

City of Boston Coronavirus Related Expanded Leave Policies Updated Effective October 1, 2021

Background

The federal Families First Coronavirus Response Act (“FFCRA”) required employers to provide two new benefits to employees: expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act (“EFMLEA”) and emergency paid sick leave under the Emergency Paid Sick Leave Act (“EPSLA”). In effect from April 1, 2020 to December 31, 2020, these benefits included differentiated terms depending on whether employees were, or were not, categorized as “emergency responders or health care providers¹”.

Following these federal enactments, the City of Boston implemented two new employee benefits related to COVID-19. The policies were enacted to provide additional support for employees who are experiencing symptoms of COVID-19 or have tested positive for COVID-19 and to protect the City of Boston workforce against the further spread of the virus. Akin to the federal delineations, these City benefits also differentiated between employees based on whether they were categorized as emergency responders or health care providers, as set forth below:

- (1) The City’s *Families First Coronavirus Response Act (for Employees Not Designated as Health Care Providers or Emergency Responders) Policy* provided both expanded FMLA benefits akin to those granted in the federal EFMLEA and for expanded paid sick leave benefits akin to the EPSLA. These benefits were available to all City employees who were not designated as health care providers or emergency responders, following the federal law. City of Boston employees who are health care providers or emergency responders were not eligible for the EFMLEA-type component of this benefit, just as they were not eligible under the federal law.

- (2) The City’s *Coronavirus Supplemental Paid Sick Leave (for Health Care Providers and Emergency Responders) Policy* provided additional paid sick leave to health care providers and emergency responders for limited reasons.

Policies describing these benefits were announced to employees on April 1, 2020. On January 8, 2021, the City extended the original deadline for these policies from December 31, 2020 to March 31, 2021, for employees to take any remaining unused leave. On April 8, 2021, the City further extended the deadline to September 30, 2021. On October 20, 2021, the City announced that employees are allowed to roll over any remaining unused leave for which they are eligible under the policies until further notice, but no later than April 1, 2022.

¹ The City follows the U.S. Department of Labor’s definitions of “health care providers” and “emergency responders”, found at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#55>

Following the Commonwealth's enactment of the Massachusetts COVID-19 Emergency Paid Sick Leave Law, the City of Boston expanded the purposes for which emergency paid sick leave benefits could be used by City of Boston employees including health care providers and emergency responders. As such, the policies related to the City's emergency paid sick leave benefits are now combined into one policy applicable to all employees, and retitled as ***Coronavirus Emergency Paid Sick Leave Policy*** to avoid future confusion regarding benefit eligibility.

No substantive changes have been made to the City's expanded FMLA benefits, as health care providers and emergency responders remain ineligible for those benefits. This policy has been retitled as ***Coronavirus Emergency Family and Medical Leave Policy*** and the preface explanation deleted in light of the background provided herein. The retitling and combination of the policies does not create any new leave benefit and all balances from the previously titled benefits remain the same.

If you have any questions about these policies, please email covidleave@boston.gov.

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Coronavirus Emergency Paid Sick Leave Policy

Eligibility

City employees are eligible for the City's Coronavirus Emergency Paid Sick Leave, in addition to the sick leave benefits the City already provides to its employees by policy or collective bargaining agreement.

Benefit

A. Purposes for Paid Sick Leave

Eligible employees who are unable to work for any of the following qualifying purposes may be entitled to paid sick leave not to exceed two (2) weeks of their regularly scheduled hours or eighty (80) hours, whichever is less, in accordance with Section B.

- Purpose 1. The employee is subject to a Federal, State or local quarantine or isolation order related to COVID-19.
- Purpose 2. The employee has been advised by a health care provider or by the City of Boston's public health nurse, BPD Occupation Health, or BFD Medical Examiner to self-quarantine due to concerns related to COVID-19.
- Purpose 3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis. An employee is experiencing symptoms of COVID-19 as described by the BPHC:
<https://www.bphc.org/whatwedo/infectious-diseases/Infectious-Diseases-A-to-Z/Pages/2019-Novel-Coronavirus.aspx>.

The time an employee is seeking a medical diagnosis is limited to time an employee is unable to work because the employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a COVID-19 test.

- Purpose 4. The employee is caring for an individual who is subject to an order as described in Purpose 1 above or has been advised to quarantine as described in Purpose 2 above.

An "individual" means an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined. An individual does not include a person with whom the employee has no personal relationship.

Purpose 5. The employee is caring for the employee's child because the child's school or place of care has been closed, or the child's childcare provider is unavailable, due to COVID-19 precautions.

A child is defined as an employee's own child, adopted child, foster child, step child, legal ward, or child for whom the employee stands in loco parentis that is (1) under eighteen (18) years of age; or (2) is over eighteen (18) years of age and has a mental or physical disability and is incapable of self-care because of that disability.

An employee has a need to take Emergency Paid Sick Leave only if no other suitable person is available to care for the minor child during the period of leave.

Purpose 6. The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

Purpose 7. The employee needs to obtain immunization related to COVID-19 or the employee is recovering from an injury, disability, illness, or condition related to such immunization.

Purpose 8. The employee needs to care for a family member who is obtaining an immunization related to COVID-19 or is recovering from an injury, disability, illness, or condition related to such immunization.

B. Emergency Paid Sick Leave Pay

Full-time Eligible Employees are entitled to up to two (2) weeks of paid sick time for the hours that they are regularly scheduled to work up to maximum of eighty (80) hours (for example 35 hour per week employees will be eligible for up to 70 hours of leave and 40 hour per week employees will be eligible for up to 80 hours of leave). Part-time Eligible Employees are entitled to a number of hours equal to the number of hours that such part-time employee works on average over a two (2) week period up to a maximum of eighty (80) hours.

