



FAMILIES FIRST CORONAVIRUS RESPONSE ACT OVERVIEW AND PROCEDURES

Background

The [Families First Coronavirus Response Act](#) (FFCRA or Act) was passed on March 18, 2020 in response to the COVID-19 pandemic. The Act approves two provisions designed to help reduce the impact of the virus on families. These provisions include the Emergency Family Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA). These provisions go into effect prospectively as of April 1, 2020 and remain in effect until December 31, 2020.

The City of Fremont allows employees to take leave from the worksite to ensure that when the employee is at work the employee is rested, healthy, and mentally available to perform duties in a professional manner and to comply with any state or federal regulations regarding authorized leave. Specifically, the City of Fremont complies with the Federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Eligibility for FMLA and CFRA is the same and in most cases, the two leaves run concurrently. The FMLA (and CFRA) provides 12 weeks of unpaid, job-protected leave per 12-month period to employees to care for themselves or seriously ill family members. Public employees are eligible for FMLA/CFRA leave if they have worked at least 1,250 hours in the preceding 12-month period and are employed within 75 miles of at least 50 other employees of the public agency. "Family member" is defined under the law.

EFMLEA expands certain provisions of the FMLA, but does not provide additional time beyond the 12 total weeks available for FMLA leave. Eligibility applies to both regular and temporary employees.

Employers may elect to exclude health care workers and emergency responders from the Act, including designated police and fire personnel and those designated by the City Manager as emergency responders. The City reserves the right to deny leave to an emergency responder or call an employee back from leave in the event the employee is needed to provide emergency response services in order to ensure the health and safety of the community. Such denial or call back would apply to individuals taking leave for non-personal medical purposes. No employee taking leave under sections (1), (2) or (3) of the Emergency Paid Sick Leave Act will be subject to denial or callback. Emergency responders are excluded from leave under section (4) of the Emergency Paid Sick Leave Act; however, the City reserves the right to make exceptions.

Emergency Family Medical Leave Expansion Act (EFMLEA)

A. Eligibility

Employees may be eligible for leave due to an inability to work (or telework) due to the care of a child under the Emergency Family and Medical Leave Expansion Act.

Employees are eligible for up to 12 weeks of job-protected Public Health Emergency Leave if the following requirements are met:

1. The employee has worked for the City of Fremont for at least thirty (30) calendar days;
2. The employee is unable to work (or telework due to a need to care for the child (under 18 years of age) 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;
and

3. The employee provided reasonable notice of the need for leave.
4. Protected Health Emergency Leave is a form of FMLA leave and is not in addition to any other FMLA leave.

B. Duration of Leave

An employee who has not exhausted FMLA during the prior 12 months is eligible to receive up to 12 weeks of job-protected leave.

If an employee has already used FMLA during the prior 12 months preceding need for EFMLEA, their eligibility for EFMLEA is based on the balance available to the employee. For example, if an employee has been using FMLA intermittently during the prior 12 months and has used 4 weeks of FMLA, such employee is eligible for 8 more weeks of leave under FMLA and/or EFMLEA combined. Employees using FMLA for a pre-existing or new medical reason under FMLA, will need to track their time separately relative to leave taking under EFMLEA.

C. Compensation

Leave under FMLA is unpaid, however, an employee may be required to use accrued leaves. Under EFMLEA, the first 10 regularly scheduled work days of EFMLEA are unpaid. The employee may choose to use any accrued leave (vacation, sick, compensatory time) during this 10-day period. Alternatively, the employee may also use pay under the provisions of EPSLA as described below.

From the 11th day of leave, the employee will be paid two-thirds of the employee's regular rate of pay as defined under the Fair Labor Standards Act (29 U.S.C. § 207(e)). Part-time employees are entitled to pay based on two-thirds of their regular pay based on the number of hours they would otherwise have been scheduled to work during the time they are taking leave.

In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if the employee had not taken leave, the employer must use the following criteria:

1. 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 commences leave, including hours for which the employee took any type of paid leave; or
2. If the employee did not work over the preceding 6-month period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Pay under the EFMLEA is capped at \$200 per day and \$10,000 in the aggregate.

Employees may elect to use accrued leave from any leave bank source to supplement the two-thirds regular rate being paid while on EFMLEA.

