



Administrative Policy
EMERGENCY PAID SICK LEAVE

A.P. No.	A.P 3-37
Effective Date:	April 1, 2020

1. AUTHORITY

Article VI, Section 7a, of the City Charter of the City of Houston and the Families First Coronavirus Response Act.

2. POLICY STATEMENT

It is the City of Houston’s policy to ensure each employee’s federally mandated benefits under the Emergency Paid Sick Leave Act (EPSLA) (which is included as part of the Families First Coronavirus Response Act, H.B. 6201) are respected.

3. POLICY PURPOSE

The purpose of this policy is to establish uniform procedures and identify appropriate forms for the City of Houston to use in administering and facilitating benefits available under EPSLA.

4. SCOPE

This policy applies to all City of Houston eligible employees and departments, except where specifically excluded, during the applicable period of April 1, 2020, and expires on December 31, 2020.

5. DEFINITIONS

Child Care Provider: Has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.10, as amended from time to time, which states the term: means a provider who receives compensation for providing child care services on a regular basis. The term includes a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of Title 42; and satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of Title 42. The eligible child care provider need not be compensated or licensed if he or she is a family member or friend, such as a neighbor, who regularly cares for the Employee’s child.

Eligible Employee: Any Employee who is employed by the City. Eligible employee does not include emergency responders or health care providers as defined in the EPSLA and this policy. Notwithstanding any other provision of this policy, an employee who a) contracts COVID-19; b) who is the named subject of a quarantine or isolation order from a health authority (or such other documentation acceptable to the HR Director or designee where a health authority has not issued an order); or c) who is experiencing symptoms of COVID-19 and seeking a medical diagnosis from a health care provider shall be deemed an eligible employee and shall not be treated as emergency responder or health care provider hereunder while sick, quarantined or isolated.

Emergency Responder: For the purposes of City employees who may be excluded from EPSLA, the term has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.30, as amended from time to time, which states the term means: anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire

Approved:

Date Approved:

4/8/2020

Page 1 of 6

fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

Employee: Has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.10, as amended from time to time, which states the term: “employee” has the same meaning given that term in section 3(e) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. 203(e)).

Health Authority: Has the meaning ascribed to it in Section 81.003(2) of the Texas Health and Safety Code.

Health Care Provider: For purposes of employees who may be excluded from this policy, the term has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.30, as amended from time to time, which is defined to mean, in part, anyone (a) “who is a health care provider under 29 C.F.R. 825.102 and 825.125”; or (b) “who is capable of providing health care services, meaning he or she is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care” (e.g. nurses, nurse assistants, medical technicians)”. As set forth in 29 C.F.R. Section 826.30(c)(iii), as amended from time to time, employees who do not meet the definition of Health Care Provider are employees “who do not provide health care services even if their services could affect the provision of health care services, such as IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers.”

Health Care Provider: For purposes of supporting the need for leave under the EPSLA, health care provider has the meaning set forth in the EPSLA which refers to the meaning the term is given in 29 C.F.R. Sections 825.102 and 825.125, which may be amended from time to time, which state, a health care provider means: “a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary to be capable of providing health care services.”

Paid Sick Leave: Has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.10, as amended from time to time, which states the term means paid leave under the EPSLA.

Place of Care: Has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.10, as amended from time to time, which states the term means: a physical location in which care is provided for the Employee’s child while the Employee works for the Employer. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

School: Has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.10, as amended from time to time, which states the term: means an “elementary school” or “secondary school” as such terms are defined below, in accordance with section 8101 of the Elementary and Secondary Education Act of 1965 (20. U.S.C. 7801). “Elementary School” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. “Secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Son or Daughter: Has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.10, as amended from time to time, which states the term: “Son or Daughter” has the meaning given such term in Section 101 of the Family Medical Leave Act of 1993 (29 U.S.C. Section 2611). Accordingly, the term means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability.

Subject to a Quarantine or Isolation Order: Has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.10, as amended from time to time, which states: a quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.

Telework: Has the meaning set forth in the Department of Labor Regulation 29 C.F.R. Section 826.100, as amended from time to time, which states the term means: work the Employer permits or allows an Employee to perform while the Employee is at home or at a location other than the Employee's normal workplace.

