



# Hidden Valley Lake Community Services District

## Personnel Committee

### Agenda

**DUE TO THE EVOLVING SITUATION WITH THE COVID-19 NOVEL CORONAVIRUS AND THE STATE OF CALIFORNIA STAY AT HOME ORDER, EXECUTIVE ORDER N-33-20, THIS MEETING SHALL ONLY BE AVAILABLE TO THE PUBLIC VIA TELECONFERENCE**

To join this meeting go to the [www.hvlcsd.org](http://www.hvlcsd.org) select the April 16, 2020 Personnel Committee Meeting select **Join Microsoft Teams Meeting** Select **Join on the web instead**.

The general public may not attend this meeting at the district's offices due to social distancing requirements. For public comments during the meeting, the board president will inquire prior to board discussion if there are any comments from the public on each item. Members of the public are encouraged to submit their comment by email, the board secretary will submit any emailed comments to the board president. For purposes of submitting comments by email during the meeting please send your email to [pcuadras@hvlcsd.org](mailto:pcuadras@hvlcsd.org).

The public can send written comments to be received by the board secretary prior to 4 p.m. on April 15, 2020. The written comments will be read during public comments or the agenda item specified.

Mail comments to the attention of: Penny Cuadras, Hidden Valley Community Services District, 19400 Hartmann Road, Hidden Valley Lake, Ca 95467 or email at [pcuadras@hvlcsd.org](mailto:pcuadras@hvlcsd.org).

DATE: April 16, 2020

TIME: 10:00 AM

PLACE: Hidden Valley Lake CSD  
Administration Office, GM Office  
19400 Hartmann Road  
Hidden Valley Lake, CA

- 1) CALL TO ORDER
- 2) PLEDGE OF ALLEGIANCE
- 3) ROLL CALL
- 4) APPROVAL OF AGENDA
- 5) REVIEW and DISCUSS: Compensation Study presented by Robert DeLoach

- 6) REVIEW and DISCUSS: Proposal from Robert DeLoach & Associates to Update of Job Descriptions
- 7) REVIEW and DISCUSS: Proposal from Robert DeLoach & Associates for Recruitment Services
- 8) REVIEW and DISCUSS: Recommended change and update to the sick leave policy
- 9) REVIEW and DISCUSS: How the District is responding to COVID-19
- 10) PUBLIC COMMENT
- 11) COMMITTEE MEMBER COMMENT
- 12) ITEMS FOR NEXT AGENDA
- 13) ADJOURN

Public records are available upon request. Board Packets are posted on our website at [www.hvicsd.org/Meetings](http://www.hvicsd.org/Meetings).

In compliance to the Americans with Disabilities Act, if you need special accommodations to participate in or attend the meeting please contact the District Office at (707) 987-9201 at least 48 hours prior to the scheduled meeting.

Public shall be given the opportunity to comment on each agenda item before the Governing Board acts on that item, G.C. 54953.3. All other comments will be taken under Public Comment.

**Position Title: Administrative Assistant/Secretary to the Board of Directors**

Labor Market Agency	Comparable Position Match	Hourly Min.	Hourly Max.
Hidden Valley Lake CSD	Administrative Assistant	\$27.05	\$33.00
City of Calistoga	Executive Assistant	\$31.19	\$37.91
City of Healdsburg	Deputy City Clerk	\$35.90	\$43.80
City of Yountville	Administrative Assistant II	\$30.17	\$36.67
City of Napa	Administrative Assistant	\$40.12	\$48.46
City of Santa Rosa	Deputy City Clerk	\$32.04	\$38.95
Sonoma County Water Agency	Administrative Aide	\$26.40	\$32.08
City of Vallejo	Administrative Secretary	\$25.55	\$31.06
North Marin Water District	District Secretary	\$50.56	\$61.46
Town of Windsor	Deputy Town Clerk	\$29.83	\$37.24
Valley of the Moon Water District	Administration/Finance Manager	\$50.97	\$61.96
Clearlake Oaks County Water District	Administrative Services Manager	\$35.17	\$48.97

Hourly Median	\$34.05	\$42.03
HVLCSD	\$27.05	\$33.00
Percentage Above or Below Median	-20.55%	-21.48%

**Position Title: Full Charge Bookkeeper**

Labor Market Agency	Comparable Position Match	Hourly Min.	Hourly Max.
Hidden Valley Lake CSD	Full Charge Booker	\$31.48	\$38.41
City of Calistoga	No Comparable Position		
City of Healdsburg	Accounting Technician	\$30.95	\$37.76
City of Yountville	Accounting Technician II	\$35.64	\$43.24
City of Napa	Senior Accountant	\$43.01	\$51.97
City of Santa Rosa	Accounting Services Supervisor	\$37.07	\$49.01
Sonoma County Water Agency	Supervising Accountant	\$39.66	\$48.22
City of Vallejo	Accounting Manager	\$48.24	\$58.64
North Marin Water District	Accounting Supervisor	\$52.27	\$63.54
Town of Windsor	Accounting Technician	\$31.30	\$39.11
Valley of the Moon Water District	Administration/Finance Manager	\$50.97	\$61.96
Clearlake Oaks County Water District	Customer Service Representative Lead	\$24.21	\$36.57

Hourly Median	\$39.33	\$49.00
HVLCSD	\$31.48	\$38.41
Percentage Above or Below Median	-19.95%	-21.61%

