

RESOLUTION

NO: 2020-04-084

LIVINGSTON COUNTY

DATE: April 1, 2020

Resolution Exempting/Excluding Livingston County Emergency Responders and Health Care Providers From the Families First Coronavirus Response Act and Authorizing Extended, Additional and/or Modified Temporary Emergency COVID-19 Paid Leave and Policies to Such Exempted/Excluded Emergency Responders and Health Care Providers - County Administration

WHEREAS, on March 18, 2020, the Families First Coronavirus Response Act (“FFCRA”) was signed into law. The FFCRA includes two (2) provisions that provide temporary emergency COVID-19 related paid/partially-paid leave to certain employees covered by the FFCRA: (1) the Emergency Paid Sick Leave Act (“EPSLA”); and (2) the Emergency Family and Medical Leave Expansion Act (“EFMLEA”). The FFCRA’s effective date of April 1, 2020 and, on March 30, 2020 the Department of Labor (“DOL”) provided online guidance as to many of the provisions of the FFCRA (“the DOL Guidance”); and

WHEREAS, the FFCRA authorizes the DOL or employers to exempt/exclude employees who are healthcare providers or emergency responders from coverage or application from the EFMLEA’s expanded leave and/or from the definition of employee under the EPSLA; and

WHEREAS, the healthcare providers and emergency responders exemptions/exclusions authority appears to be in recognition of the reality that in an emergency pandemic, the public depends on emergency responders and healthcare providers to be available to deliver critical and essential emergency response and public health services to the community whom it is the County’s mission to serve, particularly under emergency pandemic conditions which by their very nature create a strain on both available staffing and an increased demand for such critical services; and

WHEREAS, the DOL Guidance defines excludable “Healthcare Providers” to include, in relevant part:

For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any ... health care center, clinic, post-secondary educational institution offering health care instruction... **local health department or agency**, ..., any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions; and,

WHEREAS, the DOL Guidance defines excludable “Emergency Responder” to include, in relevant part:

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of **transport, care, health care, comfort, and nutrition of such 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. ...

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

- WHEREAS,** Livingston County is the employer or co-employer of Healthcare Providers and Emergency Responders as defined or contemplated under the FFCRA including, but not limited to: law enforcement, emergency medical services, 911 emergency dispatch employees, emergency management, public health and clinical care, public works, corrections, essential medical and nutritional transportation, as well as individuals within the County or departments whose work is necessary to maintain the operations of these facilities, including but not limited to, information technology, finance and human resources and additional programs or positions as may be identified by applicable Department Directors or Elected Official as within the purview of emergency responder or healthcare provider; and
- WHEREAS,** based upon the operations of Livingston County and DOL Guidance, the County Board of Commissioners (in conjunction with appropriate Elected Officials and/or Department Directors) here in good faith and reasonably seek to classify the positions, departments and personnel which the County deems to be Emergency Responders or Healthcare Providers necessary to serve the public during an emergency; and
- WHEREAS,** the State of Michigan has issued Interim Recommendations for COVID-19 Community Mitigation Strategies (“State Recommendations”), including strategies for workplaces; and
- WHEREAS,** on March 23, 2020, the Governor of Michigan issued Executive Order No. 2020-21 (“Exec. Order 2020-21”) addressing temporary requirements to suspend activities that are not necessary to sustain or protect life, which further limited County operations; and
- WHEREAS,** the Sheriff, Emergency Medical Services Director and the Emergency Dispatch Director have undertaken to provide emergency assistance or childcare options to critical employees, emergency responders and healthcare providers to seek to address and at least partially mitigate childcare issues for employees while seeking to assure critical and necessary staffing levels of those Office’s/Department’s emergency responders and healthcare providers; and
- WHEREAS,** the Sheriff, Drain Commissioner, Health Officer, Medical Services Director, Emergency Dispatch Director, Livingston Essential Transportation Director, Human Resources Director and Acting County Administrator have been consulted regarding this Resolution, and concur in this approach; and,
- WHEREAS,** Livingston County is taking reasonable measures to safeguard the health of its employees and to serve the people the County while maintaining limited operations in an effective and efficient manner and continuing to perform critical and essential services to the public.

