



**THE CITY OF NEW YORK
LAW DEPARTMENT**

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MEMORANDUM

TO: ALL LAW DEPARTMENT EMPLOYEES

FROM: SIMONE HOBBS
DIRECTOR OF HUMAN RESOURCES

DATE: JANUARY 6, 2022

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

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 September 13, 2021. This policy is in effect as of December 29, 2021.

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 an infected person, for at least 10 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. Employees 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 (non-healthcare and non-critical) has exhibited symptoms of COVID-19 and has not tested positive for COVID 19

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

- a. Symptoms have resolved or if still with residual symptoms, then all are improving,
- b. Have been fever-free for the at least 24 hours without the use of fever-reducing drug; **and**
- c. Received a lab-confirmed negative PCR (not rapid antigen) diagnostic test;

OR

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

An employee who has any known symptoms of COVID-19 and is a close contact must not report to work for at least 10 days from when their symptoms began, even if they test negative.

2. Employee (non-healthcare and non-critical) 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 symptoms began, **or** if asymptomatic, since a positive test result;
- b. Have not had a fever for at least 24 hours without the use of a fever-reducer; **and**
- c. Other respiratory symptoms (cough, shortness of breath) have improved.

3. Employee (non-healthcare and non-critical) 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, 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, **and**
- b. The employee has remained asymptomatic since the last COVID-19 exposure,
OR
- a. The employee 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.

An employee who has any known symptoms of COVID-19 and is a close contact must not report to work for at least 10 days from when their symptoms began, even if they test negative.

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

An employee (non-healthcare and non-critical) 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 10 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

An employee (non-healthcare and non-critical) 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
- b. Employees whose symptoms last more than 3 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. Employee is subject to a governmental or a healthcare provider's quarantine or isolation order

C. Employees may be eligible for Excused Leave as outlined below with any additional leave charged to applicable leave balances.

D. 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. 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 as outlined above. Such excused leave is not to exceed 4 workweeks (20 workdays); provided that an employee who remains hospitalized or in a rehabilitation facility shall continue to receive excused leave until 10 workdays after the employee is released from the hospital or rehabilitation facility have passed. **Employees who test positive within 3 months after recovering from the first COVID infection will not receive COVID-19 excused leave during that 3 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. The employee 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.

E. 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. Employees are eligible for excused leave at full pay for a maximum of 4 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 10 workdays after the employee is released from the hospital or rehabilitation facility. Employees

who test positive within 3 months after recovering from the first COVID infection will not receive COVID-19 excused leave during that 3 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 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.**
 2. Employees who are 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.
 3. Employees who have 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.

F. 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. 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 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. Employees who are 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. 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.
- d. 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.

- e. 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.
- f. 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.

G. Leave for Vaccine Reactions (including boosters)

- a. 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.
- b. 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 the symptoms develop within 3 days after receiving the vaccine:

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 2 workdays.
- b. Employees who exhibit a fever lasting more than 24 hours after receiving the vaccine are eligible for excused leave at full pay for up to 2 workweeks.
- c. To be eligible for excused leave at full pay, employees who stay out of work for more than 3 consecutive days, must provide documentation showing they sought a diagnosis of 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.**

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 2 workweeks.
- b. To be eligible for excused leave at full pay, employees who stay out of work for more than 3 consecutive days, must provide documentation showing they sought a diagnosis of 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.**

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 2 workdays. **Employees must use their own sick leave for any additional time taken.**

Temporary Citywide Policy for Vaccination (including boosters) of City Employees against SARS-CoV-2 Excused Leave

- a. An employee may take up to 4 hours of excused leave for travel during scheduled work hours to the administration site and receipt of the vaccination for each required administration of the vaccine. To the extent practicable, an employee should notify his or her supervisor at least 3 calendar days before the scheduled administration of the vaccine and schedule the excused leave for a time that minimizes interference with agency operations. The employee must provide documentation of the scheduled vaccination at the time he or she notifies the supervisor of the need for excused leave and provide documentation of the receipt of each required vaccination, including the date and time of administration, signed by the provider or the provider's agent. Employees are excused only for the time required to receive the vaccine, including travel to and from the vaccination site, up to a maximum of 4 hours for each administration. **Any additional time off must be charged to the employee's leave balances.**
- b. An agency head, in his or her sole discretion, may grant excused leave in excess of 4 hours to an employee in exceptional circumstances, such as widespread mass transit delays, unusually long travel distance between the worksite and the site of the vaccination, or unexpected delays at the vaccination site. An employee seeking excused leave that exceeds 4 hours must provide a credible explanation and documentation of the reason that the absence from the worksite to receive a vaccination exceeded four hours.
- c. An employee who receives administration of a vaccination during non-working hours shall not receive excused leave for such administration.

Compensatory Time (does not include boosters)

- a. Upon the employee's submission of documentation that he or she has received all injections of the vaccine required by the protocol for the vaccine administered to the employee (e.g., after confirmation of both the first and second dose, if the protocol requires 2 injections), the employee shall be credited with 3 hours of compensatory time. Employees are eligible to receive compensatory time upon the receipt of the vaccine whether it was received during work hours or non-working hours. This compensatory time can be used at the employee's discretion, subject to agency approval, immediately after donation or banked for up to 1 year. An employee cannot be paid for this time in lieu of taking it off.