

City of Clearlake Administrative Policy Concerning COVID-19 Supplemental Paid Sick Leave (“SPSL”) Under Labor Code Sections 248.6 and 248.7

Preamble

On February 9, 2022, Governor Newsom signed Senate Bill (“SB”) 114 into law, which reauthorized COVID-19 Supplemental Paid Sick Leave (“SPSL”), providing new paid leave entitlements to employees who are unable to work or telework due to a number of qualifying reasons related to COVID-19.

The law becomes effective on February 19, 2022, and entitles qualified employees to SPSL retroactive to January 1, 2022, and through September 30, 2022.

The City of Clearlake adopted this policy in order to provide its employees the Exclusion Leave SPSL to which they are entitled under Labor Code sections 248.6 and 248.7. The City of Clearlake will fully and faithfully comply with all relevant and applicable requirements under the Labor Code.

Statement of Policy

This policy is intended to provide all eligible and qualified City of Clearlake employees with SPSL to which they are entitled under Labor Code sections 248.6 and 248.7.

The City will provide paid leave (Exclusion Leave) upon written or oral request for absences related to COVID-19 as described below. Forms referenced in this policy will be available from Administrative Services as well as the City’s webpage. Completed forms shall be submitted to Administrative Services (mswanson@clearlake.ca.us) as soon as possible following start of leave. In no event shall leave be granted if notice of the need for leave is not made within one week of start of leave, absent extenuating circumstances.

Employees who have used accrued sick leave between January 1, 2022, and issuance of this policy where said usage qualifies under this policy, may complete the Employee Request form to request retro-active application of SPSL. Such request must be submitted within fifteen (15) days of issuance of this policy.

Within this policy there are the following types of exclusion leave being discussed:

1. **ETS Leave** - Leave provided in compliance with OSHA/ETS as described in the City’s COVID Prevention Policy. This leave will be coded as **Sick Leave: ETS** in the ESS System.

2. **SPSL 1-7** – Supplemental Paid Sick Leave in accordance with SB114 for reasons number 1 through 7 as described in this policy. This leave will be coded as **Sick Leave: SPSL 1-7**.
3. **SPSL 8** – Supplemental Paid Sick Leave in accordance with SB114 for reason number 8 as described in this policy. This leave will be coded as **Sick Leave: SPSL 8**.

The following policy sets forth certain rights and obligations regarding this leave.

Compliance

The City of Clearlake will fully and faithfully comply with Labor Code sections 248.6 and 248.7 in its administration of this policy.

Definitions

“Child” means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands *in loco parentis*. This definition of a child is applicable regardless of age or dependency status.

“Covered Employee” means any City of Clearlake employee who is unable to work or telework for the City of Clearlake for one or more of the reasons related to COVID-19 as set forth in this policy.

“ETS Exclusion Leave” means exclusion from the workplace due to isolation or quarantine arising from a workplace exposure.

“COVID-19 Supplemental Paid Sick Leave” or “SPSL” means paid sick leave pursuant to Labor Code sections 248.6 and 248.7.

“Family Member” means any of the following:

- (i) A “child”, as defined above.
- (ii) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood *in loco parentis* when the employee was a minor child.
- (iii) A spouse.
- (iv) A registered domestic partner.
- (v) A grandparent.
- (vi) A grandchild.

- (vii) A sibling.

Policy

Scope of Coverage:

This policy will apply to all Covered Employees employed by the City of Clearlake.

Effective Dates:

The policy is effective immediately upon adoption, and the paid leave benefits provided herein shall be retroactive to January 1, 2022.

SPSL benefits expire after September 30, 2022, except that the City of Clearlake will provide a Covered Employee who is on SPSL at the time of the expiration of such benefits the full amount of SPSL to which the Covered Employee would otherwise be entitled.

Unless the underlying law is extended, this policy will expire by operation of the law after September 30, 2022, except that certain Covered Employees may continue to use SPSL after that date as described above.

Employees Eligible for SPSL:

All City of Clearlake Covered Employees are eligible for SPSL if they are unable to work or telework for one or more of the enumerated reasons related to COVID-19 as provided below.

Qualifying Reasons for SPSL:

A Covered Employee qualifies for SPSL if they are unable to work or telework for one or more of the following reasons:

- 1) The employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the California Department of Public Health (“CDPH”), the federal Centers for Disease Control and Prevention (“CDC”), or a local health officer who has jurisdiction over the workplace;
- 2) The employee has been advised by a health care provider to self-quarantine due to COVID-19;
- 3) The covered employee is attending an appointment for themselves or a family member to receive a vaccine or a vaccine booster for protection against COVID-19;
- 4) The covered employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster that prevent the employee from being able to work or telework;

- 5) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 6) The covered employee is caring for a family member who:
 - a) Is subject to a CDPH, CDC, or local health officer order or guidance to isolate or quarantine, or
 - b) Has been advised by a health care provider to isolate or quarantine;
- 7) The covered employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises; or
- 8) The covered employee, or a family member for whom the covered employee is providing care, tests positive for COVID-19.

If an employee requests SPSL for reason 8, the City of Clearlake may require that the employee provide the positive test result to confirm that the employee qualifies for such leave. The City of Clearlake may also require that the employee provide the family member's positive test result if the employee is requesting leave in order to provide care to a covered family member.

The City of Clearlake may also require an employee who has taken SPSL for qualifying reason 8 to test for COVID-19 on or after day five, following the initial positive test. If the City of Clearlake requires such a test, the City of Clearlake will provide the test at no cost to the employee.

