

**PROTOCOLS FOR TESTING CITY EMPLOYEES FOR COVID-19**

**PURPOSE**

The purpose of the California Occupational Safety and Health Act of 1973 is to assure safe and healthy working conditions for all workers. (Labor Code § 6300, et seq.)

On April 23, 2020, the Equal Employment and Opportunities Commission (“EEOC”) issued updated Technical Assistance Questions and Answers (“Guidance”) concerning the Americans with Disabilities Act (“ADA”) and Rehabilitation Act. The Guidance states that, despite certain restrictions under the ADA and the Rehabilitation Act concerning medical-related testing in the workplace, employers may administer a COVID-19 test to detect the virus that causes COVID-19 and determine if employees attempting to enter the workplace have the virus for the purpose of ensuring the health and safety of their workplaces. In publishing the Guidance, the EEOC recognized that an employee with the virus will pose a direct threat to the health of others.

**GENERAL POLICY**

The purpose of this policy is to ensure the health and safety of working conditions for all City employees through the administration of COVID-19 testing for City employees. Ensuring healthy and safe working conditions and the health and safety of employees is a business necessity for the City.

**Authority**

Pursuant to Labor Code section 6300, et seq. and any applicable state or local public health orders, and consistent with the Equal Employment and Opportunity Commission’s April 23, 2020 Guidance and any guidance that the Department of Fair Employment and Housing may provide and any applicable state or local public health orders, the City is authorized to adopt this COVID-19 testing policy.

**Compliance**

The City will fully and faithfully comply with any and all applicable laws, including, but not limited to, the ADA and Rehabilitation Act, the Fair Employment and Housing Act (“FEHA”) and the California Medical Information Act (“CMA”) in the administration of this policy and associated protocol.

**Scope of Coverage:**

This policy will apply with equal force to all City employees as testing for the virus that causes COVID-19 and preventing the transmission of the virus that causes COVID-19 in the workplace is reasonably related to all City jobs.

On a case-by-case basis, the City Manager and the Human Resources/Risk Manager are authorized to determine that this policy will not apply to an employee if the City Manager and/or the Human Resources/Risk Manager determine that testing such employee is not job related or consistent with business necessity. Testing may not be job related or consistent with business necessity for a particular employee if his or her job responsibilities do not result in contact with or proximity to other people, including other employees or members of the public.

**Effective Dates:**

This Policy shall be effective immediately upon adoption and shall remain in effect until the City Manager advises employees that the Policy is no longer operative due to the end of the present public health emergency.

**Acknowledgement of Agreement to Submit to Testing:**

The City may require that employees acknowledge receipt of the notice and execute an agreement submitting to testing for the virus that causes COVID-19. Such agreement will include a CMIA authorization for release of the test results to the City.

**Refusal to Submit to Testing:**

The City will place any employee who refuses to submit to testing in accordance with the testing protocol associated with this policy on unpaid leave. The employee may then elect to use any earned or accrued leave to which they are entitled in order to provide compensation during the time away from work.

**Adoption of Testing Protocol:**

The City Manager and Human Resources/Risk Manager are authorized to adopt a testing protocol concerning the administration of COVID-19 tests for City employees.

**Notification of Test Results:**

The City will notify the employee of test results in writing and in a confidential manner. In the event of a positive COVID-19 test result, the City will also inform the employee by phone call so that the employee may consult with their health care provider and take precautionary measures to prevent transmission of the virus.

**Test Results and Any Other Health or Medical Records:**

The City will store test results and any other health or medical records, in a manner consistent with applicable law and in accordance with the City's practice for storing medical information in a file separate from the employee's personnel file.

**Effect of Positive COVID-19 Diagnosis:**

In the event that a City employee tests positive for the virus that causes COVID-19, the City will, as provided above, notify the employee of the test results. After informing the employee of the positive result, the City will instruct the employee not to return to work until such time as either of the following occur: (1) The employee's health care provider advises the employee that it is safe for them to return to work and has provided the employee with a note certifying this, which the employee provides to the City; or (2) The employee self-certifies that they are and have been: (A) Free of fever (a "fever" is defined as 100.4° F [37.8° C] or greater using an oral thermometer) for at least 72 hours without the use of fever-reducing medicines; (B) Any other signs of other COVID-19-related symptoms as determined by the Centers for Disease Control ("CDC") (e.g., cough, shortness of breath, fever, chills, headache, sore throat, repeated shaking with chills, new loss of taste or smell, and/or muscle pain) have significantly improved in the last 72 hours; and (C) At least 7 days have passed since any COVID-19 symptoms first appeared; and (D) Complying with all directives provided by their health care provider before seeking to return to work, including, but not limited to, directives regarding the length of time that the employee needs to self-isolate/quarantine, follow-up testing, and social distancing.

**Leave Status of Employee with Positive COVID-19 Diagnosis:**

The City will place any employee who tests positive for the virus that causes COVID-19 on paid sick leave status for the remainder of the day following the positive diagnosis. Thereafter, the employee may elect to remain on paid sick leave if they have a balance of such leave, may elect to use Emergency Paid Sick Leave as provided under the Families First Coronavirus Response Act if they have a balance of such leave, may elect another form of other earned or accrued leave, or may take such leave on an unpaid basis.

**Reservation of Right to Require Additional or Subsequent Testing:**

The City expressly reserves the right to require that employees submit to additional or subsequent tests in order to ensure healthy and safe working conditions for all employees.