



Bennett J. Baur
Chief Public Defender

TO: LOPD Employees

FROM: Bennett J. Baur, Chief Public Defender

DATE: April 1, 2020

SUBJECT: Administrative Leave Award 1.2 – Families First Coronavirus Response Act (H.R. 6201) and Emergency Family and Medical Leave Expansion Act

The purpose of this memo is to inform you about how LOPD must restructure its authorization of paid administrative leave to conform to the new federal coronavirus-related leave laws. These changes create new names for categories of leave, put more specific timelines on leave, and specifies how leave is requested and approved and how timesheets must be coded. These changes do not diminish the amount of leave the LOPD is making available during this time of emergency; in fact, the changes LOPD has implemented here are more generous than those required by the federal law and less restrictive than other state directives. The department remains committed to providing paid leave and taking care of our employees and their families during this critical time.

The Administrative Leave Award Memo dated March 17, 2020 that was effective March 18, 2020 is no longer in effect. This Administrative Leave Memorandum dated April 1, 2020 supersedes the prior Memorandum dated March 17, 2020, and is effective immediately.

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) (H.R. 6201), was enacted, which requires employers with fewer than 500 employees and government employers to grant 80 hours of paid sick leave under the conditions stated in the Act and mirrored below. The Family and Medical Leave Act (FMLA) was also expanded to include the Emergency Family and Medical Leave Expansion Act (EFMLA), defined below. For details regarding the FFCRA and EFMLA, please click this link: <https://www.dol.gov/agencies/whd/pandemic>

At this time, LOPD will not limit the pay available to employees as authorized by the restrictions defined in the FFCRA and the EFMLA. Rather, I am authorizing paid administrative leave, in accordance with *Subsection A of 10.12.7.14 Administrative Leave*, to employees of the department that are experiencing one or more of the Coronavirus related conditions described below and unable to work from home or telework. The purpose of the administrative leave is to ensure that employees will continue to be paid.

An analysis of the previous Administrative Leave Award memo dated March 17, 2020, the FFCRA, the EFMLA, and the [Governor's Executive Order dated March 23, 2020](#), established three categories into which employees may qualify for leave: 1) **80 hours of Family First Paid Coronavirus Leave**; 2) **Paid Emergency Family Leave** (for up to 12 weeks); and, 3) Employees who do not fall in category 1) or 2) and are unable to work (in the office or telework, full-time or part-time), hereinafter referred to **Social Distancing Admin Leave**.

1) Family First Paid Coronavirus Leave:

Employees who are experiencing one or more of these coronavirus related conditions, and are unable to work from home or telework will be authorized 80 hours of paid administrative leave with pay. This leave applies when:

- a) The employee is subject to government quarantine or isolation order related to COVID-19;
- b) The employee has been advised by a health care provider or the Chief Public Defender, Deputy Chief Public Defender, District Defender or Division Head to self-isolate due to concerns related to COVID-19; or
- c) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis or awaiting the results of a COVID-19 test; or
- d) The employee is caring for an individual who is subject to a quarantine order or self-isolation; or
- e) The employee is caring for a son or daughter under 18 years of age 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; or,
- f) The employee is experiencing any other substantially similar condition specified by the federal Secretary of Health and Human Services.

Employees who fall under one or more of these categories and is able to work from home or telework will do so in compliance with this memo, department polices, plans and directives.

If employees are unable to work from home or telework and fall under one or more of the categories above, they must submit a request to their immediate supervisor or District Defender or Division Head for Family First Paid Coronavirus Leave. Requests for leave must be submitted through the "Coronavirus Leave Request Form." The request form should be submitted to the supervisor by email or by calling to relay the required information (if no access to email).

The employee's immediate supervisor or District Defender or Division Head will forward the completed request form via email to the Deputy Chief Public Defender and LOPD-HR for review and approval. HR will notify the employee, immediate supervisor, District Defender or Division Head by email if the Family First Paid Coronavirus Leave has been approved or disapproved. The employee will then be required to adhere to agency leave policy and procedures. This leave may be taken in hourly increments.

The employee's immediate supervisor should code SHARE timesheet entries as "PDCVL". This leave is not retroactive.

2) Emergency Family and Medical Leave:

The EFMLA amends the FMLA to provide up to 12 weeks of job-protected leave for employees who are unable to work or telework because of a “qualifying need related to public health emergency as defined”, which means the employee must:

Care for a son or daughter under 18 years old if the school or place of care for the child has been closed or the childcare provider of such son or daughter is unavailable, due to a public health emergency.

