



## COVID-19 – Families First Coronavirus Response Act Policy

### Policy

The Families First Coronavirus Response Act (“FFCRA”) was signed into law effective April 1 through December 31, 2020, to provide benefits for employees and families directly affected by COVID-19. The FFCRA amends the Family and Medical Leave Act (“FMLA”) with the Emergency Family Medical Leave Expansion Act (“EFMLEA”), and also provides for additional paid sick leave through the Emergency Paid Sick Leave Act (“EPSLA”). This Policy provides an overview of FFCRA and how the EPSLA and EFMLEA integrate with existing leaves and benefits the City of Lompoc (“City”) offers.

Unused statutory sick leave, including Emergency Paid Sick Leave (“EPSL”), is not cashed out upon termination, resignation, retirement, or other separation from employment. (Labor Code § 246(f) (1).) Unused sick leave, **excluding** EPSL and sick leave earned pursuant to California Labor Code § 246, may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.

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 Family Medical Leave (“EFML”) provided that the employee had been on the City’s payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise terminated. Unused EFML will not be reinstated after December 31, 2020.

### Purpose

Employees of the City provide a wide variety of essential services to the community. In order to promote proper physical distancing to prevent the spread of COVID-19 and allow employees to continue working in a safe and healthy environment, this policy provides leave in accordance with the FFCRA, including the EPSLA and EFMLEA.

The EFMLEA expands certain provisions of the FMLA but does not provide additional time beyond the total 12 weeks available for FMLA leave. Eligibility applies to both regular status budgeted and non-budgeted full and part-time employees.

### Definitions

- 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 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. “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).)

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- C. “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.
- D. “Individual” 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.

### Emergency Paid Sick Leave Act (EPSLA)

#### I. ELIGIBILITY:

From April 1, 2020, through December 31, 2020, eligible employees can take EPSL 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 EPSL 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, as defined below. 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 EPSL based on that reason under this subsection. However, such an employee may be qualify for EPSL pursuant to the qualifying reason provided for 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 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:
  - 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.

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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. “Son or daughter” and “child care provider” are described above.
  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 EPSL when employed by another employer are not entitled to take any additional EPSL with the City. An employee, who has taken some, but not all, of the EPSL 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 if the employee meets the eligibility requirements provided above.

### **II. OTHER STATUTORY OR CONTRACTUAL LEAVES:**

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

### **III. AMOUNT OF EMERGENCY PAID SICK LEAVE:**

- A. Full-time employees: Full-time employees working 40 hours per week may take up to 80 hours of EPSL.
- B. Part-time employees: Part time employees may take to 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 City for six months, the City should calculate the leave entitlement based on the period during which the employee has been employed.

### **IV. CAPS ON THE AMOUNT OF PAY PROVIDED FOR EMERGENCY PAID SICK LEAVE:**

EPSL 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.

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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 above or has been advised to self-quarantine as described in 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.

### V. CERTIFICATION AND DOCUMENTATION REQUIRED FOR LEAVE:

If an employee fails to provide proper notice, the City 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.

An employee using EPSL must provide the following information prior to taking EPSL:

- (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 EPSL, the employee is required to provide to the City documentation in support of his/her request for EPSL as follows:

- (1) To take EPSL 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 EPSL 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 EPSL 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.

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- (4) To take EPSL 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 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 EPSL or EFML.

### VI. RESTORATION TO PRIOR POSITION:

An employee who uses EPSL 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.

## Emergency Family Medical Leave Expansion Act (EFMLEA)

### I. ELIGIBILITY:

Employees are eligible for up to 12 weeks of job-protected EFML if the employee satisfies the following requirements:

- A. The employee has worked for the City for at least 30 calendar days (FMLA Sec. 110(a)(1)(A));
- B. The employee is unable to work (or telework) due to a need to care for the son or daughter (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) 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);
- C. The employee has not used all available FMLA leave. EFML is a form of FMLA leave, and is not in addition to any other FMLA leave;
- D. There is no other suitable person (e.g., co-parent, co-guardian, or normal child care provider) available to care for the employee's son or daughter during the period for which the employee takes EFML; and
- E. The City did not exempt the employee as either a "health care provider" or "emergency responder."

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### **II. PAID LEAVE:**

The first ten (10) days of EFML may consist of unpaid leave. During that period, the employee may elect to use EPSL, as described above, if the employee has not exhausted such leave through use at the City or prior employer. If the employee has exhausted the EPSL to which they are entitled, an employee may use their earned and accrued leaves to supplement their unpaid EFML compensation they receive under EFML 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 EFML.

After the tenth day, and for the remaining ten (10) weeks of EFML, 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, the employee is not entitled to supplement the EFML with earned or accrued leave provided by the City. However, per an agreement between the City and an employee or employee's employee organization, employees may supplement the compensation they receive under EFML (paid up to the specified limitations under the FFCRA) 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.

An eligible employee is entitled to a maximum of twelve 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.

### **III. 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 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 (e.g., co-parent, co-guardian, or normal child care provider) will be caring for the son or daughter during the period for which the employee takes Emergency Family and Medical Leave.

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### IV. RESTORATION TO PRIOR POSITION:

Employees out on EFML 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.

If the City is unable to restore the employee to an equivalent position to the employee's prior position, the City will notify the employee if an equivalent position becomes available within one year of either, the date the public health emergency concludes or a date which is 12 weeks after the employee started their EFML, (whichever date is earlier). Notification shall be by regular mail to the employee's address on file.

