



May 7, 2020

Board of Directors
Ventura Regional Sanitation District
Ventura, California

APPROVAL OF PROPOSED EMERGENCY SICK LEAVE AND FAMILY MEDICAL CARE LEAVE POLICY

RECOMMENDATION

- A. Approve and Authorize the Emergency Sick Leave and Family Medical Care Leave Policy; and
- B. Approve and Authorize the use of the Request for Family and Medical Leave Act ("FMLA") Public Health Emergency Leave and/or Emergency Paid Sick Leave form.

FISCAL IMPACT

The costs associated with the Emergency Paid Sick Leave and Emergency FMLA Leave are employer paid with no offsetting credits or reimbursement anticipated from the State or Federal government. The maximum payout exposure is \$15,110 per employee, which is composed of a maximum of \$5,110 for Emergency Sick Leave and a maximum of \$10,000 for Emergency FMLA Leave.

In addition to the above payments made directly to qualifying employees, the District would also incur the cost of any applicable taxes and benefits associated with these payouts. Finally, the District may experience revenue loss for each hour that an employee, whose work is billed out to a customer, is on leave.

BACKGROUND/ANALYSIS

The attached policy outlines the two new federal paid leave entitlements available under the Families First Coronavirus Response Act ("FFCRA"), which includes both the Emergency Paid Sick Leave Act ("EPSLA") and the Emergency Family and Medical Leave Expansion Act ("EFMLEA"), effective April 1, 2020 through December 31, 2020, for employees that are unable to work remotely or must take time off from work due to

COVID-19 virus. The FFCRA requires certain employers, including VRSD, to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

Emergency Paid Sick Leave is calculated on a case-by-case basis dependent upon the reason for the leave using a formula that involves the employee's regular rate of pay. For example, an employee who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, is off work for two weeks, and earns a regular rate of pay of \$132,860 or more per year, would receive the Emergency Paid Sick Leave maximum of \$5,110 (which equates to 100% of \$132,860). An employee who is caring for a son or daughter because their school is closed due to COVID-19 precautions, is off work for two weeks, and earns a regular rate of pay of \$35,000 per year, would receive Emergency Paid Sick Leave of only \$897.44 (which equates to 2/3 of their pay).

Emergency FMLA Leave is calculated using a formula that involves the employee's regular rate of pay. For example, an employee who is eligible for Emergency FMLA Leave, is off work for ten more weeks, and earns a regular rate of pay of \$78,000 or more per year, would receive the Emergency FMLA Leave maximum of \$10,000 (equates to 2/3 of \$78,000). An employee who is eligible for Emergency FMLA Leave, is off work for only four more weeks, and earns a regular rate of pay of \$35,000 per year, would receive Emergency FMLA Leave of only \$1,794.87 (equates to 2/3 of their pay).

The policy allows employees to use their earned accumulated paid time off (known as CAL- Comprehensive Annual Leave) to supplement the compensation guaranteed by the FFCRA Act so they can maintain 100% of their normal pay.

PROPOSAL

The attached policy and form are written in compliance with federal law and presented to the District Board to address the unprecedented COVID-19 pandemic and related federal and state public health emergency orders. Because this policy and form impacts employee benefits and salary, they were sent to Service Employee International Union, Local 721 (SEIU), and International Union of Operating Engineers, Local 501, AFL-CIO (IUOE), to review and provide comments to us by Friday, May 1st. SEIU has responded and they agree with the proposed policy and form. We have not received a response from IUOE as of the writing of the letter.

This letter and the associated contract have been developed in close cooperation with labor counsel Liebert Cassidy Whitmore. This letter has been reviewed by Legal Counsel as to form.

If you should have any questions or need additional information, please contact me by phone at (805) 568-4645 or via email at melissamacias@vrsd.com.

 for
MELISSA MACIAS, HUMAN RESOURCES MANAGER

APPROVED FOR BUDGET IMPACT: 
Alvertina Rivera, Director of Finance

APPROVED FOR AGENDA: 
Chris Theisen, General Manager

- Attachments:
1. Proposed Emergency Sick Leave and Emergency Family Medical Care Leave policy
 2. Proposed Request for FMLA Public Health Emergency Leave and/or Emergency Paid Sick Leave form



Emergency Sick Leave and Family Medical Care Leave Policy

Definitions Applicable to Emergency Paid Sick Leave and Emergency FMLA Leave

- (a) “Child Care Provider” 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; and satisfies the State and local requirements. However, under the Families First Coronavirus Response Act (“FFCRA”), 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.
- (b) “Emergency responder” means the following for the purposes of employees who may be exempted from Emergency Paid Sick Leave or Emergency FMLA Leave:
- (1) Anyone necessary for the provision of transport, care, healthcare, comfort, and nutrition of such patients, or others needed for the response to COVID-19.
 - (2) This definition includes anyone who serves in the military or national guard, or as a law enforcement officer, correctional institution personnel, fire fighter, emergency medical services personnel, physician, nurse, public health personnel, emergency medical technician, paramedic, emergency management personnel, 911 operator, child welfare worker and service provider, 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.
- (c) “Health care provider” means the following for the purposes of employees who may be exempted from Emergency Paid Sick Leave or Emergency FMLA Leave:
- (1) Anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity; and
 - (2) Any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility

where that individual's services support the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

