

COVID-19 Leaves Chart

Charter and general law cities have police power to regulate leave policies and other aspects of the employment relationship.¹ Collective bargaining agreements and MOUs may have additional, expanded, or more stringent leave entitlements than those listed below, so long as they comply with state and federal laws.

Any changes made to a city’s leave policies are subject to notice and meet and confer requirements under the Meyers-Milias-Brown Act.² During a declared emergency, a city need not provide advance notice prior to making a change, so long as the employer provides notice to and meets with the collective bargaining representative “at the earliest practicable time following the adoption of” a change within scope.³

HR 6201 effective April 1, 2020 through Dec. 31, 2020.

	Employee tested COVID-19 Positive	Employee is Medically Quarantined (Per health care provider)	Employee is Self-Quarantined Due to Potential Exposure (No symptoms)	Employee is Self-Quarantined (No symptoms) Medically Vulnerable Family Member in Household	Employee is Medically Vulnerable (Including persons over 65)	Employee is Caring for COVID-19 Positive Immediate Family Member or Member of Household	Employee is on Childcare Leave Due to Child’s School Closure
1 <u>Emergency Paid Sick Leave Act/HR 6201</u> ⁴	80 hours (two work weeks) of employer-paid sick leave for full-time employees not to exceed \$511 per day and \$5,110 in the aggregate (“Higher Amount”). Part-time employees get number of hours of paid leave equal to the average hours worked over a two-week period.			If not subject to State, Federal, or Local isolation order or health care provider advice, Lesser	If subject to State, Federal, or Local isolation order or health care provider advice, Higher	80 hours (two work weeks) of employer-paid sick leave for full-time employees not to exceed \$511 per day and \$5,110 in the aggregate (“Higher Amount”). Part-time employees	80 hours (two work weeks) of employer-paid sick leave at 2/3 pay amount for full-time employees not to exceed \$200 per day and \$2,000 in the aggregate (“Lesser Amount”). Part-time employees get number of hours of paid leave equal to the average hours over a two work-week period.

¹ See *Metro. Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 756; and *Salas v. Sierra Chem. Co.* (2014) 59 Cal. 4th 407, 423.

² Gov. Code §§ 3504.5, 3505.

³ § 3504.5(b).

⁴ Seems to be a new bank of leave that can run before regular sick leave, at employee’s election. No requirement for length of employment before use; cannot require employee to use other paid leave before paid sick leave provided under the emergency act. Applies to public agency employers regardless of size. Employees who are health care providers or first responders may be excluded from this legislation. It is not clear which workers fit the definitions of health care providers or first responders. Although the Labor Department currently defines such workers narrowly (medical doctors, physician assistants, nurse practitioners, etc.), it may try to broaden the definition.

Available for Use
Leave May Apply
Leave Not Available

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				Amount likely applies.	Amount applies.	get number of hours of paid leave equal to the average hours worked over a two-week period.	
2 Emergency FMLA/HR 6201							2/3 of employee's average monthly earnings for remaining 10 weeks not to exceed \$200 per day and \$10,000 in the aggregate. ⁵ First two weeks are unpaid; however, it runs concurrently with paid sick leave, so those first two weeks may be paid if employee has sick leave available.

⁵ FMLA temporarily expanded by HR 6201 – “Emergency Family and Medical Leave Expansion Act”; must have been employee for at least 30 calendar days (1,250 hour requirement waived). Applies to public agency employers regardless of size.

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3 <u>Regular FMLA</u> Runs concurrently with sick leave (29 U.S.C. § 2601 <i>et seq.</i> , Gov. Code, § 12945.1 <i>et seq.</i>)	Regular unpaid FMLA available, if employee is eligible and has not exhausted annual FMLA leave entitlement (“eligibility requirements”). Runs concurrently with paid sick leave, so may be paid if employee has sick leave available.		Eligibility requirements apply. Unpaid FMLA leave may be available if for a qualifying serious health condition of designated family member.			Eligibility requirements apply. Unpaid FMLA available. Runs concurrently with paid sick leave, so may be paid if employee has sick leave available.	
4 <u>Sick Leave Entitlement:</u> One hour per thirty hours worked for exempt (non-hourly) employees who have worked for thirty days (Lab. Code, § 246(b))				Might be able to use sick leave – city will need to determine how liberally it wants to apply sick leave parameters and whether self-quarantine qualifies as “preventive care”	Available if employee unable to perform one or more essential job duties safely ⁶		This is limited and is only available under Kin Care Leave (See row (6))

⁶ Case by case basis.

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<p>5 <u>Accumulated Sick Leave:</u> Unused from previous years of city employment (Lab. Code, § 246(d))</p>				Might be able to use sick leave – city will need to determine how liberally it wants to apply sick leave parameters and whether self-quarantine qualifies as “preventive care”	Available if employee unable to perform one or more essential job duties safely ⁷		This is limited and is only available under Kin Care Leave (See row (6))
<p>6 <u>Kin Care:</u> Care for an employee's family member (Lab. Code § 246.5). Not a new bank; pulled from accrued and available sick leave (Lab. Code § 233.)</p>				Depends on how medically sensitive family member is. Amount available is one-half of “accrued and available sick leave.” (Lab. Code § 233) (See rows (4) and (5))		Amount available for use is one-half of “accrued and available sick leave.” (Lab. Code § 233) (See rows (4) and (5))	

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7 Leave as ADA Reasonable Accommodation (42 U.S.C. §§ 12101 et seq., 29 C.F.R. §§ 1630 et seq.)	Not automatic; must conduct interactive process (may be done telephonically or via email)				If employee is temporarily unable to perform job safely due to medical vulnerability		
8 Child-Related Activities Leave: Comes from sick leave bank (Lab. Code, § 230.8)							Up to 40 hours of personal or sick time (See rows (4) and (5))
9 Personal or Vacation Leave: Can be used at the city's discretion and pursuant to any existing leave policies or MOUs							

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10 <u>Compensatory Time Off</u> : In lieu of overtime (subject to Lab. Code, § 204.3)							
11 <u>Discretionary Leave</u> : Within city's discretion and subject to any existing leave policies or MOUs.							

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