**Position Title: Senior Accounts Representative**

Labor Market Agency	Comparable Position Match	Hourly Min.	Hourly Max.
Hidden Valley Lake CSD	Senior Accounts Representative	\$23.98	\$29.15
City of Calistoga	Accounting Assistant	\$26.80	\$32.57
City of Healdsburg	Accounting Assistant II	\$26.66	\$32.57
City of Yountville	Accounting Technician I	\$32.32	\$39.29
City of Napa	Account Clerk II	\$25.62	\$30.95
City of Santa Rosa	Accounting Technician	\$28.44	\$34.57
Sonoma County Water Agency	Account Clerk II	\$20.55	\$24.98
City of Vallejo	Accounting Technician	\$26.85	\$32.63
North Marin Water District	Consumer Services Supervisor	\$46.49	\$56.51
Town of Windsor	Accounting Specialist (10 steps)	\$27.71	\$34.60
Valley of the Moon Water District	Senior Accounting Specialist	\$33.57	\$40.81
Clearlake Oaks County Water District	Customer Service Representative II	\$22.51	\$31.43

Hourly Median	\$27.54	\$33.94
HVLCSD	\$23.98	\$29.15
% Above or Below Median	-12.92%	-14.11%

**Position Title: Accounts Representative**

Labor Market Agency	Comparable Position Match	Hourly Min.	Hourly Max.
Hidden Valley Lake CSD	Accounts Representative	\$18.25	\$22.19
City of Calistoga	N/R		
City of Healdsburg	Accounting Assistant I	\$24.32	\$29.57
City of Yountville	Accounting Assistant	\$27.47	\$33.37
City of Napa	Accounting Clerk I	\$23.71	\$28.64
City of Santa Rosa	Accounting Aide	\$21.60	\$26.21
Sonoma County Water Agency	Account Clerk I	\$18.19	\$22.11
City of Vallejo	Accounting Clerk I	\$18.54	\$22.54
North Marin Water District	Receptionist/Cashier	\$29.79	\$36.21
Town of Windsor	Accounting Specialist (10 steps)	\$27.71	\$34.60
Valley of the Moon Water District	Accounting Specialist	\$30.45	\$37.02
Clearlake Oaks County Water District	Customer Service Representative I	\$14.53	\$18.94

Hourly Median	\$23.63	\$28.92
HVLCSD	\$23.63	\$28.92
Percentage Above or Below Median	-22.76%	-23.27%

Note: The City of Calistoga was not responsive in providing position data.

**Position Title: Utilities Supervisor**

LABOR MARKEY AGENCY	COMPARABLE POSITION MATCH	HOURLY MIN.	HOURLY MAX.
Hidden Valley Lake CSD	Utility Supervisor	\$36.85	\$44.96
City of Calistoga	Maintenance Superintendent	\$44.66	\$54.29
City of Healdsburg	Utilities Maintenance Superintendent	\$40.46	\$49.18
City of Yountville	Public Works Supervisor	\$41.71	\$50.70
City of Napa	Water Quality Manager	\$56.28	\$67.99
City of Santa Rosa	Utilities System Supervisor	\$41.75	\$49.73
Sonoma County Water Agency	Water Agency Maintenance Supervisor	\$34.73	\$42.22
City of Vallejo	Assistant Water Distribution Superintendent	\$44.79	\$54.45
North Marin Water District	Water Distribution & Treatment Plant Operator	\$46.01	\$55.93
Town of Windsor	Senior Water System Operator	\$32.88	\$41.06
Valley of the Moon Water District	Senior Water System Operator	\$40.48	\$49.21
Clearlake Oaks County Water District	N/R		

Hourly Median	\$42.37	\$51.47
HVLCSD	\$36.85	\$44.96
Percentage Above or Below Median	-13.02%	-12.64%

Note: The Clearlake Oaks County Water District was not responsive in providing position data.

**Position Title: Utility Operator II**

LABOR MARKET AGENCY	COMPARABLE POSITION MATCH	HOURLY MIN.	HOURLY MAX.
Hidden Valley Lake CSD	Utility Operator II	\$28.61	\$34.91
City of Calistoga	Senior Maintenance Technician	\$30.82	\$37.46
City of Healdsburg	Utility Worker II	\$31.21	\$37.94
City of Yountville	Water System Maintenance Worker II	\$35.16	\$42.74
City of Napa	Supervising Water Service Worker	\$33.93	\$40.98
City of Santa Rosa	Utilities System Operator II	\$29.14	\$35.44
Sonoma County Water Agency	Water Agency Senior Maintenance Worker	\$30.20	\$36.82
City of Vallejo	Senior Water Distribution Technician	\$28.27	\$34.29
North Marin Water District	Asst. Water Distribution & Treatment Plant Operator	\$36.95	\$44.91
Town of Windsor	Water System Operator II	\$29.83	\$37.24
Valley of the Moon Water District	Water System Operator III	\$38.49	\$46.78
Clearlake Oaks County Water District	Distribution & Collections Operator II	\$22.95	\$33.19

Hourly Median	\$31.04	\$35.26
HVLCSD	\$28.61	\$34.91
Percentage Above or Below Median	-7.82%	-.99%



**Position Title: Utility Operator I**

LABOR MARKET AGENCY	COMPARABLE POSITION MATCH	HOURLY MIN.	HOURLY MAX.
Hidden Valley Lake CSD	Utility Operator I	\$23.04	\$28.11
City of Calistoga	Maintenance Technician II	\$27.27	\$33.15
City of Healdsburg	Utility Worker I	\$26.66	\$32.52
City of Yountville	Water System Maintenance Worker I	\$28.93	\$35.16
City of Napa	Water Service Worker	\$30.43	\$36.76
City of Santa Rosa	Utilities Systems Operator I	\$25.62	\$31.19
Sonoma County Water Agency	Water Agency Maintenance Worker II	\$25.45	\$30.94
City of Vallejo	Water Distribution Technician	\$26.19	\$31.84
North Marin Water District	Laborer	\$29.51	\$35.86
Town of Windsor	Water System Operator I	\$27.05	\$33.78
Valley of the Moon Water District	Water System Operator II	\$35.07	\$42.63
Clearlake Oaks County Water District	Distribution & Collection Operator I	\$18.02	\$24.63

Hourly Median	\$26.86	\$32.97
HVLCSD	\$23.04	\$28.11
Percentage Above or Below Median	-14.23%	-14.76%