Capitalized terms not defined in this policy shall have the meaning in the EPSLA or the meaning set forth in the Department of Labor Regulation Section 29 C.F.R. Section 826.10.

6. POLICY DETAILS

6.1. This policy shall be effective on April 1, 2020, and expires on December 31, 2020, unless the EPSLA is extended by federal mandate.

6.2. An Eligible Employee is entitled to Paid Sick Leave in accordance with the EPSLA to the extent that the employee is unable to work (or Telework) due to a need for leave because of any of the following reasons:

6.2.1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

6.2.2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

6.2.3. The employee is experiencing symptoms of COVID-19 **and** seeking a medical diagnosis from a health care provider;

6.2.4. The employee is caring for an individual who is subject to an order as described in 6.2.1. or directed as described in 6.2.2.;

6.2.5. The employee is caring for his or her Son or Daughter whose School or Place of Care has been closed for a period of time, whether by order of a State or local official or authority or at the decision of the individual School or Place of Care, or the Child Care Provider of such Son or Daughter is unavailable, for reasons related to COVID-19; or

6.2.6. The employee has a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor. The substantially similar condition may be defined at any point during the effective period, April 1, 2020, to December 31, 2020.

6.3. As stated in the Department of Labor Regulation 29 C.F.R. Section 826.30, as amended from time to time, an employee is able to Telework if: (a) his or her Employer has work for the employee; (b) the Employer permits the employee to work from the employee's location; and (c) there are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the employee from performing that work. Telework is work for which wages must be paid as required by applicable law and is not compensated as paid leave under the EPSLA.

6.4. The amount of hours of Paid Sick Leave to which an eligible employee is entitled shall be as follows:

6.4.1. For full-time employees, eighty (80) hours; and

6.4.2. For part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a two (2) week period.

6.5. The amount of pay for Paid Sick Leave pursuant to the EPSLA is as follows:

6.5.1. Subject to 6.5.1.1., for each hour of Paid Sick Leave taken pursuant to the EPSLA by an eligible employee for qualifying reasons set forth in 6.2.1., 6.2.2., 6.2.3., the eligible employee shall receive their average regular rate of pay as defined by the EPSLA for the amount of hours set forth in 6.4.

6.5.1.1. In no event shall the City be required to pay more than \$511 per day and \$5,110 in the aggregate per eligible employee when an employee takes Paid Sick Leave in accordance with EPSLA for the reasons set forth in 6.5.1.

6.5.2. Subject to 6.5.2.1., for each hour of Paid Sick Leave taken pursuant to the EPSLA by an eligible employee for qualifying reasons set forth in 6.2.4., 6.2.5., 6.2.6., the employee shall receive two-thirds (2/3) their average regular rate of pay as defined by the EPSLA for the amount of hours set forth in 6.4.

6.5.2.1. In no event shall the City be required to pay more than \$200 per day and \$2,000 in the aggregate per eligible employee when an eligible employee takes Paid Sick Leave in accordance with EPSLA for the reasons set forth in 6.5.2.

6.6. Paid Sick Leave under this policy may not be taken intermittently, unless the eligible employee takes leave set forth in 6.2.5. and the immediate supervisor agrees to an alternate schedule to permit intermittent leave in hourly increments.

6.7. Any Paid Sick Leave taken for the reason described in 6.2.3 is limited to time the eligible employee is unable to work because the eligible employee is taking affirmative steps to obtain a medical diagnosis from a health care provider, such as making, waiting for, or attending an appointment for a test for COVID-19.

6.8. Eligible employees may request to use appropriate accrued personal, sick, compensatory, and/or vacation leave concurrently when Emergency Paid Sick Leave (EPSL) is less than their regular rate of pay.

6.9. An eligible employee may be in a paid or unpaid status during the approval process; however, in the event the request to use available benefits under the EPSLA is approved, edits to the eligible employee's time records will be submitted by the immediate supervisor.

6.10. City employees assigned to the Police, Fire, Houston Emergency Center, Solid Waste Management Collections Divisions, and Health departments and Houston Water and Customer Account Services service lines/divisions of Houston Public Works are Emergency Responders and/or Health Care Providers and, therefore, are excluded from EPSLA and are not eligible for leave under this policy.