D. Request Procedure

1. An employee can initiate Emergency Family Medical Leave by contacting the City's third party Family Medical Leave Administrator (Sedgwick) at **(888) 436-9530** or online at <https://timeoff.sedgwick.com>.
2. In addition, an employee using Emergency Family Medical Leave must certify the need for the leave by completing and submitting an **Employee Request Form for Emergency Family Medical Leave** to the employee's supervisor or directly to Human Resources at humanresources@fremont.gov as supporting documentation for the leave request.
3. When Emergency Paid Sick Leave is being requested in coordination with Emergency Family Medical Leave, both requests should be submitted together as soon as practicable to the employee's supervisor or directly to Human Resources at humanresources@fremont.gov.

In the event of a medical emergency where the employee is unable to provide the form prior to initiating leave, such form shall be submitted as soon as practicable. Forms shall be submitted by way of email to humanresources@fremont.gov.

E. Response to Leave Requests

Human Resources and/or the City's third party Family Medical Leave Administrator (Sedgwick) will confirm an employee's eligibility for Emergency Family Medical leave, or provide an explanation as to why they are not eligible.

F. Reinstatement

Employees who are on Emergency Family Medical Leave are 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.

Emergency Paid Sick Leave Act (EPSLA)

A. Eligibility

All employees are eligible for EPSLA regardless of how long they have been employed with the agency 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 EPSLA at their full regular rate of pay, subject to maximum dollar amounts as provided under the 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 qualify for Emergency Paid Sick Leave pursuant to the qualifying reason provided for in subsection (b)(4) 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 is seeking a medical diagnosis.
- (b) Eligible employees are entitled to up to 80 hours of EPSL 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:
4. The employee is caring for an individual under quarantine or isolation order related to COVID-19, or 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.
 5. The employee is caring for a child if the school closure or place of care of the child has been closed, or the child care provider is unavailable, due to COVID-19 precautions.
 6. 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 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. 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 City of Fremont if the employee meets the eligibility requirements provided above.

Eligibility is based on any of the above reasons; however, any one employee may only use their total allotted EPSLA time, even if used for different reasons.

B. Compensation and Duration of Leave

Leave taken as Emergency Paid Leave is in addition to any other leave accrued and does not accrue beyond 80 hours. Unused leave does not carry over after December 31, 2020 for any employees.

For leave taken under paragraphs (1), (2), or (3), full time employees are entitled to 80 hours of paid leave at their regular rate of pay, subject to a \$511 per day and \$5,110 aggregate cap. Part-time employees are entitled to paid leave for the average number of hours worked over a 2-week period at their regular rate of pay, subject to the same cap.

For leave taken under paragraphs (4), (5), or (6), full time employees are entitled to 80 hours of paid leave at two-thirds their regular rate of pay, subject to a \$200 per day and \$2,000 aggregate cap. Part-time employees are entitled to paid leave for the average number of hours worked over a 2-week period at two-thirds their regular rate of pay, subject to the same cap.

Employees are not required to use other available paid leave (such as accrued leave available to the employee) before using sick leave under EPSLA. Employees are not required to find replacements to cover their duties during use of leave. Employers are prohibited from discharging or discriminating against any employee for requesting or taking paid sick leave under the EPSLA.

Employees may elect to use accrued leave from any leave bank source to supplement the two-thirds regular rate being paid while on EPSLA under reasons (4), (5), or (6).

C. Coordination with EFMLEA

An employee requesting leave under EFMLEA will qualify for paid leave under #5 and therefore, such employee may use EPSLA during the initial 10-day, unpaid period of EFMLEA. Such employee is not required to use EPSLA for that purpose.

An employee requesting leave under EPSLA for reasons other than #5, may be eligible for regular medical leave in accordance with FMLA/CFRA. FMLA and CFRA are unpaid, however, an employee may use their own accrued leave or EPSLA in accordance with current policy.

If an employee is requesting leave under EPSLA for reason #4, EPSLA is available to employees for the care of an individual, which is undefined. Upon conclusion of EPSLA, eligibility for FMLA/CFRA is in accordance with the law, which defines eligibility for a family member.

