



PORT OF TACOMA COMMISSION

CONSENT AGENDA

Item No. 7D

Date of Meeting: January 21, 2021

DATE: January 15, 2021

TO: Port of Tacoma Commission

FROM: Eric Johnson, Executive Director

Presenter: Jean West, Chief Human Resources Officer

SUBJECT: Family First Coronavirus Response Act (FFCRA) Voluntary Continuation of Leave Eligibility

A. ACTION REQUESTED

Commission acceptance of notification of Executive Director decision to extend the duration of paid leave benefits available to Port of Tacoma employees pursuant to the Family First Coronavirus Response Act (FFCRA) through March 31, 2021.

B. SYNOPSIS

The Family First Coronavirus Response Act (FFCRA) required certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions were in effect April 1, 2020 to December 31, 2020.

On December 27, 2020, a new pandemic relief package was signed into a law providing for stimulus funds, extension of unemployment, and other assistance. Notably, the legislation did not include a mandatory extension of the paid leave benefits previously granted under FFCRA but did provide an option to voluntarily extend the program.

C. BACKGROUND

While the relief package did not require employers to provide FFCRA leave after December 31, 2020, it allows employers to voluntarily do so, at least through March 31, 2021. If the time period for use of FFCRA is

voluntarily extended, the terms and provisions of the FFCRA leave otherwise remain the same. For example, it does not change the total amount of leave employees may use, nor does it provide for a new allotment of paid sick or family leave. As such, if employees have already exhausted their FFCRA leave in 2020, they may not take any additional FFCRA leave in 2021.

Given the Port and NWSA's priorities of employee safety and the continued high level of COVID cases, Eric Johnson, Executive Director has proposed to exercise the relief package's option to extend the paid leave benefits under FFCRA through March 31, 2021. Continuing to provide this leave option will also further the goal of keeping the gateway open and operational as it will help to keep sick employees from coming to work.

The potential cost of extending the FFCRA paid leave option by three months is not expected to exceed the executive's financial delegation of authority. While the respective Master Policies on Delegation of Authority are silent on administration of benefits by the executive, the current Master Benefits and Salary Resolution (MBSR) allows the Port Executive Director to amend benefits as necessary to comply with changes in statutory requirements with notification to the Commissioners.

In this instance, though the FFCRA does not mandate the FFCRA time extension through March, the extension is permitted by law and is of a benefit that was originally statutorily mandated. Based on the provision in the MBSR allowing the Executive to amend benefits to comply with statutory requirements, and given the overall value of this extension being within the Executive Director's delegated spending authority limits, Port Legal Counsel has advised that the Executive Director may authorize this extension of the FFCRA leave eligibility through March 31, 2021 for Port of Tacoma employees without further Commission authorization, but with notification to the Commission.

It should be noted that the new administration unveiled the American Rescue Plan on January 14, 2021 which includes a proposed extension of FFCRA leave benefits through September 30, 2021.

D. SUMMARY OF CHANGES

Exercise the option to voluntarily extend the paid leave benefits under FFCRA through March 31, 2021.

E. FINANCIAL IMPACT

The Port incurred \$42,293 in FFCRA costs in 2020. It is difficult to estimate future FFCRA costs but even if costs were to triple, the estimated cost would be \$126,879.

F. ATTACHMENT TO THIS REQUEST

Detailed description of FFCRA.

Families First Coronavirus Response Act (FFCRA)

Effective April 1, 2020

The Families First Coronavirus Response Act (FFCRA), is an expansive economic stimulus plan to address the impact of the COVID-19 pandemic. This new law will take effect on April 1, 2020 and automatically expires on December 31, 2020.

The FFCRA contains provisions which expands FMLA and provides Emergency Paid Sick Leave, which are summarized as follows:

New Emergency Paid FMLA:

The FFCRA temporarily expands the federal FMLA criteria to allow job-protected paid leave for employees who are unable to work or telework because:

- They need to care for child under age 18 whose school or place of childcare has been closed; or
- Their childcare provider is unavailable due to a COVID-19 public health emergency declared by a Federal, State, or local authority.

Pay during Emergency Paid FMLA:

- Unpaid period: The first 10 days of such leave are unpaid, but employees may elect to use accrued sick leave, vacation or, if eligible, Emergency Paid Sick Leave.
- Paid leave: After 10 days, qualified employees are paid two-thirds of the employee's regular rate of pay, capped at \$200 a day (\$1000 a week). The maximum aggregate amount of paid FMLA to any employee is \$10,000 (or 10 weeks for a full-time employee receiving the full \$200 per day).
- Notice requirement: Where necessity for leave is foreseeable, employees must provide their employer with as much notice of leave as practicable.
- Qualifying use: As noted above, paid Emergency FMLA is available only to employees who cannot work (or telework) due to need for leave to care for a child if their school or place of care is closed or unavailable due to COVID-19.

Emergency Paid Sick Leave:

The FFCRA also requires employers to provide up to 80 hours of paid sick leave to employees who are unable to work due to the following specified COVID-19-related reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
4. The employee is caring for an individual who:
 - a. is subject to an order to quarantine or isolation related to COVID-19; or
 - b. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
5. The employee is caring for a child under the age of 18 due to closure of the child's school or unavailability of the child's childcare provider due to COVID-19.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Emergency Paid Sick Leave is calculated as follows:

- For reasons (1), (2) and (3) above, employees must be paid their regular rate of pay up to \$511 per day (\$5,110) in the aggregate;
- For reason (4), (5) and (6) above, employees must be paid 2/3 of the employee's regular rate of pay, capped at \$200 per day (\$2,000 in the aggregate).

There are no continuing benefits after termination of employment and there is no carry over into the following calendar year.