7. ROLES AND RESPONSIBILITIES

7.1. Eligible employees shall first notify their supervisor of the need to take EPSL for the qualifying reasons set forth in 6.2 of this policy.

7.2. Eligible employees are responsible for providing sufficient supporting documentation, if required, to support the need for Paid Sick Leave under the EPSLA.

8. PROCEDURES

- 8.1. Eligible employees shall first notify their supervisor of their intent to request emergency Paid Sick Leave.
- 8.2. Once an eligible employee notifies his or her supervisor of the intent to request emergency Paid Sick Leave, the eligible employee shall complete an application for emergency Paid Sick Leave and submit the completed application, along with sufficient supporting documentation to HR via email at ffcra@houston.tx.gov.
- 8.3. In addition to the employee's name; date(s) for which leave is requested; the COVID-19 qualifying reason for the leave; and a statement that the employee is unable to work or Telework because of a COVID-19 qualifying reason for leave, the employee must provide the following:
 - 8.3.1. For the qualifying reason in section 6.2.1., the employee must provide the name of the government entity or Health Authority that issued the Quarantine or Isolation Order.
 - 8.3.2. For the qualifying reason in section 6.2.2., the employee must provide the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
 - 8.3.3. For the qualifying reason in section 6.2.3., the employee must provide 1) the name of the health care provider from whom the employee is seeking a medical diagnosis; 2) identify his or her COVID-19 related symptoms; and 3) provide the date of the COVID-19 test or health care provider appointment.
 - 8.3.4. For the qualifying reason in section 6.2.4., the employee must provide either (a) the name of the government entity that issued the Quarantine or Isolation Order to which the individual being cared for is subject; or (b) the name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
 - 8.3.5. For the qualifying reason in section 6.2.5., sufficient documentation shall include the following:
 - 8.3.5.1. The name(s) of the son(s) or daughter(s) being cared for;
 - 8.3.5.2. The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and
 - 8.3.5.3. A statement that no other suitable person will be caring for the son or daughter during the period for which the employee takes Paid Sick Leave.
 - 8.3.6. For the qualifying reason in section 6.2.6., sufficient supporting documentation, if any, will be determined by the HR Director or designee in accordance with the EPSLA and any regulations issued by the Department of Labor.
- 8.4. Upon receipt of a completed application for leave under EPSLA, a HR representative shall:
 - 8.4.1. Determine eligibility of the requesting employee;
 - 8.4.1.1. If the requesting employee has been deemed or determined to be not eligible, the HR representative shall notify the employee and the immediate supervisor.
 - 8.4.2. Ensure sufficient supporting documentation has been submitted for leave available under the EPSLA;
 - 8.4.2.1. If sufficient supporting documentation has been submitted, the HR representative will notify the eligible employee and the immediate supervisor of the approval, along with

instructions for documenting leave under EPSLA and coordinate any edits to the employee's time records as a result of the approved leave;

8.4.2.2. If insufficient documentation has been submitted, the HR representative will notify the eligible employee and provide the employee at least five (5) business days to submit sufficient supporting documentation;

8.4.2.3. If the eligible employee fails to submit sufficient supporting documentation, the HR representative shall notify the employee and the supervisor of the denial of benefits available under EPSLA.

8.5. Employees who have been denied benefits available under EPSLA may request to use appropriate accrued leave to cover any unpaid absence.

8.6. Any employee who has been determined by the City (i.e. the employee's Department Director, the Human Resources Director or designee, or the Office of Inspector General) to have received benefits under the EPSLA fraudulently shall be subject to corrective action up to and including an indefinite suspension or termination and will be responsible for repaying the City for any fraudulent leave payments received, which may include the use any of appropriate accrued leave during the time the employee used ESPL fraudulently and/or a repayment plan.

9. RELATED DOCUMENTS AND INFORMATION

- Families First Coronavirus Response Act, approved March 18, 2020
- 29 C.F.R. Part 826
- Application for Emergency Paid Sick Leave

10. POLICY SPONSOR

Department: Human Resources Department