

**ORDINANCE NO. O-2021-01**

**AN ORDINANCE RATIFYING A CERTAIN MAYORAL EXECUTIVE ORDER DURING THE DECLARATION OF LOCAL STATE OF EMERGENCY**

**WHEREAS**, on March 23, 2020 the Mayor of the City of Wheaton declared a local state of emergency; and

**WHEREAS**, the declaration was entered by the Mayor in conformance with Illinois Municipal Code Section 5/11-1-6, the Illinois Emergency Management Agency Act Section 330/5/11, and Chapter 2, Article III, Section 2-127 of the Wheaton City Code; and

**WHEREAS**, upon declaring a local state of emergency the Mayor is provided the extraordinary power and authority to exercise by executive order all such powers of the corporate authorities and other officers of the city as may be reasonably necessary or appropriate to respond to the emergency; and

**WHEREAS**, the Mayor has issued executive orders some of which the City Council desires to ratify and adopt as acts on behalf of the Corporate Authorities; and

**WHEREAS**, executive orders not ratified remain in full force and effect unless otherwise rescinded by the Mayor or a majority vote of a quorum of the City Council or where they have expired as a matter of law.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of Wheaton that they hereby ratify the following executive order as necessary and appropriate so as to be fully authorized as if it had been adopted by the City Council contemporaneous with the issuance by the Mayor of the City of Wheaton:

1. Executive Order 2020-11: "Extending the benefits of the Families First Coronavirus Relief Act and excluding emergency responders from certain provisions of the expanded benefits" based on the continuing COVID-19 pandemic and its affect on the workforce, incorporated herein and fully set forth as Exhibit A.
2. That upon rescission or expiration of the foregoing executive order, the underlying ordinances or policies affected by the executive order shall return to and remain in full force and effect as originally constituted.
3. That if any portion of this Ordinance is deemed invalid by a court of competent jurisdiction it shall not affect the remaining portions of the Ordinance.
4. This ordinance shall become effective upon its passage, execution and publication as required by law.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

Roll Call Vote:

Ayes: Councilwoman Robbins  
Councilman Rutledge  
Councilman Zaruba  
Councilman Barbier  
Councilwoman Bray-Parker  
Councilwoman Fitch  
Mayor Suess

Nays: None

Absent: None

Motion Carried Unanimously

Passed: January 4, 2021  
Published: January 5, 2021

2020-11

**EXECUTIVE ORDER OF THE MAYOR OF THE CITY OF WHEATON ILLINOIS:  
"EXTENDING THE BENEFITS OF THE FAMILIES FIRST CORONAVIRUS RELIEF  
ACT AND EXCLUDING EMERGENCY RESPONDERS FROM CERTAIN PROVISIONS  
OF THE EXPANDED BENEFITS"**

**WHEREAS**, Section 2-127 "Emergency Powers and Duties, of Article III "Officers". of Division 2: "Mayor of Chapter 2 "Administration" of the Wheaton City Code et. seq. grants authorization to the Mayor of the City of Wheaton to enter executive orders "upon the declaration of a local state of emergency;" and

**WHEREAS**, the authority to declare a state of emergency and to issue local executive orders under Chapter 2, Section 2-129 of Article III, Division 2 is exclusive to the Mayor; and

**WHEREAS**, on March 23, 2020, I the Mayor of the City of Wheaton, Philip Suess entered a declaration of local state of emergency based on the COVID-19 pandemic; and

**WHEREAS**, on March 18, 2020, the President of the United States signed into law the Families First Coronavirus Response Act (FFCRA) which includes requirements for paid sick leave and emergency leave due to the COVID-19 pandemic; and

**WHEREAS**, the FFCRA will expire on December 31, 2020; and

**WHEREAS**, the local state of emergency based on the COVID-19 pandemic remains in effect; and

**WHEREAS**, the City of Wheaton has the desire to extend the expansion of Family Medical Leave benefits and Emergency Paid Sick Leave beyond the FFCRA expiration date; and

**WHEREAS**, the FFCRA authorized employers of health care providers and emergency responders to exclude such employees from provisions of the FFCRA; and

**WHEREAS**, the City of Wheaton must take actions to provide for the continuation of essential and critical services and provide for the health and safety of all City residents; and

**WHEREAS**, I as Mayor have concluded that an executive order extending the benefits of the FFCRA and excluding its "emergency responders" as the term is used in the FFCRA, from application of the provisions contained within the FFCRA' is necessary in order to continue such benefits, and to ensure and enable the City to further its efforts to continually respond to emergencies during the COVID-19 pandemic.

**NOW, THEREFORE, BASED ON THE FOREGOING RECITALS**, I, Philip J. Suess, as Mayor of the City of Wheaton, hereby order instantler, pursuant to my executive powers granted by law and the declaration of emergency, the following:

**SECTION 1. Extension of the Families First Coronavirus Relief Act benefits.** All benefits provided through the Families First Coronavirus Relief Act will be extended for eligible employees beyond the FFCRA expiration date of December 31, 2020 to June 30, 2021.

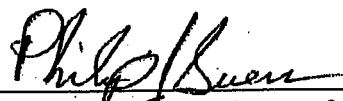
**SECTION 2. Exclusion of emergency responders from the provisions of the FFCRA.** This order hereby excludes application of the terms of the FFCRA to "emergency responders" as defined by the Secretary of Labor of the United States and includes the following City of Wheaton employees:

a. Law Enforcement Officers: Police Chief, Deputy Police Chiefs, Police Lieutenants, Police Sergeants, and Police Officers.

b. Firefighters, Paramedics, Emergency Medical Technicians: Fire Chief, Assistant Fire Chiefs, and Fire Lieutenants.