- (d) "Individual" for the purpose of Emergency Paid Sick Leave above 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. "Individual" does not include persons with whom the Employee has no personal relationship.
- (e) "Son or Daughter" 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. (29 U.S.C. 2611; 29 CFR 826.10(a).)
- (f) "Subject to a Quarantine or Isolation Order" means 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.

Emergency Paid Sick Leave

From April 1, 2020 through December 31, 2020, eligible employees can take Emergency Paid Sick Leave for one of the six qualifying reasons described below under subsections (a) and (b):

- (a) Eligible employees are entitled to up to 80 hours of Emergency Paid Sick Leave at their full regular rate of pay, subject to maximum dollar amounts as provided under the Families First Coronavirus Response Act ("FFCRA") if they are unable to work or telework for the following reasons:
 - (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19. An employee who lives with an individual who is among one or more of those categories of individuals advised to shelter in place, stay at home, isolate or quarantine will *not* qualify for Emergency Paid Sick Leave based on that reason under this subsection. However, such an employee may be qualify for

Emergency Paid Sick Leave pursuant to the qualifying reason provided for in subsection (b)(1) below.

- (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.
- (b) Eligible employees are entitled to up to 80 hours of Emergency Paid Sick Leave at two-thirds (2/3) of the employee's regular rate of pay, subject to maximum dollar amounts as provided under the FFCRA, if they are unable to work or telework because:
- (1) The employee is caring for an "individual," who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19 as described in subsections (a)(1) and (2) above.
 - (2) 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 child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
 - (3) 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.
- (c) Employees hired on or after April 1, 2020 who took the full 80 hours of Emergency Paid Sick Leave when employed by another employer are not entitled to take any additional Emergency Paid Sick Leave with the District. An employee who has taken some, but not all, of the Emergency Paid Sick Leave to which they are entitled, when they were employed by another employer, is entitled only to the remaining portion of such leave from the District if the employee meets the eligibility requirements provided above.

(d) Other Statutory or Contractual Leaves

Leave taken as Emergency Paid Sick Leave is in addition to any other statutory or contractual leave to which the employee is entitled. Unused Emergency Paid Sick Leave does not carryover for any employee.

(e) Amount of Leave

(1) Full time employees

Full time employees working 40 hours per week may take up to 80 hours of Emergency Paid Sick Leave.

b. Part time employees

Part time employees may take up to the number of hours that they work on average over a two-week period as determined by reviewing the six-month period prior to the usage of leave. If the employee has not worked for the District for six months, the District should calculate the leave entitlement based on the period during which the employee has been employed.

(f) Caps on the Amount of Pay Provided for Emergency Paid Sick Leave

Emergency Paid Sick Leave is subject to the following caps:

a. \$511 per day and \$5,110 in the aggregate for the following qualifying 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 is seeking a medical diagnosis.

b. \$200 per day and \$2,000 in the aggregate for the following qualifying reasons:

1. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised to self-quarantine as described in subparagraph (2) of the preceding subsection.

2. 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 child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
3. 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.

(g) Supplementing Pay for an Employee on Emergency Paid Sick Leave with Use of Earned or Accrued Leaves

Employees may supplement the compensation they receive if taking leave under Emergency Paid Sick Leave up to the amount of the caps specified above with their earned or accrued leaves in order to achieve 100% of the pay the employee would normally receive in a given week for working their regularly scheduled hours.

(h) Intermittent Leave

An employee may take intermittent leave as follows:

- a. An employee who is teleworking may take Emergency Paid Sick Leave intermittently for any qualifying reason.
- b. An employee who is still working at the District's worksite may take Emergency Paid Sick Leave intermittently only if that employee has requested leave to care for their son or daughter or if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

(i) Restoration to Prior Position

An employee who uses Emergency Paid Sick Leave is entitled to reinstatement to their prior position unless the position held by the employee does not exist due to economic conditions or other changes in operating conditions caused by a public health emergency during the period of leave such that the employee would not otherwise have been employed at the time of reinstatement.

(j) Expiration

The provision of this section shall expire on December 31, 2020 or when the Emergency Paid Sick Leave provisions of the FFCRA are no longer effective.

(k) Protected Leave:

Emergency Paid Sick Leave is protected when used for the reasons specified in sections (a) and (b).

