

EXECUTIVE ORDER NO. 103 NOTICES

CIVIL SERVICE COMMISSION

Notice of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103

(2020)

COVID-19 State of Emergency

COVID-19 Emergency Compensation Rates

N.J.A.C. 4A:3-4.19A

Authorized: April 29, 2020, by Deirdré L. Webster Cobb, Esq., Chair/Chief Executive Officer.

Authority: N.J.S.A. App.A:9-45 and App. A:9-47; and Executive Order No. 103 (2020).

Effective Date: April 29, 2020.

Expiration Date: Upon the Termination of the Emergency Declaration Made Pursuant to Executive Order No. 103 (2020).

This is an emergency adoption of temporary rule relaxations and modifications of the regulatory provisions concerning emergency compensation rates (N.J.A.C. 4A:3-4.19). Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Civil Service Commission is relaxing or

modifying N.J.A.C. 4A:3-4.19, which concerns other forms of compensation in State service, as follows:

Department of Children and Families

As a result of the Coronavirus-19 (COVID-19) pandemic, State departments and agencies have been directed to prioritize addressing immediate public needs and safety, while also to restrict the physical presence of individuals in office environments and work sites. The Division of Children Protection and Permanency (DCPP) in the Department of Children and Families is tasked with the critical mission of protecting children, which requires, among other things, the prompt initiation of investigations within 24 hours of receipt of a report of child abuse/neglect. These investigations necessarily involve in-person visits to people's homes and to a variety of community settings, e.g. hospitals, childcare centers and police stations. And once a family enters the DCPP system, the agency is required to conduct monthly in-person home visits.

The COVID-19 crisis has impacted the DCPP's work in critical ways. The prevalence of the virus in the general public places field workers at increased risk of infection. Thus, in order to maintain its essential functions, while also abiding by protocols restricting movement to the extent possible to curtail the epidemic, DCPP is temporarily restructuring job duties within its agency. Under this restructuring, each of DCPP's nine geographical areas will be served by a special response team dedicated solely to conducting investigations and home visits to high risk families. In recognition of the fact that the day-to-day job duties of these team members have materially changed, both in terms of the focus on field work and the enhanced risk involved, the Commission

is modifying its rule to establish a temporary emergency rate of compensation for those DCPD employees serving on a special response team while certain conditions are present.

In order for applicable titles within DCPD to obtain the temporary emergency rate, certain factors delineated in the temporary rule modification must be met. Once the detailed justification addressing all of the factors is provided to the Commission, the Chairperson or designee will review the request and determine its sufficiency. If approved, the emergency rate shall be effective as of March 28, 2020 and shall expire on June 30, 2020. Subsequent extensions of this provision may be granted based upon the criteria delineated in the rule.

Department of Human Services

Similarly, the COVID-19 crisis has impacted the Department of Human Services, Division of Developmental Disabilities (DDD). The Division operates five developmental centers for adult individuals with intellectual and developmental disabilities who require 24 hour a day, seven day a week care and oversight, including many individuals with significant underlying physical health conditions and behavioral health needs, which are heightened due to social distancing policies that restrict family visits and recreational activities. Many individuals require assistance with activities such as toileting, feeding and showering that require staff to have frequent direct contact with individuals' bodily fluids. The critical staff necessary to do this work serve in NE and NL titles, including direct care and housekeeping staff, who complete cleaning and disinfection needed to prevent the spread of the virus, and food service staff who work directly in clients' cottages (residential areas). The prevalence of the virus in the general public and the limited ability for the

clients to protect against spread themselves, increases the reliance on DDD staff to assist the clients in mitigating against the virus and its spread. This reliance places these DDD workers at increased risk of infection, materially changing the nature of their jobs. As a result, the Commission is modifying its rule to establish a temporary emergency rate of compensation for these DDD employees while certain conditions set forth in the rule are present.

In order for applicable titles within DDD to obtain the temporary emergency rate, certain factors delineated in the temporary rule modification must be met. Once the detailed justification addressing all of the factors is provided to the Commission, the Chairperson or designee will review the request and determine its sufficiency. If approved, the emergency rate shall be effective as of March 28, 2020 and shall expire on June 30, 2020. Subsequent extensions of this provision may be granted based upon the criteria delineated in the rule.

Full text of the modified rule text follows (additions indicated in boldface **thus**):

4A:3-4.19A Other forms of compensation: State service, COVID-19 emergency rate

(a) The Commission finds that during the period for the Public Health Emergency declared for COVID-19, when the following factors are met, there exists a material change in the structure and nature of the job titles of certain employees in the DCP Family Service Specialist title series and the DDD direct care and service titles:

- 1. A widespread presence of COVID-19 in the community;**
- 2. The limited availability of COVID-19 testing in order to assess exposure and the potential for infection in the relevant client population and work environment;**

3. A shortage of available personnel in these titles to provide essential in-person services due to the COVID-19 pandemic, for reasons including personal illness, self-quarantine, and lack of child care, among others; and

4. Any other factor related to the COVID-19 pandemic that, in the judgment of the Commission, materially changes the structure and nature of the jobs in the divisions referred to in (a) above.

(b) As a result of these conditions and the need to maintain essential operations for vulnerable populations that require in-person services by employees in close physical proximity to them, there is established an emergency rate of half an employee's regular rate for work, for work performed during such employee's normal work hours, and that requires close physical proximity to members of the client population.

(c) DCPD and DDD may seek approval to implement the COVID-19 emergency rate by providing detailed justification for the request. The Chairperson or designee may approve the request upon review of the applicable appointing authority's application and due consideration of how the factors set forth in (a) above, and any other information deemed relevant, and that impacts the structure and nature of the jobs of the affected employees.

(d) Eligibility for the COVID-19 emergency rate shall be as follows:

1. Employees designated as essential that work in a title series limited for use by the Department of Children and Families who conduct in home and community child abuse and neglect investigations and home visits to families identified as being a high-risk safety threat;

2. Employees who are designated as essential and who work in direct care and service title series in the Department of Human Services, Division of Developmental Disabilities, to ensure consistent delivery of critical services; and

3. The emergency rate shall apply only for those hours of work during which the employee is performing the at-risk in-person services as defined above.

(e) The existence of the COVID-19 emergency rate shall be effective as of March 28, 2020, through June 30, 2020. Availability of the COVID-19 emergency rate for the titles referenced above is conditioned on meeting the factors at (a) above, and as approved by the Commission. Subsequent extensions of the emergency rate may be granted by the Commission, upon application of the applicable Department, based on the continuation of the Public Health Emergency declared for COVID-19, a review of the criteria specified at (a) above, and in consultation with the Department of Health.