

## **Updated Guidance for City Agencies on Leave Policy Applicable During the Outbreak of Coronavirus Disease 2019 (COVID-19), eff. April 1, 2021**

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 consistent with the emergency leave provided by Divisions C and E of the Families First Coronavirus Response Act (“FFCRA”), Pub. L. 116-127 and the America Rescue Plan (ARP).<sup>1</sup> It is effective April 1, 2021 and until further notice, and supersedes the January 12, 2021 guidance.

### **I. Definition**

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

- Fever of 100.0 F or greater or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- Loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

**B.** “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.

**C.** “COVID-19 diagnostic test” means either a molecular test, such as a Polymerase Chain Reaction (PCR) test, or a rapid antigen test.

**D.** “Close contact” means someone who was within six feet of an infected person, for at least 10 minutes over a 24-hour period, starting from two days before illness onset (or, for an asymptomatic person, two days prior to test specimen collection) until the time the person is isolated.<sup>2</sup>

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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.”

<sup>2</sup> See <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-understanding-quarantine-and-isolation.pdf>.

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

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 lifesaving 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. General Policy Concerning Attendance of Employees in the Workplace During the Pandemic

- A. City employees must report to work at their assigned work sites as determined under the agency’s written Restart/Safety Plan outlining how it will reduce the risk of spread of COVID-19 in the workplace developed in accordance with “Managing the Return to the Office in the Age of COVID-19,” updated by DCAS on April 27, 2021.
- B. An employee may not report to work other than telework in the following circumstances (the employee may be eligible for excused leave as outlined in Section (IV) with any additional leave charged to applicable leave balances):

1. The employee has exhibited symptoms of COVID-19

An employee who has any documented symptom of COVID-19 must not report to work other than telework, until all of the conditions are met:

- a. They have no known exposure to COVID-19 through close contact (within six feet for at least 10 minutes over a 24-hour period) within the last 10 days and are not subject to a travel-related quarantine;
- b. They have not tested positive for COVID-19 using a COVID-19 diagnostic test within the past 10 days;
- c. They have received a negative result from a PCR (not a rapid antigen) test; **and**
- d. They have been fever-free for the last 24 hours without the use of a fever-reducer.

**OR**

- a. It has been at least 10 days since their symptoms began;
- b. They have not had a fever for at least 24 hours without the use of a fever-reducer; **and**
- c. Other symptoms have improved.

2. The employee has tested positive for COVID-19

An employee who has tested positive through a COVID-19 diagnostic test must not report to work other than telework, until all of the conditions are met:

- a. It has been at least 10 days since their symptoms began;
- b. They have not had a fever for at least 24 hours without the use of a fever-reducer; **and**
- c. Other symptoms have improved.

3. The employee has been in close contact with another person who had COVID-19

An employee who in the past 10 days, has been in close contact with anyone while

they had COVID-19 may not report to work other than telework unless:

- a. The employee has been fully vaccinated, and it has been two or more weeks following receipt of the second dose in a two-dose series or two or more weeks following receipt of one dose of a single-dose vaccine, **and**
- b. The employee has remained asymptomatic since the last COVID-19 exposure.

**OR**

- a. The employee has been previously diagnosed with laboratory confirmed COVID-19, has recovered from confirmed COVID-19,
- b. It is within three months of the date of symptom onset from the initial infection or the date of the first positive diagnostic test, **and**
- c. The employee has remained asymptomatic since the last COVID-19 exposure.

**OR**

- a. The employee is an essential worker who is asymptomatic, **and**
- b. The employee's human resources department has confirmed, in writing, that the employee's physical presence in the workplace is critical to operations or safety of the workplace and has provided the employee with requirements for returning to work after exposure.

4. The Employee developed a fever after receiving a vaccination for COVID-19

An employee who develops a fever within three days after receiving a vaccination for COVID-19 may not report to work other than telework unless:

- a. The fever lasted less than 24 hours,
- b. The employee has been fever-free for the last 24 hours (without using fever-reducing medication), **and**
- c. The employee has not had any of the other COVID-19 symptoms listed above.