**Position Title: Utility Technician**

LABOR MARKET AGENCY	COMPARABLE POSITION MATCH	HOURLY MIN.	HOURLY MAX.
Hidden Valley Lake CSD	Utility Technician - Utilities	\$18.04	\$21.94
City of Calistoga	Maintenance Technician I	\$24.74	\$30.07
City of Healdsburg	N/M		
City of Yountville	Utilities Operator in training	\$26.24	\$31.89
City of Napa	Water Facilities I	\$25.00	\$30.21
City of Santa Rosa	Utilities Technician	\$28.67	\$34.85
Sonoma County Water Agency	Water Agency Maintenance Worker I	\$20.46	\$24.87
City of Vallejo	Water Maintenance Worker I	\$21.50	\$26.14
North Marin Water District	Laborer	\$29.51	\$35.86
Town of Windsor	Utility Maintenance Worker I	\$25.75	\$32.16
Valley of the Moon Water District	Water Field Service Rep	\$26.83	\$32.61
Clearlake Oaks County Water District	Utility Technician	\$16.50	\$17.50

Hourly Median	\$24.52	\$29.61
HVLCSD	\$18.04	\$21.94
Percentage Above or Below Median	-26.42%	-25.90%

**Position Title: Water Resource Specialist**

LABOR MARKET AGENCY	COMPARABLE POSITION MATCH	HOURLY MIN.	HOURLY MAX.
Hidden Valley Lake CSD	Water Resources Specialist II	\$34.28	\$41.67
City of Calistoga	Water Conservation Specialist	\$23.92	\$28.94
City of Healdsburg	Public Information & Community Outreach Coordinator	\$38.49	\$46.78
City of Yountville	N/R		
City of Napa	Water Conservation Specialist	\$33.49	\$40.45
City of Santa Rosa	Sustainability Representative	\$37.61	\$45.67
Sonoma County Water Agency	Water Agency Resource Program Technician II	\$29.15	\$35.44
City of Vallejo	Environmental Services Manager	\$49.45	\$60.11
North Marin Water District	Water Conservation Coordinator	\$58.01	\$70.51
Town of Windsor	Seasonal Aide. - Water Environmental & Sustainability	\$20.00	\$23.64
Valley of the Moon Water District	N/M		
Clearlake Oaks County Water District	N/M		

Hourly Median	\$40.87	\$50.14
HVLCSD	\$37.31	\$45.53
Percentage Above or Below Median	8.10%	-8.40%



April 6, 2020

Ms. Penny Cuadras  
Administrative Assistant/ Secretary to the Board of Directors  
**Hidden Valley Lake Community Services District**  
19400 Hartman Rd.  
Hidden Valley Lake, CA 95467

**Subject: Proposal to Update Employee Position Descriptions**

Dear Ms. Cuadras;

Per your request we are providing the following proposal to update the current position descriptions for the HVLCSD.

- 12 position descriptions (Includes the General Manager)
- Updated position description, job duties, and position requirements
- Conform to Americans with Disabilities Act requirements for essential and reasonable accommodation for current and prospective employees
- Standardized format incorporating published salary and benefits
- Digitalized format for publication and District website

Fee Proposal: \$1,250.00. (Fee is inclusive of consultant expenses.)

We are prepared to initiate this work upon notice to proceed. If there is additional information you need or questions concerning our proposal please contact us at your convenience.

Respectfully;

***Robert A. DeLoach, President***  
**DELOACH & Associates, Inc.**  
(909)758-0273  
robertadeloach1@gmail.com



March 31, 2020

Mr. Paul Kelly  
Interim General Manager  
Hidden Valley Lake CSD  
19400 Hartman Rd.  
Lake, CA. 95467

**SUBJECT: PROPOSAL TO PROVIDE RECRUITMENT SERVICES FOR  
THE HIDDEN VALLEY LAKE COMMUNITY SERVICES  
DISTRICT: GENERAL MANAGER and WATER RESOURCE  
SPECIALIST**

Dear Mr. Kelly;

DELOACH & Associates, Inc. ("Consultant") is pleased to submit our proposal to provide recruitment services for the General Manager and Water Resources Specialist positions with the Hidden Valley Lake Community Services District, ("District"). A Scope of Work and Fee Proposal accompanies this cover letter. I have also provided a proposed recruitment schedule, which can be modified to meet the District's needs and ensure that we identify the most desirable candidates for each position. A list of the various components contained in our background investigation service along with a unit cost for each specified service is also included.

Attracting the most desirable and qualified candidates for these positions will require development of a marketing and outreach effort that focuses on the unique characteristics and needs of the District. Our primary focus will be the water and wastewater utility industry in California and specifically the northern regions of the State. Our experience in providing consulting and recruitment services for water and wastewater agencies throughout the State has allowed us to develop a network of potential candidates that have the knowledge and leadership skills to serve as your next General Manager. Similarly, we will leverage our experience and networking capability in recruitment of the Water Resource Specialist position.

As President of DELOACH & Associates, Inc. I am authorized to negotiate terms and conditions of this proposal as well as obligate Consultant during the duration of the recruitment project. I will assume the lead role and responsibility as Project Director and will be responsible for the successful completion of the recruitment. We will commit the necessary resources to achieve the highest levels of quality control, commitment to meeting project timelines and budget to ensure the most successful recruitment.

I look forward to discussing our proposal and firm qualifications to conduct this recruitment with you at your convenience. If you have any questions or would like to discuss our proposal in greater detail please do not hesitate to contact me at your convenience.

