

CITY OF NEWPORT
EMERGENCY ORDER NO. 2020-03

WHEREAS, the Governor of the State of Oregon declared a state of emergency for the state on March 8, 2020, finding that COVID-19 created a threat to the public health and safety and constituted a statewide emergency; and

WHEREAS, the City of Newport staff began meeting in early March regarding planning for a response to the COVID-19 emergency in Newport; and

WHEREAS, the Acting City Manager for the City of Newport declared an emergency on March 13, 2020, which was ratified by the Newport City Council at its meeting of March 16, 2020; and

WHEREAS, Newport staff took actions in an effort to "flatten the curve" of the COVID-19 virus, and by this Order, document those actions that include:

I, Spencer R. Nebel, City Manager, hereby order:

March 26, 2020 Approved a COVID-19 Emergency Leave Policy. A copy of the policy is attached.



Spencer R. Nebel, City Manager

Dated: March 26, 2020



COVID-19 Emergency Leave Policy

POLICY NUMBER: COVID-19.4	EFFECTIVE DATE: April 1, 2020
REVISION DATE:	REVISION NUMBER:
CITY MANAGER APPROVAL: 	DATE: 03-26-20

POLICY

In response to changes in federal law (the Families First Coronavirus Response Act and the Emergency Paid Sick Leave Act) and Oregon law (the Oregon Family Leave Act, per administrative regulation), The City of Newport issues the following temporary policy.

This policy goes into effect April 1, 2020, and ends on December 31, 2020, unless specified below or unless the city announces a continuation of this policy in writing.

This policy does not replace the city's existing policies on FMLA, OFLA, sick leave, or parts of the Temporary City Policy- Response to COVID-19, and should be read in conjunction with those policies. See Family Medical Leave Policy beginning on page 90; Sick Leave Policy on page 81 of the Employee Handbook. Questions about this policy should be directed to human resources.

Paid Sick Leave for COVID-19 Issues

If an employee is unable to work or telework due to a qualifying reason related to the COVID-19 pandemic, they will be eligible to take paid leave as described below. All employees are eligible for this type of leave with two exceptions that are identified below. This leave is in addition to paid leave employees accrue under the city's Sick Leave Policy; employees' accrued sick leave banks will not be withdrawn from for leave taken under this policy.

Qualifying Reasons for COVID-19 Paid Sick Leave

- (1) *Quarantine* — to comply with a federal, Oregon or local quarantine or isolation order related to COVID-19. This does not include situations where a city or county orders its residents to "shelter in place".
- (2) *Self-Quarantine* — to self-quarantine, if the employee has been advised to do so by a local healthcare provider.
- (3) *Diagnosis or Treatment* — to obtain a medical diagnosis or treatment if the employee is experiencing symptoms of COVID-19.
- (4) *Care for a Quarantined Individual* — to care for an individual required to be quarantined or advised to be quarantined.

- (5) *Child Care* — to care for an employee's son or daughter if the son or daughter's school or child care provider has been closed or is unavailable due to COVID-19-related issues.
- (6) *Substantially Similar Care* — to care for a substantially similar condition, as determined by the secretary of health and human services.

"Son or daughter" – For purposes of this paid sick leave, a "son or daughter" is 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 FMLA leave is to commence.

Accrual of and Requesting COVID-19 Paid Sick Leave

Full-time employees will receive 80 hours of COVID-19 Paid Sick Leave. For fire department employees, in most cases, this will be four-24-hour shifts (shifts within a two-week period). The number of hours of COVID-19 Paid Sick Leave available to part-time employees depends on the number of hours the employee is scheduled to work during a two-week period, and may be calculated using the average number of hours worked in the six months leading up to the leave's start. As an example, if a part-time employee works, on average, 20 hours per week, the employee would be entitled to 40 hours of COVID-19 Paid Sick Leave.

Any unused COVID-19 Paid Sick Leave will not carry over into 2021. Employees will not be paid the value of any unused COVID-19 Paid Sick Leave if they quit, retire or are fired.

Although COVID-19 Paid Sick Leave is available to employees immediately, employees must follow the city's call in requirement for regular sick leave. Under the city's call-in procedure employees are expected to notify their supervisor of absence at the beginning of each workday during their absence. Exceptions to this include a serious accidental injury, hospitalization, or when it is known in advance that the employee will be absent for an extended period of time.

Further, employees will be expected to provide verification of the need for COVID-19 Paid Sick Leave, as follows:

- (1) *Quarantine* — A copy of the order from a federal, Oregon or local government entity requiring quarantine or isolation relating to COVID-19. This order must include the employee's name or other identifying information sufficient to allow the city to conclude that the order affects a particular employee.
- (2) *Self-Quarantine* — Written verification of the need to self-quarantine from the employee's healthcare provider.
- (3) *Diagnosis or Treatment* — Written verification from the employee's effort to receive a medical diagnosis for COVID-19 or treatment if the employee is experiencing symptoms of COVID-19.
- (4) *Care for a Quarantined Individual* — A copy of the order or other documentation from a federal, Oregon or local government regarding the individual's requirement to be quarantined that includes the individual's name, or written verification of the need to quarantine from the individual's health care provider.
- (5) *Child Care* — No verification required for school closures due to COVID-19 issues if evidence of closure is publicly available. Written verification from the childcare provider about its/his/her unavailability to provide childcare due to COVID-19-related issues.

(6) *Substantially Similar Care* — Written verification of the employee's need to stay home from work from the employee's health care provider.