Employees who exhaust the 80 hours of Family First Coronavirus Leave above and are unable to work from home or telework, may submit a request to their immediate supervisor or District Defender or Division Head for paid administrative leave up to 10 weeks, through December 31, 2020, if they meet the following conditions:

- a) The employee is unable to work from home or telework;
- b) The employee has been employed with the State of New Mexico for at least 30 days; and
- c) The employee has a “qualifying need related to a public health emergency” as defined by EFMLA.

Unlike FMLA, EFMLA Leave does not require a medical provider certification. Requests for leave must be submitted through the “Coronavirus Leave Request Form.” The request form should be submitted to the supervisor by email or by calling to relay the required information (if no access to email).

The employee’s immediate supervisor or District Defender or Division Head will forward the completed request form via email to the Deputy Chief Public Defender and LOPD-HR for review and approval. HR will notify the employee, immediate supervisor, District Defender or Division Head by email if the Paid EFMLA Leave has been approved or disapproved. The employee will then be required to adhere to agency leave policy and procedures. This leave may be taken in hourly increments.

In this case, employees (not supervisors) must code their timesheet in SHARE with the Time Reporting Code (TRC) as “EFMLA” and enter a note in the comment bubble indicating the employee is caring for the employee’s son or daughter under 18 years old if the school or place of care for the child has been closed or the child care provider of such son or daughter is unavailable, due to a public health emergency. The employee’s immediate supervisor must confirm and approve the TRC “EFMLA” on the employee timesheet.

EFMLA leave is available for the number of hours that the employee is normally scheduled to work even if that is more than 40 hours in a week, including overtime, but in no event will the total number of hours paid exceed 80 hours per two-week period as stated in EFMLA. This leave is not retroactive.

3) Social Distancing Paid Administrative Leave:

The [Governor’s Order dated March 23, 2020](#), stated in part: “social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico”.

Therefore, this paid administrative leave is to ensure that LOPD employees who do not have the means

to telework, do not have critical job duties to perform, are not recognized as being critical, and are being asked to practice social distancing as defined by the DOH and CDC during this public health emergency are paid for hours they would regularly be scheduled to work in the office or telework, not to exceed 80 hours per pay period.

This paid leave is available to employees until otherwise amended.

Eligible employees must meet the following conditions:

- 1) The employee has been employed with the State of New Mexico for at least 30 days;
- 2) Employee is unable to work in the office or telework for at least 80 hours per pay period;
- 3) Employee must remain available for immediate recall to the office during regular working hours to fulfill **critical** functions;
- 4) Employee must remain available during regular working hours for immediate recall upon reinstatement of normal operations;

Any employee who will not be available for recall during regular business hours as described above must utilize their accrued leave in accordance with LOPD policy. For example, if an employee has a doctor's appointment for non-coronavirus related reason, they must request, obtain approval and utilize accrued sick leave.

Requests to utilize Social Distancing Paid Administrative Leave must be submitted through the "Coronavirus Leave Request Form." The request form should be submitted to the supervisor by email, or by calling to relay the required information (if no access to email).

The employee's immediate supervisor or District Defender or Division Head will forward the completed request form via email to the Deputy Chief Public Defender and LOPD-HR for review and approval. HR will notify the employee, immediate supervisor, District Defender or Division Head by email if the leave has been approved or disapproved. The employee will then be required to adhere to agency leave policy and procedures. This leave may be taken in hourly increments.

In this case, the employee (not the supervisor) must code their timesheet in SHARE with the Time Reporting Code (TRC) Administrative Leave Taken (ADMLV) and the employees immediate supervisor must confirm and approve the Time Reporting Code (TRC) Administrative Leave Taken (ADMLV) on the employee timesheet. Administrative leave may be taken in hourly increments and no more than 40 hours in a week/80 hours in a pay period. Enter a note in the comment bubble indicating the employee is "approved to utilize admin leave for category 3".

All employees have a responsibility to ensure that the workplace that is safe and healthy. Polite and professional communication amongst all levels of staff is imperative. Please take extra time, to discuss when necessary, any coronavirus related situations with managers and supervisors so informed decisions can be made and business operations are not negatively impacted.

In the [LOPD Coronavirus Response Plan 1.2](#) distributed on March 17, 2020, district defenders were directed to complete an individualized assessment of the essential functions of their office and the required positions to perform those functions. In addition, district defenders were to create a plan to consolidate critical tasks, identify tasks that that can be performed remotely, and assess available equipment and resources to allow for telework for those who could and could not help but stay home, either because of health, childcare. District defenders were also instructed to put skeleton crews in place

immediately.