Respectfully,

**Robert A. DeLoach, President**

**DELOACH & Associates, Inc.**

8780 19<sup>th</sup> Street, Suite 402

Rancho Cucamonga, CA. 91701

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[robertadeloach1@gmail.com](mailto:robertadeloach1@gmail.com)

[www.deloachassociates.com](http://www.deloachassociates.com)

## **RECRUITMENT SERVICES SCOPE OF WORK**

DEOACH & Associates, Inc. (“Consultant”) shall provide recruitment services for the General Manager and Water Resource Specialist positions for the Hidden Valley Lake Community Services District (“District”). The recruitments will be conducted concurrently. The Scope of Work shall include the following tasks:

## Scope of Work

### **Task 1 – Pre-recruitment services, position description and marketing plan**

- Develop a description of the desirable traits, experience and skills for the General Manager and Water Resource Specialist positions to be included in collateral recruitment material.
- Review Districts proposed compensation and benefit plan for the each position
- Develop a description of the positions, the District, its service area and location, and any unique characteristics of the District
- Consultant to prepare collateral advertising materials for both positions for approval by the District
- Develop a “Notice Inviting Applicants” for both positions (“Job Flyer”)
- Develop advertising and marketing plan:
  - Distribution of Notice Inviting Applicants to industry and professional forums in electronic, web based and printed format, including personal distribution
  - Consultant shall be responsible for maintaining marketing and advertising materials for both positions throughout the term of the recruitment process

### **Task 2 – Coordinate receipt and review of candidate resumes, and related materials, review candidate qualifications and prepare initial ranking of eligible candidates for both positions**

- Coordinate receipt of candidate resumes, applications and related material
- Conduct initial review of applicant submittal material, position qualifications, job match alignment, and verification of employment history
- Consultant to interview candidates to clarify information related to their work experience and qualifications
- Develop a list of qualified candidates for review with District representatives to include the Board of Directors and/or the interim General Manager for the Water Resource Specialist position

### **Task 3 – Pre-interview testing and facilitation of formal interviews**

- Develop supplemental questionnaire for selected candidates for both positions
- Conduct DISC Leadership Performance Profile for selected candidates
- Develop interview questions for candidate interviews
- Schedule candidate interviews and preparation of interview panel
  - General Manager:
    - Provide binders for each interview panelist to include recruitment materials, candidate information, Supplemental Questionnaire responses, and DISC profile
    - Conduct candidate screening interview with Personnel Committee prior to interview with the full Board (*optional*)
    - Coordinate candidate interviews (Consultant to participate as an observer and moderator)
    - Selection of ideal candidate for the General Manager position

(Task 3 Cont'd.)

#### Water Resources Specialist

- Assist District in selection of participants for interview panel (Recommended that the Interim General Manager participate as a member of the interview panel)

- Provide binders for each interview panelist to include recruitment materials, candidate information, Supplemental Questionnaire, and DISC profile
- Assist with coordination of candidate interviews (Consultant to participate as an observer and moderator)
- Selection of ideal candidate for the Water Resource Specialist position

**Task 4 – Candidate background investigation and offer of employment**

- Selection of candidate for each position
- Conduct candidate background investigation (See attached background investigation services)
- Coordinate notice and offer of employment for each position
- General Manager - Assist with development of employment agreement as needed

**FEE PROPOSAL AND SCHEDULE**

DELOACH & Associates Inc., proposes to provide professional recruitment services for the General Manager and Water Resource Specialist positions for the Hidden Valley Lake Community Services District for a fee of **\$30,000.00**. (The fee for the General Manager recruitment is \$22,000.00) Consultant fee is considered a “Not to Exceed” fee without prior authorization from the District. Reimbursable expenses will be invoiced at cost. (Estimated expenses itemized below).

Recruitment Reimbursable Expenses

- |  |                       |
|--|-----------------------|
| 1. Marketing materials, photography and printing                                     | \$4,500 - \$6,000     |
| 2. Advertising (trade publications and on-line job boards)                           | \$850 - \$2,500/month |
| 3. Disc Management Profile   | \$250/each            |
| 4. Background investigative services<br>(Background investigative services attached) | \$100 - \$200/each    |

**RECRUITMENT SCHEDULE**

The Recruitment Schedule was developed based on the availability and coordination of both the District and Consultant. Consultant will commit the necessary resources to meeting the scheduling requirements of the District. (Refer to Tasks identified in the Scope of Work).



<b>Task</b>	<b>Description</b>	<b>Schedule</b>
1	Pre-recruitment services: develop position description and proposed compensation, develop marketing plan and job flyer for District approval. Conduct advertisement and marketing.	8-12 weeks
2	Coordinate receipt of candidate resumes, review candidate qualifications, employment history and prepare initial ranking of candidates. Identify finalist for interview.	1 - 2 weeks
3	Distribute supplemental questionnaire and DISC profile, develop interview questions and preparation of interview materials for both positions. General Manager - coordinate candidate interviews with Personnel Committee and Board of Directors Water Resource Specialist – Preparation of interview panel and assist with coordination of interviews	3-4 weeks
4	Selection of candidate for each position, conduct background investigations and assist with offer of employment.	1 week
<b>Tasks 1-4</b>	<b>Project schedule to completion including offer of employment.</b>	<b>13 – 19 weeks</b>

**CANDIDATE BACKGROUND INVESTIGATION SERVICES**

Option 1

\$90.00/ea.

- Social Security trace and validation
- County criminal search (one name, one county)
- Employment credit report
- Education verification (Highest degree or certificate)

- Professional license verification

Option 2

\$120.00/each

- Social Security trace and validation
- County criminal search (one name, all counties)
- Employment credit report
- Education verification (highest degree)
- Professional license verification

Option 3

\$150.00/each

- Social security trace and validation
- County criminal search (all names, all counties)
- Employment credit report
- Education verification (highest degree)
- Professional license verification

Additional services:

1. DMV/MVR driving history \$18.00 each
2. National criminal records search \$20.00 each
3. National sexual offender registry search \$25.00 each

Note:

1. A third-party administrator will conduct background investigations.
2. Allow 5-8 business days to complete individual background investigation.



