

## **Updated Guidance for City Agencies on Leave Policy Applicable During the Outbreak of Coronavirus Disease 2019 (COVID-19), eff. June 3, 2020**

This document sets forth City leave policy with respect to City employees to mitigate the risk of the spread of Coronavirus Disease 2019 (COVID-19). This Guidance provides leave that meets or exceeds the emergency leave required by Divisions C and E of the Families First Coronavirus Response Act (“FFCRA”), Pub. L. 116-127.<sup>1</sup> It is effective June 3, 2020 and until further notice, and supersedes the May 1, 2020 guidance.

### **I. Definition**

A. “Symptoms of COVID-19” means the following physical symptoms:

- Cough
- Shortness of breath or difficulty breathing
- Fever
- Chills
- Muscle pain
- Sore throat
- New loss of taste or smell

B. “Health Care Provider” means

1. A person licensed, when required, to provide health care as a doctor of medicine or osteopathy; podiatrist; dentist; clinical psychologist; optometrist; chiropractor; nurse; nurse practitioner; nurse-midwife; clinical social worker; physician assistant; technician, including, but not limited to medical, laboratory, or radiological technician; pharmacist; and home health-care provider and any employee who works at the Department of Health and Mental Hygiene, a hospital, health care center, health clinic, mobile health facility, nursing facility, nursing home, pharmacy; and
2. Any other person whose service is necessary to the City’s provision of health care in a hospital, clinical, mobile or other appropriate setting, as determined in the discretion of the City agency that employs such person or to which such person has been assigned.

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<sup>1</sup> Division C of the FFCRA is entitled the “Emergency Family and Medical Leave Expansion Act.” Division E of the FFCRA is entitled the “Emergency Paid Sick Leave Act.”

3. Whenever this policy requires an employee to submit documented advice provided by a licensed health care provider, such licensed health care provider must be performing within the scope of practice for the license, as defined by the law of the licensing jurisdiction.

C. "Emergency Responder" means an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of patients, or whose services are otherwise needed to limit the spread of COVID-19, including, but not limited to, 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, child welfare workers and service providers, public works personnel and persons with skills or training in operating specialized equipment or the skills needed to provide aid in a declared emergency and well as personnel who work for such facilities employing these individuals and whose work is necessary to maintain the operations of the facility.

D. "Two workweeks" means the number of hours that an employee is regularly scheduled to work in a two-week period. Examples: for an employee whose regular schedule is 40 hours per week, two workweeks is 80 hours; for an employee whose regular schedule is 35 hours per week, two workweeks is 70 hours.

## **II. Determination of Personnel Performing Essential and Non-Essential Services during the Outbreak**

Every agency shall continue to implement and refine as necessary determinations concerning which services it provides that are essential during the COVID-19 outbreak, consistent with the March 19, 2020 Guidance, and identify the employees who are necessary to ensure provision of those essential services.

A. Essential services are defined as follows in the order of importance:

### **1. Responding to the COVID-19 Emergency**

Delivery of any service or function that is critical to the mitigation of the spread of COVID-19 and emergencies arising because of the outbreak or actions taken to mitigate the outbreak.

### **2. Lifesaving**

The direct, in-person delivery of lifesaving services to the public.

Examples: Emergency medical services technicians and paramedics; 911 operators;

### **3. Life Protecting, Life Safety, Transportation, Utilities**

Direct, in-person delivery of medical care to individuals in any capacity, control and care of incarcerated individuals or others under mandated or self-selected government custody of care of any interval, key personnel required to perform essential court proceedings that cannot be conducted remotely, removal /

mitigation of environmental hazards, operation of mobility and transportation systems, and physical inspection or maintenance of properties and regulated public and private facilities to ensure continued public safety and public health and other maintenance, repair, and infrastructure to support lifesavings operations.

Examples: Public Health Nurse, Shelter Workers, Marine Engineer (Ferry); traffic enforcement agents

#### 4. Workforce and Internal Service Continuity

Functions, systems, and support of critical equipment and networks that enable agency-specific and whole of government workforce productivity; revenue generation.

Examples: Information technology employees who maintain citywide and agency networks and communications, revenue operations, essential services contract administrators; city tax auditors; consumer affairs inspector

##### B. Non-essential services:

Agency-specific and whole of government roles, functions, and duties that are not critically essential to the continued performance of the above four categories.

Examples: records management, license processing, grant auditing

### III. Work Assignments During the COVID-19 Emergency

#### A. Employees Currently Performing Non-Essential Services

Employees who currently are not assigned to perform essential services, as defined in Part II of this guidance are designated “employees currently performing non-essential services.” Administrative and clerical office-based employees are presumptively performing non-essential services. If their presence at the worksite is necessary for the performance of an essential service, they may be designated by the Agency as an employee providing essential service. For example, an administrative employee who performs a task for an essential service that cannot be made accessible to the employee’s home, may be designated as an employee currently providing essential service.

