**Montgomery County Board of Commissioners**

**Ordinance 2020 – 11**

**Amending Employee Handbook and Adding Emergency Paid Sick Leave Policy and Emergency Family and Medical Leave Act Policy**

 **Whereas,** in response to COV-ID-19 emergency and the need to protect it employees from exposure to COVID-19 and the need to retain existing employees and attract future employees during this emergency, the Montgomery County Board of Commissioners (Commissioners) believes it is in the best interests of the County employees and the citizens of Montgomery County to implement emergency paid sick leave and expanded emergency Family and Medical Leave Act (FMLA) leave benefits to eligible employees; and

**Whereas**, on March 18, 2020, James D. Fulwider, as President of the Board, entered Executive Order 2020-1 which ordered the implementation of a pandemic leave policy which provided paid sick leave for employees of the Montgomery County government during the public health emergency; and

**Whereas**, on March 19, 2020, the federal Families First Coronavirus Response Act (FFCRA) was enacted, and the FFCRA requires government employers to provide emergency paid sick leave and emergency FLMA leave during the pending emergency; and

**Whereas,** the Commissioners now ratify the action ordered by President Fulwider under his emergency powers under Executive Order 2020-1 and replace the interim leave benefit policy with an expanded leave program which meets the requirements of the FFCRA; and

**Whereas,** the Commissioners have reviewed the Employee Handbook and now finds that revisions should be made in order to insert the new emergency leave policies into the Handbook.

 **It is therefore ordained** that Section 6.04.4 and 6.05.6 are hereby added to the Montgomery County Employee Handbook and reads as written in Exhibit A.

 **It is further ordained** that all provisions of the Employee Handbook, which are not expressly modified by the two new sections added by this ordinance will remain in full force and effect.

 **It is further ordained** that this ordinance is effective upon adoption.

Adopted March 23, 2020.

 **Montgomery County**

**Board of Commissioners:**

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 James D. Fulwider, President

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 John Frey, Vice President

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 Dan Guard, Member

Attest:

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Jennifer Andel, Auditor

**Exhibit A**

**A new Section, Section 6.04.4 will be added and it will read as follows:**

“**6.04.4 Emergency Paid Sick Leave Policy**: Beginning March 17, 2020, Montgomery County will provide emergency paid sick leave, as provided in this Section, for employees of Montgomery County. This paid sick leave program, which meets the requirements of the federal Families First Coronavirus Response Act of 2020 (FFCRA) and which provides benefits which exceed the FFCRA, provides to all employees of Montgomery County additional paid leave for employees who cannot work due to a qualifying event related to the Coronavirus 2019 emergency.

**6.04.4.1 Qualifying Events**: If an employee is not able to work or work from home because of any of the following qualifying events, the employee is entitled to emergency paid sick leave:

**6.04.4.1.1 Self-Isolation**. The Employee is in self isolation or is hospitalized because of a diagnosis of Coronavirus 2019 (COVID-19);

**6.04.4.1.2 Symptomatic**. The employee is experiencing symptoms of COVID-19 and needs to obtain a medical diagnosis;

**6.04.4.1.3 Order or Directive**: The employee is complying with an order or recommendation from a public official with jurisdiction or a health care provider or his employer that the employee’s physical presence at work would jeopardize others because of (a) the employee’s exposure to COVID-19 or (b) the exhibition by the employee of the symptoms of COVID-19;

**6.04.4.1.4 Care for Family Member**: The employee is assisting or caring for a family member who has been diagnosed with COVID-19, has symptoms of COVID-19, or has been ordered or recommended to self-isolate because of either exposure to COVID-19 or is because such family member is experiencing symptoms of COVID-19. For purposes of this section, the term “family member” means a parent, spouse, son or daughter under the age of 18 years old, a son or daughter or next of kin who is pregnant, a senior citizen, has a disability of has functional needs, a grandparent or a grandchild; or

**6.04.4.1.5 Child Home from School**. The employee is caring for a child, step-child or ward who is under the age of 18 years and is at home with the employee because of a school or child care facility closure related to the COVID-19 emergency.

