

City Council Staff Report

January 26, 2021



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From: Sarah Eddy, Human Resources Manager
Prepared by: Sarah Eddy, Human Resources Manager
Agendized by: Gary R. Hampton, Acting City Manager

1. ACTION RECOMMENDED:

Resolution: Adopting the Families First Coronavirus Response Act (FFCRA) extension policy

Resolution: Adopting the COVID-19 workplace exposure policy

2. SYNOPSIS:

City staff has prepared two (2) resolutions for the City of Turlock ("City") City Council ("Council") consideration to adopt policies regarding workplace exposures to COVID-19 and extension of the time frame within which employees may use the benefits granted under the Families First Coronavirus Response Act ("FFCRA") for time off work due to COVID-19 related issues.

3. DISCUSSION OF ISSUE:

Introduction/Background

FFCRA Extension Policy. The FFCRA was passed on March 18, 2020, in response to the COVID-19 pandemic. The FFCRA was effective April 1, 2020 and expired December 31, 2020. The FFCRA provisions included the Expanded Family Medical Leave Act ("EFMLA") and the Emergency Paid Sick Leave Act ("EPSLA"). Under the EPSLA, eligible employees could receive up to 80 hours of additional paid sick leave for use in specified situations related to COVID-19. Under the EFMLA, eligible employees could use up to 10 weeks of the employees 12-week FMLA leave allotment to care for a child whose school or place of care has been closed or whose child-care provider is unavailable due to COVID-19, and receive partial compensation for that time off.

The City has administered the benefits provided under the FFCRA pursuant to the City's Families First Coronavirus Response Act policy dated April 14, 2020 ("FFCRA Policy"). The FFCRA was designed to aid employees in dealing with illness and child-care crises related to COVID-19. In accordance with the

requirements of the FFCRA, the City's FFCRA Policy was drafted to expire on December 31, 2020. However, the pandemic is ongoing and more severe than ever. While some employees have exhausted all of the benefits provided under the FFCRA, others have only partially exhausted or used none of the FFCRA benefits as of December 31, 2020. The City conducted a survey of other Central California cities with regard to their approach to provide benefits after the end of FFCRA effective December 31, 2020. A majority of the cities surveyed have made the decision to extend EPSLA and the EFMLA in some form to allow employees to utilize any unused hours and/or unused time through March 31, 2021 in order to help reduce the impact of the pandemic on employees.

The proposed FFCRA Extension Policy does not confer additional or new benefits on any employee; rather, it provides only that:

- 1) Eligible employees who did not use any or all of the EPSLA benefits outlined in the FFCRA Policy prior to January 1, 2021 may carry over the unused benefits for use through March 31, 2021; and
- 2) Eligible employees who did not use any or all of the EFMLA benefits outlined in the FFCRA Policy prior to January 1, 2021 may carry over the unused benefits for use through March 31, 2021.
- 3) After an employee has exhausted all available accrued time off, the City will advance sick leave for absences necessitated by non-workplace exposures to COVID-19 as set forth in the City's FFCRA Policy to a maximum of 40 hours, through March 31, 2021. The employee's sick leave bank will reflect a negative balance, which shall be repaid as the employee accrues sick leave. Paid sick leave will become available for use once the employee has accrued sufficient leave to create a positive balance in the employee's sick leave bank.

COVID-19 Workplace Exposure Policy. Assembly Bill 685 ("AB 685") recently amended the Labor Code to require employers to take certain actions to protect employees from issues related to workplace exposures to COVID-19. In response to the ongoing pandemic, Cal/OSHA adopted emergency regulations with the goal of preventing infections and responding to cases and outbreaks in the workplace.

The Cal/OSHA regulations ("Regulations") went into effect on November 30, 2020, and apply to all employers with employees working outside the home (except health care employers covered by the Aerosol Transmissible Diseases standard), and are immediately enforceable. The Regulations are divided into five compliance categories, one of which addresses employer obligations to employees who have been exposed to COVID-19 at the worksite.

The Regulations require, among other things, that employers notify employees and their representatives of any workplace exposure and offer free testing on work time

to exposed employees. The Regulations also require that employees who have had a workplace exposure to COVID-19 be excluded from returning to the worksite until the return-to-work criteria have been satisfied, which includes isolation, typically for a 10-day period, pursuant to recent California Department Public Health guidance. In addition, the Regulations appear to require that employers continue exposed employees' salary and benefits while they are excluded from the worksite.

There is some ambiguity in the language of the Regulations regarding the obligation to maintain pay and benefits for exposed employees and/or whether employers may require employees to utilize accrued sick leave during the time the employee is prohibited from returning to work. Some employer advocacy groups have called for additional guidance to be issued by Cal/OSHA. However, the Regulations as currently enacted may be read to require that employees maintain earnings, benefits, and seniority during the time employees are excluded from work as a result of a workplace exposure, and as the lost time is due to a workplace exposure, the requirement seems to be reasonable.

