

City Manager's Office
Administrative Order No: 72
Issued: 04/2020; Revised 05/2021



Approved by **Garrett Evans**
City Manager

Subject: The Families First Coronavirus Response Act and California Senate Bill 95, COVID-19 Supplemental Paid Sick Leave

Purpose

The Families First Coronavirus Response Act (FFCRA) was passed by Congress on March 18, 2020 in response to the COVID-19 pandemic. The FFCRA includes two divisions designed to help reduce the impact of the virus on families. These divisions are entitled the Emergency Family Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA). The FFCRA took effect April 1, 2020 and remained in effect until December 31, 2020.

On January 1, 2021, the City Manager, by way of this administrative order, extended EFMLEA through September 30, 2021 to eligible employees in response to the local county's continued health order restrictions, including the closure of local schools, and COVID-19 positive case data in the surrounding communities.

On March 19, 2021, the State of California Governor, Gavin Newsom, signed Senate Bill (SB) 95, COVID-19 Supplemental Paid Sick Leave (SPSL) into law, adding Section 248.2 to the Labor Code, which provides certain paid sick leave entitlements for employees who are unable to work or telework due to specifically enumerated qualifying reasons related to COVID-19. SB 95 extends qualifying leave protections through September 30, 2021 and is retroactive for qualifying sick leave taken beginning January 1, 2021.

Policy

The policy of the City of Pittsburg 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 or federal laws regarding authorized leave. The City of Pittsburg's leave policy is described in Personnel Rule 25. Specifically, the City of Pittsburg 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 seriously ill family members. Public employees are eligible for FMLA/CFRA leave if they have worked at least 1,250 hours in the preceding 12-month period. "Family member" is defined under the law.

The Emergency Family Medical Leave Expansion Act (EFMLEA) temporarily expands certain provisions of the FMLA but does not provide additional time beyond the 12 total weeks available for FMLA leave. Regular full-time and part-time and seasonal/temporary employees are eligible for the leave.

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The FFCRA allows employers to exclude emergency responders from the EFMLEA, including designated police personnel and those designated by the City Manager as emergency responders as defined in Attachment A, which is subject to revision based on emerging needs. The City reserves the right to deny leave to an emergency responder or call an employee back from leave in the event the employee is needed to provide emergency response services in order to ensure the health and safety of the community. Such denial or call back would only apply to individuals taking leave for non-personal medical purposes. No employee taking leave under reasons (1), (2), or (3) of EPSL or 1-4 of the SPSL will be subject to denial or callback.

The COVID-19 SPSL is intended to provide all eligible and qualified City employees with 80 hours of SPSL to which they are entitled under Labor Code § 248.2 through September 30, 2021. The following sets forth certain rights and obligations regarding this leave. The City will comply with Labor Code § 248.2 in its administration of this policy.

Emergency Family Medical Leave Expansion Act (EFMLEA)

Eligibility

Employees who have been employed with the City for at least thirty (30) calendar days are eligible to receive up to 12 weeks of protected leave if they are unable to work (including telework) due to a need to care for the son or daughter (under 18 years of age) whose school or place of care has been closed, or whose child care provider is unavailable due to a COVID-19 emergency declared by either a Federal, State, or local authority. An employee is required to provide reasonable notice of the need for leave.

Duration of Leave

An employee who has not exhausted FMLA during the prior 12 months is eligible to receive up to 12 weeks of protected leave.

If an employee has already used FMLA during the prior 12 months preceding need for EFMLEA, their eligibility for EFMLEA is based on the balance available to the employee. For example, if an employee has been using FMLA intermittently during the prior 12 months and has used 4 weeks of FMLA, such employee is eligible for 8 more weeks of leave under FMLA and/or EFMLEA combined. Employees using FMLA for a pre-existing or new event under FMLA, will need to track their time separately relative to leave taking under EFMLEA.

Compensation

Leave under FMLA is unpaid, however, an employee may be required to use accrued leaves. Under EFMLEA, the first 10 regularly scheduled workdays of leave are unpaid. The employee may choose to use any accrued leave (vacation, sick, compensatory time) during this 10-day period. Alternatively, the employee may also use pay under the provisions of EPSLA or SPSL as described in this policy.

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From the 11th day of leave, the employee will be paid 2/3rds of the employee's regular rate of pay as defined under the Fair Labor Standards Act (29 U.S.C. § 207(e)). Part-time employees are entitled to pay based on 2/3rds of their regular pay based on the number of hours they would otherwise have been scheduled to work during the time they are taking leave.