D. Request Procedure

1. An employee using Emergency Paid Sick Leave must request paid sick leave by submitting and completing the Employee Request Form for Emergency Paid Sick Leave to Human Resources at humanresources@fremont.gov.
2. In the event of a medical emergency where the employee is unable to provide the form prior to initiating leave, the form and/or oral written notice shall be submitted as soon as reasonably practicable. Notice can be provided 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.

The **Employee Request Form for Emergency Paid Sick Leave**, which will be available on the City's Intranet and Internet. Completed forms shall be submitted to the employee's supervisor or directly to Human Resources after initiating leave. When EPSLA is being requested in coordination with EFMLEA, both requests should be submitted together.

In the event of a medical emergency where the employee is unable to provide the form prior to initiating leave, such form shall be submitted as soon as reasonably practicable. Forms shall be submitted by way of email to humanresources@fremont.gov.

E. Human Resources Response to Leave Requests

Human Resources will confirm an employee's eligibility for Emergency Paid Sick Leave, or provide an explanation as to why they are not eligible.

F. Reinstatement

Upon return from an approved EPSLA, an employee will be reinstated to the employee's original position or to a comparable position with equivalent pay, benefits, and other employment terms and conditions

for which the employee is qualified. However, an employee has no greater rights to any benefit or position of employment than if the employee had been continuously working rather than on leave.

Attachment

- Employee Request Form for Emergency Paid Sick Leave and/or Emergency Family Medical Leave



Employee Request Form for Emergency Paid Sick Leave and/or Emergency Family Medical Leave

Employee's Name:		Date of Request:
Employee ID:	Bargaining Unit:	Hire Date:
Department:		Job Title:
Primary Contact Phone:	Personal Email Address:	

I am requesting (check one or both):

- Emergency Paid Sick Leave
 Emergency Family and Medical Leave

Section 1: Request for Emergency Paid Sick Leave (EPSL)

Consistent with the Families First Coronavirus Act, I am requesting EPSL because I am unable to work or telework because of the following reason(s):

- (1)** 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).
- (2)** I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19. The name of the health care provider who has advised me to self-quarantine due to concerns related to COVID-19 is _____.
- (3)** I am experiencing symptoms of COVID-19 (e.g., fever [defined as 100.4° F [37.8° C] or greater using an oral thermometer], coughing, and/or shortness of breath) and seeking a medical diagnosis.
- (4)** I am caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or who has 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 of the health care provider who has advised the individual to self-quarantine that I am caring for is _____.

- (5)** I am caring for my child(ren) whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions.

The name of my child(ren) who I am caring for is _____.

The name of my child(ren)'s school, place of care, or child care provider that is closed or unavailable is _____.

- (6)** I am 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.



Employee Request Form for Emergency Paid Sick Leave and/or Emergency Family Medical Leave

I understand that if my circumstances change, I must immediately inform my supervisor and I may be directed to report back to work (or telework). This benefit is limited to 80 hours of Emergency Paid Sick Leave for the reasons described above and will be pro-rated for part time employees as required by the law.

Paid Sick Leave Start Date: _____ End Date: _____

Paid Sick Leave Intermittent Basis Yes No

If "YES", please **provide the reason** for intermittent leave: _____

If "YES", please **provide the dates and hours per day** for intermittent leave:

I acknowledge that I will not be approved for EPSL without submitting appropriate supporting documentation for the need to take EPSL. (Refer to the list of appropriate supporting documentation on page 5.)

I acknowledge for leave taken under options (**check one**):

- (1), (2), or (3)**, full time employees are entitled to 80 hours of paid leave at their regular rate of pay, subject to a \$511 per day and \$5,110 aggregate cap. Part-time employees are entitled to paid leave for the average number of hours worked over a 2-week period at their regular rate of pay, subject to the same cap.
- (4), (5), or (6)**, full time employees are entitled to 80 hours of paid leave at 2/3 their regular rate of pay, subject to a \$200 per day and \$2,000 aggregate cap. Part-time employees are entitled to paid leave for the average number of hours worked over a 2-week period at 2/3 their regular rate of pay, subject to the same cap.

