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**STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MAY 20, 2020)
COVID-19 STATE OF EMERGENCY**

Temporary Rule Relaxation of certain provisions of Title 4A, New Jersey Administrative Code, adopted by New Jersey Civil Service Commission.

Date: May 20, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy) (“EO 103”)

Effective Date: May 20, 2020

Expiration Date: Concurrent with end of the Public Health Emergency.

This is an emergency adoption of temporary rule relaxations and modifications of the regulatory provisions concerning the Voluntary Furlough Program in State service (N.J.A.C. 4A:6-1.23). 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 its rules as follows:

As a result of the Coronavirus-19 (COVID-19) pandemic, the Governor issued numerous Executive Orders establishing statewide social mitigation strategies to combat transmission of this serious virus. These strategies include using work-from-home arrangements for both essential and non-essential personnel wherever feasible. The State’s mitigation efforts also include mandates to limit all unnecessary movement of individuals in and around their communities, reducing person-to-person interactions and temporarily closing numerous non-essential retail and entertainment venues. State departments and agencies have been directed to prioritize addressing immediate public needs and safety, while also restricting the physical presence of individuals in office environments and work sites. As a result of these emergency measures, many State and local appointing authorities under the jurisdiction of Title 11A, the Civil Service Act, are experiencing increased financial constraints, as well as workforce challenges, as they restructure operations to meet the essential needs of the public within the parameters dictated by public health requirements.

Thus, in these extraordinary times, the Commission finds that it is necessary to provide additional flexibility to appointing authorities, including the State Colleges and Universities, that are forced to reduce staffing in the short term but seek to ensure that they have experienced personnel ready to be mobilized when normal operations resume. Key to this effort is maintaining a healthy workforce, even when employees are temporarily out of work. But when State employees are laid off, even for a short period of time, their employer-sponsored health benefits coverage ceases. The purpose of this rule modification is to provide a potential alternative to layoffs that would enable affected employees to retain their health benefits while they are temporarily separated from work.

N.J.S.A. 11A:8-3 provides, in pertinent part, that the Commission may adopt rules on voluntary reduced work time or other alternatives to layoffs. In accordance with this authority, the Commission promulgated *N.J.A.C. 4A:8-1.2*, Alternatives to layoff. *N.J.A.C. 4A:8-1.2(a)* states that in State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives. Such alternatives, as set forth in *N.J.A.C. 4A:8-1.2(c)* include “granting voluntary furloughs to employees” under *N.J.A.C. 4A:6-1.23*. The rules further provide at *N.J.A.C. 4A:8-1.2(e)* that prior to offering alternatives to layoff, appointing authorities should consult with affected negotiations representatives, must submit a plan for alternatives to layoff that contains the information delineated in *N.J.A.C. 4A:8-1.2(f)*, and must obtain approval from the Chairperson of the Commission (Chairperson) or designee prior to implementation

N.J.S.A. 11A:6-1.1 provides for the establishment of a voluntary furlough program for State employees under which days of leave without pay may be taken without the loss of seniority rights and health benefit coverage of an employee who participates in this furlough program. In accordance with this authority, *N.J.A.C. 4A:6-1.23* establishes the voluntary furlough program. That rule states that voluntary furlough may be granted to an employee in the amount of 30 days in a calendar year, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status. It also provides that during that initial 30 days of furlough, the employee’s health benefits may continue, provided that the employee pays their share of the premiums. The regulation further provides for an extension of voluntary furlough for up to 60 days, during which accrual of leave time, anniversary dates and seniority shall be treated as if the employee is in pay status. *N.J.A.C. 4A:6-1.23(d)*. However, during an extension of voluntary furlough, current *N.J.A.C. 4A:6-1.23(d)(1)* provides that an employee may continue health benefits by paying the full premium amount (employer’s and employee’s share) for the furlough extension days. Also, under *N.J.A.C. 4A:6-1.23(d)(2)* the furlough extension leave may be used only for education or family care needs, and requests for furlough extension leave are subject to the approval of the appointing authority and the Chairperson or designee.

Under this temporary rule modification, *N.J.A.C.* 4A:6-1.23 will be revised, for the period of the COVID-19 Public Health Emergency, to clarify that appointing authorities may develop a plan to use voluntary furlough in lieu of layoffs, subject to the approval of the Chairperson or designee. Such plan may provide for up to 90 days of voluntary furlough, and may provide that the affected employees may continue employer-sponsored health benefit coverage with the employer and employee each continuing to pay the premium costs as if the employee were an active employee.

Full text of the proposed modifications follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

§ 4A:6-1.23 Voluntary furlough program

(a) - (k) No change.

(l) During the COVID-19 Public Health Emergency, an appointing authority may implement a voluntary furlough plan subject to the following terms and conditions:

1. **An appointing authority that seeks to participate in the program as an alternative to layoffs in accordance with N.J.A.C. 4A:8-1.2(c)(2) due to the COVID-19 pandemic shall request, in writing, approval for such participation in the program from the Chairperson or designee. An appointing authority shall not be permitted to utilize voluntary furlough as an alternative to layoffs due to the COVID-19 pandemic until it has received approval from the Chairperson or designee.**
2. **The voluntary furlough plan implemented as an alternative to layoffs may provide for both an initial furlough period of 30 days and an extended furlough period of up to 60 days for a total of up to 90 days of voluntary furlough.**
 - i. **The voluntary furlough program under this provision, including extended furlough period, upon approval of the Chairperson or designees, may also provide that employees work shorter work days, intermittent days off, or consecutive days off.**
3. **The voluntary furlough plan implemented as an alternative to layoffs may provide that the affected employees may continue employer-sponsored health benefit coverage, with the employer**

and employee each continuing to pay the premium costs as if the employee were an active employee.

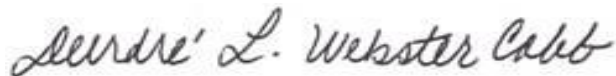
- 4. The requirement of N.J.A.C. 4A:6-1.23(d)(2) that furlough extension leave be used only for education or family care needs is temporarily suspended for employees taking voluntary furlough in lieu of layoff under the provisions of this section.**

The Commission has determined that the above noted rules should be modified/suspended, as so indicated, until such time as it is determined by the Governor that the Public Health Emergency no longer exists, after which time the relaxation or modifications shall no longer be in effect.

At its meeting on May 20, 2020, the Commission found that modification of the above rules is necessary, as enforcement of the existing rules would be detrimental to the public welfare during this emergency.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON MAY 20, 2020

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission



Date May 20, 2020

Deirdré L. Webster Cobb, Esq.
Chair/Chief Executive Officer