



## **POLICY FOR COVID-19 CHILD CARE LEAVE**

The purpose of this policy and procedure is to comply with the City's obligations under the FFCRA to provide paid leave to City employees who are unable to work (or to telework) due to school closures or loss of child care for reasons related to COVID-19.

### **I. COVID-19 Child Care Leave**

The federal FFCRA provides for two types of paid leave related to COVID-19: EFMLA Leave, and paid sick leave under the EPSLA Leave. Both EFMLA Leave and EPSLA Leave may be available when an employee is caring for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19.

**a. Policy.** To ensure the continued operation of City government and City services, employees generally are expected to report to work or to telework as directed by their supervisor. If an employee must be absent from work due to a need to care for their child whose school or place of care has been closed, or their childcare provider is unavailable, for reasons related to COVID-19, and there is no other suitable person available to care for their child during the period of absence, the employee:

- i. Should telework, with supervisor approval, if their job responsibilities can be performed through telework. Supervisors may permit an employee to telework even if their children are present in the remote work location, so long as the employee is actually performing their job duties and maintaining their normal work schedule or flexing their time as approved by their supervisor.
- ii. Employees may use paid COVID-19 child care leave if their job responsibilities cannot be performed through telework, they are not reasonably able to perform telework while also providing childcare, or they are not permitted to telework by their supervisor.

**b. EFMLA Leave.** For employees who have been employed by the City for at least 30 days (calculated as of the date that is immediately prior to the day leave would begin), requests for COVID-19 child care leave shall be processed as requests for EFMLA Leave. For eligible employees, EMFLA Leave is available when the employee is unable to work (or to telework) because the employee is caring for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19, and there is no other

suitable person available to care for the child during the period of absence. EFMLA Leave is limited to a maximum of 40 hours of leave per week (pro-rated for part-time employees).

- i. *Unpaid Leave Period.* During the initial two work weeks of EFMLA Leave (or the hours equivalent to two work weeks of leave, if leave is taken intermittently), the employee will be on unpaid leave. However, at the employee's option, the employee may choose to use either:
  - (a) EPSLA Leave. Employees choosing to use EPSLA Leave during this period will be paid at the rate of 2/3 of their regular rate of pay; or
  - (b) Accrued AVAIL or other paid time off (excluding SAIL) which the employee has available. Employees choosing to use this option will be paid at 100% of their regular rate of pay.
- ii. *Paid Leave Period.* After the initial two work weeks of EFMLA Leave, the employee will be on paid leave for up to 10 work weeks (or the hours equivalent to 10 work weeks, if leave is taken intermittently). During the paid leave period, the employee will be paid 2/3 of their regular rate of pay. In accordance with the City's current FMLA Leave Policy, at the beginning of the paid leave period for EFMLA Leave, the City requires the employee to substitute accrued AVAIL or other applicable paid time off (excluding SAIL), subject to the employee's option to reserve up to 80 hours of accrued AVAIL that will not be substituted for EFMLA Leave.
- iii. *Withholdings.* All pay during the EFMLA Leave period shall be subject to normal payroll withholdings for income and payroll taxes, retirement contributions, and other elective benefits (e.g., the employee's share of health, dental, or vision insurance, etc.).
- iv. *Maximum Benefits.* The maximum paid leave benefit for EFMLA Leave is \$200 per day, and \$10,000 in the aggregate, exclusive of any AVAIL or accrued paid time off which the employee elects to use during the leave period. Under no circumstances shall the hours of the employee's EFMLA Leave exceed the employee's normal work schedule.
- v. *Coordination with Regular FMLA Leave.* EFMLA Leave under this policy is also covered by the provisions of the FMLA, and to the City's FMLA Leave Policy, to the extent by the FFCRA. For employees normally eligible for FMLA Leave, use of EFMLA Leave for child care under this policy will run concurrently with FMLA Leave and will be counted against the employee's existing FMLA Leave balance. The total amount of leave available to any employee eligible for both FMLA and EFMLA Leave shall not exceed 12 work weeks.

- vi. *Reinstatement.* At the end of the leave period, employees taking leave pursuant to this policy will be reinstated in accordance with the City's current FMLA Leave Policy. Use of EFMLA Leave under this policy will be afforded all job protections of the FMLA, to the extent and as provided by the FFCRA.

c. **EPSLA Leave.** For employees who are not eligible for EFMLA Leave (those who have been employed by the City for less than 30 days, calculated as of the date that is immediately prior to the day leave would begin), requests for COVID-19 child care leave shall be processed as requests for EPSLA Leave. EPSLA Leave is available when the employee is unable to work (or to telework) because the employee is caring for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19, and there is no other suitable person available to care for the child during the period of absence. EPSLA Leave provides up to 80 hours (40 hours per week for two work weeks, subject to proration for part-time employees) of paid leave. Under no circumstances shall the hours of the employee's EPSLA Leave exceed the employee's normal work schedule.

