

<p><b>TITLE: Families First Coronavirus Act Emergency Family Medical Leave</b></p>	<p><b>PROCEDURE NUMBER: A-20</b></p>
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<p><b>EFFECTIVE DATE: April 1, 2020</b></p>	<p><b>PAGES: 5</b></p>
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**REVISED DATES:**

**APPROVED:** *Laurel Revett*

**PURPOSE**

This administrative procedure establishes and defines the temporary provisions related to the Emergency Family and Medical Leave Expansion Act resulting from the recent enactment of the federal Families First Coronavirus Act (FFCRA) that became effective on April 1, 2020.

**SCOPE**

This procedure applies to eligible employees defined as full-time, part-time, temporary/seasonal, and retired annuitants except for employees identified in Section 8.

The effective date of this procedure is April 1, 2020 and will expire on December 31, 2020 or when the Emergency Family and Medical Leave Expansion Act is no longer effective.

**GENERAL PROVISIONS**

The Town of Los Gatos provides family and medical care leave for eligible employees as required by state and federal law. This procedure is specific to the Emergency Family and Medical Leave Expansion Act and is supplemented by the Federal Family and Medical Leave Act ("FMLA"), and the California Family Rights Act ("CFRA").

1. Eligibility

Employees are eligible for up to 12 weeks of job-protected Emergency FMLA Leave if the employee satisfies all of the following requirements:

- A. The employee has worked for the Town of Los Gatos for at least 30 calendar days;

- 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) whose school or place of care has been closed, or who's child care provider is unavailable due to a COVID-19 emergency declared by either a Federal, State, or local authority;
- C. There is not another suitable person (e.g., co-parent, co-guardian, or normal childcare provider) available to care for the employee's child during the period for which the employee takes Emergency FMLA Leave;
- D. The employee provided reasonable notice of the need for the leave. Employees shall request leave as soon as practicable and shall certify the need for leave in writing at the time of the request;
- E. The employee has not used all available FMLA leave. Emergency FMLA Leave is a form of FMLA leave and is not in addition to any other FMLA leave; and

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 FMLA Leave provided that the employee had been on the Town's payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise terminated. Unused Emergency FMLA Leave will not be reinstated after December 31, 2020.

## 2. Paid Leave

The first ten (10) days of Emergency FMLA Leave may consist of unpaid leave. During this period, the employee may elect to use Emergency Paid Sick Leave, as described in the Town's Emergency Paid Sick Leave Administrative Procedure, if the employee has not exhausted such leave through use at the Town or prior employer. If the employee has exhausted the Emergency Paid Sick Leave to which they are entitled, an employee may use their earned and accrued leaves to supplement their unpaid Emergency FMLA Leave compensation 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 Emergency FMLA Leave.

After the tenth day, and for the remaining ten (10) weeks of Emergency FMLA Leave, 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 \$12,000 total. During this period, the employee may supplement the Emergency FMLA Leave 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 work weeks 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.

### 3. Employee Notice

Where the need to use Emergency FMLA Leave is foreseeable, the employee shall provide the Town with such notice as soon as practicable. The Town may not require an employee to provide notice of the need to use Emergency FMLA Leave until after the first workday of the usage of such leave.

After the first workday for which an employee takes Emergency FMLA Leave, the Town may require that the employee provide reasonable notice for the usage of such as soon as is practicable thereafter.

An employee may provide notice of the need to use Emergency FMLA Leave 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 him or herself.

If an employee fails to provide proper notice, the Town will provide the employee notice of the failure and provide the employee an opportunity to provide the required documentation, described below, prior to denying the request for leave.

### 4. Certification or Documentation of Need for Leave

In order to certify the need for Emergency FMLA, the employee must provide all of the following information prior to taking leave:

- A. Employee's name;
- B. Date(s) for which leave is requested;
- C. Qualifying reason for the leave;
- D. The name of the child being cared for;
- E. The name of the school, place of care, or childcare provider that has closed or become unavailable; and

- F. A representation that no other suitable person (e.g., co-parent, co-guardian, or normal childcare provider) will be caring for the child during the period for which the Employee takes Emergency Family and Medical Leave.

#### 5. Restoration to Prior Position

An employee who uses Emergency FMLA Leave 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 have otherwise been employed at the time of reinstatement.

#### 6. Intermittent Leave

An employee may take intermittent Emergency FMLA leave if that employee has requested leave to care for their child or if the school or place of care of the child has been closed, or the childcare provider is unavailable, due to COVID-19 precautions.

#### 7. Supplementing Other Earned or Accrued Leaves

If an employee takes Emergency FMLA Leave after taking all or a part of their Emergency Paid Sick Leave for a reason other than leave to care for their child, all or part of the employee's first 10 days of Emergency FMLA Leave may be unpaid because the employee will have exhausted his or her Emergency Paid Sick Leave entitlement. In such circumstances, the employee may choose to use earned or accrued leaves provided by the Town 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 Emergency FMLA Leave.

Beginning on the eleventh day of Emergency FMLA Leave, employees may supplement the compensation they receive if taking leave under Emergency FMLA Leave (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.

#### 8. Exemptions

The Town has not exempted from this leave any employee who is an "emergency responder."

#### 9. Expiration

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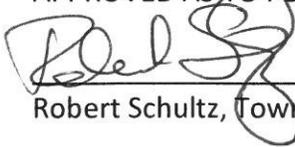
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Emergency Family Medical Care Leave is not cashed out upon termination, resignation, retirement, or other separation from employment.

This procedure shall expire on December 31, 2020 or when the Emergency Family and Medical Leave Expansion Act is no longer effective.

APPROVED AS TO FORM:



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Robert Schultz, Town Attorney