### Intermittent Leave

Per an agreement between the City and an employee or employee organization, an employee may take intermittent leave as follows:

1. An employee who is teleworking may take EPSL and/or EFML intermittently for any qualifying reason, as outlined above;
2. An employee who is still working at the City's worksite may take EPSL and/or EFML 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.

### Exclusion of Emergency Responders

Pursuant to Department of Labor regulations (29 C.F.R. § 826.30 subd. (c)(2)(i)), the City excludes from eligibility for EPSL and EFML under the FFCRA the following "emergency responder" positions: law enforcement officers, fire fighters, emergency medical technicians, paramedics, emergency management personnel, 911 operators and public works personnel, including utilities employees.

### Interaction with Existing City Leaves

Any leave taken prior to April 1, 2020, will be deducted from the employee's leave accruals. However, if an employee was on leave for a qualifying reason before April 1, 2020, when FFCRA went into effect, the employee will be eligible to take the leaves provided for under this policy as of April 1, 2020, after filling out the appropriate certification.

Per an agreement between the City and an employee or employee organization, employees may supplement the compensation they receive if taking leave under EPSL (paid up to the specified limitations under the FFCRA) 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.

If an employee takes EFML after taking all or a part of his or her EPSL for a reason other than leave to care for their son or daughter, all or part of the employee's first 10 days of EFML may be



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unpaid because the employee will have exhausted his or her EPSL entitlement. In such circumstances, the employee may choose to use earned or accrued leaves provided by the City pursuant to established paid leave policies in order to achieve 100% of the pay they would normally receive in a given week for working their regularly scheduled hours. Such leave will run concurrently with the unpaid portion of the EFML.

Beginning on the eleventh day of EFML, per an agreement between the City and an employee or employee's employee organization, employees may supplement the compensation they receive if taking leave under EFML (paid up to the specified limitations under the FFCRA) 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.

### **Request Procedure**

The City may not require an employee to provide notice of the need to use EPSL and/or Emergency FMLA until after the first workday of usage of such leave. However, an employee may provide notice of the need to use EPSL and/or EFML prior to the usage of such leave.

After the first workday for which an employee takes EPSL and/or EFML, the City may require the employee to provide reasonable notice for the usage of such leave as soon as is practicable thereafter.

An employee may provide notice of the need to use EPSL and/or EFML 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 himself or herself.

### **Expiration**

This policy shall expire on December 31, 2020, or when the EPSL Act and/or Emergency FMLA is no longer effective, whichever is first.

### **Department of Labor Q&A**

The Department of Labor (DOL) will continue to provide compliance assistance to employers and employees on their responsibilities and rights under the FFCRA, which can be accessed on the DOL website at <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>





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### Request For Emergency Family Medical Leave (EFML) and/or Emergency Paid Sick Leave (EPSL)

Employee Name \_\_\_\_\_ Date of Request \_\_\_\_\_

Department \_\_\_\_\_ Position Title \_\_\_\_\_

Hire Date \_\_\_\_\_

Employee Signature \_\_\_\_\_

I am requesting (check one or both):

\_\_\_\_\_ Emergency Family Medical Leave (“EFML”)

\_\_\_\_\_ Emergency Paid Sick Leave (“EPSL”)

If approved for EFML, the first 10 days of this leave are unpaid but you have the option to substitute your pay during those 10 days with any available accrued vacation, personal, sick, or EPSL.

If you are requesting EFML and want to substitute your pay for the first 10 days with EPSL, check both options above and complete both sections of this form.

If you are requesting EFML and want to substitute your pay for the first 10 days with leave other than EPSL, complete Section One of this form and request the vacation, personal, or sick leave as you would normally.

#### SECTION ONE: REQUEST FOR EFML

I am requesting EFML 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 (or 18 years of age or older who is incapable of self-care because of a mental or physical disability) because my son or daughter’s school or place of care has been closed due to a public health emergency.

\_\_\_\_\_ 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 (or 18 years of age or older who is incapable of self-care because of a mental or physical disability) because the child care provider of my son or daughter is unavailable due to a public health emergency.





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### 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.

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

\_\_\_\_\_ 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.

\_\_\_\_\_ 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.

\_\_\_\_\_ I am caring for a son or daughter under the age of 18 years (or 18 years of age or older who is incapable of self-care because of a mental or physical disability) whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions.

\_\_\_\_\_ 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.

I am requesting EPSL begin on \_\_\_\_\_, 2020.

I expect to use EPSL until \_\_\_\_\_, 2020.

I am requesting to take EPSL on an intermittent basis:  Yes  No

I am requesting to take EPSL on an intermittent basis as follows: \_\_\_\_\_

I am requesting to take EPSL on an intermittent basis for the following reason(s): \_\_\_\_\_



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

\_\_\_\_\_  
Employee Signature

***NOTE:** Examples of acceptable supporting documentation will vary depending on the reason for EPSL. A reference to the applicable Federal, State or local quarantine or isolation order related to COVID-19 applicable to the employee or written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19 are examples of acceptable documentation. If EPSL is related to the need to care for a son or daughter, acceptable documentation 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.*

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**FOR HUMAN RESOURCES USE:**

Date: \_\_\_\_\_

Request for EFML Approved:

\_\_\_\_\_  
Yes

\_\_\_\_\_  
No

Dates of Approved EFML:

\_\_\_\_\_

Request for EPSL Approved:

\_\_\_\_\_  
Yes

\_\_\_\_\_  
No

Dates of Approved ESPL:

\_\_\_\_\_

**NOTES:**

\_\_\_\_\_  
Human Resources Manager or Designee Printed Name

\_\_\_\_\_  
Signature of Human Resources Manager or Designee