In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if the employee had not taken leave, the employer must use the following criteria:

1. A number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee commences leave, including hours for which the employee took any type of paid leave; or
2. If the employee did not work over the preceding 6-month period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Pay under the EFMLEA is capped at \$200 per day and \$10,000 in the aggregate

Employees may elect to use accrued leave from any leave bank source to supplement the 2/3rds regular rate being paid while on EFMLEA.

Request Procedure

An employee using Emergency Family Medical Leave must certify the need for the leave in writing at the time of request. Human Resources will provide an Emergency Family Medical Leave request form which will be available on the City's webpage, Human Resources page, HR Forms & Links - For City Employees. The completed Emergency Family Medical Leave request form shall be submitted to the employee's supervisor prior to initiating leave. The Employee Certification of Need for Emergency Paid Sick Leave or Request for Prospective Supplemental Paid Sick Leave form shall be submitted directly to the employee's supervisor or an oral request may be made to the supervisor to complete the form on behalf of the employee.

In the event of a medical emergency where the employee is unable to provide the form prior to initiating leave, such form shall be submitted as soon as reasonably practicable. Forms shall be submitted by way of fax to Human Resources (925) 252-4138 or via email to Personnel2@ci.pittsburg.ca.us

City Response to Leave Requests

The City will confirm an employee's eligibility for leave or provide an explanation as to why they are not eligible.

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Reinstatement

Employees out on Emergency Family and Medical Leave are entitled to reinstatement to an equivalent position if available in accordance with FMLA.

Reinstatement may, in certain circumstances set forth by statute, be denied to certain "highly compensated" positions. Such employees will be notified of this possibility at the time the request for leave is processed.

Supplemental Paid Sick Leave (SPSL)

Effective Dates

SPSL benefits provided herein shall be retroactive to January 1, 2021. If employees used 2020 Emergency Paid Sick Leave (EPSL) after 2020, those hours of leave will be deducted from the 80 hours of sick leave under the SPSL for 2021.

SPSL benefits expire on September 30, 2021, except that the City will provide an eligible employee who is on SPSL at the time of the expiration of such benefits the full amount of SPSL to which the eligible employee would otherwise be entitled.

Unless the underlying law is extended, this policy will expire by operation of the law on September 30, 2021, except that certain eligible employees may continue to use SPSL after that date as described above.

Eligibility

All City employees are eligible for SPSL, regardless of how long they have worked for the City of Pittsburgh if they are unable to work or telework for one or more of the following enumerated reasons related to COVID-19:

1. The employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State 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;¹
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;

¹A "general stay at home order" does not trigger this qualifying reason, and states that "[t]he order or guidelines must be specific to the covered employee's circumstances. If an employee is subject to multiple applicable quarantine or self-isolation orders from the CDC, CDPH, or local health officers, "the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period." (Labor Code § 248.2 (b)(1)(A).)

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4. The employee is caring for a Family Member who is subject to a quarantine or isolation order or guidelines described above, or who has been advised to self-quarantine by a health care provider;
5. If the employee is caring for a Child whose school or place of care is closed due to COVID-19. This qualifying reason also applies if the employee is caring for a Child whose school or place of care is otherwise unavailable for reasons related to COVID-19 on the premises;
6. The employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework;
7. The employee is excluded from the workplace as a result of a "close contact" exposure, as defined by the Centers for Disease Control and Prevention ("CDC"), pursuant to Cal/OSHA's COVID-19 emergency temporary regulations.

Compensation and Duration of Leave

Eligible employees are entitled to compensation for SPSL at their regular rate of pay, including pursuant to any applicable collective bargaining agreement, subject to a cap of \$511 per day and \$5,110 in the aggregate. The City will treat eligible employees who use SPSL as if they are using paid sick leave according to the City's Personnel Rule No. 23 - Sick Leave.

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.

Full-time eligible employees working 40 hours per week may take up to 80 hours of SPSL

Part-time eligible employees are entitled to SPSL in the following amounts:

1. If the part-time eligible employee has a normal weekly schedule, the total number of hours the eligible employee is normally scheduled to work for City over two weeks; or
2. If the part-time eligible employee works a variable number of hours, the eligible employee is entitled to 14 times the average number of hours the eligible employee worked each day for the City in the six (6) months preceding the date the eligible employee took SPSL. If the eligible employee has worked for the City over a period of fewer than six (6) months but more than 14 days, this calculation shall instead be made over the entire period the eligible employee has worked for the City.