POLICY TITLE:	<b>Sick Leave</b>	
POLICY #: <b>3104</b>	ADOPTED DATE:	REVISION DATE: April 21, 2020 Vice President: Jim Lieberman

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date. This version of the Policy, supersedes all other previous versions.

**3104.1 POLICY**

**SICK LEAVE**

1. Sick Leave Accumulation. Regular full-time employees earn and accumulate sick leave credit at the rate of 20% of the standard average workweek for each full month of continuous service if the employee has worked or has been on authorized leave of absence with pay. An employee continues to earn sick leave while on any paid leave. An employee shall not receive payment for unused accumulated sick leave upon termination of employment or retirement (either disability or regular). An employee may not use sick leave to extend a retirement (either disability or regular) or termination date. This prohibition shall not affect an employee’s right to obtain sick leave credit with PERS.
2. Accounting of Sick Leave Used. Each employee has one hour deducted from the employee's accrued sick leave time for each hour of sick leave taken.
3. Holiday During Sick Leave. In the event that a paid holiday occurs during a period when the employee is on sick leave, the holiday is not charged against the employee's accrued sick leave.
4. Use of Sick Leave. An employee eligible for sick leave is granted such leave for the following reasons:
  - a. Non-work-related illness, injury or exposure to contagious disease to the employee or physical or mental incapacity of the employee due to non-work-related illness or injury.
  - b. Medical or dental office or hospital visits for examinations, diagnosis, or treatment to the extent such appointments cannot be scheduled outside the work day.
  - c. Maternity-related disabilities as provided in Section 4.10.3.F.

- d. Serious illness or emergency of a member of the employee's immediate family member (see definition of Immediate Family under Rule 2-Definition of Terms), who is incapacitated and/or requires the service of a physician, and when the presence of the employee is required.

5. Exclusions. No employee is entitled to sick leave while absent from duty on account of any of the following causes:

- a. Sickness or injury sustained while on leave of absence without pay.
- b. Sickness or injury sustained from improper employee conduct as defined in Section 14.2 herein.
- c. To permit an extension of the employee's vacation.

Sick leave shall not be considered as a right which the employee may use at his or her discretion, but shall be allowed only in accordance with Section 4.10.3.E.4.

6. Proof Required. The supervisor will approve sick leave only after having ascertained that the absence was for an authorized reason. When absence is for more than three work days or if abuse of sick leave is suspected, the supervisor may require the employee to submit substantiating evidence including, but not limited to, a physician's certificate. If the supervisor requires the employee to submit substantiating evidence, the supervisor shall make this requirement known to the employee as soon as possible. If the supervisor does not consider the evidence adequate, he/she will disapprove the request for sick leave, and such time off will be considered a leave of absence without pay. In order for the employee to be eligible for paid sick leave, the District reserves the right to verify the reason for the use of sick leave by whatever means the District deems appropriate.

7. Exhaustion of Sick Leave. In the event an employee uses all of the sick leave the employee has accrued, upon the approval of the supervisor, the employee may have any other paid leave days which the employee has accrued deducted for each day or portion thereof he/she is absent due to illness. This deduction will continue until the employee either returns to work or uses all his/her accrued leave time. With the concurrence of the General Manager, the supervisor may, pursuant to Section 4.10, allow the employee to take a leave of absence without pay if the employee does not have any paid leave time or sick leave remaining to his/her credit.

#### E. PENALTY FOR SICK LEAVE ABUSE.

1. The District's successful operation depends in large part upon the attendance of each of its employees. Employees have an important job that fits into a pattern of service. Unnecessary and unexcused absences, therefore, are undesirable because they affect not only operations but the way in which fellow employees are able to do their jobs. It is important, too, to have a uniform attendance policy to avoid any misunderstandings regarding attendance expectations.

2. Any unapproved absence may constitute cause for disciplinary action, up to and including discharge from employment.

3. Abuse of Sick Leave and Excessive Absenteeism: If it appears that an employee is abusing sick leave or using sick leave excessively, the employee will be counseled that continued use of sick leave may result in a requirement to furnish a medical certificate for each such subsequent absence for sick leave regardless of duration. Continued abuse of leave or excessive use of sick leave constitutes grounds for dismissal.

a. "Abuse of sick leave" means the misrepresentation of the actual reason for taking sick leave, using sick leave for unauthorized purposes, failure to report sick leave, and may include chronic, persistent or patterned use of sick leave.

b. "Excessive absenteeism" is a level of absence, other than protected leaves, that significantly disrupts the work of the District. Absenteeism may be excessive even where the employee remains able to draw upon accrued leave accounts. An employee may be considered excessively absent when he/she has used an above average amount of unscheduled leave (40 hours or more), excluding any protected leaves.

4. The General Manager shall have the authority to request a physician's note substantiating any illness for a return to work report, provided privacy laws are observed. When, the employee's reasons for being absent are inadequate, and/or not consistent with the eligibility requirements for use of sick leave, at the discretion of the General Manager, a change to the payroll time report will be made to indicate the absence was leave without pay. In addition, the employee is subject to disciplinary action.

Approved and Adopted on

\_\_\_\_\_  
Jim Lieberman  
Vice-President to the Board

**Attest:** \_\_\_\_\_  
Penny Cuadras,  
Secretary to the Board

## ADDENDUM

### Note:

On March 18, 2020, the FFCRA was signed into law. Among other things, the Act provides for up to 80 hours of paid leave for full-time employees for coronavirus related reasons. The reasons are specified in the FFCRA. The leave can only be used for specified reasons, it does not accrue, and cannot be carried over. The District may elect to exclude leave for any "health care provider" or "emergency responder," as those terms are defined in U.S. Department of Labor ("DOL") regulations. The leave is only available through December 31, 2020. The leave is protected and employers may not discharge, discipline, or discriminate against employees who take the leave or who file any complaint or institute proceedings under the act.