The important administrative details:

All requests for paid leave for one or more of the three categories above must be preapproved.

Work from the office and telework status and leave must be preapproved by your supervisor.

For those external selected candidates extended offers between April 1, 2020 and the time LOPD operations return to normal, the hiring manager must communicate with the candidate, HR Director Ronald Herrera or Zachary Olivas, and the Deputy Chief to discuss a proposed start date, a training plan, and approval of any administrative leave.

The administrative leave categories will be available April 1, 2020. It will not require the additional step of being populated into your leave balances, as has been done with other administrative leave allotments in the past.

- Category 1) Family First Paid Coronavirus Leave: If your leave is approved, your immediate supervisor must enter the Time Reporting Code (TRC) “PDCVL”. This leave may be taken in hourly increments and no more than 40 hours in a week/80 hours in a pay period.
- Category 2) Emergency Family and Medical Leave: If your leave is approved, you must code your timesheet in SHARE with the Time Reporting Code (TRC) as “EFMLA” and enter a note in the comment bubble indicating that you are caring for a son or daughter under 18 years old if the school or place of care for the child has been closed or the child care provider of such son or daughter is unavailable, due to a public health emergency. Your immediate supervisor must confirm and approve the TRC “EFMLA” on the employee timesheet.

EFMLA leave is available for the number of hours that the employee is normally scheduled to work even if that is more than 40 hours in a week, including overtime, but in no event will the total number of hours paid exceed 80 hours per two-week period as stated in EFMLA. This leave is not retroactive.

- Category 3) Social Distancing Paid Administrative Leave: If your supervisor authorizes administrative leave, you must enter the Time Reporting Code (TRC) Administrative Leave Taken (ADMLV) on your timesheet. Administrative leave may be taken in hourly increments and no more than 40 hours in a week/80 hours in a pay period. Your immediate supervisor must confirm and approve the TRC “ADMLV” on the employee timesheet.
- If you are working in-office, then enter the hours worked as REGHR – Regular Hours worked in your timesheet.
- If you are teleworking you must enter the “TELWK –Telework 2020” TRC code.
- Please enter time in SHARE that accurately reflects the hours worked, PDCVL, EFMLA, Telework 2020, and ADMLV or combination of all, when appropriate.

In the case that LOPD needs to order an office closure, a formal notice will be sent out by Chief Baur. In that case, employees shall use the time reporting code (TRC) Office Closure (OFFCL). Please enter the following note in the comment bubble: *Office closure due to coronavirus authorized by the Chief Public Defender*. Employees who are well and able to telework should do so in accordance with the

LOPD Coronavirus Response Plan, and enter TRC TELWK –Telework 2020.

In the event of a closure, district defenders, managing attorneys, and office managers should take the necessary steps to ensure that our clients and criminal justice partners are aware of any office closure, to post appropriate signage, and to ensure that any hearings or other critical office tasks are covered.

- The Time Reporting Code (TRC) of Office Closure (OFFCL) results in regular pay for employees but is not counted toward overtime.
- Employees who work in-office or telework must enter regular hours worked during an office closure.
- **Supervisors**: if you know the office was closed, and the employee was not approved for telework, please do not approve the TRC Regular Hours Worked for employees who did not report to work or telework– ask them to enter the OFFICE CLOSURE (OFFCL) TRC.

Employees may request to their immediate supervisor, District Defender, or Division Head, Deputy Chief Public Defender and LOPD HR additional administrative leave if circumstances warrant. The request will be provided to the Chief Public Defender for review and approval or disapproval. The Chief's decision will be emailed to you, your immediate supervisor, District Defender, or Division Head, Deputy Chief Public Defender and LOPD HR

Employees who exhaust all options for paid administrative leave may also request and use preapproved leave or request and utilize leave without pay from their immediate supervisor and District Defender or Division Head, if approved by Human Resources.

All employees are required to continue to enter their time in [SHARE](#), and managers and supervisors must continue to communicate with employees about leave and telework status to continue to timely approve time entered in SHARE. The calendar showing pay periods is available [HERE](#).

LOPD's Human Resources team is available to help answer any questions regarding this memo, coronavirus-related leave and time reporting codes.

This memorandum will continue to be updated as necessary due to the coronavirus crisis, as required by law, and in the best interest of the department, and its clients.