director and Planner classifications; Building Maintenance/Custodian/Supervisor/Manager/Director classifications; and Public Works Maintenance Workers/Sr./Supervising/Superintendent classifications are not eligible employees for expanded FMLA. However, where these employees are eligible for existing "classic" FMLA/CFRA entitlements they would continue to be eligible.
- If FMLA time off is related to school or place of care closure:
  - FMLA is unpaid for the initial 2 workweeks. However, the employee may elect to use emergency paid sick leave during the initial 2 workweeks, paid at 2/3 regular rate of pay up to the daily cap of \$200/\$2000 aggregate. Additionally, the employee may choose to coordinate emergency sick leave with existing leave accruals up to their normal earnings.
  - Emergency sick leave is capped at 80 hours regardless of the number of hours in an employee's workweek.
  - After the initial 2 workweeks, the County will pay an employee at 2/3 the regular rate of pay not to exceed a daily cap of \$200/\$10,000 aggregate.
  - The employee may elect to coordinate existing leave accruals (vacation, CTO) with the 2/3 pay up to their normal earnings.
  - The use of existing sick leave accruals is not applicable after the initial 2 workweeks of leave.

- If the employee chooses to not use their vacation, the County’s existing irrevocable choice limitations apply as outlined in labor agreements and County Rules.
- If an eligible employee has already exhausted their existing 12 workweek FMLA entitlement within the prior 12 months, they are not eligible for expanded FMLA. They are still eligible for emergency sick leave.
- If an eligible employee used a portion of their 12 workweeks of FMLA, they may use the remaining balance for any qualifying reason, including the expanded FMLA related to school/daycare closure (if not exempt from expanded FMLA).

**General Questions and Answers:**

***What do I do if my employee is ill, injured, or requesting time off due to childcare/school closure?***

- If your employee is sick, send them home. Notify HR immediately so we can communicate with the employee regarding possible benefits/leave entitlements. If needed, departments can use the attached “*Notice of Directive to Employee to Not Return to Work*”.
- If your employee is injured, and the injury is work related, report the injury to Company Nurse following standard processes. As normal, HR will work with the department contacts and the injured employee.
- If your employee has a non-industrial injury and they are requesting an accommodation or time off work, determine if you can temporarily accommodate the restrictions by offering a modified work assignment. Forward a copy of the doctor’s note to HR with any applicable information. If you are unable to offer a modified work assignment or the employee is requesting a leave of absence, notify HR immediately so we can communicate with the employee regarding possible leave entitlements and engage in an interactive process.
- If your employee is requesting time off work due to childcare/school closure, immediately communicate with HR so we can discuss their possible eligibility for leave entitlement. HR will always work with the departments to determine if we can offer something other than leave. As a reminder, certain employees are exempt from expanded FMLA. If your employee is exempt, you are still welcome to work with HR on possible solutions. However, essential employees are required to work.
- In each of these cases, HR will work with department contacts, payroll, and the employee and communicate what benefits are applicable.

***How should my employee fill out their timesheet?***

- Employees should fill out their timesheet as they normally would following any guidance that has already been given. If the division/department has an expectation that employees are available Monday through Friday 7 hours a day and Saturdays 5 hours, they will use 7 hours of leave accrual each weekday and 5 hours of leave accrual on Saturday. You continuously apply leave accruals and FMLA even if the employee is not reporting to the normal worksite on a regular basis. If they are unavailable per the administrative leave orders, paid admin leave stops.
- If the employee is using emergency sick leave they will need to indicate the number of hours of emergency sick leave on their timesheet using the code “C-19”. If departments have the capability to modify their timesheet columns, they can do so creating a column specific for emergency sick leave. For departments that don’t have the ability to modify the timesheet, the employee can use a written code.

For example:

| Timesheet- Jane Doe | Hrs. Wkd. | Sick Leave Hrs. | Vacation Hrs. | Holiday Hrs. | FH Hrs. | FMLA Hrs. |
|---------------------|-----------|-----------------|---------------|--------------|---------|-----------|
| Sun. 4/5/2020       |           |                 |               |              |         |           |
| Mon. 4/6/2020       |           | 7, C-19         |               |              |         | 7         |
| Tues. 4/7/2020      |           | 7, C-19         |               |              |         | 7         |
| Wed. 4/8/2020       |           | 7, C-19         |               |              |         | 7         |
| Thur. 4/9/2020      |           | 7, C-19         |               |              |         | 7         |
| Fri. 4/10/2020      |           | 7, C-19         |               |              |         | 7         |
| Sat. 4/11/2020      |           | 5, C-19         |               |              |         | 5         |