Eligible 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 eligible employee is entitled under the above.

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The City is not required to provide an eligible employee more than the total number of hours of SPSL to which the eligible employee is entitled under this policy.

If an eligible Employee is provided SPSL retroactively for qualifying leave before approval of this policy, the City will count the retroactive SPSL provided against the total amount of SPSL to which the eligible employee is entitled.

Eligible employees that request retroactive SPSL will be required to sign a "COVID-19 Supplemental Paid Sick Leave Acknowledgment," acknowledging the accuracy of the amount of leave designated retroactively.

If the City provided an eligible employee with FFCRA Emergency Paid Sick Leave taken on or after January 1, 2021, that was payable for the same qualifying reasons enumerated above and compensated in an amount equal or greater to the amount enumerated below, the City will count such supplemental benefit against the employee's SPSL entitlement.

Request Procedures for Prospective and Retroactive SPSL

Eligible employees must notify the City that they intend to take SPSL. The eligible employee may provide such notice either orally or in writing to their immediate supervisor. These forms are available on the City's webpage, Human Resources HR Forms & Links - For City Employees page.

Employees are entitled to SPSL retroactive to January 1, 2021. If the City did not compensate the employee for leave that would otherwise have qualified as SPSL between January 1, 2021 and the effective date of this policy, in an amount equal or greater to what the employee would have been entitled under this policy, the employee is eligible for a retroactive payment from the City for such leave.

To receive payment for such leave, employees must make an oral or written request to be paid for such leave to the City's Human Resources 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 eligible employee.

City Response to Leave Requests

The City will confirm an employee's eligibility for leave or provide an explanation as to why they are not eligible.

Reinstatement

Upon return from an approved leave under EPSLA, an employee will be reinstated to the employee's original position or to a comparable position with equivalent pay, benefits, and other employment terms and conditions for which the employee is qualified. However, an

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employee has no greater rights to any benefit or position of employment than if the employee had been continuously working rather than on leave.

Emergency Paid Sick Leave Act (EPSLA) (Expired on December 31, 2020 and superseded by SPSL)

Eligibility

All employees are eligible for EPSLA regardless of how long they have been employed with the City of Pittsburg if:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.²
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 diagnosis.
4. The employee is caring for an individual under quarantine or isolation order or advised by a health care professional to self-quarantine.
5. The employee is caring for a child due to school closure or unavailability of the child's care provider due to COVID-19.
6. The employee is "experiencing any substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and Secretary of Labor." The statute does not provide any guidance on what this language means. It is believed Congress intended to insert a placeholder to expand eligibility later if an unexpected need arises, therefore eligibility under this item is subject to future update and clarification by Congress.

Eligibility is based on any of the above reasons, however any one employee may only use their total allotted EPSLA time, even if used for different reasons.

Compensation and Duration of Leave

Leave taken as Emergency Paid Sick Leave is in addition to any other leave accrued and does not accrue beyond 80 hours. Unused leave does not carry over after December 31, 2020 for any employees.

For leave taken under paragraphs (1), (2), or (3), full-time employees are entitled to 80 hours of paid leave at their regular rate of pay, subject to a \$511 per day and \$5,110 aggregate cap.

² Quarantine and isolation orders, as defined by the Department of Labor, include "shelter in place" orders. This eligibility criteria applies where an employee is unable to work because they are subject to a quarantine or isolation order, but only if being subject to the order prevents them from working or teleworking. An employee subject to the order may not receive this benefit under the EPSLA where the City does not have work for the employee.

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Part-time employees are entitled to paid leave for the average number of hours worked over a 2-week period at their regular rate of pay, subject to the same cap.

For leave taken under paragraphs (4), (5), or (6), full-time employees are entitled to 80 hours of paid leave at 2/3rds their regular rate of pay, subject to a \$200 per day and \$2,000 aggregate cap. Part-time employees are entitled to paid leave for the average number of hours worked over a 2-week period at 2/3rds their regular rate of pay, subject to the same cap.

Employees are not required to use other available paid leave (such as leave accruals available to the employee) before using sick leave under EPSLA. Employees are not required to find replacements to cover their duties during use of leave. The City of Pittsburg is prohibited from discharging or discriminating against any employee for requesting or taking paid sick leave under the EPSLA.

Employees may elect to use accrued leave from any leave bank source to supplement the 2/3rds regular rate being paid while on EPSLA under reasons (4), (5), or (6).

