

## **City of Bothell Families First Coronavirus Response Act Temporary Procedure**

This procedure provides temporary protected leave and paid leave benefits for certain absences arising from the COVID-19 outbreak in accordance with the federal Families First Coronavirus Response Act (FFCRA). The benefits available under this procedure are available beginning on April 1, 2020. This procedure will be administered in accordance with the FFCRA statute and forthcoming federal regulations and guidance.

The FFCRA provides for two categories of leave. The first expands existing FMLA coverage to provide up to 12 weeks of partially-paid Public Health Emergency Leave (“PHEL/FMLA”) for eligible employees forced to miss work due to closure of their child’s school or the unavailability of the child’s childcare provider for reasons related to COVID-19. The second provides up to 10 days of Emergency Paid Sick Leave (EPSL) for various reasons related to the COVID-19 outbreak. Details regarding each category of leave are provided in the sections below.

### **Public Health Emergency Leave (PHEL/FMLA)**

Eligibility. Non-emergency responder employees who have worked for the City for at least 30 calendar days are eligible for PHEL/FMLA leave. An employee need not meet the eligibility requirements for regular FMLA (12 months of employment and 1250 hours worked in the prior year) to be eligible for PHEL/FMLA.

To ensure the City’s ability to meet the needs of the community during the COVID-19 pandemic, the City has designated the following positions as emergency responders who are not eligible for PHEL/FMLA as of April 3, 2020:

- All Police Department and Fire Department employees

The City reserves the right to expand this list in order to meet the needs of the community in the future in accordance with Department of Labor Regulations.

Leave Entitlement. An eligible employee may take up to 12 weeks of protected leave if the employee is unable to work, or telework, based on a need to care for the employee’s child under age 18 because the child’s school or place of care has been closed, or the child’s child care provider is unavailable due to a public health emergency. In accordance with Department of Labor regulations an employee is able to telework if the City:

- a) Has work for the employee;
- b) Permits the employee to telework from their home; and
- c) There are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the employee from performing the work. Telework may be performed during normal hours or at other times agreed to by the employee and the City.

A public health emergency means an emergency with respect to COVID-19 declared by a federal, state, or local authority. PHEL/FMLA may be taken intermittently only if approved by the City.

Per Department of Labor regulations, this leave is not available if another suitable individual is available to provide care. Intermittent use of PHEL/FMLA is permitted only upon approval of the employee's Department Director.

PHEL/FMLA is part of an employee's regular FMLA leave entitlement. Accordingly, if an employee has already used FMLA for other purposes during the FMLA leave year, the amount of available PHEL/FMLA will be reduced by the amount of FMLA leave already taken. PHEL/FMLA leave will be available through December 31, 2020.

Partial Pay Entitlement. The first 10 days of PHEL/FMLA will be unpaid, although employees may elect to use other accrued leave including EPSL during this period. For leave beyond the first 10 days, the City will pay two-thirds of the employee's regular pay, up to a maximum of \$200 per day or \$10,000 in the aggregate. Pay is calculated based on the number of hours an employee would otherwise have been scheduled to work. For employees with variable hours, hours will be determined based on the average number of hours scheduled over the six-month period preceding the leave (including paid leave hours) or on a reasonable expectation at the time of hire as to the hours per day the employee would normally be scheduled to work. Employees may elect to supplement the PHEL/FMLA paid benefit with other accrued leave up to their base rate of pay.

Notification; Verification. Employees who need to take PHEL/FMLA leave should notify Human Resources as soon as practicable after the need for leave arises. Under the law, an employee seeking PHEL/FMLA leave must provide the following:

1. the employee's name;
2. the date(s) for which leave is requested;
3. qualifying reasons for the leave;
4. the name of the child(ren) being cared for;
5. the name of the school(s) or childcare provider(s) that has/have closed or become unavailable; and
6. a representation that no other suitable person will be caring for the child while PHEL-FMLA leave is being used.

Other. This procedure will be administered consistent with the City's existing Family and Medical Leave (FMLA) procedure, except as modified by the FFCRA.

### **Emergency Paid Sick Leave (EPSL)**

Eligibility. All employees of the City are eligible for up to 80 hours of EPSL. EPSL may be fully paid or partially paid, depending on the reason for taking leave (see below). The City reserves the right to exclude positions it designates as first responders in order to meet the needs of the community in the future.