I am requesting leave taken under options (**check one or none**):

- (4), (5), or (6)**, to use leave from the following bank(s) to supplement the two-thirds (2/3) regular rate being paid while on EPSLA:

- | | |
|---|--|
| <input type="checkbox"/> Compensatory Time Bank | <input type="checkbox"/> General Leave Bank |
| <input type="checkbox"/> Management Leave Bank | <input type="checkbox"/> Sick Leave Bank |
| <input type="checkbox"/> Sabbatical/Sick Leave Bank | <input type="checkbox"/> Vacation Leave Bank |
| <input type="checkbox"/> Leave Without Pay | |

Signature

Date



Employee Request Form for Emergency Paid Sick Leave and/or Emergency Family Medical Leave

Section 2: Request for Emergency Family Medical Leave Act (EFMLA)

Consistent with the requirements under the Families First Coronavirus Act 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 child(ren) under 18 years of age because my child(ren)'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 child(ren) during the period of such leave.
- I am unable to work (including telework) due to a need for leave to care for my child(ren) under 18 years of age because the childcare provider of my child(ren) is unavailable due to a public health emergency and because not suitable person is available to care for my child(ren) during the period of such leave.

Due to the need to care for my child(ren), I am unable to work (or telework). I understand that if my childcare needs change, I must immediately inform my supervisor and the City and I may be directed to report back to work (or telework).

EFMLA Start Date: _____ End Date: _____

EFMLA Intermittent Basis Yes No

If "YES", please **provide the reason** for intermittent leave: _____

If "YES", please **provide the dates** for intermittent leave: _____

I acknowledge that I may be denied EFMLA or may be not granted the entirety of EFMLA requested if I have already previously used all or a portion of FMLA leave.

I acknowledge that if approved for EFMLA, 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 vacation personal, sick, or EPSL I may have. From the 11th day of leave, payment will be provided at two-thirds of my regular rate of pay.

I acknowledge that I will not be approved for EFMLA without submitting documentation supporting the need to take EFMLA. I am submitting with this request a true and correct copy of documentation in support of my need to take EFMLA. I also acknowledge that I may have to submit certification(s) related to my need to take EFMLA.



Employee Request Form for Emergency Paid Sick Leave and/or Emergency Family Medical Leave

I am requesting to **(check one or multiple)**:

- Use EPSL for the first 10 days of EFMLA and remain in an unpaid status for the duration of my leave.

- Use leave from the following bank(s) for the duration of my leave starting on the 11th day as I will be paid two-thirds (2/3) of my regular rate of pay up to \$200 per day and \$10,000 in the aggregate:
 - Compensatory Time Bank
 - Management Leave Bank
 - Sabbatical/Sick Leave Bank
 - Leave Without Pay
 - General Leave Bank
 - Sick Leave Bank
 - Vacation Leave Bank

Signature

Date

Note: examples of acceptable documentation for EFMLA related to the need to care for a child, includes a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

Section 3: Form and Documentation Submission Process

1. An employee using EPSL or EFMLA must submit this completed form to Human Resources at humanresources@fremont.gov. When EPSLA is being requested in coordination with EFMLA, both requests should be completed on this form and submitted together.

2. An employee can initiate an EFMLA request by contacting the City's third party Family Medical Leave Administrator, (Sedgwick) at **(888) 436-9530** or online at <https://timeoff.sedgwick.com>. Employees should submit supporting documentation to Sedgwick for EFMLA.

In the event of a medical emergency where the employee is unable to provide the form prior to initiating leave, the form should be submitted as soon as reasonably practicable via email to humanresources@fremont.gov.

If you have any questions or concerns, please contact Human Resources via email at humanresources@fremont.gov or call (510) 494-4660.



Employee Request Form for Emergency Paid Sick Leave and/or Emergency Family Medical Leave

Examples of acceptable supporting documentation *will vary depending on the reason for EPSL and EFMLA.*

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, based on the qualifying reason for use of Emergency Paid Sick Leave, the employee is required to provide to the City of Fremont documentation in support of 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 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 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 child(ren) of such employee if the school or place of care of the child(ren) has been closed, or the child care provider of such child(ren) is unavailable, due to COVID-19 precautions, the employee must provide:
 - i. The name of the child(ren) being cared for;
 - ii. The name 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 child(ren) during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.