Coordination with EFMLEA

An employee requesting leave under EFMLEA will qualify for paid leave under reason (5) and therefore, such employee may use EPSLA during the initial 10-day, unpaid period of EFMLEA. Such employee is not required to use EPSLA for that purpose.

An employee requesting leave under EPSLA for reasons other than reason (5), may be eligible for regular medical leave in accordance with FMLA/CFRA. FMLA and CFRA are unpaid, however, an employee may use their own accrued leave or EPSLA in accordance with current policy.

If an employee is requesting leave under EPSLA for reason (4), EPSLA is available to employees for the care of an individual, which is undefined. Upon conclusion of EPSLA, eligibility for FMLA/CFRA is in accordance with the law, which defines eligibility for a family member.

Request Procedure

An employee using Emergency Paid Sick Leave must certify the reason for the leave and provide supporting documentation if possible. Human Resources will provide an Employee Certification of Need for Emergency Paid Leave form which will be available on the City's website and shall be submit directly to Human Resources prior to initiating leave.

In the event of a medical emergency where the employee is unable to provide the form prior to initiating leave, such form shall be submitted as soon as reasonably practicable. Forms shall be submitted by way of fax to Human Resources (925) 252-4138 or via email to Personnel2@ci.pittsburg.ca.us

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Reinstatement

Upon return from an approved leave under EPSLA, an employee will be reinstated to the employee's original position or 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.

Attachments:

Attachment A – Emergency Responders

Request for Emergency Paid Family and Medical Leave

Employee Request Form for Prospective COVID-19 Supplemental Paid Sick Leave (SPSL)

Employee Request Form for Retroactive COVID-19 Supplemental Paid Sick Leave (SPSL)

**Attachment A
 COVID-19 Emergency Responder Positions**

The Department of Labor has provided guidance relative to defining “emergency responder” to include any employee who is necessary for the provision of transport, care, comfort, and nutrition of patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

Specific classifications may be designated as Emergency Responders if the City Manager determines that such skills are necessary to provide aid to emergency response operations, including efforts to prevent the spread of COVID19. Currently, the City Manager has designated the following classifications as Emergency Responders:

CLASSIFICATIONS
Account Clerk (Public Works)
Accounting Technician (Public Works)
Administrative Specialist (Public Works)
Assistant Director of Economic Development & Recreation
Assistant Director of Public Works
Building Inspection Supervisor
Chief Building Official
Chief of Police
City Attorney
City Engineer
City Manager
Community Outreach Coordinator (Recreation/Outreach)
Development Manager
Director of Community Development
Director of Community Services
Director of Finance
Director of Human Resources
Director of Public Works
Director of Records and Council Services
Electrical Technician

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CLASSIFICATIONS
Electrical Apprentice
Environmental Affairs Manager
Environmental Health Specialist I
Environmental Health Specialist II
Equipment Mechanic
Equipment Shop Supervisor
Harbormaster
Lead Electrical Technician
Lead Marina Services Worker
Lead Public Works Superintendent
Maintenance Assistant
Maintenance Ld Worker - Env. Services/Fac. Util.
Maintenance Worker I - Env. Services/Fac. Util.
Maintenance Worker II - Env. Services/Fac. Util.
Office Assistant (Recreation/Outreach)
Planning Manager
Police Captain
Police Lieutenant
Police Officer
Police Sergeant
Public Works Superintendent
Public Works Supervisor
Recreation Coordinator
Recreation Supervisor
Senior Civil Engineer
Senior Combination Building Inspector
Senior Human Resources Analyst
Sweeper Operator
Utility Lineworker
Utility Supervisor
Utility Technician - (Electric/Gas)
Water Instrument/Maintenance Technician I
Water Instrument/Maintenance Technician II
Water Maintenance Mechanic I
Water Maintenance Mechanic II
Water Plant Apprentice Operator
Water Plant Operator

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CLASSIFICATIONS
Water Plant Superintendent
Water Plant Supervisor
Water Quality Analyst I
Water Quality Analyst II



Employee Request Form for Prospective COVID-19 Supplemental Paid Sick Leave (SPSL)

Please complete and return the form to your immediate supervisor if you are requesting COVID-19 Supplemental Paid Sick Leave (SPSL). You may orally request SPSL from your supervisor and he/she may submit form to Human Resources.

