



PERSONNEL MEMORANDUM NO. 2, 2020-2021

September 1, 2020

(Updated January 15, 2021)

TO: Executive Superintendents, Superintendents, Principals, BCO Executive Directors, BCO Deputy Directors, Chief Executives and Heads of Offices, HR Directors, School Secretaries

FROM: Vicki Bernstein
Acting Chief Human Capital Officer, Division of Human Capital

RE: Updated Guidance Related to Attendance, Leave and Timekeeping Policies During COVID-19

DOE policies regarding absences and leaves due to COVID-19 are being updated consistent with changes in Federal, State, and City law and policy. This memorandum replaces Personnel Memoranda 5 (2019-2020), 6 (2019-2020) and 23 (2019-2020), as well as Payroll Memoranda 13R (2019-2020) and 23R (2019-2020), and provides one comprehensive personnel memorandum covering these topics.

The following process and rule changes relate to absences due to COVID-19. Guidance below is in accordance with updated guidance for New York City agencies during the outbreak of COVID-19. This guidance also 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. 116-127.1.

A. LEAVE OPTIONS DURING COVID-19

Excused leave at full or partial pay under this Policy is available to employees who are unable to report to work or telework, as applicable, without regard to length of service except as specified below.

I. Excused Leave at Full Pay

The following category of employees will be eligible for excused leave at full pay without a charge to leave balances:

- a. An employee who has a documented positive COVID-19 test shall be able to take excused leave at full pay until the employee is cleared to return to work, however, such excused leave may not exceed four (4) calendar weeks. An employee who remains hospitalized or in a rehabilitation facility may continue to receive excused leave until two (2) calendar weeks after the employee is released from the hospital or rehabilitation facility.

The following categories of employees will be eligible for excused leave at full pay for up to two (2) work weeks without charge to leave balances if they are unable to telework. Employees are limited to a total of up to two (2) work weeks of such excused leave, even if employees have multiple or repeat qualifying circumstances. After an employee has used the maximum amount of two (2) work weeks of this excused leave, any additional leave that the employee may need will be charged to leave balances. In the event that an employee in a category below receives a positive COVID-19 test, that employee shall be eligible for excused leave at full pay as described above.

- b. An employee who is exhibiting symptoms of COVID-19, but who has not tested positive for COVID-19, may take an excused leave at full pay for up to two (2) work weeks. To be eligible for excused leave, an employee must provide documentation that he or she has exhibited symptoms of COVID-19 and is seeking diagnosis of COVID-19 with a Polymerase Chain Reaction (PCR) diagnostic test. An employee who teleworks must provide such documentation only if the absence extends for more than five (5) consecutive days. Documentation obtained from Teledoc or other on-line doctor's services will be accepted.
- c. An employee who is subject to a governmental quarantine or isolation order and is unable to telework while observing the governmental quarantine or isolation order. Quarantine required due to a government-issued travel advisory is not eligible for such excused leave.
- d. An employee 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 (e.g. underlying medical conditions, age, etc.). The employee must provide documentation, if requested, from the licensed health care provider stating that the employee is unable to telework as a result of the need to self-quarantine.

Part-time employees may receive excused leave for the number of hours that the employee is expected to work in a two-week period. If expected hours cannot be readily determined, part-time employees may receive excused leave for the average number of hours that the employee worked in a two-week period over the six months preceding the leave.

Employees shall not be required to charge absences to other accrued leave during the period of excused leave authorized by this policy.

II. Excused Leave at Partial Pay for Care of Others

Employees, other than health care workers, are eligible for two (2) weeks 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:

- a. The employee is caring for an individual subject to a governmental quarantine or isolation order and the employee must demonstrate, if requested, 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; or
- 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 and the employee must, if requested, 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; or

- c. The employee is caring for their child 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 and the employee must demonstrate, if requested, that the child depends on the employee for care and that they are unable to telework while caring for the child. The employee may be asked for documentation to show that the school or place of care has been closed.

Employees whose child care needs as described in section A.II.c above continue beyond two (2) weeks may continue their excused leave at partial pay for up to an additional ten (10) weeks, for a total of up to twelve (12) weeks, provided such employees have worked at least thirty (30) days of the previous 365 days, as outlined in the Emergency Family and Medical Leave Expansion Act (Division C of the FFCRA).

Employees may also use CAR, annual leave or sick leave, as applicable, in lieu of the excused leave at partial pay, for the circumstances set forth in this section, provided that the use of any leave shall not exceed a total of two (2) weeks for the care of an individual as set forth in sections A.II.a and A.II.b above, and shall not exceed a total of twelve (12) weeks for the care of a child as set forth in section A.II.c above.

