# Glendale City Employees Association

# June 2020 News

## Contract Bargaining Update

Last month, your Negotiating Team (Orlando Urquidez, Luis Hernandez, Gina Randolph, Kerri Zelenak, Bertha Albright, Jaime Avalos, Rhoquel Huylber, Dominique Paniagua and CEA Staff Brian Niehaus) began formal negotiations with the City. As the world has been turned upside down by the Virus and the shutdown that followed, the regular order of negotiating a successor MOU has likewise been upended. While we submitted our initial proposal with increases as we discussed with you earlier this year, it quickly became clear that pursuing these increases in this environment could be a losing strategy. We are now exploring a trimmed down package, as we watch the financial picture come into focus. We want to guard against any talks of concessions or cuts. We hope to get something secured this month, likely in the form of a short-term MOU with some small improvements like additional holidays and higher vacation cash outs. We will always bring any tentative agreement to you for a ratification vote. In the meantime, know that although the contract expires at the end of this month, all terms and conditions in the current MOU will continue uninterrupted even if we do not have a new agreement by then. *Thank you for your continued support!*

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# *Returning to Work in the Post-COVID-19 World*

It has been 3 long months of Shelter-in-Place! Although many public sector workers continued to work during the quarantine – both on-site and remotely – it still comes as news, if not shock, to most people that agencies are re-opening to the public. Its true many private businesses remain closed. But public agencies provide essential public services and will be among the first to re-open. Each agency is approaching this differently, both in terms of how and when. But the fact is that many agencies will re-open soon. Here are some things to keep in mind for when your Agency starts this phase.

**Added Safety Measures**: Agencies must take all reasonable steps to reduce or eliminate the risk of COVID-19 spreading in the workplace. Depending on local or state ordinances, CDC guidelines, and the nature of the specific worksite, this may include protective measures such as maintaining social distancing, limiting the size of any group meetings, limiting the numbers of persons in a confined space at any given time, inserting physical barriers to protect employees working at public counters, facilitating the delivery or contactless pick-up, and conducting temperature screenings. You will see a lot of facemasks, hand-sanitizer, and protective barriers in the post-Shelter-in-Place workplace.

Many agencies are adopting return-to-work policies that set forth necessary safety guidelines. The important thing to remember is that both the policy and any impacts on terms and conditions of employment are negotiable. Your Association should review any policy and, if necessary, contact professional staff for help. Truth be told, many policies will not require a formal meet and confer (which may still be done by teleconference or videoconference). Most workers support basic safety measures, and for those who are at a high-risk of developing extreme symptoms, will want to insist on them. But there are some important points to keep in mind.

- The Agency should commit to following state and local guidelines to ensure the health and safety of employees and residents and should set forth measures to keep the work environment safe for all who enter.
- The Agency should continue to re-assess its approach as the situation evolves.
- The policy should identify how the worksite and any workstations will be sanitized and disinfected, by whom, and how frequently, especially any high-traffic areas.
- It should identify limits or restrictions on Agency-related travel.

- It should encourage social distancing and working remotely or telecommuting for any eligible employees, especially any who may be in the high-risk category.
- Employees who work onsite may be screened for COVID-19 symptoms, including temperature screening. Normal temperatures can vary widely, so it is important to set the threshold at 100.4 or above. Temperature screenings should be done by a contact-less thermometer.
- Any time an employee spends at an onsite temperature screening should be paid time. The policy should also identify how the Agency will safeguard employee privacy, including medical information and any temperature reading.
- Employees who exhibit symptoms, refuse screening, or whose temperature exceeds the threshold may be sent home and asked to self-isolate. The employee may need to get tested or released from their doctor before returning to work.
- If an employee tests positive for COVID-19, the agency is required by state and local law to (1) notify the local health department and disclose the employee's information and any others who may have come into contact with this person at the worksite, and (2) follow contact tracing protocols, which may include having employees answer questions from the local health department and completing a Contact Tracing Form.

**Workers Compensation Benefits**: Many agencies began designating employees as "essential workers" in late March and early April. Public Works crews, Public Safety staff, and some Finance Department employees were early examples of this. But last month, after California Governor Gavin Newsom signed Executive Order N-62-20 on May 6, some agencies began taking a second look at who is really "essential."

The Order establishes a rebuttable presumption that an essential worker infected with COVID-19 contracted the virus *on the job*. This shifts the burden of proof from the worker to the employer (or insurance carrier) to rebut the presumption. In other words, the agency can only contest whether it is an on-the-job injury based on strict, proven conditions. The presumption is retroactive to March 19, 2020 (when Governor Newsom ordered Shelter-in-Place) and extends to 60 days from the date this latest order was signed. This means that an essential worker who contracted the virus between March 19 and July 5 is presumed to have contracted the virus on the job and is therefore eligible for workers compensation benefits. The Governor may extend this order if he chooses.