**OR**

- a. The fever lasted less than 24 hours,
- b. The employee has been fever-free for the last 24 hours (without using fever-reducing medication), **and**
- c. The employee has received a lab-confirmed negative PCR (not rapid antigen) diagnostic test.

**OR**

- a. It has been at least 10 days since their symptoms began;

- b. They have not had a fever for at least 24 hours without the use of a fever-reducer; **and**
- c. Any other symptoms have improved

5. The Employee developed other symptoms after receiving a vaccination that are consistent with vaccination

An employee who develops other symptoms that are consistent with vaccination (fatigue, a headache, chills, muscle aches, joint pain, nausea or vomiting) within three days after receiving a vaccination for COVID-19 may not report to work other than telework until all of the conditions are met:

- a. Employees whose symptoms last three or fewer days may return to work when they are feeling well enough to work.

**OR**

- a. Employees whose symptoms last more than three days may return to work after:
  - 1) Testing negative for COVID-19 using a PCR test (not a rapid antigen test) with improving symptoms.

**OR**

- 1) It has been at least 10 days since their symptoms began; and
- 2) All symptoms have improved.

6. The employee is subject to a governmental or a healthcare provider's quarantine or isolation order.

#### **IV. Leave Policy**

##### **A. Excused Leave**

###### **1. General Provisions**

- a. Excused leave at full 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 with a COVID-19 diagnostic test shall be available until the employee is cleared to return to work, such excused leave is not to exceed four workweeks (20 workdays); provided that an employee who remains hospitalized or in a rehabilitation facility shall continue to receive excused leave until ten workdays

after the employee is released from the hospital or rehabilitation facility have passed.

- c. Except as set forth in subparagraphs “b” of this paragraph, effective April 1, 2021, all excused leave provided pursuant to this guidance is limited to a cumulative total of two work weeks in each calendar year while this guidance remains in effect.
- d. 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.
- e. Excused leave under this Policy is in addition to existing rules and entitlement regarding leave, e.g. annual leave and sick leave.
- f. Agencies shall not require employees to charge absences to other accrued leave during the period of excused leave authorized by this policy.
- g. 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.
- h. An employee may be required to submit medical documentation of the reason for sick leave if the absence is for more than three consecutive days.
- i. 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.
- j. The City’s and all Agencies’ absence control procedures concerning lateness are suspended until further notice.
- k. 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.
- l. In the rare circumstance where an employee designated as currently performing non-essential services is unable to work remotely because of inadequate equipment or lack of assignment, the employee shall be granted excused leave with pay without charge to leave accruals.

## 2. Excused Leave at Full Pay for Exposure to or Diagnosis or Symptoms of COVID-19

An employee is eligible for excused leave at full pay as follows:

- a. An employee is eligible for excused leave at full pay for a maximum of four workweeks with a documented positive COVID-19 diagnostic test; except that an employee who is hospitalized or in a rehabilitation facility shall continue to receive excused leave during such care and for ten workdays after the employee is released from the hospital or rehabilitation facility.
  - 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 but does not, at the time symptoms develop, have a positive COVID-19 diagnostic test. To be eligible for excused leave, an employee must provide documentation that they have exhibited symptoms of COVID-19 and that they sought diagnosis of COVID-19 with a COVID-19 diagnostic test within three days from symptom onset. Employees must use their own sick leave for any additional time taken after receiving a negative COVID-19 test result or if they do not seek COVID-19 testing. **Please note, if the employee has a negative rapid antigen test, advise them they will need to confirm this negative result with a PCR test that is also negative before they can return to work.**
    - ii. The employee is subject to a governmental quarantine or isolation order or healthcare provider's quarantine order and is unable to telework while observing the quarantine or isolation order.
    - iii. The employee has been exposed to COVID-19 and is seeking or awaiting the results of a diagnostic test for COVID-19. The employee must obtain documentation of the exposure, or have been advised by a City agency responsible for testing and tracing or their own agency that they have been in close contact with someone who has tested positive and has to quarantine. Please note that employees who have had close contact exposure and have to quarantine as a result of that exposure cannot test out of quarantine early. They must complete the full quarantine regardless if they obtain a negative result from a PCR test before their quarantine period is complete.
3. Excused Leave at Partial Pay. Employees are eligible for twelve 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 \$12,000), as follows:
- a. The employee is exhibiting symptoms of COVID-19 but does not, at the time symptoms develop, have a positive COVID-19 diagnostic test. To be eligible for excused leave, an employee must provide documentation that they have exhibited symptoms of COVID-19 and that they sought diagnosis of COVID-19 with a COVID-19 diagnostic test within three days from symptom onset.

