



Common Council Chambers
8040 S. 6TH Street
Oak Creek, WI 53154
(414) 766-7000

SPECIAL
COMMON COUNCIL MEETING AGENDA
MARCH 30, 2020
4:30 P.M.

Daniel Bukiewicz - Mayor
Steven Kurkowski - 1st District
Greg Loreck - 2nd District
Richard Duchniak - 3rd District
Michael Toman - 4th District
Kenneth Gehl - 5th District
Chris Guzikowski - 6th District

The City's Vision

Oak Creek: A dynamic regional leader, connected to our community, driving the future of the south shore.

This meeting will be held by video conference. Persons wishing to participate need to register via <http://ocwi.org/register> prior to the start of the meeting. The Webinar will start at 4:25 p.m. so those that registered may log in. The meeting will also be live streamed on the City of Oak Creek YouTube Page via <http://ocwi.org/livestream>

1. Call Meeting to Order / Roll Call
2. Pledge of Allegiance

Informational

3. **INFORMATIONAL:** COVID-19 Update.

New Business

4. **Resolution:** Consider *Resolution* No. 12149-033020, defining "Emergency Responder" and "Health Care Provider" under the Families First Coronavirus Response Act ("FFCRA") and Authorizing the Necessary Amendments to the City of Oak Creek Personnel Manual to Incorporate FFCRA and the Related Provisions of the Expanded Family and Medical Leave and Employee Paid Sick Leave (by Committee of the Whole).
5. **Motion:** Consider a *motion* to approve the City of Oak Creek's Personnel Manual regarding the Families First Coronavirus Response Act: Expanded Family and Medical Leave (by Committee of the Whole).
6. **Motion:** Consider a *motion* to approve the City of Oak Creek's Personnel Manual regarding the Families First Coronavirus Response Act: Employee Paid Sick Leave (by Committee of the Whole).

Adjournment.

Visit our website at www.oakcreekwi.org for the agenda and accompanying common council reports.

Public Notice

Upon reasonable notice, a good faith effort will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aid at no cost to the individual to participate in public meetings. Due to the difficulty in finding interpreters, requests should be made as far in advance as possible preferably a minimum of 48 hours. For additional information or to request this service, contact the Oak Creek City Clerk at 766-7000, by fax at 766-7976, or by writing to the ADA Coordinator at the Oak Creek Health Department, 8040 S. 6th Street, Oak Creek, Wisconsin 53154.

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may attend the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice



COMMON COUNCIL REPORT

Item: Resolution No. 12149-033020 Defining "Emergency Responder" and "Health Care Provider" under the Families First Coronavirus Response Act ("FFCRA") and Authorizing the Necessary Amendments to the City of Oak Creek Personnel Manual to Incorporate FFCRA and the Related Provisions of the Expanded Family and Medical Leave Expansion and Employee Paid Sick Leave

Recommendation: That the Common Council approve Resolution No. 12149-033020 Defining "Emergency Responder" and "Health Care Provider" under the Families First Coronavirus Response Act ("FFCRA") and Authorizing the Necessary Amendments to the City of Oak Creek Personnel Manual to Incorporate FFCRA and the Related Provisions of the Expanded Family and Medical Leave and Employee Paid Sick Leave

Fiscal Impact: Unknown

- Critical Success Factor(s):**
- Vibrant and Diverse Cultural Opportunities
 - Thoughtful Development and Prosperous Economy
 - Safe, Welcoming, and Engaged Community
 - Inspired, Aligned, and Proactive City Leadership
 - Financial Stability
 - Quality Infrastructure, Amenities, and Services
 - Not Applicable

Background: The Families First Coronavirus Response Act ("FFCRA") provides that local governments comply with FFCRA by providing their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

Options/Alternatives:

Respectfully submitted:

Andrew J. Vickers, MPA
City Administrator

Prepared:

Judy L. Rogers
Human Resources Manager

Fiscal Review:

Bridget M. Souffrant
Assistant City Administrator/Comptroller

RESOLUTION NO. 12149-033020

A RESOLUTION DEFINING "EMERGENCY RESPONDER" AND
"HEALTH CARE PROVIDER" UNDER THE FAMILIES FIRST CORONAVIRUS
RESPONSE ACT ("FFCRA") AND AUTHORIZING THE NECESSARY AMENDMENTS
TO THE CITY OF OAK CREEK PERSONNEL MANUAL TO INCORPORATE FFCRA AND THE
RELATED PROVISIONS OF THE EXPANDED FAMILY AND MEDICAL LEAVE AND
EMPLOYEE PAID SICK LEAVE