Before this Order, the burden of proof was on the worker to establish that he or she was subject to a special or materially greater risk than the public at-large. It is difficult for a worker to prove precisely when and where the virus was contracted. This presumption alleviates that problem and should make many more essential workers eligible for benefits. It will also significantly limit the number of cases where the agency will contest whether contracting COVID-19 was job-related. The presumption applies if ALL the following requirements are satisfied:

1. The employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction.
2. The day on which the employee performed labor or services at the employee's place of employment at the employer's direction was on or after March 19, 2020.
3. The employee's place of employment was not the employee's home or residence.
4. The diagnosis was made by a physician who holds a physician and surgeon license issued by the California Medical Board and that diagnosis is confirmed by further testing within 30 days of the date of the diagnosis.

The presumption covers any employees who must work outside of their homes during the stay-at-home order at the employer's direction. While all essential workers who were required to report to work are clearly covered, the presumption also covers any non-essential workers who performed "labor or services at the employee's place of employment at the employer's direction." The presumption would not cover employees who went to their place of employment without their employer's direction. An employee not covered by the presumption can still claim benefits if the facts support the claim. The only difference is that the employee has the burden of proof in this instance. Before the benefits can take effect, including any total temporary disability ("TTD") benefits, any other sick leave under local law or ordinance or the Families First Coronavirus Response Act (FFCRA) must first be used and exhausted. Once these benefits run out, a worker can then receive TTD benefits. If a worker would have been entitled to greater benefits through workers compensation than they might be through other leave benefits, it is possible that additional workers compensation benefits may be owed retroactive to when the claim was initiated. The Order eliminates any waiting periods to file.

**FFCRA Leave**: The FFCRA is new Federal legislation that requires employers – including public agencies – to provide employees with emergency paid sick leave and expanded

family and medical leave for specified reasons related to COVID-19. The paid sick leave is in addition to any sick, vacation, or Paid-Time-Off (PTO) that you already accrued. It does not come out of your existing leave accruals. But the expanded family and medical leave is ***not*** an additional 12-weeks on top of what you already qualify for. It just allows you to use family medical leave for qualifying absences that ordinarily would not be covered.

The law applies from April 1, 2020, through December 31, 2020. Covered employees get up to two weeks (80-hours) of paid sick leave based on their regular rate of pay at:

- 100% for qualifying reasons #1-3 below (up to $511 daily and $5,110 total);
- 2/3 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 medical leave paid at 2/3 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. An employee is entitled to take leave if the employee is unable to work, including unable to telework, because the employee:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine related to COVID-19;
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual subject to an order described in #1 or self-quarantine as described in #2;
5. Is caring for his/her child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons; or
6. Is experiencing any other substantially similar condition specified by the U.S. Dept of Health and Human Services

Employers may not discharge, discipline, or otherwise discriminate against employees who lawfully take paid sick leave or expanded family and medical leave, and employers who violate the FFCRA are subject to penalties and enforcement by the U.S. Department of Labor's Wage & Hour Division, which began enforcing violations last month. If the Agency did not credit your leave time as FFCRA, you may be able to file a grievance and have any leave accruals restored that were used to cover your FFCRA-approved absence.

Under the FFCRA, public agencies can decide which employees are "Emergency Responders," who are exempt from the law. But this should still be based on the actual job responsibilities. Even for employees who are exempt, some agencies have extended the law's protections by a separate policy – in particular, a separate bank of paid sick leave for those who contract the virus. Other agencies have been far more restrictive, such as classifying all workers as exempt and refusing to extend any leave protections voluntarily. But in the wake of Order N-62-20, some agencies are re-examining that approach. Employees who are exempt from the FFCRA are likely "essential" under the Order.

As agencies re-open, the scope of who can also effectively telecommute may be shrinking. FFCRA leave is not available to the extent you are able to telecommute while also quarantined or caring for your child during school or daycare closures. But if your Agency says telecommuting is no longer an option, you may be eligible for FFCRA now, even if you previously were not eligible during the shutdown because you could telecommute.

**Conclusion**: Although most agencies are taking re-opening protocols seriously, remember that you do have rights on the job! Your Association can help ensure that the Agency is taking the proper steps – whether that's implementing necessary safety measures, providing paid leave under the FFCRA or Agency policy, or ensuring that those who test positive receive the workers' compensation benefits and medical treatment they deserve. Your Association can also negotiate any additional measures that you feel may be necessary. This can and should be a continuing negotiation as developments unfold.