- i. *Paid Leave.* For employees who use EPSLA Leave for loss of child care, the employee will be paid 2/3 of their regular rate of pay.
- ii. *Maximum Benefit.* The maximum paid leave benefit for EPSLA Leave is \$200 per day, and \$2,000 in the aggregate. Under no circumstances shall the hours of the employee's EPSLA Leave exceed the employee's normal work schedule.

d. **Continuity of Health Insurance Benefits.** During the period of leave under this policy, the City will continue to pay its share of health insurance premiums pursuant to the City's present health insurance coverage. Each employee will continue to pay his or her share of the premiums except to the extent that such employee's share is paid through the use of accumulated AVAIL time if applicable. Such payments shall be made to the Finance Department. In the event the employee fails to pay his or her share, the City will make those payments on behalf of such employee, subject to the City's right of recovery from such employee of all amounts paid by the City on behalf of that employee. If an employee fails to return to work after a period of leave under this policy, and the city has paid the employee's share of the health-insurance premium during his or her absence, the city will assert a right of recovery of those premiums against such employee, unless the failure to return to work is due to the onset, continuation, or recurrence of a serious health condition of the employee or other family members, or other circumstances beyond the control of the employee.

## II. Exceptions

The FFCRA allows the City to exempt emergency responders from EFMLA Leave and/or EPSLA Leave. At this time, the City has not elected to exempt emergency responders from EFMLA Leave or EPSLA Leave. However, the City reserves the right to revise this policy in the future to

exempt some or all emergency responders, to the extent that it may become necessary to do so to preserve the continuity of critical or essential City services.

### **III. General Provisions**

The following requirements will apply to all requests for leave pursuant to this policy:

- a. Employees who request leave due to loss of child care pursuant to this policy must notify their supervisor and request such leave as soon as the need for leave is foreseeable.
- b. Employees requesting leave under this policy (as either EFMLA Leave or EPSLA Leave) must complete such request forms as may be required by the Human Resources Department.
- c. Employees requesting COVID-19 child care leave must present written documentation to verify that their child's school or place of care is closed, or that their child care provider is unavailable, for reasons related to COVID-19. Employees also must certify in writing that there is no other suitable person available to care for their child during the period of absence.
- d. Requests for leave pursuant to this policy must be approved by the employee's supervisor and by Human Resources. Requests that do not meet the requirements of this policy will not be approved.
- e. Employees must notify both their supervisor and the Human Resources Department promptly once their need for COVID-19 child care leave ends.
- f. Employees must complete a new leave request form(s) and receive a new approval for use if the reason for their need for leave changes.
- g. All approvals of leave under this policy are subject to change to conform with any changes that may be made to this policy, and all leave approved under this policy expires when this policy is no longer in effect, except as may be required under federal law.
- h. COVID-19 child care leave can be taken on an intermittent or reduced schedule basis.
- i. Use of EFMLA Leave or EPSLA Leave does not count as hours worked.
- j. Employees are not entitled to reimbursement or payout for unused EFMLA Leave or EPSLA Leave.

#### **IV. Duration**

This policy shall continue in force so long as there is an existing state of emergency related to COVID-19, as declared by the governing authorities of the United States, the State of Alabama, or the City of Tuscaloosa. In no event shall this policy continue in force after December 31, 2020, unless extended by a later policy revision, or other action by the City.

#### **V. Definitions and Key Terms**

*“Child”* means the employee’s biological, adopted, or foster child, stepchild, legal ward, or child via *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act (as amended).

*“Child care provider”* means a provider who receives compensation for providing childcare 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. Under the 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.

When used in reference to a school or place of care, *“closed”* means that the school or place of care is physically closed to in-person attendance. If a school or place of care is only physically open on a limited basis (for example, the school or place of care allows a child to physically attend in-person on campus on Mondays and Tuesdays, but only allows virtual or remote attendance on Wednesdays, Thursdays, and Fridays), the school or place of care will be considered *“closed”* on those days when the child is not permitted to physically attend.

*“COVID-19 child care leave”* means EFMLA Leave and/or EPSLA Leave as provided for in this policy.

*“EFMLA”* means the Expanded Family and Medical Leave Act, adopted as part of the FFCRA, and effective through December 31, 2020.

*“EFMLA Leave”* means the leave benefits (including paid leave) provided by the EFMLA.

*“Emergency responder”* is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers,

public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

*“EPSLA”* means the Emergency Paid Sick Leave Act, adopted as part of the FFCRA, and effective through December 31, 2020.

*“EPSLA Leave”* means the paid leave benefits provided by the EPSLA.

*“FFCRA”* means the federal Families First Coronavirus Response Act, effective as of March 27, 2020.

*“FMLA”* means the federal Family and Medical Leave Act of 1993, as amended.

*“FMLA Leave Policy”* means the current policy of the City of Tuscaloosa for family and medical leave, codified at Section 19-8 of the City Code.

*“Health care provider”* means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA (see 29 C.F.R. § 825.102).

*“Place of care”* means a physical location in which care is provided for the employee’s child while the employee works for the employer. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, camps, enrichment programs, and respite care programs.

*“Regular rate of pay”* means the average of the employee’s regular pay (excluding overtime and bonuses) over a period of six months prior to the date on which the employee takes leave. If an employee has not been employed by the City for at least six months, the regular rate of pay is calculated based on the average of the employee’s regular pay (excluding overtime and bonuses) for each week the employee has been employed by the City.

*“School”* means an elementary school or secondary school. *“Elementary school”* means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. *“Secondary school”* means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that the term does not include any education beyond Grade 12.

**\*END OF DOCUMENT\***