Caps on Value of COVID-19 Paid Sick Leave

For leave due to reasons (1), (2) or (3), above, an employee will earn the employee's regular rate of pay, capped at \$511 per day, for a maximum of \$5,110. For leave due to reasons (4), (5) or (6), above, an employee will earn 2/3 of the employee's regular rate of pay, capped at \$200 per day, for a maximum of \$2,000.

Employees who receive COVID-19 Paid Sick Leave may supplement this pay with accrued sick leave or vacation time to meet their full salary expectations, but they will not be paid from both COVID-19 Paid Sick Leave and vacation/sick leave for the same hours.

Family Medical Leave Act and Oregon Family Leave Act Policy for School Closures

Employees who have met the eligibility requirements below are eligible to receive unpaid time off when the employee is unable to work (or telework) due to a need to care for a son or daughter if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

The leave of absence available under this policy, under FMLA and OFLA, will be referred to as "School Closure Leave", regardless of the terminology used in both laws. If not specifically addressed in this policy, all other provisions in the city's Family and Medical Leave Policy apply.

Definitions

"Son or daughter" – For purposes of FMLA leave, a "son or daughter" is 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 FMLA leave is to commence. For purposes of OFLA, "child" includes a biological, adopted, foster or stepchild, the child of a registered same-sex domestic partner or a child with whom the employee is in a relationship of *in loco parentis*. For purposes of OFLA, the "son or daughter" must be under the age of 18 or over 18 if incapable of self-care.

"Place of care" includes childcare providers, and means a provider, who receives compensation for providing childcare services on a regular basis,

"School" means elementary or secondary school. Community college, university, college, or other post-secondary schools are not included.

Eligibility Requirements

FMLA: Employees who have worked for the city in the 30 calendar days leading up to the start of the School Closure Leave.

OFLA: Employees who have been employed for at least 180 days and worked an average of at least 25 hours per week leading up to the start of the School Closure Leave.

Length of Leave

FMLA: Up to 12 weeks of leave, to be taken any time during the period of April 2, 2020, and December 31, 2020. If a FMLA leave under this policy is started on December 1, 2020 (for example), the employee will not be allowed to continue the leave past December 31, even if the employee still has available FMLA leave.

OFLA: Up to 12 weeks of unpaid leave, to be taken any time during the period of March 18, 2020, to September 13, 2020. The 12 weeks of School Closure Leave must be used before September 13, 2020; no available School Closure Leave may be used after September 13, 2020.

School Closure Leave under these laws will run concurrently, where applicable. The city will apply the law that is most generous to the employee if the School Closure Leave runs concurrently.

Employees who have already exhausted 12 weeks of FMLA [or OFLA] leave in the city's 12-Month Period may not be eligible to take an additional 12 weeks of School Closure Leave, depending on the employee's eligibility under FMLA [and OFLA]. The City of Newport uses a "rolling" 12-month period, measured backward from the date an employee begins using leave.

Notice and Verification

FMLA: Where the necessity for public health emergency leave is foreseeable, an employee shall provide the employer with as much notice as practicable.

OFLA: Employees must provide at least 30 days' notice before School Closure Leave is to begin if the reason for leave is foreseeable. If 30 days' notice is not foreseeable or practical, an employee must give verbal or written notice to the city within 24 hours of commencement of the leave.

Under both laws' School Closure Leave, no verification is required for school closures due to a public health emergency if evidence of closure is publicly available. Written verification from the "place of care" about its/his/her unavailability to provide childcare due to a public health emergency is required.

Benefits during Leave

FMLA: The first ten days of leave are unpaid; employees may, however, use COVID-19 Paid Sick Leave or any other accrued paid leave during this period. After the first ten days of School Closure Leave, and for each day thereafter, the city will provide paid leave calculated at two-thirds of an employee's regular rate of pay and the number of hours the employee would otherwise normally be scheduled to work. Paid leave will not exceed \$200 per day, or \$10,000 in the aggregate.

Employees who receive School Closure Leave may supplement their pay with accrued COVID-19 Paid Sick Leave, or sick leave or vacation time under the city's policies, to meet their full salary expectations, but they will not be paid from both School Closure Leave and COVID-19/vacation/sick leave for the same hours.

OFLA: OFLA School Closure Leave is unpaid. Employees may however, use any accrued paid leave during the period of OFLA School Closure Leave.

If an employee is on approved School Closure Leave under either or both laws, the city will continue the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. An employee wishing to maintain health insurance during a period of approved School Closure Leave will be responsible for bearing the cost of his/her share of group health plan premiums, which had been paid by the employee prior to the School Closure Leave. Employees will not accrue vacation, sick leave or other benefits (other than health insurance) while the employee is on a School Closure Leave. The leave period, however, will be treated as continuous service (i.e., no break in service) for purposes of vesting and eligibility to participate in the city's benefit plans.

Job Protection

FMLA and OFLA: Employees returning to work from School Closure Leave will be reinstated to their former position. If the position has been eliminated, the employee may be reassigned to an available equivalent position. Reinstatement is not guaranteed if the position has been eliminated under circumstances where the law does not require reinstatement.

Employees are expected to promptly return to work when the circumstances requiring School Closure Leave have been resolved, even if leave was originally approved for a longer period. If an employee does not return to work at the end of a designated School Closure Leave period, reinstatement may not be available unless the law requires otherwise.

No-Retaliation

The city will issue discipline, up to and including termination, to anyone who retaliates against an employee who asks about, requests or uses School Closure Leave or COVID-19 Paid Sick Leave.