## ***News Release - CPI Increases!***

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

0.3% - CPI for All Urban Consumers (CPI-U) Nationally

1.3% - CPI-U for the West Region

0.7% - CPI-U for the Los Angeles Area

1.1% - CPI-U for San Francisco Bay Area

2.3% - CPI-U for the Riverside Area (from March)

1.8% - CPI-U for San Diego Area (from March)

# Questions & Answers about Your Job

*Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.*

**Question: We are working every other week for a total of 40 hours each 80-hour pay period. The Agency paid us for hours worked and provided separate paid leave for the remaining hours that we did not work in the pay period. Last month, we agreed to a 10%, or 8-hour unpaid furlough. The Agency continued to provide paid leave for the other 32 hours. This month, the Agency said they are no longer providing the separate 32 hours of paid leave and we must use our own leave. Can they deduct our leave without our agreement like that? Also, several of us are wondering – can we file for partial unemployment for the reduced workweek? Some of us would rather have unemployment make up for some of the lost pay, and not use our banked leave, until the Agency restores our normal schedule. There is a rumor that someone tried to file for the 8-hour unpaid furlough last month but was denied. We are hoping you can clarify.**

**Answer:** Yes, you can apply for unemployment to help recover the lost wages of working only 50% of your schedule. The amount of benefits you receive may be lessened due to your current earnings but do not let that stop you from applying! You can apply on-line with EDD. The required one week waiting period is waived so your claim can start from the first week you lost pay. If you do use your paid leave, you must wait until your leave is exhausted. Just remember that if money is tight, it may be better to use your leave and collect full pay. Even if you are eligible for unemployment benefits, it probably will not replace your lost pay in its entirety.

The Agency should not be requiring you to burn up all your paid leave unless there is an MOU or policy that allows for this. In any event, many Agencies are being more flexible in applying these rules that govern your leave time. Your Association can request to meet and confer with the Agency over any change in how these policies are being applied. Contact them to discuss the next steps.

**Question: The Agency just distributed a memo to all employees and demanded that we sign a notice and release for the DMV to share our driving record with the Agency. It says we will be enrolled in the Employer Pull Notice program and the Agency will receive a report from DMV at least once every twelve months or when any subsequent conviction,**

**failure to appear, accident, driver's license suspension, revocation, or any other action is taken against my driving privilege during my employment. By signing the form, I am authorizing the DMV to disclose or make my driving record available to the Agency as my employer. Is this something they can require? It seems like they are asking for authorization for something they should not be receiving. Do I have to sign? What happens if, down the road, they find something they do not like in my driving record? Can they fire me?**

**Answer:** If driving an Agency vehicle for work is a job requirement, then yes, they can ask this, and yes, you must fill out the form and be enrolled in the Employer Pull Notice Program. If it is not a job requirement, then contact your Association for help. They can inquire as to whether your position should be excluded. But a valid driver's license is often a minimum job requirement for many public agency jobs. If that is your case, participation is mandatory. The key is whether you *may* be asked to drive for work, not whether you do so regularly.

Under the Program, the DMV will notify your Agency if you lose your license. If a license is required for your job, this could result in you losing your job, too. But the Agency must still follow the discipline procedure first. Rest assured that in many cases, revocations are for a limited time. If so, your Agency may allow you to take unpaid leave or use your own leave accruals until your license is restored. In other cases, DMV may allow you a temporary permit that allows you to drive for work. Contact your Association for help if this happens to you.

**Question: Our MOU indicates that an employee will receive two 15-minute breaks for an 8- or 9-hour work schedule. With the current situation, some of us are being given the choice to work a 4/10 schedule. I had that schedule when I worked for another City. We received two 20-minute breaks for the 10-hour day. How long is the rest break period for a 10-hour day?**

**Answer:** There is no standard break period for the 4/10, or any schedule for that matter. Your MOU or Personnel Manual is what determines when and for how long your break is. The California Labor Code sections governing break periods do not apply to public employees. Unless your MOU states otherwise, you will likely only be eligible for the fifteen-minute breaks set forth in the MOU when you switch to the 4/10.

But your Association can negotiate over break periods when the Agency first introduces the 4/10 work schedule as an option. Your Association can ask for longer breaks, or even an extra break if an employee must work beyond a ten-hour day, but the Agency is not required to agree. Under the California Labor

Code, private sector employees do get an extra break if working from 10:01 hours to 14:00 hours, but still only gets two breaks (plus lunch) for a 10-hour shift.

The exception for public employees is the Lactation Break where they are covered under Labor Code Section 1030. Every employer, including the state and any political subdivision, must provide a reasonable amount of break time to accommodate an employee who wants to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with their normal break but does not have to.