Employees must use their own sick leave for any additional time taken after receiving a negative COVID-19 test result or if they do not seek COVID-19 testing. **Please note, if the employee has a negative rapid antigen test, advise them they will need to confirm this negative result with a PCR test that is also negative before they can return to work.**

- b. The employee is subject to a governmental quarantine or isolation order or healthcare provider's quarantine order and is unable to telework while observing the quarantine or isolation order.
- c. 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 they are unable to telework while caring for an individual under the governmental quarantine or isolation order.
- d. 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 they are unable to telework while caring for an individual in self-quarantine.
- e. The employee is caring for a son or daughter under the age of 18 years whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 precautions. For childcare leave, 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 son or daughter being cared for;
  - vi. The name of the school, place of care or childcare provider that has closed or become unavailable;
  - vii. A communication from the school that provides the remote/hybrid learning schedules for the child; and



- viii. A representation that no other suitable person will be caring for the child during the period of the leave.
- g. 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.
- h. Such leave is available only to employees who have been employed for thirty (30) days or longer.
- i. An eligible employee may utilize leave at partial pay 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.
- j. Effective April 1, 2021, employees are eligible for a cumulative total of to 12 weeks of leave at partial pay in a rolling 12-months period, starting from the first day of leave. The maximum 12 weeks of leave in a twelve-month period available under this section is reduced by the amount of FMLA leave taken by the employee during the same twelve-month period.

## **B. Leave for Vaccine Reactions**

1. Employees who exhibit a cough, shortness of breath, runny nose, congestion, sore throat or loss of taste must follow the existing COVID-19 leave policy outlined above.
2. Employees who exhibit any other symptoms that are consistent with vaccine side effects (fever, headache, chills, muscle aches, joint pain, nausea or vomiting) are eligible for excused leave as follows if symptoms develop within three days after receiving the vaccine:

### **1. Fever**

- a. Employees who exhibit a fever lasting less than 24 hours after receiving the vaccine are eligible for excused leave at full pay for up to two workdays.
- b. Employees who exhibit a fever lasting more than 24 hours after receiving the vaccine are eligible for excused leave for up to two workweeks.
- c. To be eligible for excused leave at full pay, employees who stay out of work for more than three consecutive days must provide documentation showing they sought a COVID-19 diagnostic test during their leave and the date they received their test results. Employees must use their own sick leave for any additional time taken after receiving a negative test result or if they do not seek diagnostic testing.

**2. Fatigue, a headache, chills, muscle aches, joint pain, nausea or vomiting**

- a. Employees who exhibit fatigue, a headache, chills, muscle aches, joint pain nausea or vomiting (and no fever) after receiving the vaccine and are not feeling well enough to work are eligible for excused leave at full pay for up to two workweeks.
- b. To be eligible for excused leave at full pay, employees who stay out of work for more than three days must provide documentation showing they sought a COVID-19 diagnostic test during their leave and the date they received their test results. Employees must use their own sick leave for any additional time taken after receiving a negative test result or if they do not seek diagnostic testing.

**3. Other side effects**

- a. Employees who exhibit other symptoms that are consistent with vaccine side effects are eligible for excused leave at full pay for up to two workdays. Employees must use their own sick leave for any additional time taken.