Additionally, from April 1, 2020 through December 31, 2020, eligible employees can take Emergency Paid Sick Leave for one of the six qualifying reasons described below under subsections (a) and (b):

(a) Eligible employees are entitled to up to 80 hours of Emergency Paid Sick Leave at their full regular rate of pay, subject to maximum dollar amounts as provided under the Families First Coronavirus Response Act ("FFCRA") if they are unable to work or telework for the following reasons:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, as defined in Section 804.2(c)(1)(v) below. An employee who lives with an individual who is among one or more of those categories of individuals advised to shelter in place, stay at home, isolate or quarantine will not qualify for Emergency Paid Sick Leave based on that reason under this subsection. However, such an employee may be qualified for Emergency Paid Sick Leave pursuant to the qualifying reason provided for in subsection (b)(1) below.

(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 seeking a medical diagnosis.

(b) Eligible employees are entitled to up to 80 hours of Emergency Paid Sick Leave at two-thirds (2/3) of the employee's regular rate of pay, subject to maximum dollar amounts as provided under the FFCRA, if they are unable to work or telework because:

(1) The employee is caring for an "individual," as defined in Section below, who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19 as described in subsections (a)(1) and (2) above.

(2) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions. "Son or daughter" and "child care provider" are defined below.

(3) 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.

(c) Employees hired on or after April 1, 2020 who took the full 80 hours of Emergency Paid Sick Leave when employed by another employer are not entitled to take any additional Emergency Paid Sick Leave with the District. An employee who has taken some, but not all, of the Emergency Paid Sick Leave to which they are entitled, when they were employed by another employer, is entitled only to the remaining portion of such leave from the District if the employee meets the eligibility requirements provided above.

## Terms of Sick Leave

### Emergency Paid Sick Leave

#### (1) Definitions

i. “Emergency responder” means the following for the purposes of employees who may be exempted from Emergency Paid Sick Leave:

1. Anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19; or

2. Anyone who serves in the military or national guard, or as a law enforcement officer, correctional institution personnel, fire fighter, emergency medical services personnel, physician, nurse, public health personnel, emergency medical technician, paramedic, emergency management personnel, 911 operator, child welfare worker and service provider, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

ii. “Health care provider” means the following for the purposes of employees who may be exempted from Emergency Paid Sick Leave:

1. Anyone employed at any doctor’s office, hospital, health care center, clinic, postsecondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity; and

2. Any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual’s services support the operation of the facility. This also

includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

iii. “Child Care Provider” means 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 State law; and satisfies the State and local requirements. However, under the Families First Coronavirus Response Act (“FFCRA”), the eligible child care provider need not be compensated or licensed if he or she is a family member or friend, such as a neighbor, who regularly cares for the Employee’s child.

iv. “Son or Daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability. (29 U.S.C. 2611; 29 CFR 826.10(a).)

v. “Subject to a Quarantine or Isolation Order” means a quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.

vi. “Individual” above 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. “Individual” does not include persons with whom the Employee has no personal relationship.

## (2) Other Statutory or Contractual Leaves

Leave taken as Emergency Paid Sick Leave is in addition to any other statutory or contractual leave to which the employee is entitled. Unused Emergency Paid Sick Leave does not carryover for any employee.

## (3) Amount of Leave

i. Full time employees mean a Full-time employee working 40 hours per week may take up to 80 hours of Emergency Paid Sick Leave.



ii. Part time employees mean a Part time employee may take to up to the number of hours that they work on average over a two-week period as determined by reviewing the six-month period prior to the usage of leave. If the employee has not worked for the District for six months, the District should calculate the leave entitlement based on the period during which the employee has been employed.

(4) Caps on the Amount of Pay Provided for Emergency Paid Sick Leave

Emergency Paid Sick Leave is subject to the following caps:

- i. \$511 per day and \$5,110 in the aggregate for the following qualifying reasons:
  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 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.
- ii. \$200 per day and \$2,000 in the aggregate for the following qualifying reasons:
  1. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised to self-quarantine as described in subparagraph (2) of the preceding subsection.
  2. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
  3. 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.

(5) Supplementing Pay for an Employee on Emergency Paid Sick Leave with Use of Earned or Accrued Leaves

Per an agreement between the District and an employee or employee organization, employees may supplement the compensation they receive if taking leave under Emergency Paid Sick Leave (paid up to the specified limitations under the FFCRA) with their earned or accrued leaves in order to achieve 100% of the pay the employee would normally receive in a given week for working their regularly scheduled hours.

**NOTE:**

*It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to supplement compensation employees earn under the FFCRA's Emergency Paid Sick Leave provisions (\$511 or \$200 per day depending on the qualifying reason for taking leave, as outlined above).*

*We have written the above provision to allow employees to supplement leave.*

*If your agency chooses not to permit employees to supplement earned and accrued leaves, this section can either be deleted or edited to say that employees cannot supplement earned or accrued leaves.*

#### (6) Intermittent Leave

Per an agreement between the District and an employee or employee organization, an employee may take intermittent leave as follows:

- i. An employee who is teleworking may take Emergency Paid Sick Leave intermittently for any qualifying reason, as outlined in Section 804.1 above;
- ii. An employee who is still working at the District's worksite may take Emergency Paid Sick Leave intermittently only if that employee has requested leave to care for their son or if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

#### **NOTE:**

*It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to take leave intermittently. However, the DOL regulations provide that intermittent leave for employees who are still coming into the worksite may only take intermittent leave if the leave is to care for the employee's son or daughter due to school and child care closures.*

*We have written the above provision to allow employees to take intermittent leave.*

*While an agency may choose not to enter into such agreements, DOL guidance strongly recommends that employers remain flexible in regard to the intermittent use of leave.*

*If your agency chooses not to permit employees to take intermittent leave, this section can either be deleted or edited to say that employees cannot take intermittent leave.*

#### (7) Restoration to Prior Position

An employee who uses Emergency Paid Sick 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 otherwise have been employed at the time of reinstatement. (FMLA Sec. 110(d).)