Employee Name: _____

Date of Request: _____

I am requesting SPSL because I am unable to work or telework for the following reason:

1. I am subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State 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. The government agency that has issued the quarantine or isolation order is: _____.
2. I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19. I am experiencing symptoms of COVID-19 and seeking a medical diagnosis. The name of the health care provider who advised me to self-quarantine is: _____.
3. I am experiencing symptoms related to a COVID-19 vaccine that prevent me from being able to work or telework.
4. I was excluded from the workplace as a result of a "close contact" exposure, as defined by the centers for disease control and prevention (CDC), pursuant to CAL/OSHA's COVID-19 emergency temporary regulations.
5. I am caring for a Family Member who is subject to a quarantine or isolation order or guidelines described above, or who has been advised to self-quarantine by a health care provider. The Family Member I am caring for is: _____ (state relation to you of Family Member)
6. I am caring for a Child whose school or place of care is closed due to COVID-19 or place of care is otherwise unavailable for reasons related to COVID-19 on the premises. The name of the school or place of care that is closed or unavailable is: _____.

Pay Entitlement

Up to two weeks (80 hours or a part-time employee's two week equivalent) of paid sick leave. Pays up to \$511 daily. If your pay (w/incentives) exceeds the daily limit, designate leave accruals to supplement (i.e. sick, vacation, comp time, or other). 1st _____ 2nd _____ 3rd _____ 4th _____

I am requesting SPSL beginning on _____ 2021. I expect to use SPSL until _____ 2021.

Employee Signature (UNAVAILABLE if completed by supervisor)

Date

Supervisor Signature

Date

FOR HUMAN RESOURCES USE ONLY

HR Representative Signature

Date

Copy to Payroll



Employee Request Form for Retroactive COVID-19 Supplemental Paid Sick Leave ("SPSL")

Please complete and return the following form to your immediate supervisor if you are requesting COVID-19 Supplemental Paid Sick Leave ("SPSL") retroactively for leave taken on or after January 1, 2021 and prior to 4/2021

You may also orally request retroactive SPSL payments from your supervisor(s). Supervisor may complete this form for employee.

Employee Name: _____

Date of Request: _____

I am requesting retroactive payments for SPSL because I was previously unable to work or telework for the following reason(s) on or after January 1, 2021 and prior to 4/2021:

I was subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State 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. The government agency that had issued the quarantine or isolation order is: _____. I am requesting payment for COVID-19 Supplemental Paid Sick Leave I took for this qualifying reason beginning on _____ 2021 and ending on _____ 2021.

I was advised by a health care provider to self-quarantine due to concerns related to COVID-19. The name of the health care provider who advised me to self-quarantine is: _____. I am requesting payment for COVID-19 Supplemental Paid Sick Leave I took for this qualifying reason beginning on _____ 2021 and ending on _____ 2021.

I was experiencing symptoms of COVID-19 and seeking a medical diagnosis; I am requesting payment for COVID-19 Supplemental Paid Sick Leave I took for this qualifying reason beginning on _____ 2021 and ending on _____ 2021.

I was caring for a Family Member who was subject to a quarantine or isolation order or guidelines described above, or who was advised to self-quarantine by a health care provider. The Family Member I was caring for is: _____ (state relation to you of Family Member) I am requesting payment for COVID-19 Supplemental Paid Sick Leave I took for this qualifying reason beginning on _____ 2021 and ending on _____ 2021.

I was caring for a Child whose school or place of care was/is closed due to COVID-19 was caring for a Child whose school or place of care was/is otherwise unavailable for reasons related to COVID-19 on the premises. The name of the school of place of care that was/is closed or unavailable is: _____. I am requesting payment for COVID-19 Supplemental Paid Sick Leave I took for this qualifying reason beginning on _____ 2021 and ending on _____ 2021,

I was experiencing symptoms related to a COVID-19 vaccine that prevented the me from being able to work or telework. I am requesting payment for COVID-19 Supplemental Paid Sick Leave I took for this qualifying reason beginning on _____ 2021 and ending on _____ 2021.

I was excluded from the workplace as a result of a "close contact" exposure, as defined by the centers for disease control and prevention (CDC), pursuant to CAL/OSHA's COVID-19 emergency temporary regulations.

The dates listed above must lie between January 1, 2021 and 4/2021. If the dates you are requesting SPSL is after 4/2021, please fill out the "Employee Request Form for Prospective COVID-19 Supplemental Paid Sick Leave".

Employee Signature (or supervisor if oral request)

Date

Supervisor Signature

Date

FOR HUMAN RESOURCES USE ONLY: HR Representative _____ Date _____

_____ Copy to Payroll