WHEREAS, on March 17, 2020, the City of Oak Creek Common Council adopted Resolution No. 12148-031720, a Resolution Declaring a Public Health Emergency in Response to the COVID-19 Coronavirus; and

WHEREAS, on March 18, 2020, the Families First Coronavirus Response Act ("FFCRA") was signed into law with the Expanded Family and Medical Leave ("EFML") expanding the Family and Medical Leave Act and the Employee Paid Sick Leave Act ("EPSL") creating a paid sick leave entitlement for certain eligible employees; and

WHEREAS, FFCRA imposes certain obligations on employers with fewer than 500 employees and government employers with one or more employees; and

WHEREAS, FFCRA provides for emergency leave to employees under the provisions of EFML and EPSL if the employee is unable to work or to telework under certain circumstances due to COVID-19; and

WHEREAS, FFCRA allows employers to exempt "emergency responders" and "health care providers" from applicable provisions that provide for taking public health emergency leave; and

WHEREAS, FFCRA takes effect on April 1, 2020 and remains in effect through December 31, 2020; and

WHEREAS, the purpose of this Resolution is to provide the process for identifying employees, categories of employment, positions and/or departments that are "emergency responders" or "health care providers" under FFCRA and, as a result, exempt from the provisions of FFCRA.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Common Council of the City of Oak Creek, for purposes of the application and implementation of FFCRA, the following positions in the City of Oak Creek are hereby designated as "emergency responders": all sworn police personnel, all sworn firefighter/paramedics, all dispatchers and dispatch supervisors, and all Health Department staff;

BE IT FURTHER RESOLVED for purposes of the application and implementation of FFCRA, the following positions in the City of Oak Creek are hereby designated as "health care provider": all employment positions associated with or related to those within the meaning of section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611) and as further clarified by 29 C.F.R. 825.124;

BE IT FURTHER RESOLVED that the terms "emergency responder" and "health care provider" are intended to be defined in the broadest sense possible consistent with the law in an

effort to ensure and continue the essential functions of the City of Oak Creek during this time of emergency. Any final determinations regarding the definitions of emergency responder and/or health care provider as applied to any employment position with the City of Oak Creek shall be determined by the City Administrator, with such decision being final;

BE IT FURTHER RESOLVED that the necessary policy amendments to the City of Oak Creek Personnel Manual to incorporate FFCRA and the related provisions of EFML and EPSL are hereby authorized;

BE IT FURTHER RESOLVED this Resolution is effective immediately.

Introduced at a regular meeting of the Common Council of the City of Oak Creek held this 30th day of March, 2020.

Passed and adopted this ___ day of _____, 2020.

Common Council President Kenneth Gehl

Approved this _ day of _____, 2020.

Mayor Daniel J. Bukiewicz

ATTEST:

Catherine A. Roeske, City Clerk

VOTE: Ayes _____ Noes _____

COMMON COUNCIL REPORT

Item: Families First Coronavirus Response Act (FFCRA or Act): Expanded Family and Medical Leave

Recommendation: That the Common Council approve the City of Oak Creek's Personnel Manual regarding the Families First Coronavirus Response Act: Expanded Family and Medical Leave

Fiscal Impact: Unknown

Critical Success Factor(s):

- Vibrant and Diverse Cultural Opportunities
- Thoughtful Development and Prosperous Economy
- Safe, Welcoming, and Engaged Community
- Inspired, Aligned, and Proactive City Leadership
- Financial Stability
- Quality Infrastructure, Amenities, and Services
- Not Applicable

Background: The Families First Coronavirus Response Act: Expanded Family and Medical Leave provides that local governments comply by providing their employees with paid Expanded Family and Medical Leave for specified reasons related to COVID-19. This provision will apply from April 1, 2020 through December 31, 2020. Please see attached policy for the details of the Act and policy implementation.

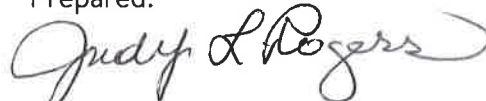
Options/Alternatives:

Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Prepared:



Judy L. Rogers
Human Resources Manager

Fiscal Review:



Bridget M. Souffrant
Assistant City Administrator/Comptroller

Attachments: Expanded Family and Medical Leave Policy



Families First Coronavirus Response Act (FFCRA): Expanded Family and Medical Leave

I. PURPOSE

This policy outlines the provisions of the federal Expanded Family and Medical Leave Acts and the rights and obligations of employees and employers under the law. Due to the changes provided by the Expanded Family and Medical Leave, the below modifications are made effective April 1, 2020 until December 31, 2020.