[Applicable only to agencies with fewer than 25 eligible employees: If the District is unable to restore the employee to an equivalent position to the employee's prior position, the District will notify the employee if an equivalent position becomes available within 1-year of either, the date the public health emergency concludes or date which is 12 weeks after the employee started their Emergency FMLA Leave, (which ever date is earlier). Notification shall be by regular mail to the employees address on file.]

#### (8) Intermittent Leave

Per an agreement between the District and an employee or employee's employee organization, an employee may take intermittent Emergency FMLA leave if that employee has requested leave to care for their son or if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

#### **NOTE:**

*It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to take leave intermittently. We have written the above provision to allow employees to take intermittent leave.*

*Such an agreement should reflect the minimum increment of time by which an employee may take such leave. We recommend using the same increment of time as the Agency does for other leaves.*

*While an agency may choose not to enter into such agreements, DOL guidance strongly recommends that employers remain flexible in regard to the intermittent use of leave.*

*If your agency chooses not to permit employees to take intermittent leave, this section can either be deleted or edited to say that employees cannot take intermittent leave.*

#### (9) Supplementing Other Earned or Accrued Leaves

If an employee takes Emergency FMLA Leave after taking all or a part of his or her Emergency Paid Sick Leave for a reason other than leave to care for their son or daughter, 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 District 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, per an agreement between the District and an employee or employee's employee organization, 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.

## NOTES:

Whether an employee is entitled to supplement unpaid Emergency FMLA Leave depends on which portion of the Emergency FMLA Leave the employee is using:

- If an employee takes Emergency FMLA Leave after taking all or a part of his or her Emergency Paid Sick Leave for a reason other than leave to care for their son or daughter, 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 substitute earned or accrued leaves provided by the employer pursuant to established paid leave policies, leaves 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 Expanded FMLA Leave.
- For days 11 through the end of the twelfth week of Emergency FMLA Leave, employees (or employee associations) and employers can also agree to allow employees to 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.

### (10) Expiration

The provision of this section shall expire on December 31, 2020 or when the Emergency Paid Sick Leave Act is no longer effective.

### (11) Sick Leave Request

The District may not require an employee to provide notice of the need to use Emergency Paid Sick Leave until after the first workday of usage of such leave. However, an employee may provide notice of the need to use Emergency Paid Sick Leave prior to the usage of such leave.

After the first workday for which an employee takes Emergency Paid Sick Leave, District 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 Paid Sick 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 District will provide the employee notice of the failure and provide the employee with an opportunity to provide the required documentation, described below, prior to denying the employee's request for leave.

An employee using Emergency Paid Sick Leave must provide the following information prior to taking Emergency Paid Sick Leave:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave; and
- (4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

In addition, based on the qualifying reason for use of Emergency Paid Sick Leave, the employee is required to provide to the District documentation in support of his/her request for Emergency Paid Sick Leave as follows:

1. To take Emergency Paid Sick Leave because the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, the employee must provide the name of the government entity that issued the Quarantine or Isolation Order.
2. To take Emergency Paid Sick Leave because the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, the employee must provide the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
3. To take Emergency Paid Sick Leave because the employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or been advised by a health care provider to self-quarantine due to concerns related to COVID-19 order, the employee must provide either:
  - i. The name of the government entity that issued the Quarantine or Isolation Order to which the individual being care for is subject; or
  - ii. The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
4. To take Emergency Paid Sick Leave because the employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions, the employee must provide:
  - i. The name of the Son or Daughter being cared for;
  - ii. The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and
  - iii. A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.

**NOTE:**

Due to the emergency need for the leave, employees can give notice orally and can do so through a representative. DOL regulations provide that if an employee provides oral statements to support his or her request for Paid Sick Leave, the employer is required to document and maintain such information in its records for four (4) years.

In regard to provision that employees will need to certify that “no other suitable person” will be caring for their son or daughter, the comments to the DOL regulations provide that generally, an employee will be deemed to “need” to take such leave if another suitable individual— such as a co-parent, co-guardian, or the usual child care provider—is not available to provide the care the employee’s child needs. For example, these comments appear to suggest that employers may deny Emergency FMLA Leave if to a parent of an only child if another parent is able to take care of that child. From our perspective, it will be difficult to challenge an employee’s certification that no other suitable person is available. Additionally, making such a challenge may open the employer up to claims of discrimination.

Additionally, an employer must maintain employee certification and documentation of the need for Emergency Paid Sick Leave for four (4) years.

Lastly, DOL regulations require that where an employer denies a request for Emergency Paid Sick Leave or Emergency FMLA Leave, the employer must document the determination in writing and retain the record for four (4) years.

Unused statutory sick leave, including Emergency Paid Sick Leave, is not cashed out upon termination, resignation, retirement, or other separation from employment. (Labor Code § 246(f)(1).) Unused sick leave, excluding Emergency Paid Sick Leave and sick leave earned pursuant to California Labor Code section 246, may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.

#### 11. Sick Leave on Separation from Employment

- (a) Unused statutory sick leave, including Emergency Paid Sick Leave, is not cashed out upon termination, resignation, retirement, or other separation from employment. (Labor Code § 246(f)(1).) Unused sick leave, excluding Emergency Paid Sick Leave and sick leave earned pursuant to California Labor Code section 246, may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.
- (b) 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 Paid Sick Leave for the qualifying reasons set forth as described above. Unused Emergency Paid Sick Leave will not be reinstated after December 31, 2020.