(l) Sick Leave Request:

An employee must provide notice of the need to use Emergency Paid Sick Leave, as soon as practicable or after the first workday of using the Leave.

An employee may provide notice of the need to use Emergency Paid Sick Leave orally or in writing, or may provide such notice through the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to provide such notice him or herself.

If an employee fails to provide proper notice, the District will provide the employee notice of the failure and provide the employee with an opportunity to provide the required documentation, described below, prior to denying the employee's request for leave.

(m) Certification or Documentation of Need for Leave

An employee using Emergency Paid Sick Leave must provide the following information prior to taking Emergency Paid Sick Leave:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave; and
- (4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

In addition, the employee is required to provide to the District documentation in support of his/her/their request for Emergency Paid Sick Leave as follows:

- (1) To take Emergency Paid Sick Leave because the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, the employee must provide the name of the government entity that issued the Quarantine or Isolation Order.
- (2) To take Emergency Paid Sick Leave because the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, the employee must provide the name and contact information of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.

- (3) To take Emergency Paid Sick Leave because the employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19 order, the employee must provide either:
 - i. The name of the government entity that issued the Quarantine or Isolation Order to which the individual being care for is subject; or
 - ii. The name and contact information of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
- (4) To take Emergency Paid Sick Leave because 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 child care provider of such son or daughter is unavailable, due to COVID-19 precautions, the employee must provide:
 - i. The name of the Son or Daughter being cared for;
 - ii. The name and contact information of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and
 - iii. A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.

(n) Sick Leave on Separation from Employment

Unused Emergency Sick leave may not be cashed out upon separation. An employee who is laid off or otherwise terminated on or after March 1, 2020 and who is rehired on or before December 31, 2020 will be eligible for unused Emergency Paid Sick Leave for the qualifying reasons set forth above. Unused Emergency Paid Sick Leave will not be reinstated after December 31, 2020.

Emergency FMLA Leave

(a) Eligibility

Employees are entitled to up to 12 weeks of job-protected Emergency FMLA Leave if the employee satisfies the following requirements:

- (1) The employee has worked for the District for at least 30 calendar days (FMLA Sec. 110(a)(1)(A);
- (2) The employee is unable to work (or telework) due to a need to care for the son or daughter whose school or place of care has been closed, or whose child care provider is unavailable due to a COVID-19 emergency declared by either a Federal, State, or

local authority, (FMLA Secs. 101(12); 110(a)(2)(A) & (B); 29 CFR §§ 825.102, 826.010);

- (3) The employee has not used all available FMLA leave. Emergency FMLA Leave is a form of FMLA leave, and is not in addition to any other FMLA leave;
- (4) There is no other suitable person available to care for the employee's son or daughter during the period for which the Employee takes Emergency FMLA Leave; and
- (5) The District did not exempt the employee as either a "health care provider" or "emergency responder."

An employee who is laid off or otherwise terminated on or after March 1, 2020 and who is rehired on or before December 31, 2020 will be eligible for unused Emergency FMLA Leave provided that the employee had been on the District's payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise terminated. Unused Emergency FMLA Leave will not be reinstated after December 31, 2020.

(b) Paid Leave

The first ten (10) days of Emergency FMLA Leave consists of unpaid leave. During this period, the employee may elect to use Emergency Paid Sick Leave if the employee has not exhausted such leave through use at the District or prior employer. If the employee has exhausted the Emergency Paid Sick Leave, an employee may use their earned and accrued leaves to supplement their unpaid Emergency FMLA Leave compensation they receive under Emergency FMLA Leave in order to achieve 100% of the pay they would normally receive in a given week for working their regularly scheduled hours. Use of such accrued and unused leave will run concurrently with use of Emergency FMLA Leave.

After the tenth day, and for the remaining ten (10) weeks of Emergency FMLA Leave, an employee is entitled to compensation for such leave at two-thirds (2/3) of the employee's regular rate of pay, subject to a cap of \$200 per day and \$10,000 total. (FMLA Sec. 110 (b).) During this period, employees may supplement the compensation they receive under Emergency FMLA Leave with their earned or accrued leaves in order to achieve 100% pay of the pay they would normally receive in a given week for working their regularly scheduled hours.

An eligible employee is entitled to a maximum of twelve (12) workweeks of FMLA Leave during the period in which the leave may be taken (between April 1, 2020 to December 31, 2020) even if the twelve workweeks spans two FMLA leave twelve-month periods.

(c) Employee Notice

Where the need to use Emergency FMLA Leave is foreseeable, the employee shall provide the District with such notice as soon as practicable.

The District may not require an employee to provide notice of the need to use Emergency FMLA Leave unit after the first workday of the usage of such leave.