**SECTION 3. Eligible FFCRA Employees.** During the term of the policy all other eligible Wheaton employees shall have the FFCRA benefits as described in Exhibit 1 which is attached hereto and incorporated herein as if fully set forth.

**SO ORDERED** this 28<sup>th</sup> day of December 2020.

  
Philip J. Stuess, Mayor of the City of  
Wheaton

ATTEST:

  
City Clerk

Date: 12/28/20

## **EXHIBIT 1 - COVID-19 EXPANDED FMLA BENEFITS**

In order to assist eligible employees affected by the COVID-19 outbreak and to comply with the Families First Coronavirus Response Act, the City of Wheaton is expanding its Family and Medical Leave benefit and offering Emergency Paid Sick Leave. This policy will be in effect from April 1, 2020, until June 30, 2021. The City's existing FMLA leave policy still applies to all other reasons for leave outside of this policy.

### **Expanded FMLA Leave**

#### ***Employee Eligibility***

All employees who have been employed with the City of Wheaton for at least 30 days, except Sworn Personnel.

#### ***Reason for Leave***

Eligible employees who are unable to work (or telework) due to a need to provide care for their child because either the school or place of care has been closed or a regular childcare provider is unavailable provide childcare in consequence of the COVID 19 precautions. For purposes of this order:

- "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is-
  - under 18 years of age; or
  - 18 years of age or older and incapable of self-care because of a mental or physical disability.
- "Childcare provider" means a provider who receives compensation for providing childcare services on a regular basis, including:
  - a center-based childcare provider;
  - a group home childcare provider;
  - family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence);
  - other licensed provider of childcare services for compensation; or
  - a childcare provider that is 18 years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.
- "School" means an elementary or secondary school.

#### ***Duration of Leave***

Eligible employees are entitled to 12 weeks of leave to use from April 1, 2020, through June 30, 2021, for the purposes stated above. This time is included in and not in addition to the total FMLA leave entitlement of 12 weeks in a 12-month period. For example, if an employee has already taken 6 weeks of FMLA leave, that employee would be eligible for only the remaining 6 weeks of FMLA leave under this policy.

#### ***Pay During Leave***

Leave will be unpaid for the first 10 days; however, employees may use any accrued paid vacation, sick or personal leave during this time. *The employee may also elect to use the paid sick leave provided under the Emergency Paid Sick Leave Act, as further explained below.* After the first 10 days, leave will be paid

at two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Pay will not exceed \$200 per day, and \$10,000 in total. Any unused portion of this pay will not carry over to the next year.

#### ***Employee Status and Benefits During Leave***

An employee on an FMLA qualifying leave may continue in the City's health and dental plans. Coverage in the health and dental plans will remain on the same terms as if the employee had continued to work for a period of up to twelve (12) weeks. While the employee is active on the City's payroll, premiums will continue to be deducted from the employee's paycheck. If any portion of the FMLA-approved leave is unpaid, the employee has the option to manually pay their premiums to the City, or upon return, they may double their premium deductions until the premium is paid in full for the length of their unpaid leave.

Employees who fail to return to work from any FMLA qualifying leave will be required to pay full cost of the COBRA premium rate for the twelve-week period unless the failure to return to work was due to the recurrence or onset of a serious health condition or was otherwise beyond the employee's control. After twelve weeks, the employee can purchase continued coverage at COBRA rates for the period permitted by COBRA.

#### ***Procedure for Requesting Leave***

All employees requesting FMLA leave shall provide written notice, where possible, of the need for leave to the Human Resources Department as soon as practicable by filling out the "Request for Family/Medical Leave Form."

#### ***Employee Status After Leave***

Upon return from FMLA qualifying leave, an employee will be restored to their original job or to a job with equivalent pay, benefits, and employment conditions unless the employee would no longer be employed had the employee not taken the leave. Certain "key" employees may not be entitled to reinstatement. A "key" employee is a salaried eligible employee who is among the highest paid ten percent of all employees.

### **Emergency Paid Sick Leave**

#### ***Eligibility***

All full and part-time employees who are unable to work (or telework) due to one of the following reasons for leave:

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 seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for his or her child if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the secretary of health and human services in consultation with the secretary of the treasury and the secretary of labor.

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is-

- under 18 years of age; or
- 18 years of age or older and incapable of self-care because of a mental or physical disability.

#### ***Amount and Duration of Paid Sick Leave***

All eligible full-time employees will have up to 80 hours of paid sick leave available to use for the qualifying reasons above from April 1, 2020 through June 30, 2021. Eligible part-time employees are entitled to the number of hours worked, on average, over a two-week period.

#### ***Rate of Pay***

Paid emergency sick leave will be paid at the employee's regular rate of pay for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 will be compensated at two-thirds their regular rate of pay, or minimum wage, whichever is greater. Pay will not exceed:

- \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above; or
- \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

#### ***Interaction with Other Paid Leave***

- The employee may use emergency paid sick leave under this policy before using any other accrued paid time off for the qualifying reasons stated above.
- Employees on expanded FMLA leave under this policy may use emergency paid sick leave during the first 10 days of normally unpaid FMLA leave.

#### ***Procedure for Requesting Emergency Paid Sick Leave***

Employees must notify their manager or the Human Resources Department of the need and specific reason for leave under this policy. A form will be provided to all employees on the City's Human Resources intranet and/or in a manner accessible to all. Verbal notification will be accepted until practicable to provide written notice.

Once emergency paid sick leave has begun, the employee and his or her supervisor must determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive paid sick time.

#### ***Carryover***

Paid emergency sick leave under this policy will not be provided beyond June 30, 2021. Any unused paid sick leave will not carry over beyond June 30, 2021 or be paid out to employees.

#### ***Job Protections***

No employee who appropriately utilizes emergency paid sick leave under this policy will be discharged, disciplined or discriminated against for work time missed due to this leave.