**Question: The Agency declared that everyone in our Department is an Essential Worker. They say this means that we do not qualify for the federal Coronavirus relief bill, the FFCRA. We do not get separate paid leave for COVID-19 and are not eligible for child-care leave. Does this mean that we cannot be laid off? There must be some advantage to us being characterized this way. I know the Agency is not going to tell us what that is. Please advise.**

**Answer:** Unfortunately, pretty much the only advantage to being deemed "essential" is the one discussed in this month's lead article – if you catch COVID-19, there is a presumption that you are eligible for workers' compensation. Being categorized as essential does not mean you cannot be laid-off. Your Agency must maintain a minimum number of positions to provide public services, but if they can do so with less staff, they may be able to reduce positions and re-organize the work. Your Association can request to bargain over any impacts of the reduction-in-force, both for employees who separate, and for those who see their workloads increased. As part of these negotiations, your Association can ask the Agency how they plan to continue performing any essential functions if they are reducing the number of essential workers.

Also know that an Agency is not required to provide "Emergency Responders" with the benefits of the FFCRA because the law specifically exempts these workers from coverage. The state's Shelter-in-Place order uses "Essential Worker" to identify who is exempt from that order. They are often used interchangeably, but there is a distinction between the two.

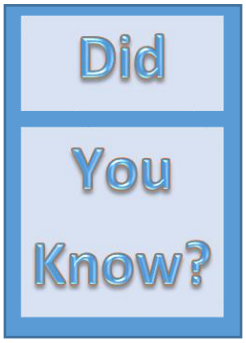
Regardless, there is no master list of who is an emergency responder or who is an essential worker. In general, Public Works crews are considered both essential and emergency responders. If there is confusion about which job classifications are exempt, look at the actual job tasks performed. For example, a Water Operator is likely exempt, but a Recreation Coordinator probably does not qualify as either essential or as an emergency responder.

**Question: The City is asking everyone in our Public Works Department to take an online first responder course. Several of us do not feel comfortable taking an online course since we do not use computers very often. We work almost entirely in the field. Can they force us to take this? Is there another option besides doing it online?**

**Answer:** Is first response a new job duty being added to your position? If so, the first step is to contact your Association and ask to bargain over the impact of this new job duty being added to your position. Negotiations may include how you will be trained to become a "first responder," what expectations the Agency can hold you to, and what compensation, if any, you will get for these additional responsibilities.

If the Agency is not changing your job duties or expectations and only wants you to participate in a course of instruction for training purposes, then it is probably not something to lose much sleep over. It could simply be that the pandemic has reinforced for the Agency the importance of providing instruction to essential workers, so you know what to do if you encounter an emergency. With Shelter-in-Place, it is reasonable for that instruction to be in an online format.

In short, the Agency can ask employees to take an online course even if it is not part of your customary training. What the Agency cannot do is hold you accountable for mistakes that are not your job responsibility. So, get in touch with your Association and let them know of the situation. They can notify the Agency and request to negotiate. This can include looking into other formats, understanding the need for the course, discussing what it entails, when and where it will be administered, and asking for assistance for those who need help taking an online course or operating a computer. You might also negotiate a written agreement that helps protect you if you have trouble with the course, because of unfamiliarity with computers or for some other reason. But do not refuse to take the course. This could be considered insubordinate and a basis for disciplinary action.




The California Public Employees Retirement System (CalPERS) has a special power of attorney form that you can file now, in order to protect your retirement benefits later, if you die or become incapacitated prior to your retirement. It is called the CalPERS Special Power of Attorney form and it allows you to designate a representative to conduct your retirement business if you are unable to do so. If you become unable to act on your own behalf, your designated attorney-in-fact will be able to perform important duties concerning your CalPERS business, such as address changes, federal or state tax withholding elections, and retirement benefit elections, including beneficiary designations.

Remember, not all power of attorney forms are the same – the CalPERS Special Power of Attorney form is specifically designed for CalPERS retirement. You may already have a power of attorney from another resource (e.g. your will or estate plan), but it may not address your CalPERS retirement benefits. If you do not complete and submit the form, you run the risk that, should you die or become incapacitated prior to retirement, CalPERS may find it necessary to withhold your retirement allowance until a court appoints a conservator to handle your affairs. This can be both expensive and time-consuming. Completing and submitting the form ensures you get to decide who makes these decisions, in the unfortunate situation that you can't. You may call toll free at (888) CalPERS (or 888-225-7377). You can also learn more, and download the form, at https://www.calpers.ca.gov/powerofattorney

Not all public employees in California are in CalPERS. Some are in local County retirement systems. This includes counties with retirement systems under the County Employees' Retirement Law of 1937. Many of these systems have reciprocity agreements with CalPERS, and many look to CalPERS as the leader in managing pension systems. You should contact your county retirement system if you are a member and inquire about whether they have a form similar to the CalPERS Special Power of Attorney form.