Amount of SPSL for Qualifying Reasons 1 - 7:

1. Leave taken as SPSL is in addition to any other statutory and/or contractual leave to which the employee is otherwise entitled, and which is not specific to COVID-19.
2. Employees who worked at least 40 hours per week in the two weeks before they take SPSL, or who the employer considers to be full-time employees, are entitled to 40 hours of SPSL for qualifying reasons 1 through 7, above.
3. Part-time Covered Employees are entitled to SPSL in the following amounts:
 - a. If the part-time Covered Employee has a normal weekly schedule, the total number of hours the Covered Employee is normally scheduled to work for the **City of Clearlake** over one week for qualifying reasons 1 through 7; or
 - b. If the part-time Covered Employee works a variable number of hours, the Covered Employee is entitled to 7 times the average number of hours the Covered Employee worked each day for the City of Clearlake in the six (6) months preceding the date the Covered Employee took SPSL. If the employee has worked for the City of Clearlake fewer than six months, then the employer calculates the average hours worked for the entire employment period and multiplies the daily average by seven. If an employee works variable hours and

has only worked for the City of Clearlake seven days or fewer, then the employee receives an amount of SPSL equivalent to the total number of hours worked for the employer.

Amount of SPSL for Qualifying Reason 8:

Employees taking additional COVID-19 supplemental paid sick leave under qualifying reason 8 are entitled to an amount not to exceed that which the employee received under qualifying reasons 1-7.

Covered Employees may determine how many hours of SPSL to use based upon a qualifying reason, up to the total number of hours to which the Covered Employee is entitled.

If a Covered Employee is provided SPSL retroactively for qualifying leave before adoption of this policy, the City of Clearlake will count the retroactive SPSL provided against the SPSL to which the Covered Employee is entitled.

For Covered Employees that request retroactive SPSL, the City of Clearlake will request that the employee sign a "COVID-19 Supplemental Paid Sick Leave Acknowledgment," acknowledging the accuracy of the amount of leave designated retroactively.

Compensation While on SPSL:

Covered Employees are entitled to compensation for SPSL at their regular rate of pay *or* the employee's total wages less any overtime premium pay, including pursuant to any applicable collective bargaining agreement, subject to a cap of \$511 per day and \$5,110 in the aggregate.

Leave taken as Exclusion Leave is in addition to any other leave accrued and has no cash value or accrual value.

Employees are not required to use other available paid leave (leave accruals available to the employee such as vacation, sick, administrative leave, or compensatory time off) before using Exclusion Leave. Employees are not required to find replacements to cover their duties during use of leave.

Employee Notice of Supplemental Paid Sick Leave:

Covered Employees must notify the City of Clearlake that they intend to take SPSL. The Covered Employee may provide such notice either orally or in writing to their immediate supervisor.

Employee Status While on Leave:

The City of Clearlake will compensate Covered Employees who use SPSL according to the manner described in this policy and will otherwise treat Covered Employees who use COVID-19 Supplemental Paid Sick as if they are using paid sick leave according to the City of Clearlake's Personnel Regulations and any applicable collective bargaining agreement.

Upon return from an approved Exclusion Leave, an employee will be reinstated to the employee's original position or, if such position is no longer available, to a comparable position with equivalent pay, benefits, and other employment terms and conditions for which the employee is qualified. However, an employee has no greater rights to any benefit or position of employment than if the employee had been continuously working rather than on leave.

Upon conclusion of quarantine or isolation period or upon being called to return to work, employee shall complete a Certification to Return to Work. Completed forms are to be returned to Administrative Services.

Coordination With Family Medical Leave Act/California Family Rights Act

The policy of the City of Clearlake is to allow employees to take leave from the worksite to ensure that when the employee is at work the employee is rested, healthy, and mentally available to perform duties in a professional manner and to comply with any state and/or federal regulations regarding authorized leave. The City of Clearlake's leave policy is described in the Personnel Regulations and applicable collective bargaining agreements. Specifically, the City of Clearlake complies with the Federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Eligibility for FMLA and CFRA is the same and in most cases, the two leaves run concurrently. The FMLA (and CFRA) provides 12 weeks of unpaid, job-protected leave per 12-month period to employees to care for themselves or family members with a serious health condition (or other qualifying event as defined by the Acts). Public employees are eligible for FMLA leave if they have worked at least 1,250 hours in the preceding 12-month period and are employed within 75 miles of at least 50 other employees of the public agency. All public employees are eligible for CFRA leave if they have worked at least 1,250 hours in the preceding 12-month period. "Family member" is defined under each law.

Where City COVID-19 Exclusion Leave is taken for purposes of an employee's serious illness or care of seriously ill family member, such illness may also qualify as job protected leave under FMLA/CFRA and run concurrently to such leave. Exclusion Leave does not provide additional time beyond the 12 total weeks available for FMLA/CFRA leave.

Employee Obligations for Requesting Retroactive Payments for Prior Leave that Qualified as SPSL:

Employees are entitled to SPSL retroactive to January 1, 2022.

If the City of Clearlake did not compensate the employee for leave that would otherwise have qualified as SPSL between January 1, 2022, and the effective date of this policy, in an amount equal to or greater to what the employee would have been entitled to under this policy, the employee is eligible for a retroactive payment from the City of Clearlake for such leave.

In order to receive payment for such leave, employees must make an oral or written request to be paid for such leave to the City of Clearlake's Administrative Services Department.

For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of SPSL that the employer is required to provide to the Covered Employee.

No Retaliation

No employee will be retaliated or discriminated against for requesting leave under this policy, even if it is determined that the employee is not eligible for leave. Any acts of retaliation or discrimination should be reported to Administrative Services and may also be reported directly to the Office of the Labor Commissioner. If an employee is intentionally dishonest in requesting or using leave under this policy, they may be subject to discipline.