

PERSONNEL MEMORANDUM NO. 1, 2021-2022

(updated January 3, 2022)

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

FROM: Vicki Bernstein, Chief Human Resources Officer, Division of Human Resources

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 updated 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 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 American Rescue Plan (ARP).

DEFINITIONS

a. Symptoms of COVID-19:

This 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:

This 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. Close contact:

This 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.

d. Fully vaccinated:

This means at least two weeks have passed after a person received a single-dose of an FDA- or WHO- authorized or approved one-dose COVID-19 vaccine or the second dose of an FDA- or WHO- authorized or approved two-dose COVID-19 vaccine.

e. COVID-19 Diagnostic Test:

This means 1) a NAAT or molecular test, such as PCR, or 2) a lab-based antigen test, or 3) an in-home FDA authorized antigen diagnostic test, including in-home tests provided by the DOE.

A. LEAVE OPTIONS DURING COVID-19

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

I. Excused Leave at Full Pay – Documented Positive COVID-19 test

The following category of employees will be eligible for excused leave at full pay without 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 while the employee is in their isolation period or has symptoms that preclude them from working, however, such excused leave may not exceed four (4) calendar weeks. This isolation period is subject to change under federal, state, and local guidelines. An employee who remains hospitalized or in a rehabilitation facility may continue to receive excused leave for ten work days after the employee is released from the hospital or rehabilitation facility.
- b. 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.

II. Excused Leave at Full Pay – Symptomatic or Quarantined

The following categories of employees will be eligible for excused leave at full pay for up to two (2) workweeks without charge to leave balances. Employees are limited to a total of up to two (2) workweeks of such excused leave per calendar year while this guidance is in effect, even if employees have multiple or repeat qualifying circumstances. 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.

- a. An employee who 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 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.

- b. An employee who is subject to a governmental quarantine or isolation order or healthcare provider's quarantine order while observing the quarantine or isolation order. Quarantine required due to a government-issued travel advisory is not eligible for such excused leave.
- c. An employee who 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 the DOE/City that they have been in close contact with someone who has tested positive and has to quarantine.

Please Note: A fully vaccinated, asymptomatic employee, who within the past 10 days, has been in close contact with a person who has tested positive for COVID-19 should continue to report to work.

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.

III. Excused Leave at Partial Pay

Employees who have been employed for thirty (30) days or longer are eligible for twelve (12) 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 \$12,000) as follows (note that III a and b are eligible for excused leave at full pay per II above; partial pay is available after the employee uses two work weeks of excused leave at full pay per II above):

- 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 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.
- b. The employee is subject to a governmental quarantine or isolation order or healthcare provider's quarantine order 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.
- 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.
- 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 childcare provider is unavailable due to COVID-19 precautions. The employee must provide documentation to show that the school or place of care is closed. Excused leave under this Policy is in addition to existing rules and entitlement regarding leave (e.g. annual leave, CAR, and sick leave). 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.

Effective April 1, 2021, employees are eligible for a cumulative total of up to 12 weeks of leave at partial pay in a rolling 12-month 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.

An eligible employee may utilize excused leave intermittently as agreed upon by the DOE and the employee. This leave must be taken in full-day increments.

IV. Telework in Lieu of Excused Absence

For the above circumstances qualifying for an excused absence at full or partial pay (I, II and III), as an alternative to excused leave, teleworking may be permitted for non-school-based staff, with prior supervisor approval, if the essential functions of the job can be performed remotely. However, supervisors are not required to create or allow a teleworking assignment for employees who cannot report to work in person for the reasons listed above. To the extent that teleworking is permitted, employees are still required to provide documentation of the reason for the in-person absence consistent with these criteria.

B. TIME OFF TO RECEIVE THE COVID-19 VACCINE AND BOOSTERS

DOE will allow employees excused time off to receive the COVID-19 vaccine including boosters. Please see [Payroll Memorandum No. 11 \(2020-2021\)](#) and [Payroll Memorandum No. 6 \(2020-2021\)](#) for more information.

C. TIME OFF TO ACCOMPANY CHILDREN TO RECEIVE COVID-19 VACCINES

Effective November 4, 2021, DOE will allow employees up to four hours of excused leave during business hours to accompany their child receiving their COVID-19 vaccine. Please see [Payroll Memorandum No. 6 \(2021-2022\)](#) for more information.

D. ABSENCES DUE TO VACCINE SIDE EFFECTS

The DOE will allow excused time off for employees who require leave because they exhibit symptoms consistent with COVID-19 vaccine side effects, including from boosters, as described below, and are unable to telework. Please see [Payroll Memorandum #15 \(2020-2021\) for more information.](#)

I. Leave for COVID-19 Symptoms

Employees who require leave because they exhibit symptoms of COVID-19, which may include 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. Leave for COVID-19 Vaccine Reactions (including boosters)

Employees who exhibit other symptoms that are consistent with COVID-19 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 calendar days after receiving the vaccine. This leave is exclusive of any excused leave received for symptoms of COVID-19:

a. Fever

1. 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.
2. Employees who exhibit a fever lasting more than 24 hours after receiving the vaccine are eligible for excused leave for up to two workweeks.
3. 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.

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

1. 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.
2. 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.

c. Other side effects

Employees who exhibit symptoms other than those described above that are consistent with vaccine side effects, who cannot work, 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.

E. 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 pandemic, 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, including but not limited to documentation from a health care provider, school, day care provider, and/or governmental order, as applicable.

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.III above.

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 2021-2022 school year, and may be changed without prior notice before 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.