



THE CITY OF NEW YORK
LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, NY 10007

Hon. Sylvia O. Hinds-Radix
Corporation Counsel

MEMORANDUM

TO: ALL LAW DEPARTMENT EMPLOYEES

FROM: TIFFANY CHARLES
CHIEF OF PERSONNEL

DATE: APRIL 19, 2022

SUBJECT: LEAVE POLICY FOR EMPLOYEES AS IT RELATES TO COVID-19

The following changes were made to the Leave Policy:

- Employees who test positive no longer receive up to four weeks of leave and is subject to a maximum of **two weeks**. Employees who are hospitalized or in a rehabilitation facility will still receive COVID-19 excused leave during this period and for up to **ten workdays** after they are released.

In accordance with the leave policy set forth by DCAS as it relates to COVID-19, please read the following as it replaces the previous leave policy effective January 26, 2022. This policy is in effect as of March 30, 2022.

Leave Policy for Employees

Symptoms of COVID-19 are:

- 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

COVID-19 diagnostic test, means 1) a NAAT or molecular test, such as PCR, or 2) a lab-based antigen test, or 3) an in-home test. **For in-home tests: If an employee tests positive using an at-home test, they may qualify for COVID-19 Excused Leave by submitting the following additional information:**

- **Date of positive test**
- **Name/manufacturer of at-home test kit**
- **Lot number of at-home test kit**
- **Photo of staff ID with test result**

“Close contact” means someone who was within 6 feet of someone with COVID-19, for at least **15 minutes** over a 24-hour period, starting from 2 days before illness onset (or, for an asymptomatic person, two days prior to test specimen collection) until the time the person is isolated.

General Policy Concerning Attendance of Employees in the Workplace

A. Employees must report to work at their assigned work sites in accordance with “Managing the Office in the Age of COVID-19.”

B. An employee who is able to medically tolerate a face covering may not report to work other than telework in the following circumstances (the employee may be eligible for excused leave as outlined in the Excused Absence section below with any additional leave charged to applicable leave balances):

1. Employee has tested positive through a COVID-19 diagnostic test

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

- a. It has been at least 5 calendar days since symptoms began (if symptomatic), or at least 5 calendar days since test specimen collection (if asymptomatic); **and**
- b. The employee is asymptomatic or symptoms are improving (fever free for at least 24 hours without the use of a fever-reducing medicine and other respiratory symptoms (cough, shortness of breath) have improved.

2. Employee has exhibited symptoms of COVID-19 and has not tested positive through a COVID 19 diagnostic test

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

- a. Received a lab-confirmed negative PCR (not rapid antigen) diagnostic test; **and**
- b. Symptoms are improving, (fever free for at least 24 hours without the use of a fever-reducing medicine and other respiratory symptoms (cough, shortness of breath) have improved; **and**
- c. The employee was not a close contact with another person who had COVID-19.

OR

- a. It has been at least 5 calendar days since symptoms began; **and**

- b. Symptoms are improving, (fever free for at least 24 hours without the use of a fever-reducing medicine and other respiratory symptoms (cough, shortness of breath) have improved).

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

An employee who in the past 5 days, has been in close contact with someone with COVID-19 may not report to work other than telework unless:

- a. The employee has been fully vaccinated, i.e. it has been 2 or more weeks following receipt of the second dose in a 2 dose series or 2 or more weeks following receipt of 1 dose of a single-dose vaccine, **or** 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; **and**
 - b. The employee has remained asymptomatic since the last COVID-19 exposure.
- OR**
- a. It has been at least 5 calendar days since they were in close contact with someone with COVID-19; **and**
 - b. The employee has remained asymptomatic since the last COVID-19 exposure.

An employee who develops symptoms within the 5 calendar day quarantine period should follow the guidance noted in # 2 above.

4. Employee developed a fever after receiving a vaccination for COVID-19 (including boosters)

An employee who develops a fever within 3 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 5 calendar days since their symptoms began.
 - b. 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. Employee developed other symptoms after receiving a vaccination that are consistent with vaccination (including boosters)

An employee who develops other symptoms that are consistent with vaccination (fatigue, a headache, chills, muscle aches, joint pain, nausea or vomiting) within 3 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 3 or fewer days may return to work when they are feeling well enough to work.

