



Town Council Agenda Report

Date: April 14, 2020 Item No. 10

To: Honorable Mayor and Town Council

Subject: ADOPT RESOLUTION NO. 2020-11 - A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, ADDING THE TEMPORARY EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT AND EMERGENCY PAID SICK LEAVE POLICY FOR THE TOWN OF APPLE VALLEY

From: Douglas Robertson, Town Manager

Submitted by: Douglas Robertson, Town Manager

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

That the Town Council adopt the attached Resolution No. 2020-11, a Resolution of the Town Council of the Town of Apple Valley to approve the addition of the temporary Emergency Family and Medical Leave Extension (EFMLEA) and Emergency Paid Sick Leave (EPSL) Policy due to the COVID-19 national pandemic.

BACKGROUND

On March 18, 2020, the President authorized the Families First Coronavirus Response Act (FFCRA) in response to the COVID-19 pandemic. The FFCRA requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19, effective April 1, 2020. Under this new law, employees of covered employers are eligible for:

- Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or

unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and

- Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

An employee qualifies for paid sick time if the employee is unable to work (or telework) due to a need for leave because the employee:

- is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine related to COVID-19;
- is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
- is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

In response to these new requirements, the Human Resources Department, working in conjunction with the Town Attorney's office, recommends adding the temporary Emergency Family and Medical Leave Extension and Emergency Paid Sick Leave Policy. This policy will be in effect from April 1, 2020 until December 31, 2020. The rights and entitlements provided in this policy will sunset as of December 31, 2020.

FISCAL IMPACT

None.

ATTACHMENTS

- A. Resolution 2020-11
- B. EFMLEA and Emergency Paid Sick Leave Policy

RESOLUTION NO. 2020 –11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY ADDING THE TEMPORARY EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT AND EMERGENCY PAID SICK LEAVE POLICY FOR THE TOWN OF APPLE VALLEY

WHEREAS, the Town Council of the Town of Apple Valley has established the temporary Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Policy for the Town of Apple Valley employees; and

WHEREAS, the Town Council of the Town of Apple Valley wishes to add the temporary Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Policy for the Town of Apple Valley employees.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Policy shall be adopted in accordance with Attachment B.
2. All resolutions, parts of resolutions in conflict herewith are hereby amended to be consistent herewith.

Unless otherwise noted, the effective date of this Resolution shall be April 14, 2020.

APPROVED and ADOPTED by the Town Council of the Town of Apple Valley and signed by the Mayor and attested to by the Town Clerk this 14th day of April 2020.

Mayor, Scott Nassif

ATTEST:

Town Clerk, La Vonda-M Pearson

ATTACHMENT B



FMLA Leave Expansion and Emergency Paid Sick Leave Policy (Coronavirus)

Purpose

The purpose of this temporary policy is to comply with the Families First Coronavirus Response Act (FFCRA) and to assist employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. This policy will be in effect from April 1, 2020 until December 31, 2020. The rights and entitlements provided in this policy will sunset as of December 31, 2020.

The FFCRA contains both the Emergency Family and Medical Leave Expansion Act, providing an additional reason for leave under the FMLA and making related changes, and the Emergency Paid Sick Leave Act, creating a new paid leave entitlement. The existing FMLA leave policy still applies to all other reasons for leave outside of this policy, as well as other applicable leave policies. At this time, the Department of Labor (DOL) is expected to issue regulations to provide additional guidance on implementing the FFCRA. Therefore, this policy may be updated based on additional guidance from the DOL.

I. FMLA Leave Expansion for Childcare Issues Arising from School Closures

Employee Eligibility

All employees who have been employed with the Town of Apple Valley for at least 30 calendar days.

Qualifying Reason for Leave

Eligible employees who are unable to work (or telework) due to a need to care for a child who is under 18 years of age because the school or place of care has been closed, or the regular childcare provider is unavailable due to a public health emergency with respect to COVID-19.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

“Childcare provider” means a provider who receives compensation for providing childcare services on a regular basis, including:

- a center-based childcare provider
- a group home childcare provider
- a family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence)
- other licensed provider of childcare services for compensation
- a childcare provider that is 18 years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if

such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.

- "School" means an elementary or secondary school.