 **6.04.4.2 Leave Benefit**: An employee who experiences a qualifying leave as described in Section 6.04.4.1 is entitled to emergency paid sick leave as follows:

 **6.04.4.2.1 Full-Time Employees**: The full length of time of the qualifying event not to exceed the following:

6.04.4.2.1.1 County Police Department and Central Communication Center. Not to exceed 84 hours; and

6.04.4.2.1.2 Other Full-Time: Not to exceed 80 hours.

 **6.04.4.2.2 Other Employees**: The full length of time of the qualifying event not to exceed the number of hours the employee would be expected to work for the County during the qualifying event. If the employee is not scheduled to work during the qualifying event or if the irregular nature of the employee’s hours make it difficult to determine the number of hours the employee would work, the leave benefit will be the average number of hours the employee worked in the six-month period immediately prior to the leave period.

**6.04.4.3 Compensation**: The amount of paid leave will be based upon the salary of salaried employee and the hourly wage of all other employees.

**6.04.4.4 No Requirement to Exhaust Other Leave**. An employee is not required to exhaust other paid or unpaid leave prior to taking emergency paid sick leave.

**6.04.4.5 Additional Benefit**. The emergency paid sick leave provided for in this section is in addition to Paid Time Office (PTO) provided to the employees.

**6.04.4.6 Expansion of Benefit.** The Board of County Commissioners may expand or modify the benefits for this leave as warranted by the emergency circumstances.

**6.04.4.7 Application for Leave**. Any employee who believes that they have experienced a qualifying event may apply for the leave benefit by notifying the employee’s supervisor and completing in and all applications and providing such documentation as is deemed by his or her supervisor to be required under this policy. The supervisor will determine whether the employee is eligible for leave and will notify the employee of the determination.

**6.04.4.8 Duty to Notify**. Every employee has the obligation to notify his or her supervisor if the employee:

**6.**04.4.8.1 has been diagnosed with COVID-19;

**6.**04.4.8.2 has symptoms of COVID-19,

**6.**04.4.8.3 has been exposed to COVID-19;

**6.**04.4.8.4 has traveled internationally or domestically to an area where there is a COVID-19 outbreak;

**6.**04.4.8.5 lives with a person who has been diagnosed with COVID-19, has symptoms of COVID-19, has been exposed to COVID-19, or has traveled internationally or domestically to an area where there is a COVID-19 outbreak

**6.04.4.9 Directives**. Every employee has the obligation to follow any and all isolation or self-quarantine directives of his or her employer which are designed to protect the employee, other employees or members of the public from exposure to COVID-19. Such directives may also include, but are not limited to, directives to work from home, directives to not attend planned meetings or conferences.

**6.04.4.10 Work from Home**. If an employee is directed to work from home during this public health emergency, the employee will record the amount of time worked each day and provide such records to his or her supervisor not less than weekly. If the employee is able to work from home, the hours of actual work at home will not be counted as emergency paid leave hours.

**6.04.4.11 No Right to Compensation for Unused EPSL**. At termination of the employee’s employment, the employee has no right to compensation for unused emergency paid sick leave.

**6.04.4.12 Violation of Policy**. Any employee who violates this policy or who obtains emergency paid leave by providing false information to his or her employer will be subject to discipline, including but not limited to suspension and termination.

**6.04.4.13 At-Risk Employees**. The County reserves the right to require employees who are at-risk to COVID-19 because of an underlying medical condition or other risk factor to either work from home or self-isolate from exposure to COVID-19. If the employer requires an at-risk employee to work from home or self-isolate, the employer may treat the at-risk condition as a qualifying event and, in its discretion, award emergency paid sick leave to the employee.”