II. POLICY

The Family and Medical Leave provide eligible employees with up to 12 workweeks of unpaid protected leave each calendar year for specified family and medical reasons. The eligibility and entitlements are defined differently under federal and state law. Under the Expanded Family and Medical Leave, employers will need to provide up to 12 weeks of FMLA leave for employees for specified reasons related to COVID-19. These 12 weeks are not in addition to any other current FMLA balances already used in the calendar year.

The first 10 days of leave can be unpaid but employees can opt to use other available paid leave they may have for those days. After the 10 days, employees will receive 2/3 of their normal rate of pay for hours they would have worked. However, the paid leave is capped at \$200 per day and \$10,000 in the aggregate.

III. ELIGIBILITY

Those who have been on the job for at least 30 days, and who are unable to work or telework because they have to care for a minor child if the child's school or place of care has been closed, or if the child care provider of that child is unavailable due to a COVID-19 public health emergency are eligible. The term 'public health emergency' means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

IV. QUALIFYING EVENT AND AMOUNT OF LEAVE

The Expanded Family and Medical Leave provides employees up to 12 weeks of FMLA leave for time away from work, if the employee is unable to work or tele-work, because of COVID-19. The leave must be granted for the employees caring for a close family member under quarantine or isolation, or caring for a minor child if the child's school or place of childcare has been closed or is unavailable due to a public health emergency. An employee may be eligible for regular FMLA leave if they have a COVID-19 diagnosis and they meet the normal requirements of FMLA. An employee who is not ill, but merely quarantined because of coming into contact with COVID-19, would not be eligible for Expanded Family and Medical Leave or regular FMLA (See Employee Paid Sick Leave provisions of the Families First Coronavirus Response Act).

It is important to note that while an employee is entitled to 12-weeks of leave under the Expanded Family and Medical Leave the length of the leave is reduced by any FMLA Leave previously taken by the employee – this is not a separate 12-week entitlement. In other words, the Expanded Leave for childcare purposes is automatically reduced by the amount of leave an employee has already taken in the current administrative year, without regard to the reason for the previous leave.

V. PAYMENT ON LEAVE PER EXPANDED FAMILY AND MEDICAL LEAVE EXPANSION ACT

Under the Expanded Family and Medical Leave, a qualifying employee will not be eligible for pay from the employer for the first ten (10) work days of Expanded Family and Medical Leave unless the employee has available accrued vacation, personal, or sick leave, which can be substituted for the otherwise unpaid time. An employer is not permitted to require the substitution of accrued paid leave which the employee may have for the 10 unpaid work day period. After the 10 work day period, the employee will be eligible for pay from the employer equal to $\frac{2}{3}$ of the employee's regular rate of pay for the remainder of the available FMLA leave associated with the qualifying COVID-19 reason.

For full time employees, the paid leave opportunity will be based on the regular rate of pay of the employee for the hours the employee would normally work. Part-time employees' pay eligibility will be based on their regular hours worked per week – or if variable – the average hours worked in the preceding six months. Paid Expanded Family and Medical Leave is allowed only for the reason of closure of the child's school or childcare and a need to provide child care due to the public health emergency. It is limited to a total of \$200 per day or \$10,000 in the aggregate, per person.

COMMON COUNCIL REPORT

Item: Families First Coronavirus Response Act (FFCRA or Act): Employee Paid Sick Leave

Recommendation: That the Common Council approve the City of Oak Creek's Personnel Manual regarding the Families First Coronavirus Response Act: Employee Paid Sick Leave

Fiscal Impact: Unknown

Critical Success Factor(s):

- Vibrant and Diverse Cultural Opportunities
- Thoughtful Development and Prosperous Economy
- Safe, Welcoming, and Engaged Community
- Inspired, Aligned, and Proactive City Leadership
- Financial Stability
- Quality Infrastructure, Amenities, and Services
- Not Applicable

Background: The Families First Coronavirus Response Act: Employee Paid Sick Leave provides that local governments comply by providing their employees with paid sick leave for specified reasons related to COVID-19. This provision will apply from April 1, 2020 through December 31, 2020. Please see attached policy for the details of the Act and policy implementation.

Options/Alternatives:

Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Prepared:



Judy L. Rogers
Human Resources Manager

Fiscal Review:



Bridget M. Souffrant
Assistant City Administrator / Comptroller

Attachments: Employee Paid Sick Leave Policy



Families First Coronavirus Response Act (FFCRA): Employee Paid Sick Leave (EPSL)

I. PURPOSE

This policy outlines the provision of Employee Paid Sick Leave (EPSL) in the Families First Coronavirus Response Act (FFCRA) and the rights and obligations of employees and employers under this law. The EPSL is effective from April 1st, 2020 until December 31, 2020.