Duration of Leave

Employees will have up to 12 weeks of leave to use from April 1, 2020 through December 31, 2020, for a qualifying reason for leave, stated above. This entitlement to leave is an additional qualifying reason for leave and not an additional leave entitlement. Therefore, employees will be entitled to a total of 12 weeks in a 12-month period (as measured in the established FMLA Policy) for all qualifying reasons.

For example, if an employee has already taken 6 weeks of FMLA leave, that employee would be eligible for the remaining 6 weeks of FMLA leave for a qualifying reason, including to care for a child under this policy.

Pay During Leave

Leave will be unpaid for the first 10 days of leave; however, employees may use any accrued paid vacation, sick or personal leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act, as further explained below. After the first 10 days, leave will be paid at two-thirds (2/3) of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Pay will not exceed \$200 per day, and \$10,000 in total.

For part-time employees with varying hours to such an extent that the hours worked cannot be determined with certainty, one of two methods for computing the number of hours paid will be used:

- 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 leave, including hours for which the employee took leave of any type; or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Employee Status and Benefits During Leave

While an employee is on leave, the Agency will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium (if any). During any unpaid portions of leave, the employee must continue to make this payment per instructions from the Human Resources Department. These provisions are the same as for all other FMLA leave, as described in the current FMLA Policy.

Procedure for Requesting Leave

All employees requesting FMLA leave must provide written notice, where possible, of the need for leave to the Human Resources Department as soon as practicable. Verbal notice will otherwise be accepted until written notice can be provided. Within five business days after the employee has provided this notice, HR will complete and provide the employee with any Department of Labor (DOL) required notices.

The notice the employee provides should include a brief statement as to the reason for leave and, if possible, the expected duration.

On a basis that does not discriminate against employees on FMLA leave, the Town may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

Employee Status After Leave

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms.

Please contact the Human Resources Department with any questions.

II Emergency Paid Sick Leave

Emergency Paid Sick Leave is an entitlement *above and beyond* an employee's normal sick leave entitlement. It shall be available first for the reasons set forth herein. As described below, this emergency leave will be available for use beginning April 1, 2020.

Eligibility

All full-time and part-time employees unable to work (or telework) due to one of the following reasons for leave:

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 seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for his or her child under 18 years of age if the school or place of care of the child has been closed, or the childcare provider of such child 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 the secretary of labor.

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* ("as if" the employee was the parent).

Amount of Paid Sick Leave

All eligible full-time employees will have up to 80 hours of paid sick leave available to use for the qualifying reasons above. Eligible part-time employees will have the number of hours worked, on average, over a two-week period, of paid sick leave available to use for the qualifying reasons above.

For part-time employees with varying hours, to such an extent that the hours worked cannot be determined with certainty, one of two methods for computing the number of hours paid will be used:

- 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 leave, including hours for which the employee took leave of any type; or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

Rate of Pay

Paid emergency sick leave will be paid at the employee's regular rate of pay, for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 will be compensated at two-thirds their regular rate of pay.

Pay will not exceed:

- \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above.
- \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

Interaction with Other Paid Leave

The employee may use emergency paid sick leave under this policy before using any other accrued paid time off for the qualifying reasons stated above.

Employees on expanded FMLA leave under this policy may use emergency paid sick leave during the first 10 days of normally unpaid FMLA leave.

Procedure for Requesting Emergency Paid Sick Leave

Employees must notify their department manager or HR of the need and specific reason for leave under this policy. A form will be provided to all employees for certifying the leave request. Verbal notification will be accepted until practicable to provide written notice.

Once emergency paid sick leave has begun, the employee and his or her manager must determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive paid sick time.

Employees may be requested to provide medical certification or a medical note supporting the need for leave under appropriate circumstances but will not be required when not practicable to obtain.

Carryover

Paid emergency sick leave under this policy will not be provided beyond December 31, 2020. Any unused emergency paid sick leave will not carry over to the next year or be paid out to employees.

Job Protections

No employee who appropriately utilizes emergency paid sick leave under this policy will be discharged, disciplined or discriminated against for use of leave under the policy or any request to use leave under this policy.

Please contact the Human Resources Department with any questions.

III. Exclusions

The Town has designated the following positions as emergency responders who are therefore ineligible for the leave benefits set forth herein:

FMLA Leave Expansion

None.

Emergency Paid Sick Leave

None.