This is just an example and can be modified. Additionally, HR will communicate with department contacts, payroll, and the employee regarding who is eligible for emergency sick leave and how many hours should be applied. **Emergency sick leave should not be indicated on a timesheet if HR has not been involved.**

***How should I direct my staff who prepare payroll to complete the pay and hour sheets?***

- An employee who has been approved for emergency sick leave or expanded FMLA will be instructed to designate hours used for leave as “C-19” when completing their timesheet for each day they are using FFCRA.
- The Auditor form has been updated to include COVID-19 in the dropdown that indicates what type of designation is being utilized. Please use the updated form to indicate the proper designation for your employees so that it matches the timesheet. The Auditor form will be turned in as usual with the Pay and Hour sheets.

***How do I know if my employee can return to work?***

- If you have a doctor’s note from your employee, use the return date that is on the doctor’s note. HR recommends departments reach out to their employee at least a couple of days before their expected return to work date to confirm they will return and to notify them of any work assignment/reporting procedure changes. If your employee expresses some uncertainty about returning, or is still sick, request another doctor’s note. Notify HR immediately of the status.
  - If the employee is unable to get a doctor’s note, please be flexible. Contact HR.
  - Departments can use the attached “*Employee Certification to Return to Work*”, if needed.
  - If departments are unsure if they should allow their employee to return to work and need guidance from Public Health specific to COVID-19, they can call the Yuba Sutter EOC Call Center at 530-749-7700 for advice, and should also consult the attached guidance.

***What if my employee tells me their spouse was told to go home by their employer because their coworker tested positive for COVID-19 and now their spouse is quarantined?***

- Contact the Yuba Sutter EOC Call Center at 530-749-7700 for advice; and
- Contact HR. If the employee is sent home, we need to assess if the employee is eligible for any benefits.

***What benefits may be available to employees who are unable to work?***

- Expanded FMLA, depending on their classification and which department they work in.
- FMLA/CFRA/PDL
- Disability Insurance
- Paid Family Leave
- Emergency Sick Leave
- Existing leave accruals
- ADA/FEHA Reasonable Accommodation
- Temporary modified work assignment
- Approved leave without pay
- Unemployment Insurance

***My employee is requesting personal time off, such as a vacation day, not related to COVID-19. What do I do?***

- Requests for time off for personal reasons should be treated as normal request for leave (vacation, comp-time, etc.). Approval of the request is subject to the operational needs of the department.
- Departments are encouraged to do what they can to work with employees. Pay attention to signs of burnout. We want to prevent work related injuries.

***My employee seems to be having a difficult time dealing with things. I am concerned for them. What do I do?***

- It is important for Supervisors or Managers to meet individually with the employee in a private space (while observing social distancing and Dr. Luu's Stay at Home Order) or by private phone call. Explain to the employee your observations and concerns. Ask them if there is anything they need and do your best to accommodate. Be supportive and empathetic.
- Employees who work for the Sheriff's department, Probation department, and the District Attorney's office are also encouraged to use Peer Support and Critical Incident Stress Management (CISM).
- If needed, call HR so we can help assess the situation.

***I had an extra help employee who stopped working last month, but I need them to work again. Are they eligible for FFCRA?***

- If, prior to the FFCRA's effective date (4/1/2020), an employee was sent home and the County stopped paying him/her because there was no work for the employee to do, the employee will not get emergency sick leave or expanded family and medical leave. The employee may be eligible for unemployment insurance benefits. For example, an extra help employee was told prior to 4/1/2020 that their assignment/project would be put on hold and their working hours were reduced to zero. They are still employed with the County, just not scheduled to work. This extra help employee is not eligible for FFCRA. If after 4/1/2020, you determine you require the assistance of this same extra help employee and schedule them to work, they may become eligible for FFCRA. Eligibility is dependent on which department the employee works for or their classification and if they meet FFCRA eligibility requirements.

If you have any questions about FFCRA, you can reach out to Tiffany Manuel at ext. 7871, [tmanuel@co.yuba.ca.us](mailto:tmanuel@co.yuba.ca.us); or call the HR mainline at 530-749-7860, [HR@co.yuba.ca.us](mailto:HR@co.yuba.ca.us)

**Attachments to the email:** Employee Certification to Return to Work; Notice of Directive to Employee to Not Return to Work; Procedure-employee positive for COVID-19; Procedure-employee quarantined possible COVID-19;