**A new section, Section 6.05.6 will be added and it will read as follows:**

“**6.05.6 Emergency Paid Family and Medical Leave**. Beginning April 2, 2020 and ending on December 31, 2020, Montgomery County will provide emergency paid Family and Medical Leave Act leave (EFMLA), as provided in this Section, for eligible employees of Montgomery County. This paid FMLA leave program, which meets the requirements of the federal Families First Coronavirus Response Act of 2020 (FFCRA), provides to all eligible employees of Montgomery County up to twelve (12) weeks of additional leave, all of which is paid leave except for the first fourteen (14) days, for employees who cannot work due to a qualifying event related to the Coronavirus 2019 emergency.

**6.05.6.1 Eligible Employees**. In order to be eligible for EFMLA, an employee must have been employed by Montgomery County for at least 30 days and have a qualifying event.

**6.05.6.2 Qualifying Events**. An eligible employee is entitled to EFMLA if an employee is not able to work or work from home because of any of the following qualifying events:

**6.05.6.2.1 Self-Isolation**. The Employee has a need for leave in order to comply with a recommendation or order by a public official with jurisdiction or health care provider that the employee’s physical presence on the job would jeopardize the health of others because of (a) exposure to COVID-19 or (b) the employee is exhibiting symptoms of COVID-19 and the employee is unable to both perform the functions of his or her position and comply with such recommendation or order;

**6.05.6.2.2 Care for Family Member**: The employee has a need for leave in order to care for a family member of the employee with respect to whom a public official with jurisdiction or a health care provider makes a determination that the presence of the family member in the community would jeopardize the health of other individuals because of the (a) exposure of such family member to COVID-19 or (b) the family member exhibits symptoms of COVID-19. For purposes of this section, the term “family member” means a parent, spouse, son or daughter under the age of 18 years old, a son or daughter or next of kin who is pregnant, a senior citizen, has a disability of has functional needs, a grandparent or a grandchild; or

**6.05.6.2.3 Child Home from School**. The employee is caring for a child, step-child or ward who is under the age of 18 years and is at home with the employee because of a school or child care facility closure related to the COVID-19 emergency.

**6.05.6.3 Leave Benefit**: An eligible employee who experiences a qualifying leave as described in Section 6.05.6.2 is entitled to up to twelve (12) weeks of EFMLA leave as follows:

 **6.05.6.3.1 Unpaid EMFLA**. The first fourteen (14) days of EFMLA leave is unpaid.

 **6.05.6.3.2 Paid EMFLA**. After the first fourteen (14) days of EFMLA leave, a full-time employee is entitled to receive compensation equal to two-thirds of the employee’s normal salary or wage up to Two Hundred Dollars ($200) per day, but not to exceed a total of Ten Thousand Dollars ($10,000) in 2020. For an employee other than a full-time employee, the amount of paid EFMLA will not exceed two-thirds of the amount of wages the employer expected to pay the employee during the leave period. If the employee is not scheduled to work during the qualifying event or if the irregular nature of the employee’s hours make it difficult to determine the number of hours the employee would work, the leave benefit will be the average number of hours the employee worked in the six-month period immediately prior to the leave period.

**6.05.6.4 No Requirement to Exhaust Other Leave**. An employee is not required to exhaust other paid or unpaid leave prior to taking EFMLA leave.

**6.05.6.5 Additional Benefit**. The EFMLA leave provided for in this section is in addition to other Family Medical Leave Act leave, Paid Time Off (PTO), and other leave provided to the employees.

**6.05.6.6 Application for Leave**. Any employee who believes that they have experienced a qualifying event may apply for the leave benefit by notifying the employee’s supervisor and completing in and all applications and providing such documentation as is deemed by his or her supervisor to be required under this policy. The employer will determine whether the employee is eligible for leave and will notify the employee of the determination.

**6.05.6.7 No Right to Compensation for Unused EFMLA**. At termination of the employee’s employment, the employee has no right to compensation for unused EFMLA leave.

**6.05.6.8 Violation of Policy**. Any employee who violates this policy or who obtains EFMLA leave by providing false information to his or her employer will be subject to discipline, including but not limited to suspension and termination.”