After the first workday for which an employee takes Emergency FMLA Leave, the District may require that the employee provide reasonable notice for the usage of such as soon as is practicable thereafter.

An employee may provide notice of the need to use Emergency FMLA Leave orally or in writing, or may provide such notice through the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to provide such notice him or herself.

If an employee fails to provide proper notice, the District will provide the employee notice of the failure and provide the employee an opportunity to provide the required documentation, described below, prior to denying the request for leave.

(d) Certification or Documentation of Need for Leave

In order to certify the need for Emergency FMLA, the employee must provide the following information prior to taking leave:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave;
- (4) Oral or written statement that the employee is unable to work because of the qualified reason for leave;
- (5) The name of the son or daughter being cared for;
- (6) The name and contact information of the school, place of care, or child care provider that has closed or become unavailable; and
- (7) A representation that no other suitable person will be caring for the son or daughter during the period for which the Employee takes Emergency Family and Medical Leave.

(e) Restoration to Prior Position

An employee who uses Emergency FMLA Leave is entitled to reinstatement to their prior position unless the position held by the employee does not exist due to economic conditions or other changes in operating conditions caused by a public health emergency

during the period of leave such that the employee who not otherwise have been employed at the time of reinstatement. (FMLA Sec. 110 (d).)

(f) Intermittent Leave

An employee may take intermittent Emergency FMLA leave if that employee has requested leave to care for their son or daughter or if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

(g) Supplementing Other Earned or Accrued Leaves

If an employee takes Emergency FMLA Leave after taking all or a part of his or her Emergency Paid Sick Leave for a reason other than leave to care for their son or daughter, all or part of the employee's first 10 days of Emergency FMLA Leave may be unpaid because the employee will have exhausted his or her Emergency Paid Sick Leave entitlement. In such circumstances, the employee may choose to use earned or accrued leaves provided by the District pursuant to established paid leave policies in order to achieve full pay. Such leave will run concurrently with the unpaid portion of the Emergency FMLA Leave.

Beginning on the eleventh (11th) day of Emergency FMLA Leave, employees may supplement the compensation they receive if taking leave under Emergency FMLA Leave with their earned or accrued leaves in order to achieve 100% of the pay they would normally receive in a given week for working their regularly scheduled hours.

(i) Expiration

The provision of this section shall expire on December 31, 2020 or when the Emergency FMLA Leave provisions of the FFCRA are no longer effective.

Attachment:

Request For FMLA Public Health Emergency Leave and/or Emergency Paid Sick Leave



Request For FMLA Public Health Emergency Leave and/or Emergency Paid Sick Leave

Please complete the following form if you are requesting to take Family and Medical Leave Act Public Health Emergency Leave (“EFMLA”) and/or Emergency Paid Sick Leave (“EPSL”) under the Families First Coronavirus Response Act (“FFCRA”). The information requested in this form must be submitted as soon as practicable after the need for leave arises.

Employee Name: _____

Date of Request: _____

I am requesting (check one or both):

_____ Family and Medical Leave Act Public Health Emergency Leave (“EFMLA”)

_____ Emergency Paid Sick Leave (“EPSL”)

If approved for EFMLA, the first 10 days of this leave are unpaid but you have the option to use any available accrued leave or EPSL time during those 10 days.

If you are requesting EFMLA and want to use EPSL for the first 10 days, check both options above and complete both Sections of this form.

If you are requesting EFMLA and want to use accrued leave other than EPSL, complete Section One of this form and request accrued leave as you would normally.

SECTION ONE: REQUEST FOR EFMLA

I am requesting EFMLA for the following reason (check one):

_____ I am unable to work (including telework) due to a need for leave to care for my son or daughter under 18 years of age because my son or daughter’s school or place of care has been closed due to a public health emergency and because no suitable person is available to care for my son or daughter during the period of such leave.

I acknowledge that if approved for EFMLA that the first 10 days of EFMLA are unpaid but that I have the option to substitute my pay during those 10 days with any available accrued leave or EPSL time I may have.

Employee Signature

SECTION TWO: REQUEST FOR EPSL

I am requesting EPSL because I am unable to work or telework because of the following reason:

_____ I am subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

The government agency that has issued the quarantine or isolation order is _____ (e.g. state, county, city).

_____ I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

The name and phone number of the health care provider who has advised me to self-quarantine due to concerns related to COVID-19 is _____.

_____ I am experiencing symptoms of COVID-19 and am seeking a medical diagnosis.

_____ I am caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

The government agency that has issued the quarantine or isolation order is _____ (e.g. state, county, city).

The name and phone number of the health care provider who has advised the individual to self-quarantine that I am caring for _____.

NOTE: A qualifying “individual” for whom an employee is caring for is defined under the FFCRA policy.

_____ I am caring for a son or daughter whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions.

