

was pre-approved for vacation and she could not change it. It is noted that the appellant's worksite was closed on February 13, 2021 due to a shortage of staff.

On appeal, the appellant maintains that she should have been able to use COVID-19 Sick Leave as her "vacation was interrupted with COVID and quarantines." She also seeks clarification as to whether an approved vacation day must be utilized when a State agency closes for inclement weather or for other reasons.

In response, the appointing authority argues that the temporary rule relaxation and modification concerning sick leave did not provide for employees to retroactively replace pre-approved vacation leave with COVID-19 paid leave. In that regard, the appointing authority cites *N.J.S.A. 52:14-17.13a* which provides that:

No employee of this State, or of any State agency or instrumentality, who is on approved vacation leave with pay on any day on which the department, division, agency or other office within which he is employed is officially closed due to inclement weather, hazardous transportation conditions, a declaration of public mourning, or for any other reason, shall be eligible to receive compensatory time off granted in connection with such official closing in the form of any type of leave of absence with pay.

Accordingly, it submits that the appellant's appeal should be denied based on this statutory provision.

In reply, the appellant states that upon its enactment and last amendment in 2019, *N.J.S.A. 52:14-17.13a* clearly did not contemplate the coronavirus outbreak. She contends that Executive Orders "are developed to elucidate and assist in gray area contexts." Executive Order No. 103 did that and resulted in the establishment of COVID-19 Sick Leave and COVID-19 Family Leave for State employees. The appellant emphasizes that, per the rule, an appointing authority shall not require an employee to use or exhaust other State paid leave entitlements before using available COVID-19 Sick Leave. *See N.J.A.C. 4A:6-1.3A(b)2*. Further, she reiterates that her "approved vacation on February 13, 2021 was intended for a lavish vacation. However, due to unforeseeable positive COVID test(s) and to 'no-fault' of [hers], [she] was forced to quarantine and was isolated from the general population and not free to roam the resort." Moreover, as a result of COVID-19, the appellant had to take care of her ill child. She states that "[t]his in itself entitles [her] to exercise the modified order signed" by the Chair of the Commission. The appellant maintains that she timely provided the appointing authority's leave unit with all the required documents and its "curt response" that she was not privy to the leave policy and its failure to respond to her emails requesting that she speak to "someone in higher authority" "displays unethical behavior on all levels."

CONCLUSION

The appellant requests that her leave for February 13, 2021 be recorded as COVID-19 paid leave. The appointing authority relies on *N.J.S.A. 52:14-17.13a* in support of its denial. The appellant contends that *N.J.S.A. 52:14-17.13a* had been in place prior to the COVID-19 pandemic and it did not contemplate a coronavirus outbreak. Rather, Executive Order No. 103 and the modified sick leave rules address this “gray area” and dictate her receipt of COVID-19 paid leave for the day in question. Therefore, the appellant submits that she should be able to cancel her pre-approved vacation leave and utilize COVID-19 Sick Leave.

Upon review, the Commission finds that the determination as to whether the appellant is permitted to cancel her pre-approved vacation leave and utilize COVID-19 Sick Leave under the modified sick leave rules is discretionary to the appointing authority. In this regard, while one of the underlying reasons for all of the rule modifications approved by the Commission is to encourage appointing authorities to be flexible and as accommodating as possible to the needs of its employees in the administration civil service based programs, such as COVID-19 Sick Leave, the modified rule does not mandate the approval of COVID-19 Sick Leave in all situations. It cannot be ignored before the COVID-19 pandemic, the decision to cancel an employee’s pre-approved vacation leave and change it to either sick or administrative leave has always been discretionary to each appointing authority. It is proper that such determinations are discretionary as an appointing authority is in the best position to assess an employee’s request in relation to such things as an individual’s overall attendance record or operational needs. Thus, while flexibility is always encouraged, the Commission recognizes that the needs of each appointing authority may not always make it possible.

In this case, the appointing authority does not permit cancellation of pre-approved vacation leave in situations where the department or agency are closed in accordance with *N.J.S.A. 52:14-17.13a*. The modified rule only indicates that an employee may be eligible for COVID-19 Sick Leave. Thus, there is nothing arbitrary about the appointing authority’s reliance on *N.J.S.A. 52:14-17.13a* when it exercised its discretion not to approve cancellations of the appellant’s one pre-approved vacation day and change it to COVID-19 Sick Leave. Even assuming *arguendo* that an appointing authority does not have the discretion to permit an employee to change the type of leave he or she utilizes, it appears that cancellation of pre-approved vacation leave in this situation has been superseded by statutory authority. There is no dispute that the appellant was exposed to COVID-19 and submitted the required documents. It is also not disputed that the appellant’s worksite was closed due to a shortage of staff. Consequently, as *N.J.S.A. 52:14-17.13a* is a statutory provision, the determination of the appellant’s entitlement to COVID-19 paid leave is a moot point. It is well established that the Commission cannot relax a statute as the jurisdiction to

modify a statute rests with the Legislature. Moreover, regardless of whether the law was enacted prior to the COVID-19 pandemic, the provision anticipates a closure of a facility “for any other reason.” *N.J.S.A. 52:14-17.13a* is clear that no employee who is on approved vacation leave with pay “shall be eligible to receive compensatory time off granted in connection with such official closing in the form of **any type of leave of absence with pay**” [emphasis added].” Therefore, under these circumstances, the denial of the appellant’s request regarding her pre-approved vacation leave was proper.

Lastly, the Commission notes that it makes no determination as to whether the appellant would have been entitled to COVID-19 Sick Leave had her facility remained open.¹ Further, the Commission does not find sufficient grounds to sanction the appointing authority under Civil Service law and rules for the alleged “displays [of] unethical behavior on all levels.”

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF SEPTEMBER, 2021

Deirdre' L. Webster Cobb

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¹ It is noted that it appears from the record that the appellant received COVID-19 paid leave during her quarantine.

c: S.T.
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