THEREFORE BE IT RESOLVED in order to seek to maintain sufficient staffing to provide critical and essential healthcare and emergency response services necessary for the protection and preservation of the public, life, property, evidence, and the environment, the Board of Commissioners hereto exempts/excludes those County employees who are, or reassigned or redeployed to act as in the capacity of a Healthcare Provider or Emergency Responder from coverage or application from the EFMLEA and/or from the definition of employee under the EPSLA. The positions included within the definition of Healthcare Providers or Emergency Responders shall be as defined to the broadest extent permitted by law and shall include but not be limited to persons assigned to, reassigned to, or redeployed to any of the following: Road Patrol employees, management and support; Emergency Medical Services employees, management and support; Emergency Dispatch employees, management and support; Corrections employees, management and support; Health Department providers, employees, management and support; public works employees, management and support; LETS drivers performing patient and/or nutritional transport, management and support; airport employees necessary to provision of medical/patient/nutritional transport or other emergency services, management and support; Information Technology employees necessary to maintain the operations of these facilities, management and support; Finance and Human Resources employees necessary to maintain the operations of these facilities, management and support; and, such further and additional Emergency Responders and/or Healthcare Providers permitted by law and designated by the applicable department director or Elected Official.

BE IT FURTHER RESOLVED that the Sheriff, Health Officer, Drain Commissioner, Emergency Dispatch Director, Emergency Medical Services Director, LETS Director, County Administrator, Human Resources Director, Airport Manager and/or other Elected Officials, or their respective designees, shall evaluate applicable County operations and identify to Administration and Human Resources such further or additional necessary or additional positions within the Department/Office which they believe to be properly within the definition of Healthcare Providers or Emergency Responders under the FFCRA. Such delineation may be modified by Administration and the applicable Elected Official based upon future guidance by the DOL, the courts, or Corporation Counsel.

BE IT FURTHER RESOLVED that the attached Temporary Emergency COVID-19 Leave Policy Applicable to Exempted/Excluded Emergency Responders and HealthCare Providers is hereby approved to support our employees in response to COVID-19 as a tool for departments to utilize in response to COVID-19 for Exempted/Excluded Emergency Responders and Health Care Providers shall be eligible for a grant of up to fourteen (14) calendar day regularly scheduled work period of paid COVID-19 leave for an applicable leave granted or extended past April 1, 2020 under such terms and conditions as deemed prudent by Administration and applicable Elected Officials, in consult with affected Department Directors, to assure critical staffing levels of emergency responders and healthcare providers and the delivery essential emergency and public healthcare services to the community.

BE IT FURTHER RESOLVED that the Livingston County Board of Commissioners hereby extends approval of the previously approved Temporary Emergency Telecommuting Arrangement as a tool for departments to utilize in response to COVID-19 to continue to be effective in accordance with social distancing requirements of a State of Michigan Governor's Executive Order or through April 30, 2020, whichever is sooner.

BE IT FURTHER RESOLVED that the grant, extension or compensation status of any COVID-19 related leave on or after April 1, 2020 for those County employees not exempted by the County or by law from coverage under the FFCRA shall be considered exclusively under the requirements, terms, conditions and procedures provided by applicable law including, but not limited to, the EFMLEA, the EPSLA, the Family and Medical Leave Act and/or appropriate collective bargaining agreement leave provisions (for unit employees) or County leave policies (for non-unit employees).

BE IT FURTHER RESOLVED that the Livingston County Board of Commissioners hereby repeals, revokes and rescinds such provisions of Resolution 2020-03-080 and/or the Temporary Emergency Leave Policy applicable to COVID-19 sick related leaves granted on or after, or extended past April 1, 2020 as applied to Exempted/Excluded Emergency Responders and HealthCare Providers and/or to the extent inconsistent with this Resolution.

BE IT FURTHER RESOLVED that the eligibility for, application of, or procedures for grant or compensation of COVID-19 related compensation or leave may be modified by Administration to comply with changing circumstance, staffing requirements, the law, anticipated future DOL regulations or as recommended by Corporation Counsel.

BE IT FURTHER RESOLVED that the provision of certain benefits law may be subject, as to certain employees, to notice and/or possible bargaining requirements and Administration is authorized to provide such notice and satisfy such requirements to effectuate this Resolution.

#

MOVED:

G. Childs

SECONDED:

R. Bezotte

CARRIED:

Roll Call Vote: Yes (7): G. Childs, K. Lawrence, W. Green, W. Nakagiri, D. Helzerman, R. Bezotte, and C. Griffith; No: (0) None; Absent (1): D. Dolan