

CITY OF NEWPORT
EMERGENCY ORDER NO. 2020-08

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, on March 16, 2020, the Acting City Manager approved a Temporary Leave Policy regarding leave related to the COVID-19 emergency, by City of Newport Emergency Order No. 2020-B; and

WHEREAS, on March 26, 2020, the City Manager approved a COVID-19 Emergency Leave Policy, by City of Newport Emergency Order No. 2020-03; and

WHEREAS, Newport staff approved these policies in an effort to “flatten the curve” of the COVID-19 virus; and

WHEREAS, more current legislation provides changes to leave associated with COVID-19; and


WHEREAS, Order No. 2020-08 repeals the COVID-19 Emergency Leave Policy, approved on March 26, 2020, as Emergency Order No. 2020-03.

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

April 7, 2020

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

The repeal and replacement of the COVID-19 Emergency Leave Policy approved on March 26, 2020 (Emergency Order No. 2020-03), with the COVID-19 Emergency Leave Policy attached.



Spencer R. Nebel, City Manager

Dated: April 7, 2020



COVID-19 Emergency Leave Policy

POLICY NUMBER: COVID-19.4	EFFECTIVE DATE: April 1, 2020
REVISION DATE: April 6, 2020	REVISION NUMBER: 1
CITY MANAGER APPROVAL: <i>[Signature]</i>	DATE: 04-07-20

This policy replaces policy number COVID-19.4 effective 4/1/20 issued on 3/26/20.

POLICY

In response to changes in federal law (the Families First Coronavirus Response 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 of Newport announces a continuation of this policy in writing.

This policy does not replace the city's existing policies on FMLA, OFLA or sick leave, 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. See also the "Employee Rights" notice, which is posted in the breakroom of each facility. 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. This leave will be referred to as "COVID-19 Sick Leave" in this policy. All employees are eligible for this type of leave. 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 includes shelter-in-place or stay-at-home orders issued by any Federal, Oregon or local government authority that causes employees to be unable to work, even though the employer has work for the employee to do.
- (2) *Self-Quarantine* — to self-quarantine, if the employee has been advised to do so by a health care provider, due to concerns related to COVID-19.
- (3) *Diagnosis or Treatment* — to obtain a medical diagnosis or treatment if the employee is experiencing symptoms of COVID-19. This leave is limited to time the employee is

unable to work because the employee is taking steps to obtain a medical diagnosis, such as making, waiting for or attending an appointment for a test for COVID-19.

(4) **Care for a Quarantined Individual** — to care for an individual subject to a federal, Oregon or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

"Individual" means an 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) **Child Care** — to care for an employee's son or daughter if the son or daughter's school, child care provider or place of care has been closed or is unavailable due to COVID-19-related issues. This leave is not available if another suitable person will be caring for the son or daughter during the period for which the employee takes COVID-19 Sick Leave.

(6) **Substantially Similar Care** — to care for a substantially similar condition, as determined by the U.S. Secretary of Health and Human Services at any point between April 1, 2020, and December 31, 2020.

Definitions

- "Child Care Provider" – A provider who receives compensation for providing child care 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 Oregon law. A "child care provider" need not be compensated or licensed if he/she is a family member or friend, such as a neighbor, who regularly cares for the Employee's son or daughter.
- "Place of care" - A physical location in which care is provided for the Employee's child while the employee works for the city. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.
- "School" means elementary or secondary school. Community colleges, universities, colleges, or other post-secondary schools are not included.
- "Son or daughter" – 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 COVID-19 Paid Sick 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. 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.

Requests to take COVID-19 Paid Sick Leave on an intermittent basis will be assessed on a case-by-case basis. The city may require employees to attempt telework on a trial basis before

granting a request for intermittent leave. Any agreement regarding intermittent leave will be revoked if, in the city's determination, the arrangement is not meeting the city's needs.

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.

Further, employees will be expected to provide verification of the need for COVID-19 Paid Sick Leave. All employees must provide the date(s) for which the leave is requested, the qualifying reason for the leave, and a statement that the employee is unable to work or telework because of the qualifying reason. Employees will need to complete the Family First Coronavirus Response Act and Oregon Family Leave Act Designation Notice provided by Human Resources. Additional information will be required for the various qualifying reasons, as follows:

- (1) *Quarantine* — Provide the name of the government entity that issued the Quarantine or Isolation Order.
- (2) *Self-Quarantine* — Provide the name of the health care provider who advised the Employee to self-quarantine due to concerns related to COVID-19.
- (3) *Diagnosis or Treatment* — Provide the name of the health care provider from whom the employee sought diagnosis or treatment for COVID-19-related symptoms.
- (4) *Care for a Quarantined Individual* — The employee must provide the name of the government entity that issued the Quarantine or Isolation Order to which the individual being cared is subject or the name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
- (5) *Child Care* — Provide the name of the son or daughter being cared for, the name of the school, place of care, or child care provider that has closed or become unavailable, and a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes COVID-19 Sick Leave.
- (6) *Substantially Similar Care* — Written verification of the employee's need to stay home from work from the employee's health care provider due to care for a "substantially similar" condition identified and announced by the U.S. Secretary for Health and Human Services between April 1, 2020, and December 31, 2020.

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 (over a two-week period).

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 (over a two-week period).

Note, however, that additional paid leave may be available to employees who take School Closure Leave, discussed below.

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 may be eligible to receive time off under FMLA and/or OFLA when the employee is unable to work (or telework) due to a need to care for a son/daughter/child 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 or COVID-19 related reasons.

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

"Child Care Provider" – A provider who receives compensation for providing child care 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 providers of child care services for compensation that is licensed, regulated, or registered under Oregon law. For purposes of the FFCRA, a "child care provider" need not be compensated or licensed if he/she is a family member or friend, such as a neighbor, who regularly cares for the Employee's son or daughter.

"Place of care" - A physical location in which care is provided for the Employee's child while the employee works for the city. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

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

"Son or daughter" or "Child" --

- 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.

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 1, 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.

Intermittent Leave

Requests to take School Closure Leave on an intermittent basis will be assessed on a case-by-case basis. The city may require an Employee to attempt telework on a trial basis before granting a request for intermittent leave. Any agreement regarding intermittent leave will be revoked if, in the city's determination, the arrangement is not meeting city's needs (the employee will be allowed to take any remaining time in a continuous block).

Notice and Verification

FMLA: Where the necessity for School Closure 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, an employee must provide an oral or written statement that the employee is unable to work (or telework) due to a need to care for a son/daughter/child 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 or COVID-19 related reasons. Further, the employee must provide the name of the son or daughter being cared for, the name of the school, place of care, or child care provider that has closed or become unavailable, and a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes COVID-19 Sick Leave. Employees wishing to take School Closure Leave under FMLA or OFLA should use the Family First Coronavirus Response Act and Oregon Family Leave Act Designation Notice provided by Human Resources.

Benefits During Leave

FMLA: The first two weeks 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 two weeks 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 be normally scheduled to work. Paid leave will not exceed \$200 per day, or \$10,000 in the aggregate (covering a 10-week period).

Employees who receive School Closure Leave may supplement their pay with accrued COVID-19 Paid Sick Leave, or sick leave or vacation time under city 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 of Newport 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.