OR

- a. Employees whose symptoms last more than 3 days may return to work after testing negative for COVID-19 using a PCR test (not a rapid antigen test) with improving symptoms or it has been at least 5 calendar days since their symptoms began with improving symptoms.

6. Employee is subject to a governmental or a healthcare provider's quarantine or isolation order, including:

- a. Individuals who are required to quarantine for 10 days due to significant medical issues; or
- b. Employees who are required to quarantine for 10 days because they are unable to tolerate a face covering.

C. Excused Absence

- a. Excused leave at full pay is available to an employee who is unable to work or telework without regard to length of service.
- b. Excused leave for an employee who tests positive with a COVID-19 diagnostic test and is hospitalized or becomes a patient in a rehabilitation facility due to COVID-19 shall be available until ten workdays after the employee is released from the hospital or rehabilitation facility. **Employees who test positive within three months after recovering from the first COVID infection will not receive COVID-19 excused leave during that three-month period unless they have new COVID-19 symptoms.**
- c. Effective April 1, 2021, excused leave is available to employees who are unable to work or telework without regard to length of service. Full-time employees may receive up to 2 workweeks of excused leave. Part-time employees may receive excused leave for the number of bi-weekly hours that the employee was expected to work. **This leave is limited to a cumulative total of 2 weeks in a calendar year while the guidance remains in effect.**
- d. Excused leave is in addition to existing rules and entitlement regarding leave, i.e. annual leave and sick leave.
- e. Employees are not required to charge absences to other accrued leave during the period of excused leave authorized by this policy.
- f. 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, or has been sent home by the agency, and by agreement between the employee and the agency.
- g. Employees may be required to submit medical documentation of the reason for sick leave if the absence is for more than 3 consecutive days.
- h. Employees are required to follow reasonable notice procedures to continue receiving excused leave.
- i. 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.

Employees who are able to telework under the conditions outlined in Excused Leave at Full Pay and Excused Leave at Partial Pay below should do so. Employees must submit appropriate documentation of their condition to HR and receive confirmation from their Division Chief or their liaison, that their work can be completed successfully.

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

Employees are eligible for excused leave at full pay as follows:

- a. An employee who is hospitalized or in a rehabilitation facility due to COVID-19 is eligible for excused leave at full pay during such care and for ten workdays after the employee is released from the hospital or rehabilitation facility. **Employees who test positive within three months after recovering from the first COVID infection will not receive COVID-19 excused leave during that three-month period unless they have new COVID-19 symptoms.**
- b. Employees are eligible for excused leave at full pay for up to 2 workweeks, with any additional leave charged to applicable leave balances as follows:
 1. Employees who are 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 3 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 an employee has a negative rapid antigen test, they will need to confirm this negative result with a PCR test that is also negative before they can return to work.**
 2. The employee tested positive for COVID-9 with a COVID-19 diagnostic test.
 3. The employee is exhibiting side effects from vaccination (including boosters) where the symptoms develop within three days of the administration of the vaccination.
 4. 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.
 5. 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 are not fully vaccinated, and must quarantine. Agency quarantine procedures must comport with the timelines outlined in this guidance. Please note that employees who have had close contact exposure, are not fully vaccinated, and must 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.

E. Excused Leave at Partial Pay

Employees are eligible for 12 workweeks of excused leave at partial pay, 2/3 the amount of the employee's regular rate of pay, not to exceed \$200 per day or a total of \$12,000 as follows:

- a. All conditions as outlined above in **General Policy Concerning Attendance of Employees in the Workplace, Section B, Subsection 2.**
- b. Employees who are 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.

- c. Employees who are 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.
- d. Employees caring for a son or daughter under the age of 18 years whose school or place of care has been closed or whose childcare provider is unavailable due to COVID-19 precautions. The employee must provide documentation that they are unable to telework while caring for the child. For childcare leave, the employee must provide documentation containing the following information:
 - 1. Employee's name;
 - 2. Date(s) for which leave is requested;
 - 3. Qualifying reason for the leave;
 - 4. 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);
 - 5. The name and age of son or daughter being cared for;
 - 6. The name of the school, place of care or childcare provider that has closed or become unavailable;
 - 7. A communication from the school that provides the remote/hybrid learning schedules for the child, if applicable; and
 - 8. A representation that no other suitable person will be caring for the child during the period of the leave.
- e. 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, or has been sent home by the agency, by agreement between the employee and the agency.