All personnel currently performing non-essential services are expected to perform work remotely. They are required to complete all work assignments which they are assigned by the Agency and which they have the technological capacity to perform at home using personal equipment or equipment provided by the agency (e.g., computer, phone, internet access). Those employees may also be re-assigned to perform essential services within their agencies or by the City in other agencies at a location other than at their home including, but not limited to, at emergency services administered by the Department of Education, such as Regional Enrichment Centers, food services sites, and nursing care sites for vulnerable students, as circumstances require.

Designation of an employee as performing non-essential services is temporary and may change to essential as the COVID-19 emergency develops. An employee who refuses to perform assigned work or

to obtain equipment provided by the Agency to perform assigned work shall be charged accrued leave and may be subject to discipline. Agencies must make and document all diligent efforts to identify work that can be performed remotely by an employee designated as performing non-essential services. An employee designated as currently performing non-essential services who in the rare circumstance is unable to work remotely because of inadequate equipment or lack of assignment shall be granted excused leave with pay without charge to leave accruals.

#### B. Employees Currently Performing Essential Services

1. Employees currently performing essential services are required to work at home or other alternate location if the agency has determined that is feasible pursuant to the agency's telework plan implemented in accordance with Personnel Service Bulletin 600-3 (Temporary Citywide Telework Policy for City Employees During the COVID-19 Outbreak), dated March 13, 2020.
2. Employees who are unable to perform essential services at home, for example field workers, must continue to work at the locations to which their agencies have assigned them.
  - a. Such Employees performing essential services who exhibit symptoms of COVID-19 that are not due to a pre-existing condition must stay home. An employee who does not fall within the provisions of Section IV below but who has been exposed to another person who is or may be infected with COVID-19 is not authorized to receive excused leave under this paragraph.
  - b. If an employee is exhibiting symptoms of COVID-19, the agency should instruct the employee to go home. Before instructing an employee to go home under this circumstance, the employee's supervisor or manager must notify the agency's human resources department.

### IV. Leave Policy

#### A. Excused Leave

1. General Provisions
  - a. Excused leave at full or partial pay under this Policy is immediately available to an employee who is unable to work or telework without regard to length of service.
  - b. Length of excused leave: Excused leave for an employee who tests positive for COVID-19 shall be available until the employee is cleared to return to work. Excused leave provided pursuant to the Emergency Paid Sick Leave Act (Division E of the FFCRA) effective April 1, 2020, is limited to two workweeks.

- c. Part-time employees may receive excused leave for the number of bi-weekly hours that the employee was expected to work. Where expected hours cannot be readily determined, part-time employees may receive excused leave for the average number of bi-weekly hours that the employee worked over the six months preceding the leave.
  - d. Excused leave under this Policy is in addition to existing rules and entitlement regarding leave, e.g. annual leave and sick leave.
  - e. An employee may waive excused leave at partial (two-thirds) pay authorized by this policy and use accrued annual leave or sick leave, if applicable, during the period of excused leave at partial pay.
  - f. Agencies shall not require employees to charge absences to other accrued leave during the period of excused leave authorized by this policy.
  - g. Leave that an employee has taken prior to April 1, 2020 shall not be counted toward the amount of excused leave authorized by this Policy.
  - h. An eligible employee may utilize excused leave intermittently as agreed upon by the agency and the employee. This leave must be taken in full-day increments if the employee is not teleworking. Excused leave may be taken in partial-day increments if the employee is teleworking and by agreement between the employee and the agency.
  - i. The length of absence that requires an employee to submit required documentation upon return to work is extended from absences of more than three consecutive days to absences of more than five consecutive days.
  - j. The City's and all Agencies' absence control procedures are suspended until further notice.
  - k. After the first workday (or portion thereof) that an employee receives excused leave under this Policy, the agency may require the employee to follow reasonable notice procedures to continue receiving excused leave.
  - l. All agencies must post the attached bulletin entitled "Employee Rights" at office locations, via e-mail to all employees, and/or by posting on the agency's intranet site.
2. Excused Leave at Full Pay – An employee is eligible for excused leave at full pay as follows:

- a. An employee who has a documented positive COVID-19 test shall receive excused absence without charge to leave balances until the employee is cleared to return to work.
  - b. An employee is eligible for excused leave at full pay for up to two workweeks, with any additional leave charged to applicable leave balances as follows:
    - i. The employee is exhibiting symptoms of COVID-19:
      - a) If the employee has any documented symptom of COVID-19, the employee must not report to work other than telework for 10 days after the symptoms started<sup>2</sup> or for three days after the fever has stopped, whichever is longer.<sup>3</sup>
      - b) An employee must provide documentation that he or she has exhibited symptoms of COVID-19 to be eligible for excused leave, provided that an employee who teleworks must provide such documentation only if the absence extends for more than five consecutive days. Documentation obtained from Teledoc or other on-line doctor's services will be accepted.
      - c) Employees who exhaust sick leave may be advanced additional sick leave at the discretion of the Agency Head. Until further notice, the provision of advanced sick leave does not require the employee to be a permanent employee or to have more than 10 years of service.
    - ii. The employee is subject to a governmental quarantine or isolation order and is unable to telework while observing the governmental quarantine or isolation order.
    - iii. The employee has been advised by a licensed health care provider to self-quarantine either because of exposure to COVID-19 or because of heightened risk associated with exposure to COVID-19. The employee must provide documentation from the licensed health care provider stating that the employee is unable to telework as a result of the need to self-quarantine.
3. Excused Leave at Partial Pay. Except as provided in subsection "d" below, employees are eligible for two workweeks of excused leave at partial pay (two-thirds of the employee's regular rate of pay, not to exceed \$200 per day or a total of \$2,000) as follows:

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<sup>2</sup> Any employee who used leave directly after excused leave between DOHMH's Health Advisory #14 (<https://www1.nyc.gov/assets/doh/downloads/pdf/han/advisory/2020/covid-19-update-05142020.pdf>) dated May 14, 2020 and the date of this guidance may have up to three days credited at the agency's discretion.

<sup>3</sup> See "What New Yorkers Need to Know Now About COVID-19," New York City Department of Health and Mental Hygiene (May 20, 2020) at <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/coronavirus-factsheet.pdf>

- a. The employee is caring for an individual subject to a governmental quarantine or isolation order and the employee must demonstrate that the individual depends on the employee for care and that he or she is unable to telework while caring for an individual under the governmental quarantine or isolation order.
- b. The employee is caring for an individual who has been advised by a licensed health care provider to self-quarantine either because of exposure to COVID-19 or because of heightened risk associated with exposure to COVID-19. The employee must provide documentation of the licensed health care provider's advice and must demonstrate that the individual depends on the employee for care and that he or she is unable to telework while caring for an individual in self-quarantine.
- c. The employee is caring for a son or daughter under 18 years of age whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 precautions. As required by federal regulation, the employee must provide documentation containing the following information:
  - i. Employee's name;
  - ii. Date(s) for which leave is requested;
  - iii. Qualifying reason for the leave;
  - iv. Oral or written statement that the employee is unable to work because of the qualified reason for leave (in this case care for a child):
  - v. The name and age of the son or daughter being cared for;
  - vi. The name of the School, place of care or child care provider that has closed or become unavailable; and
  - vii. A representation that no other suitable person will be caring for the child during the period of leave.
- d. **Health Care Providers and Emergency Responders are not eligible for excused leave at partial pay.** Health Care Providers and Emergency Responders may be eligible to receive child care at a Regional Enrichment Center administered through the Department of Education.

## **B. Leave to Care for a Child Under the Emergency Family and Medical Leave Expansion Act**

1. Leave to care for a child under the Emergency Family and Medical Leave Expansion Act (Division C of the FFCRA) is available only to employees who have been employed for thirty (30) days or longer.

2. Health Care Providers and Emergency Responders are not eligible for leave to care for a child under this section. Health Care Providers and Emergency Responders may be eligible to receive child care at a Regional Enrichment Center administered through the Department of Education.
3. Eligible employees may take up to 12 weeks of Family Medical Leave to care for a son or daughter whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 precautions and is unable to telework.
4. During the first ten work days of such leave, the employee may:
  - a. Receive excused leave at two-thirds of the regular rate of pay not to exceed \$200 per day or a total of \$2,000, in accordance with paragraph IV (A)(3)(c) above, or
  - b. Elect to utilize accrued annual leave or compensatory time.
5. After the first ten work days of leave to care for a child under this section, leave shall be paid at two-thirds of the regular rate of pay not to exceed \$200 per day or a total of \$10,000. The employee may not utilize accrued leave or compensatory time during this ten-week period.
6. An eligible employee may utilize leave to care for a child intermittently as agreed upon by the agency and the employee. This leave must be taken in full-day increments if the employee is not teleworking. Excused leave may be taken in partial-day increments if the employee is teleworking by agreement between the employee and the agency.
7. The maximum 12 weeks of leave under this section is reduced by the amount of the FMLA leave entitlement taken in that year. If an employee has exhausted his or her 12 weeks of leave, he or she may still take two weeks of partial pay leave for a COVID-19 qualifying reason as outlined in Section IV(A)(3).
8. As required by federal regulation, the employee must provide documentation containing the following information:
  - a. Employee's name;
  - b. Date(s) for which leave is requested;
  - c. Qualifying reason for the leave;
  - d. Oral or written statement that the Employee is unable to work because of the qualified reason for leave (in this case care for a child);
  - e. The name and age of son or daughter being cared for;

- f. The name of the School, place of care or child care provider that has closed or become unavailable; and
- g. A representation that no other suitable person will be caring for the child during the period of the leave.