As such, the proposed COVID-19 Workplace Exposure Policy would provide that employees who have been excluded from work as the result of a verified workplace exposure to COVID-19 would be placed on paid COVID-19 Administrative Leave for the time period the employee is excluded from work under the Cal/OSHA regulations.

4. BASIS FOR RECOMMENDATION:

The FFCRA Extension Policy would aid City employees who suffer COVID-19 related issues under the FFCRA guidelines and who have not yet used FFCRA benefits by extending availability of those benefits through March 31, 2021.

The COVID-19 Workplace Exposure Policy would provide for COVID-19 Administrative Leave pay during the time an employee is excluded from the worksite due to a workplace exposure to COVID-19.

5. FISCAL IMPACT / BUDGET AMENDMENT:

Unknown at this time.

6. CITY MANAGER'S COMMENTS:

Recommend Approval.

7. ENVIRONMENTAL DETERMINATION:

N/A

8. ALTERNATIVES:

- A. City Council could approve the adoption of the FFCRA Extension policy and/or COVID-19 Workplace Exposure Policy; or
- B. City Council could reject the FFCRA Extension policy and/or COVID-19 Workplace Exposure Policy; or
- C. City Council could request additional information from staff.

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF ADOPTING }
THE FAMILIES FIRST CORONAVIRUS } RESOLUTION NO. 2021-
RESPONSE ACT (FFCRA) EXTENSION POLICY }
_____ }

WHEREAS, the Families First Coronavirus Response Act ("FFCRA") was passed on March 18, 2020 in response to the COVID-19 pandemic. The FFCRA was effective April 1, 2020 and expired December 31, 2020. The FFCRA provisions included the Expanded Family Medical Leave Act ("EFMLA") and the Emergency Paid Sick Leave Act ("EPSLA"), which provided additional paid sick leave and extended FMLA benefits to employees for use in specified situations related to COVID-19; and

WHEREAS, the City has administered the benefits provided under the FFCRA pursuant to the City's Families First Coronavirus Response Act Policy dated April 14, 2020 ("FFCRA Policy"). In accordance with the requirements of the FFCRA, the City's FFCRA Policy expired on December 31, 2020; and

WHEREAS, many City employees did not exhaust the benefits provided under the FFCRA Policy before its expiration; and

WHEREAS, the COVID-19 pandemic continues to negatively impact City employees and, in order to reduce the impact of the pandemic on those employees who have not yet exhausted benefits under the FFCRA Policy, the City desires to extend the expiration of the FFCRA Policy.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby adopt the Families First Coronavirus Response Act (FFCRA) Extension Policy.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 26th day of January, 2021, by the following vote:

AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

ATTEST:

Jennifer Land, City Clerk,
City of Turlock, County of Stanislaus,
State of California

FFCRA BENEFIT EXTENSION POLICY

The Families First Coronavirus Response Act (“FFCRA”) was passed on March 18, 2020 in response to the COVID-19 pandemic. The FFCRA was effective April 1, 2020 and expired December 31, 2020. The FFCRA provisions included the Expanded Family Medical Leave Act (“EFMLA”) and the Emergency Paid Sick Leave Act (“EPSLA”). Under the EPSLA, eligible employees could receive up to 80 hours of additional paid sick leave for use in specified situations related to COVID-19. Under the EFMLA, eligible employees could use up to 10 weeks of the employee’s 12-week FMLA leave allotment to care for a child whose school or place of care has been closed or whose child-care provider is unavailable due to COVID-19 and receive partial compensation for that time off.

The City has administered the benefits provided under the FFCRA pursuant to the City’s Families First Corona Virus Act Policy dated April 14, 2020 (“FFCRA Policy”). In accordance with the requirements of the FFCRA, the City’s FFCRA Policy was drafted to expire on December 31, 2020. However, due to the ongoing nature of the pandemic, in order to help reduce the impact of the virus on our employees, the City has determined it will extend the time frame for employees to use the benefits granted under the City’s FFCRA Policy to March 31, 2021.

This extension does not confer additional or new benefits on any employee; rather, it provides only that:

- 1) eligible employees who did not use any or all of the EPSLA benefits outlined in the FFCRA Policy prior to January 1, 2021 may carry over the unused benefits for use through March 31, 2021; and
- 2) eligible employees who did not use any or all of the EFMLA benefits outlined in the FFCRA Policy prior to January 1, 2021 may carry over the unused benefits for use through March 31, 2021.

Employees who have exhausted all benefits under the FFCRA Policy may use the employee’s accrued sick leave and/or vacation and/or comp time and/or other accrued time off.