Pay Under Purposes 1, 2, 3, 6 or 7

If an Eligible Employee takes leave for purposes 1, 2, 3, 6 or 7 above, the Eligible Employee will receive the employee's regular rate of pay for the number of hours that the employee would otherwise normally be scheduled to work.

Pay Under Purposes 4, 5, or 8

If an Eligible Employee takes leave for purposes 4, 5, or 8 above, the Eligible Employee will receive the greater of their regular rate of pay up to one week (not to exceed 40 hours), then 2/3 of the employee's regular rate of pay (or minimum wage whichever is higher) for any remaining time. All leave under Purposes 4, 5, or 8 is capped at \$200 per day and a total of \$2,000.

Employees cannot use accrued leave to supplement the difference between their regular rate of pay and their rate of pay under this leave.

C. Health Benefits

An employee's health insurance coverage remains in effect during the period of leave under Emergency Paid Sick Leave. An employee remains responsible for paying the employee's share of the premiums for such insurance during the period of leave.

Requests for Leave

Any employee requesting leave under the City's Coronavirus Emergency Paid Sick Leave Policy must complete and submit the attached Coronavirus Emergency Paid Sick Leave Request Form, which employees can also access [here](#), and all necessary supporting documentation.

Pay

Employees who are approved for Coronavirus Emergency Paid Sick Leave after meeting these eligibility requirements and submitting appropriate requests and documentation will be credited up to two week's paid sick leave (for example 80 hours for 40 hour per week employees and 70 for 35 hour per week employees).

Other Terms

- (a) Coronavirus Emergency Paid Sick Leave shall not be added to the employees' accrued sick leave balances if not used.
- (b) Coronavirus Emergency Paid Sick Leave may be used intermittently or in less than full-day increments.
- (c) Disputes regarding the interpretation or application of this policy shall be resolved by the City in its sole discretion.

Duration

Unless extended by law, the Coronavirus Supplemental Paid Sick Leave benefits expire on April 1, 2022.

Coronavirus Emergency Family and Medical Leave

Eligibility

Employees who have been employed by the City for at least thirty (30) calendar days immediately prior to the day the leave would begin and who have not already exhausted their FMLA leave entitlement may be eligible for Emergency Family and Medical Leave. Employees who are designated health care providers or emergency responders are not eligible for Emergency Family and Medical Leave benefits.

Benefits

A. Overview

The FFCRA adds another qualifying reason to the currently existing qualifying reasons for leave under the Family and Medical Leave Act (“FMLA”). Specifically, under the FFCRA, Eligible Employees can take up to twelve (12) weeks of job-protected leave when they are unable to work or telework (remote work) because they are caring for their child when the child’s school or place of care has been closed, or the child’s childcare provider is unavailable due to COVID-19 precautions. An employee has a need to take Emergency Family and Medical Leave only if no other suitable person is available to care for the child during the period of leave. A child is defined as an employee’s own child, adopted child, foster child, step child, legal ward, or child for whom the employee stands in loco parentis who is (1) under eighteen (18) years of age; or (2) is over eighteen (18) years of age and has a mental or physical disability and is incapable of self-care because of that disability.

Employees may take a total of twelve (12) workweeks for FMLA or Emergency Family and Medical Leave during a rolling twelve (12) month period. If an employee has taken some, but not all of the twelve (12) workweeks of leave under FMLA during such rolling twelve (12) month period, the employee may take the remaining workweeks as Emergency Family and Medical Leave. However, if the employee has already taken twelve (12) workweeks of FMLA leave during such rolling twelve (12) month period, the employee is not eligible for any additional leave under FMLA or the Emergency Family and Medical Leave.

B. Pay for Emergency Family and Medical Leave

The first ten (10) days of Emergency Family and Medical Leave are unpaid. However, an Eligible Employee may use the Employee’s accrued vacation, personal or compensatory time leave or available leave under the Emergency Paid Sick Leave Act during this initial 10-day period.

Employees will be required to use accrued paid leave (including vacation, personal, and compensatory time and excluding sick leave) concurrent with the Emergency Family and

Medical Leave. Once an employee has exhausted all accrued paid leave (excluding sick leave), the employee will be compensated in accordance with the Emergency Family and Medical Leave at a rate of two-thirds (2/3) the employee's regular rate of pay for the number of hours the employee would otherwise be regularly scheduled to work up to a maximum of \$200 per day and a cap of \$10,000 in the aggregate for the remaining weeks of Emergency Family and Medical Leave.

If an Eligible Employee's work hours vary from week to week, the City shall use a number equal to the average number of hours that the Eligible Employee was regularly scheduled to work per day over the prior 6-month period ending on the date on which the Eligible Employee takes such leave, including hours for which the Eligible Employee took leave of any type. If the Eligible Employee did not work over such 6-month period, the City shall use the Eligible Employee's reasonable expectation at the time of hiring of the average number of hours per day that the Eligible Employee would normally be scheduled to work.

C. Health Benefits

An employee's health insurance coverage remains in effect during the period of leave under Emergency Paid Sick Leave. An employee remains responsible for paying the employee's share of the premiums for such insurance during the period of leave.

Requests for Leave

Eligible Employees requesting Emergency Family and Medical Leave must complete and submit the attached Request Form, which employees can also access [here](#).

Duration

Unless extended by law, the Emergency Family and Medical Leave benefits expire on April 1, 2022.