



Bennett J. Baur
Chief Public Defender

TO: LOPD Employees

FROM: Bennett J. Baur, Chief Public Defender *BJB*

DATE: January 11, 2021

**SUBJECT: Administrative Leave Award 2.0 – LOPD Paid Coronavirus Leave and
And Emergency Family and Medical Leave Extended to March 31, 2021**

The purpose of this memo is to provide additional guidance and clarification regarding the email dated December 30, 2020 from Deputy Chief Jennifer Birmingham, titled “Extension of Covid Leave Time Frame”. This Administrative Leave Award Memorandum 2.0, supersedes the Administrative Leave Memo 1.2 dated April 1, 2020, and was effective January 1, 2021.

At this time, LOPD is not cancelling its administration of the COVID-19 leave available to employees as defined in the Federal Families First Coronavirus Response Act (FFCRA) and the Emergency Family Medical Leave Act (EFMLA), which both expired on December 31, 2020. Rather, I am authorizing paid administrative leave in accordance with *Subsection A of 10.12.7.14 Administrative Leave and in effect through March 31, 2021* to employees of the department who are experiencing one or more of the coronavirus-related conditions described below, are unable to work from the office or telework, **and who have not previously exhausted the federal leave entitlement**. The purpose of the administrative leave is to ensure eligible employees who meet one or more of the conditions below will continue to receive pay until **March 31, 2021**. This extension does not increase the number of hours already granted. Employees who have exhausted the allowable hours of leave are not eligible for more paid administrative leave.

Extending the paid coronavirus leave as LOPD has is more generous than what is required by federal law and less restrictive than other state agency directives. The department remains committed to providing paid leave and taking care of our employees and their families during this critical time.

LOPD Authorized Paid Administrative Leave for COVID-19 Related Reasons:

1) LOPD Family First Paid Coronavirus Leave (PDCVL):

Employees who are experiencing one or more of the following coronavirus-related conditions, are unable to work from the office or telework, and who **have not previously exhausted this leave option** will be

authorized 80 hours of paid administrative leave. 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 the office or telework will do so in compliance with this memo, department polices, plans and directives.

If employees are unable to work from the office or telework, and **have not previously used 80 hours of PDCVL** 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 LOPD Family First Paid Coronavirus Leave. Requests for leave must be submitted using the "LOPD Paid COVID-19 Leave Request Form." The employee should submit this request form 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 LOPD PDCVL has been approved or disapproved. The employee will then be required to adhere to agency leave policy and procedures. The employee may take this leave in hourly increments.

Process in SHARE: LOPD-HR will award 80 hours of paid coronavirus leave (PDCVL) to employees authorized to use the leave. Each week employees will enter their working hours on their time sheet and communicate (PDCVL) leave hours to their supervisor. Supervisors must email those leave hours to the LOPD-HR team each week, confirming the number of hours used and the date used. HR will enter and approve those hours.

2) LOPD Emergency Family and Medical Leave (EFMLA):

The LOPD EFMLA provides up to 10 weeks of paid administrative leave for employees who **have not previously exhausted federal leave entitlement**, and who are unable to work in the office 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 LOPD Family First Coronavirus Leave above and are unable to work from the office or telework, may submit a request to their immediate supervisor or District Defender or Division Head for paid administrative leave up to 10 weeks, eligible for use through March 31, 2021, if they meet the following conditions:

- a) The employee has **not** previously exhausted the federal leave entitlement;
- b) The employee is unable to work from the office or telework;
- c) The employee has been employed with the State of New Mexico for at least 30 days; and
- d) The employee has a “qualifying need related to a public health emergency” as defined by EFMLA.

EFMLA leave is available for the number of hours 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.

Unlike FMLA, EFMLA does not require a medical provider certification. Requests for leave must be submitted on the “LOPD Paid COVID-19 Leave Request Form.” The employee should submit this request form 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 LOPD EFMLA has been approved or disapproved. The employee will then be required to adhere to agency leave policy and procedures. The employee may take this leave in hourly increments.

Process in SHARE: LOPD does not award EFMLA as it does PCDVL. Each week employees will enter their working hours on their time sheet and communicate (EFMLA) leave hours to their supervisor. Supervisors must email those leave hours to the LOPD-HR team each week, confirming the number of hours used and the date used. HR will enter and approve those hours.

All employees have a responsibility to ensure the workplace 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.

The important administrative details:

- ❖ All requests for paid leave using PDCVL and EFMLA must be preapproved.
- ❖ The LOPD paid administrative leave categories are only available until March 31, 2021.
- ❖ If leave requests for PDCVL and EFMLA are approved, the employee’s immediate supervisor must report the hours used and date used to LOPD-HR weekly. This process will ensure employees using leave are paid. Employees may use this leave in hourly increments and will not be paid more than 40 hours in a week/80 hours in a pay period.

- ❖ Supervisors must preapprove working from the office, teleworking and taking leave.
- ❖ If an employee has a doctor's appointment for non-coronavirus-related reason, they must request and obtain approval in advance and utilize accrued sick leave.
- ❖ For those external selected candidates extended offers between January 1, 2021 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.
- ❖ Employees working in-office enter the hours worked as REGHR – Regular Hours worked -- in your timesheet.
- ❖ 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 post appropriate signage and to ensure that our clients and criminal justice partners are aware of the office closure, and hearings or other critical office tasks are covered.

- The Time Reporting Code (TRC) of Office Closure (OFFCL) results in regular pay for employees but SHARE does not count it as worked time toward overtime.
- ***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 or Telework. Ask them to enter the OFFICE CLOSURE (OFFCL) TRC.

Employees who exhaust all options for paid administrative leave may also request and use preapproved leave (such as annual leave or comp time) 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 and continue to timely approve time entered in SHARE.

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

The Executive Team will continue to update this memorandum as necessary due to the coronavirus crisis, as required by law, and in the best interest of the department, and its clients.