Covered Reasons for Using EPSL: Employees are entitled to use EPSL when they are unable to work, or telework, for any of the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. This includes a shelter-in-place or stay-at-home order issued by federal, state or local government if the order precludes the employee from working; an employee who is able to telework or who is not covered by the order (e.g., those performing essential services as defined by the applicable order) would not be eligible to take leave for this reason.
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.
4. To care for an individual who is self-isolating for one of the reasons described in (1) or (2) above. The individual needing care must be the 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.
5. To care for the employee's child under age 18 due to closure of the child's school or unavailability of the child's childcare provider due to COVID-19 precautions. A "child" is defined the same as under the FMLA; *i.e.*, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and "incapable of self-care because of a mental or physical disability" at the time leave is to commence.
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.

Paid Leave Entitlement. Full-time employees are entitled to up to 80 hours of EPSL. Part-time employees are entitled to the EPSL equal to number of hours they typically work over a two-week period. For employees with variable hours, hours will be determined based on the average number of hours scheduled over the six-month period preceding the leave (including paid leave hours) or on a reasonable expectation at the time of hire as to the hours per day the employee would normally be scheduled to work. Any EPSL available under this procedure is in addition to accrued leave to which an employee was already entitled under existing City policies or labor agreements.

Reduced Benefit for Certain Leaves; Cap on Sick Leave Amount. Where EPSL is taken for reasons (1), (2), or (3) above (which cover leave due to the employee's own health or quarantine), the paid sick leave benefit is equal to the employee's regular rate of pay for the missed work time, provided that EPSL is capped at \$511 per day and \$5,110 in the aggregate when leave is taken for these reasons. Where leave is taken for reasons (4), (5), or (6) above (to care for another, to care for a child due to a school closure or unavailability of childcare, or where the employee is experiencing a substantially similar condition), the paid sick leave benefit is two-thirds of the employee's regular rate of pay,

provided that EPSL is capped at \$200 per day and \$2,000 in the aggregate when leave is taken for one of these reasons.

Use of Paid Sick Leave; Sequencing with Other Leave; Intermittent Use. Employees may access EPSL for a covered reason before exhausting other accrued leaves. If an absence is covered by this EPSL procedure and the PHEL/FMLA procedure above, the employee may elect to use EPSL during the first 10 days of PHEL/FMLA in order to remain in paid status.

Employees using EPSL intermittently due to a closure of a child's school or unavailability of the childcare provider, the employee may take leave intermittently only with the City's approval. An employee may also use EPSL intermittently with City approval if unable to telework his/her normal schedule of hours due to a qualifying reason (for example, if an employee can telework in the morning, but needs to care for a child in the afternoon due to a school closure). Per Department of Labor guidance, where an employee is not telecommuting, intermittent use of EPSL is not permitted when leave is taken for reasons (1), (2), (3), (4), or (6) above. In such cases, EPSL must be taken in full-day increments and once leave is initiated for one of these reasons, the employee must continue to use EPSL until either (i) the full amount of EPSL has been used; or (ii) the employee no longer has a qualifying reason for taking EPSL. The Department of Labor has explained that this requirement is imposed because if an employee is actually or possibly sick with COVID-19, or is caring for someone who is sick or possibly sick with COVID-19, the intent of the law is to provide paid leave to prevent the spread of the virus.

Carryover; Termination of Benefit. The EPSL Benefit expires on December 31, 2020; any unused EPSL will not be carried over to the next calendar year or merged into other leave banks. Additionally, the entitlement to EPSL ceases beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick leave. However, to the extent an employee subsequently needed additional time off for another covered reason prior to December 31, 2020, the employee could use any remaining EPSL available.

Notification. An employee who needs to take EPSL should notify their supervisor and Human Resources as soon as practicable, and fill and submit all required forms and documentation. After the first workday (or portion thereof) that an employee takes EPSL, the employee must follow the notice requirements required for use of regular sick leave.

Verification. An employee requesting EPSL must: specify the qualifying reason for requesting leave; state that the employee is unable to work or telework, for that specified reason; and provide the date(s) for which leave is requested. Depending on the type of leave taken, the Department of Labor requires that an employee provide the following additional information to substantiate the leave request:

- Where leave is taken due to a quarantine or isolation order, the name of the government entity issuing the order;

- Where leave is taken due to the recommendation of a health care provider to self-quarantine, the name of the health care provider making the recommendation; or
- Where leave is taken due to a school closure or unavailability of a childcare provider: (1) the name of the child(ren) being cared for; (2) the name of the school(s) or childcare provider(s) that has/have closed or become unavailable; and (3) a representation that no other suitable person will be caring for the child while EPSL is being used.