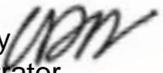




MEMORANDUM

Date: April 16, 2020

To: The Honorable Chairman and Members
Pima County Board of Supervisors
Presiding Judge, Superior Court
Elected Officials
Appointing Authorities

From: C.H. Huckelberry 
County Administrator

Re: **Families First Coronavirus Response Act Leave Updates**

As you are aware, the Families First Coronavirus Response Act (FFCRA) mandated certain employers to provide Federal Emergency Paid Sick Time and Emergency Family and Medical Leave Expansion Act leave. As indicated in my previous memo dated March 31, 2020, which outlined these leave pays/types, the Federal legislation was confusing and I provided the best guidance available at the time. Due to recent guidance from the Department of Labor (DOL), I find it necessary to provide additional information for consistent application of these leaves.

1. Stacking of Federal Emergency Paid Sick Time and Emergency Family and Medical Leave Expansion is Prohibited

The Federal Emergency Paid Sick Time provides for 80 hours (two weeks) of paid sick time for various reasons. This pay period, many employees are currently using this leave at 100% pay due to the Governor's stay-at-home order which meets the definition of a quarantine or isolation order as outlined in the FFCRA.

The Emergency Family and Medical Leave Expansion Act (E-FMLA) provides for up to 12 weeks of leave for an employee who has a child (under 18) who is affected by a school or daycare closure. The first 10 days of this leave is unpaid under E-FMLA; however, the employee may use Pandemic Outbreak Leave, Federal Emergency Paid Sick Time, compensatory time or vacation leave to cover the first unpaid 10 days. Regular sick leave is not permitted to cover the first ten workdays of E-FMLA since the employee is not ill. The remaining 10 workweeks is paid at 2/3's of the employee's regular rate of pay, capped at \$10,000 total.

The DOL has provided guidance on the use of these two leaves. While the employee may be eligible for both types of leave, the employee may only use these two leaves for a total of twelve weeks of paid leave. For those employees sent home on April 1, 2020, the Pandemic Outbreak Leave will be used to cover the first ten workdays of the E-FMLA; the Emergency Federal Paid Sick Time will not be used as it is not needed as the initial 10 days have been covered.

In essence, this means that there is no "stacking" of leaves, i.e. an employee is not permitted to use Pandemic Outbreak Leave (2 weeks), and Federal Emergency Paid Sick Time (2 weeks), and E-

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FMLA (12 weeks), for a total of 16 weeks of leave. If the employee is taking E-FMLA, they will receive a total of 12 weeks leave total, regardless of whether Pandemic Outbreak Leave or Federal Emergency Paid Sick Time was used to cover the first ten workdays of the E-FMLA.

Therefore, if an employee uses the full 12 weeks of E-FMLA leave, and had not used the Federal Emergency Paid Sick Time within the 12 weeks, they are not permitted to do so in the future. Conversely, if the employee has not used the full 12 weeks of E-FMLA leave, they are permitted to use Federal Emergency Paid Sick Time, not to exceed 12 weeks in total of combined E-FMLA and the Federal Emergency Paid Sick Time.

2. Use of Accruals for 1/3 Remaining Hours of E-FMLA

DOL has also come out with additional guidance on use of accruals for supplementing the E-FMLA. As such, the County will require employees who are on E-FMLA to supplement the remaining 1/3 of unpaid time with available compensatory time and then vacation leave. Employees are not permitted to supplement the remaining 1/3 of unpaid leave with sick leave. Sick leave is intended to be used when an employee is ill; E-FMLA is not.

3. Use of Leave Accruals Upon Exhaustion of Pandemic Outbreak Leave and Federal Emergency Paid Sick Time

In the event that the Governor's Stay-at-Home Order is not lifted on April 30, 2020, and upon exhaustion of the 80 hours of Pandemic Outbreak Leave and 80 hours of Federal Emergency Paid Sick Time, employees who are ordered to stay at home are required to use available compensatory time, vacation leave, and sick leave, in that order.

4. Clarification of DOL Guidance and Worksite Closures

Current DOL guidance provides that if an employee's worksite was closed, the employee is not entitled to either Federal Emergency Paid Sick Time or E-FMLA. Given that the Library District closed its libraries and employees were sent home on Pandemic Outbreak Leave and have already started their Federal Emergency Paid Sick Time, the County will permit the Library District employees to remain on Federal Emergency Paid Sick Time, or if they have not taken it, they will be permitted to take it in the future. Similarly, even though the libraries are closed, the County will permit Library District employees to take E-FMLA if they are eligible for such leave.

5. Clarification of DOL Guidance and Furloughs

The DOL guidance has changed since the County initially implemented its practices. Therefore, it is necessary to clarify what action the County has already taken that may be contrary to the new information you may read on the current DOL website. The County will furlough employees once they have exhausted all available paid leaves, including Pandemic Outbreak Leave, Federal Emergency Paid Sick Time, compensatory time, vacation leave and sick leave.

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The DOL guidance provides that if you are furloughed, you are not entitled to take paid sick leave or E-FMLA. For clarification, the County is permitting employees to take Federal Emergency Paid Sick Time, prior to a furlough. In terms of E-FMLA, the County will not furlough employees on E-FMLA unless they have no compensatory time, vacation leave, or sick leave. Since employees are not permitted to use sick leave to supplement their 1/3 unpaid portion of leave, those employees who have sick leave remaining, will not be furloughed. Should an employee choose to be furloughed, they may request to do so and would inform their Appointing Authority.

6. County Furloughs

It is anticipated that some employees will receive a Notice of Placement on COVID-19 Furlough beginning the week of April 20, 2020. Placement on COVID-19 furlough is a non-pay, non-duty status. Furloughed employees remain employees of the County but are not permitted to perform any County work tasks and are required to return all County-issued equipment and devices. Appointing Authorities, managers and immediate supervisors are required to ensure that these two objectives are met and followed. COVID-19 Furlough FAQ's will post shortly on the employee resource page.

It is important that you share this information with your staff. As information changes frequently, please continue to monitor the employee resource page on the intranet at [Employee COVID-19 Intranet Page](#) . For those employees accessing the public website on the internet, the employee resource page is at <http://www.pima.gov/covid19employees/> .

I continue to thank our employees, managers and directors for assisting in providing essential services to the people of Pima County in these stressful and uncertain times. Your public service dedication is very much appreciated by the Board of Supervisors and myself.

CHH/anc

c: Jan Leshar, Chief Deputy County Administrator
Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
Cathy Bohland, Director, Human Resources
Michelle Campagne, Director, Finance and Risk Management
Regina Kelly, Director, Grants Management and Innovation Office