



# BOARD OF COMMISSIONERS SPECIAL MEETING AGENDA

April 1, 2020

8:00 AM

Virtual Meeting Room 399-700-0062

*"The mission of Livingston County is to be an effective and efficient steward in delivering services within the constraints of sound fiscal policy. Our priority is to provide mandated services which may be enhanced and supplemented to improve the quality of life for all who work, reside and recreate in Livingston County."*

Pages

1. **CALL SPECIAL MEETING TO ORDER**
2. **MOMENT OF SILENCE FOR REFLECTION**
3. **PLEDGE OF ALLEGIANCE TO THE FLAG**
4. **ROLL CALL**
5. **CALL TO THE PUBLIC**
6. **APPROVAL OF AGENDA**
7. **REPORTS**
8. **RESOLUTIONS FOR CONSIDERATION**  
Resolutions 2020-04-083 and 2020-04-084
  - a. **2020-04-083** 2  
Resolution Authorizing Extended, Additional and/or Modified Temporary Emergency Employment Provisions in Response to COVID-19 for Employees Not Excluded/Exempted From Families First Coronavirus Response Act - County Administration
  - b. **2020-04-084** 5  
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
9. **CALL TO THE PUBLIC**
10. **ADJOURNMENT**

RESOLUTION

NO: 2020-04-083

LIVINGSTON COUNTY

DATE: April 1, 2020

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**Resolution Authorizing Extended, Additional and/or Modified Temporary Emergency Employment Provisions in Response to COVID-19 for Employees Not Excluded/Exempted From Families First Coronavirus Response Act - County Administration**

**WHEREAS,** the State of Michigan has issued Interim Recommendations for COVID-19 Community Mitigation Strategies (“State Recommendations”), including strategies for workplaces; and

**WHEREAS,** the State Recommendations include encouraging employees to stay home when sick, encouraging staff to tele-work when feasible, particularly individuals at risk of severe illness, and other measures to encourage social distancing to limit the spread of the virus; 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,** on March 18, 2020, the Families First Coronavirus Response Act (“FFCRA”) was signed into law. The FFCRA includes two (2) distinct provisions that provide emergency COVID-19 related 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”). It is the current understanding that the Department of Labor (“DOL”) will provide clarifying regulations in the near future following the FFCRA’s effective date of April 1, 2020.

**WHEREAS,** on April 1, 2020, the provisions of the FFCRA go into effect; and

**WHEREAS,** Livingston County is taking reasonable measures to safeguard the health of our employees and the people we serve 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 light of the partial County closure effective March 17, 2020 to April 13, 2020, Exec. Order 2020-21, or to continue to be effective in accordance with other social distancing requirements of a State of Michigan Governor’s Executive Order or through April 30, 2020, whichever is sooner, and as a reasonable mitigation strategy in response to COVID-19: As to those regular full-time and part-time employees who are deemed by their applicable department head or Elected Official as non-essential/non-critical and who are directed by their applicable department head or Elected Official not to report because of a temporary closure, partial closure, or reduction in services, and who are not approved to telecommute -- the Livingston County Board of Commissioners authorizes continuation of these employees’ regular pay and benefits in accordance with social distancing requirements of a State of Michigan Governor’s Executive Order or through April 30, 2020, whichever is sooner. As a condition of this continued pay and benefits, employees are expected to remain ready and able to work if called to do so by their department head or Elected Official.

**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 granting of, 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). As provided by law, EPSLA expires on Dec. 31, 2020, and employees may not carry over leave from one year to the next and employees are not entitled to reimbursement for unused EPSLA leave upon termination, resignation, retirement, or other separation from employment.

**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 as to the granting of additional COVID-19 sick related-leave or compensation as to applicable leaves granted on or after, or which extend past, April 1, 2020, as applied to those County employees who not exempted from coverage under the FFCRA.

**BE IT FURTHER RESOLVED** that the eligibility for, application of, or procedures for granting of or compensation of COVID-19 related compensation or leave under the FFCRA may be modified by County Administration to comply with the amendments in such laws and/or anticipated future DOL regulations.

**BE IT FURTHER RESOLVED** that the provision of certain benefits not mandated by 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.

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**MOVED:  
SECONDED:  
CARRIED:**

# EMPLOYEE RIGHTS

## PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires 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 will apply from April 1, 2020 through December 31, 2020.

### ► PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅔ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### ► ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

### ► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

- |   |   |
|---|---|
| <ol style="list-style-type: none"><li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li><li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li><li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li><li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li></ol> | <ol style="list-style-type: none"><li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li><li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li></ol> |
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### ► ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

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For additional information  
or to file a complaint:

**1-866-487-9243**

TTY: 1-877-889-5627

[dol.gov/agencies/whd](https://dol.gov/agencies/whd)



WH1422 REV 03/20

RESOLUTION

NO: 2020-04-084

LIVINGSTON COUNTY

DATE: April 1, 2020

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**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

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**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.

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**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.

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**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 FUTURE 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.

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**MOVED:**

**SECONDED:**

**CARRIED:**

Roll Call Vote:

# **Temporary Emergency COVID-19 Leave Policy Applicable to Exempted/Excluded Emergency Responders And Health Care Providers Effective April 1, 2020**

- A. In response to the COVID-19 outbreak and in consultation with the Livingston County Health Department, the Livingston County Board of Commissioners authorizes the County Administrator and Elected Officials, or their designees, to appropriately monitor and coordinate actions and implement measures to safeguard the welfare of its employees and residents while maintaining operations in an effective and efficient manner. After April 1, 2020 and through December 31, 2020, employees who are healthcare providers or emergency responders exempted/excluded from coverage or application from the Emergency Family and Medical Leave Expansion Act (“EFMLEA”) and from the definition of employee under the Emergency Paid Sick Leave Act (“EPSLA”) (an “Exempt Employee” or collectively “Exempt Employees”) may be authorized -- upon request by the Exempt Employee -- a temporary emergency leave of up to three (3) work days for any Exempt Employee who reasonably believes he/she has been exposed or infected with COVID-19 to permit the employee an opportunity to contact his/her healthcare provider for examination to seek a diagnosis, testing and treatment. During the first three (3) days of a temporary emergency leave absence (“Temporary Emergency Leave”) supervisors shall not require a healthcare provider’s note for Exempt Employees who are experiencing COVID-19 symptoms (including, coughing, fever, shortness of breath) and are seeking a medical from a healthcare provider in that offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.
- B. The Temporary Emergency Leave granted under this Policy may be extended for up to two (2) consecutive work weeks (or such additional or longer period as may in the future be granted by the Board of Commissioners) if an Exempt Employee's healthcare provider confirms, in writing, that an employee has been infected with COVID-19, is reasonably likely to spread COVID-19 to coworkers or the public through the performance of the employee's regular job duties, and/or is unable to perform the essential functions of his/her job without possible harm to himself/herself or others.
- C. An Exempt Employee diagnosed with COVID-19 must provide doctor’s certification clearing them to work in order to return. This provision shall in no-way be interpreted to limit the County’s authority at law to require such further and/or additional testing or clearances for employees or other to implement other measures to safeguard the health of employees and the public while maintaining operations in an effective and efficient manner and continuing to perform critical and essential services.
- D. An Exempt Employee may be instructed not to report if the employee is showing symptoms of COVID-19 (including, coughing, fever, shortness of breath) until they are released by a healthcare provider.
- E. A full-time Exempt Employee may granted Temorary Emergency Leave equal to, but not exceeding the total hour equivalent of the position’s normal budgeted hours for a normal two-week pay-period

(normally, 80 hours, but this may vary by position) (pro-rated for part-time). Eligibility for Temporary Emergency Leave expires on December 31, 2020, and employees may not carry over leave from one year to the next and not entitled to reimbursement for unused Temporary Emergency Leave upon termination, resignation, retirement, or other separation from employment.

- F. Absences using Temporary Emergency Leave will not be counted as an unscheduled absence. However, nothing shall alter or amend the current County policy that both paid and unpaid leave for an otherwise qualifying reason will count toward FMLA time off pursuant to employer policies. The attribution or non-attribution of Temporary Emergency Leave to existent FMLA limits shall be applied consistent with County policies and the law.
  
- G. If an Exempt Employee believes their Temporary Emergency Leave absence will exceed the allowable hours (pro-rated for part-time) authorized by this special Temporary Emergency Leave policy, the employee may request additional paid or unpaid leave pursuant to the normal applicable County policies or provisions of the applicable collective bargaining agreement. Normal verification requirements will apply, which may include but not be limited to verification from a health care provider to the Human Resources Director.