Excused leave under this Policy is in addition to existing rules and entitlement regarding leave (e.g. annual leave, CAR, and sick leave).

B. TIME OFF TO RECEIVE THE COVID-19 VACCINE

DOE will allow employees excused time off to receive the COVID-19 vaccine. Please see Payroll Memo No. 11 (2020-2021) for more information.

C. ABSENCES DUE TO VACCINE SIDE EFFECTS

Employees may receive excused leave for reactions to the COVID-19 vaccine; this leave is exclusive of any excused leave received for symptoms of COVID-19. The guidelines for this leave are outlined as follows:

- I. 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.
- II. Fever, fatigue, a headache, chills, muscle aches, joint pain, nausea or vomiting
 - a. Employees who exhibit fever, fatigue, headache, chills, muscle aches, joint pain, nausea or vomiting consistent with vaccine side effects, and who cannot work or telework are eligible for excused leave at full pay for up to eight (8) consecutive weekdays (inclusive of DOE holidays and school vacation as applicable to the title)
 - b. To be eligible for excused leave at full pay, employees who stay out of work for more than two (2) days must provide documentation showing they sought diagnosis of COVID-19 with a PCR 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.

III. Other side effects

Employees who exhibit other symptoms than above that are consistent with vaccine side effects who cannot work or telework are eligible for excused leave at full pay for up to two (2) consecutive weekdays. Employees must use their own sick leave for any additional time taken.

D. **GENERAL ATTENDANCE POLICIES DURING COVID-19**

When an employee is absent for COVID-19 related reasons and such absence is not otherwise covered by the conditions outlined above, the employee must utilize their own leave time. However, during the COVID-19 outbreak period, an employee's absence related to their own health or for the care of a family member as set forth above shall not be deemed to be excessive or used as the basis for discipline.

I. Documentation

Employees must be able to provide documentation, if requested, to support their request for an excused leave at full or partial pay, such as documentation from a health care provider, school, day care provider, and/or governmental order, as applicable.

When using CAR or sick days, rules regarding the need to provide medical documentation after a certain number of days of absence will be relaxed until further notice and employees may self-certify the reason for such COVID-19-related absences without the need to provide outside documentation. Supervisors reserve the right to request follow-up documentation if there is a question about the reasonableness of the time taken or other concerns.

Extended leaves may be subject to further medical review by DOE.

II. Use of CAR/Sick Days for COVID-19 Related Absences

Employees shall be permitted to utilize CAR or sick days, over the existing limit of three such days per year, to either (a) care for a family member who is home due to documented COVID-19 related illness after having tested positive for COVID or (b) care for their child whose school or place of care has been closed for COVID-19 related reasons, and/or is at home for remote learning for COVID-19 related reasons. Such use of CAR or sick days is limited to no more than twelve (12) weeks total, less any time taken as excused leave at partial pay pursuant to section A.II above.

E. **EMPLOYEES DESIGNATED TO WORK FROM HOME/REMOТЕLY**

It is the expectation that all employees who are working from home are still working the equivalent of their regular workhours, even if they are at home. It is understood that the roles and work that can be done from home may differ from what is traditionally performed in person. Given these constraints, supervisors should work with remote staff to identify work activities that employees can perform while they are home and for which they have the technological capacity. This may include supporting other teams and/or offices in related work.

An employee who refuses to perform assigned work shall be charged accrued leave and may be subject to discipline.

Some DOE employees who are asked to work remotely may not be able to perform their regular hours of work from home. Every effort should be made to identify work that can be performed consistent with the employee's title, which does not necessarily have to be work normally performed by the employee or the office, as long as it is consistent with the employee's job title. At different times, employees may be told to report to work locations to work in person, or may be requested to work from home/remotely. These designations/location assignments may change.

If it is determined that such an employee cannot perform their regular hours of work from home and they are not otherwise designated to work in person, then the employee shall not have their leave or CAR balances charged for any hours not worked. Instead, the employee shall be granted an emergency excused absence with pay without charge to leave accruals.

The use of the emergency excused absence/timekeeping code must be approved by the head of office. The use of this emergency excused absence/timekeeping code can be used for a whole day, a partial day or only certain days per week. If the employee can perform some work from home, the emergency excused absence/timekeeping code must only be used for the balance of time not worked.

The approval for the use of this excused absence/timekeeping code may change as the designation in person/remote work is subject to change and/or conditions may change the ability of an employee to work from home.

F. POLICY APPLICATIONS

Questions regarding this memo may be emailed to COVIDtimekeeping@schools.nyc.gov.

This memo and these policies are subject to change, are not applicable beyond the 2020-2021 school year, and may be changed prior to the end of the school year. These policies do not represent permanent changes to DOE policy or procedures. If there are additional policy changes, this memo will be updated accordingly.