II. POLICY

The EPSL provides all employees with up to 80 hours of paid sick leave if they are full-time employees, or the average number of hours worked over a two-week period if they are part-time employees. There is no 10-day waiting period for this sick pay and it is independent of any PTO time the City provides to the employees. The Act expressly prohibits the City from requiring the employee to use PTO before using emergency paid sick leave. Department Directors should not require employees to find substitute leave before becoming eligible for the emergency paid sick leave.

III. QUALIFYING REASONS

Employees qualify for the employee paid sick leave under the following circumstances:

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 their healthcare provider to self-quarantine because they are infected with or have been exposed to COVID-19 or because they are at high risk of complications from COVID-19;
3. The employee is showing symptoms of COVID-19 and is seeking but has not yet received a medical diagnosis;
4. The employee is caring for someone subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by their healthcare provider to self-quarantine for COVID-19 related reasons; or
5. The employee is caring for his or her son or daughter because the child's school or childcare facility has been closed or the childcare provider is no longer available because of a COVID-19 related reason.

6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

V. DIFFERENT STANDARDS FOR DIFFERENT QUALIFYING REASONS

1. Employees needing sick leave for reasons 1, 2, or 3 above are entitled to the sick leave to be paid at 100% of their regular rate of pay up to 80 hours of leave for full-time employee and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period. Payments are capped at \$511 per day, or \$5,110 in the aggregate (over a 2-week period).
2. Employees needing sick leave for reason 4 or 6 above are entitled to the sick leave to be paid at two-thirds (2/3) of their wages/salary up to 80 hours of leave for full-time employees and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period. Payments are capped at \$200 per day, or \$2,000 in the aggregate. (over a 2-week period).
3. Employees needing sick leave for reason 5 above as a full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period. However, these weeks are not additional weeks and any FMLA time already used in 2020 is a part of the 12 weeks. Employees are entitled to two-thirds (2/3) of their wages/salary. Payments are capped at \$200 per day, or \$12,000 in the aggregate (over a 12-week period – two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

VI. FMLA, EXPANDED FMLA ACT AND THE SICK LEAVE ACT

The Employee Paid Sick Leave Act provides job-protected sick leave in situations that may not be covered by the regular Family and Medical Leave Act:

1. When an employee is under a quarantine order or recommendation for exposure to COVID-19 but is not showing any symptoms of illness;
2. When an employee is seeking but does not yet have a diagnosis of COVID-19;
3. When an employee is caring for someone who is under a quarantine order or recommendation for exposure to COVID-19, but who is not showing any symptoms of illness or is caring for someone seeking a diagnosis of COVID-19;
4. When an employee has COVID-19 but their illness does not qualify as a serious health condition although it renders them unable to work;
5. When an employee's childcare provider is unavailable due to COVID-19 related reasons, but that childcare provider is a relative or friend and does not receive compensation for those services, as required under the Emergency FMLA Act.

FMLA will run concurrently with the paid sick leave if (1) Employee has a “serious health condition” or (2) Is caring for an immediate family member with a serious health condition.

Where the employee qualifies for both paid emergency FMLA leave (that is, after 10 days) and emergency paid sick leave the law that provides the employee with the greater benefit will be applied.

Employees diagnosed with COVID-19 may satisfy the “serious health condition” requirement for regular FMLA leave because they are ordered to isolate themselves by their local Health Officer. While the terms isolation and quarantine are often used together and have similar meanings, there is a key distinction. Isolation is used for people who have known or suspected infections (in other words, they’re sick), while quarantine is used for employees who are at risk of becoming infected, usually because they have a known or suspected exposure to an infected person. NOTE: There probably aren’t any situations in which an employee with COVID-19 infection, that qualifies as “serious health condition,” would be in quarantine rather than isolation.

Under the FMLA, an employee who has a “serious health condition” and is subject to an isolation order or recommendation may, or the City may, order the employee to use any accrued paid sick leave that they have available. If the employee does not have any accrued paid sick leave, the FMLA leave for a serious health condition will be unpaid leave.

The Expanded Family and Medical Leave will not come into play in this situation because it covers only those situations related to a lack of childcare.

In this case the Employee Paid Sick Leave would apply and the employee would begin receiving the 80 hours or two workweeks of pay (Part-time would be adjusted for hours worked).