



Administrative Policy
EMERGENCY FAMILY AND MEDICAL LEAVE

A.P. No.	AP 3-38
Effective Date:	April 1, 2020

1. AUTHORITY

Article VI, Section 7a, of the City Charter of the City of Houston; the Family and Medical Leave Act (FMLA); the Families First Coronavirus Response Act.

2. POLICY STATEMENT

It is the City of Houston’s policy to ensure each employee’s federally mandated protections under the Emergency Family Medical Leave Expansion Act (EFMLEA) (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 EFMLEA.

4. SCOPE

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

5. DEFINITIONS

Benefit Year: The 12-month period beginning September 1 and ending August 31.

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 full-time or part-time Employee who has been employed for at least 30 calendar days by the City. Eligible employee does not include emergency responders or health care providers as defined in the EFMLEA and this policy.

Emergency Responder: For the purposes of City employees who may be excluded from EFMLEA, 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 fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers

Approved:

Date Approved:

4/6/2020

Page 1 of 5

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 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.”

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.

Public Health Emergency: The term ‘Public Health Emergency’ means an emergency with respect to COVID-19 declared by a federal, state, or local authority.

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.

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 EFMLEA 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 April 1, 2020, and expires on December 31, 2020, unless the EFMLEA is extended by federal mandate.

- 6.2. Eligible employees shall be entitled to a total of 12 weeks of job protected leave if the employee is unable to work (or Telework) due to a need for leave to care for a Son or Daughter if the School or Place of Care has been closed, or the Child Care Provider of such son or daughter is unavailable, due to a Public Health Emergency.
 - 6.2.1 Protected leave is aggregate, and leave taken in two (2) different Benefit Years does not extend the leave entitled under this policy.
 - 6.2.2 If an eligible employee has taken some, but not all, 12 workweeks of leave under the FMLA in a Benefit Year, the remaining portion may be used for leave under the EFMLEA.
 - 6.2.3 If an eligible employee has taken all 12 workweeks of leave under the FMLA, the employee is not entitled to additional leave under the EFMLEA during the current Benefit Year. However, in that instance, an eligible employee may be entitled to 12 workweeks of Emergency Family and Medical Leave (EFML) beginning the new Benefit Year, September 1, 2020, not to exceed past December 31, 2020.
- 6.3. The first two (2) weeks of leave, granted under this policy is unpaid.
 - 6.3.1. An eligible employee may request to use any accrued vacation, personal, or compensatory, leave for unpaid leave during the first two weeks of leave under this policy.
 - 6.3.2. An eligible employee may elect to substitute Emergency Paid Sick leave during the first two (2) weeks of leave in accordance with the Emergency Paid Sick Leave Act and AP 3-37: Emergency Paid Sick Leave.
- 6.4. The remaining ten (10) weeks of protected leave under this policy will be paid at an amount that is not less than two-thirds of the full-time eligible employee's regular rate of pay, which shall not exceed \$200.00 per day and \$10,000.00 in the aggregate.
 - 6.4.1. A part-time eligible employee is entitled to leave for the average number of work hours in a two-week period. The calculation is based on the number of hours the employee is normally scheduled to work.
 - 6.4.2. When a part-time eligible employee's schedule varies from week to week and the City is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave, a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave.
- 6.5. Eligible employees may request to use accrued personal, compensatory, and/or vacation leave concurrently when EFML is less than their regular rate of pay.
- 6.6. EFML may not be taken intermittently, unless the immediate supervisor agrees to an alternate schedule to permit intermittent leave in hourly increments.
- 6.7. 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 EFMLEA.
- 6.8. 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 EFMLEA and are not eligible for leave under this policy.

7. ROLES AND RESPONSIBILITIES

- 7.1. Eligible employees shall first notify their supervisor of their intent to request EFML, as soon as practicable.
- 7.2. Eligible employees are responsible for providing sufficient supporting documentation to support the need for leave established by EFMLEA.

8. PROCEDURES

- 8.1. Eligible employees shall first notify their supervisor of their intent to request EFML.
- 8.2. Once an eligible employee notifies his or her supervisor of the intent to request EFML, the eligible employee shall complete an application for leave Emergency Family Medical Leave and submit the completed application, along with sufficient supporting documentation to HR via email at ffcra@houston.tx.gov.
 - 8.2.1. Sufficient supporting documentation includes the following:
 - 8.2.1.1. The name(s) of the son(s) or daughter(s) being cared for;
 - 8.2.1.2. The name of the School, Place of Care or Child Care Provider that has closed or become unavailable; and
 - 8.2.1.3. A representation that no other suitable person will be caring for the Son or Daughter during the period for which the employee is receiving family medical leave.
 - 8.2.1.4. A statement that the eligible employee is unable to work (or Telework) due to a need for leave to care for a son or daughter if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.
 - 8.2.2. Failure to submit a completed application for leave under the EFMLEA via email to ffcra@houston.tx.gov may cause delays in the approval or denial process to use this benefit.
- 8.3. Upon receipt of a completed application for leave under the EFMLEA, a HR representative shall:
 - 8.3.1. Determine eligibility of the requesting employee;
 - 8.3.1.1. If the requesting employee has been deemed or determined to be not eligible, the HR representative shall notify the employee and the immediate supervisor.
 - 8.3.2. Ensure sufficient supporting documentation has been submitted for leave available under the EFMLEA;
 - 8.3.2.1. 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 EFMLEA and coordinate any edits to the employee's time records as a result of the approved leave;
 - 8.3.2.2. 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.

8.3.2.2.1. 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 EFMLEA.

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

8.5. 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 EFMLEA fraudulently shall be subjected to the 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 EFML 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 Family and Medical Leave

10. POLICY SPONSOR

Department: Human Resources Department