After an employee has exhausted all available accrued time off, the City will advance sick leave for absences necessitated by **non-workplace exposures** to COVID-19 as set forth in the City’s FFCRA Policy to a maximum of 40 hours. The employee’s sick leave bank will reflect a negative balance, which shall be repaid by as the employee accrues sick leave. Paid sick leave will become available for use once the employee has accrual sufficient leave to create a positive balance in the employee’s sick leave bank.

Leaves and benefits will continue to be granted and administered under the terms and conditions specified in the City’s FFCRA Policy. Any unused leaves or benefits under this extension will expire as of midnight on April 1, 2021 and are not subject to any cash-out or conversion under this or any other City policy or provisions.

Employees who are excluded from work as a result of a **workplace exposure** may be eligible for COVID Administrative Leave under the City’s COVID 19 Workplace Exposure Policy.

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF ADOPTING THE
COVID-19 WORKPLACE EXPOSURE POLICY

} RESOLUTION NO. 2021-
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WHEREAS, Assembly Bill 685 recently amended the California Labor Code requiring employers to take certain actions to protect employees from impacts related to workplace exposures to COVID-19. In response to the ongoing pandemic, Cal/OSHA has adopted emergency regulations ("Regulations") with the goal of preventing infections and responding to COVID-19 cases and outbreaks in the workplace; and

WHEREAS, the Regulations require, among other things, that employers notify employees and their representatives of any workplace exposure and offer free testing on work time to exposed employees. The Regulations also require that employees who have had a workplace exposure to COVID-19 must be excluded from returning to the worksite until the return-to-work criteria has been satisfied, which typically includes a 10-day period of isolation, pursuant to recent California Department Public Health guidance; and

WHEREAS, the Regulations as currently enacted may be read to require that employees maintain earnings, benefits, and seniority during the time employees are excluded from work as a result of a workplace exposure; and

WHEREAS, the City desires to provide paid COVID-19 Administrative Leave to employees who have been excluded from work under Cal/OSHA regulations as the result of a verified workplace exposure to COVID-19.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby adopt the COVID-19 workplace exposure policy.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 26th day of January, 2021, by the following vote:

AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

ATTEST:

Jennifer Land, City Clerk,
City of Turlock, County of Stanislaus,
State of California

City of Turlock Workplace COVID-19 Exposure Policy

COVID-19 Workplace Exposure

In accordance with current Cal/OSHA regulations, employees who have been within 6 feet of a “COVID-19 Case” in the workplace for a cumulative total of 15 minutes in a 24 hour period during the COVID-19’s Case’s “high risk exposure period” will be deemed to have a “workplace exposure.”

A “COVID-19 Case” means: 1) a person who has tested positive for COVID-19; 2) a person who is subject to an order to isolate by a local or state health official due to COVID-19; or 3) a person who has died of COVID-19 according to a local health department or inclusion in the COVID-19 statistics of the county. A person ceases to be a COVID-19 Case when a licensed health care professional determines the person does not have COVID-19 in accordance with the guidance issued by state or local health officials.

“High risk exposure period” for COVID cases who are symptomatic means the period beginning two days before through the tenth day after symptoms first appear, *and* after 24 hours have passed with no fever without the use of fever reducing medication and symptoms have improved. “High risk exposure period” for persons who test positive for COVID-19 but do not develop symptoms means the period beginning two days before until the tenth day after the first specimen for the positive test was collected.

Notice/Testing

All employees with potential workplace exposure will receive notice of the exposure within one business day. Notice will also be provided to authorized representatives of any such employees. Employees who have had a potential workplace exposure will be offered testing at no cost. Time spent getting tested is considered compensable work time.

Return to Work

Per Cal/Osha regulations and Governor Newsom’s Executive Order N-84-20 employees who are COVID-19 Cases or who have been subject to a workplace exposure will be excluded from the workplace as follows:

Symptomatic COVID-19 Cases--employees who tested positive and developed symptoms will be allowed to return to work only after: 1) at least 24 hours have passed since a fever of 100.4 or higher has resolved without medication; 2) COVID-19 symptoms have improved; and 3) at least 10 days have passed since COVID-19 symptoms first appeared.

Asymptomatic COVID-19 Cases--employees who test positive but do not develop symptoms cannot return until 10 days have passed since the first specimen for the positive test was taken.

COVID-19 Exposure—employees who have been exposed to COVID-19 will be allowed to return to work after ten days have passed from exposure, provided the employee has remained asymptomatic the entire time. Stricter local health department isolation orders may modify this time frame.

COVID Administrative Leave

Employees who have been excluded from work under this policy who would otherwise be able and available to work will be placed on paid COVID Administrative Leave for the time periods set forth

above. The City will maintain employees' seniority, earnings and benefits during the time employees are excluded from work as a result of a workplace exposure, unless otherwise covered by worker's compensation.

This Policy is intended to comply with requirements of California law and Cal/OSHA regulations and may be modified in accordance with changes in the law, regulations, or any guidance issued by Cal/OSHA.