## Emergency Family and Medical Leave Expansion Act

### Eligibility

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

- (1) The employee has worked for the District for at least 30 calendar days (FMLA Sec. 110(a)(1)(A));
- (2) The employee is unable to work (or telework) due to a need to care for the son or daughter (under 18 years of age or 18 years of age or older who is incapable of self-care because of a mental or physical disability) who's 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, (FMLA Secs. 101(12); 110(a)(2)(A) & (B); 29 CFR §§ 825.102, 826.010);
- (3) 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;
- (4) There is no other suitable person (e.g., co-parent, co-guardian, or normal child care provider) available to care for the employee's son or daughter during the period for which the Employee takes Emergency FMLA Leave; and
- (5) The District did not exempt the employee as either a "health care provider" or "emergency responder."

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 provide that the employee had been on the District'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.

(b) 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 above, if the employee has not exhausted such leave through use at the District 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 they receive under Emergency FMLA Leave 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 \$10,000 total. (FMLA Sec. 110(b).) During this period, the employee is not entitled to supplement the Emergency FMLA Leave with earned or accrued leave provided by the District. However, per an agreement between the District and an employee or employee's employee organization, employees may supplement the compensation they receive 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.

An eligible employee is entitled to a maximum of twelve workweeks 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 period.

**NOTES:**

*It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to supplement compensation employees earn under the FFCRA's Emergency FMLA Leave provisions (\$200 per day or \$10,000 in aggregate).*

*We have written the above provision to allow employees to supplement leave. If your agency chooses not to permit employees to supplement earned and accrued leaves, this section can either be deleted or edited to say that employees cannot supplement accrued leaves.*

(c) Employee Notice

Where the need to use Emergency FMLA Leave is foreseeable, the employee shall provide the District with such notice as soon as practicable.

The District may not require an employee to provide notice of the need to use Emergency FMLA Leave unit after the first workday of the usage of such leave.

After the first workday for which an employee takes Emergency FMLA Leave, the District 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 District 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.

(d) Certification or Documentation of Need for Leave

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

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave;
- (4) Oral or written statement that the employee is unable to work because of the qualified reason for leave;
- (5) The name of the son or daughter being cared for;
- (6) The name of the school, place of care, or child care provider that has closed or become unavailable; and
- (7) A representation that no other suitable person (e.g., co-parent, co-guardian, or normal child care provider) will be caring for the son or daughter during the period for which the Employee takes Emergency Family and Medical Leave.

**NOTE:**

*Due to the emergency need for the leave, employees can give notice orally and can do so through a representative. DOL regulations provide if an employee provided oral statements to support his or her request for Expanded FMLA Leave, the employer is required to document and maintain such information in its records for four (4) years.*

*In regard to provision that employees will need to certify that "no other suitable person" will be caring for their son or daughter, the comments to the DOL regulations provide that generally, an employee will be deemed to "need" to take such leave if another suitable individual— such as a co-parent, co-guardian, or the usual child care provider—is not available to provide the care the*

*employee's child needs. For example, these comments appear to suggest that employers may deny Emergency FMLA Leave if to a parent of an only child if another parent is able to take care of that child. From our perspective, it will be difficult to challenge an employee's certification that no other suitable person is available. Additionally, making such a challenge may open the employer up to claims of discrimination.*

*Additionally, Employee certification and documentation of the need for Emergency FMLA Leave must be maintained by the employer for four (4) years.*

*Lastly, DOL regulations are require that where an employee denies a request for Emergency FMLA Leave, the employer must document the determination in writing and retain the record for four (4) years.*

(e) 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 who not otherwise have been employed at the time of reinstatement. (FMLA Sec. 110(d).)

[Applicable only to agencies with fewer than 25 eligible employees: If the District is unable to restore the employee to an equivalent position to the employee's prior position, the District will notify the employee if an equivalent position becomes available within 1-year of either, the date the public health emergency concludes or date which is 12 weeks after the employee started their Emergency FMLA Leave, (which ever date is earlier). Notification shall be by regular mail to the employees address on file.]

(f) Intermittent Leave

Per an agreement between the Dsitrict and an employee or employee's employee organization, an employee may take intermittent Emergency FMLA leave if that employee has requested leave to care for their son or if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

**NOTE:**

*It is up to the employer whether it will enter into an agreement with employees (or employee associations) that permits employees to take leave intermittently. We have written the above provision to allow employees to take intermittent leave.*

*Such an agreement should reflect the minimum increment of time by which an employee may take such leave. We recommend using the same increment of time as the Agency does for other leaves.*

*While an agency may choose not to enter into such agreements, DOL guidance strongly recommends that employers remain flexible in regard to the intermittent use of leave.*

*If your agency chooses not to permit employees to take intermittent leave, this section can either be deleted or edited to say that employees cannot take intermittent leave.*

(g) Supplementing Other Earned or Accrued Leaves

If an employee takes Emergency FMLA Leave after taking all or a part of his or her Emergency Paid Sick Leave for a reason other than leave to care for their son or daughter, 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 District 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, per an agreement between the District and an employee or employee's employee organization, 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.

NOTES:

*Whether an employee is entitled to supplement unpaid Emergency FMLA Leave depends on which portion of the Emergency FMLA Leave the employee is using:*

*- If an employee takes Emergency FMLA Leave after taking all or a part of his or her Emergency Paid Sick Leave for a reason other than leave to care for their son or daughter, 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 substitute earned or accrued leaves provided by the employer pursuant to established paid leave policies, leaves 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 Expanded FMLA Leave.*

*- For days 11 through the end of the twelfth week of Emergency FMLA Leave, employees (or employee associations) and employers can also agree to allow employees to 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.*

*We have written the above provision to allow employees to supplement leave. If your agency chooses not to permit employees to supplement earned and accrued leaves for days 11 through the end of the twelfth week of Emergency FMLA Leave, this section can either be deleted or edited to say that employees cannot supplement accrued leaves.*

(h) Expiration

The provision of this section shall expire on December 31, 2020 or when the Emergency Family and Medical Leave Expansion Act is no longer effective.