

**STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)
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: February 3, 2020

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

Effective Date: Retroactive to January 1, 2021

Expiration Date: 30 days following the expiration of the Public Health Emergency declared in Executive Order No. 103 (2020), unless modified by the Civil Service Commission. In the event that the federal government provides federally funded paid sick or other leave for any of the reasons described below, the Commission will review the continued utility of this rule.

This is an emergency adoption of temporary rule relaxations and modifications of the regulatory provisions concerning sick leave (N.J.A.C. 4A:6-1.3). Section 6 of Executive Order No. 103 (2020) (“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:6-1.3, which concerns sick leave and sick leave procedures, as follows:

As a result of the Coronavirus-19 (COVID-19) pandemic, the federal government passed the “Emergency Paid Sick Leave Act” (EPSLA), P.L. 116-127 which required certain employers to provide their employees paid sick time to the extent that the employee was unable to work (or telework) due to a need for leave because: (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2); or (5) The employee is caring for a child of such employee if the school or place of care of the child has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions. Non-exempt state employees were entitled to the emergency paid sick leave provided by EPSLA. Additionally, as a result of the COVID-19, the federal government passed the “Emergency Family Medical Leave Expansion Act” (EFMLEA), P.L. 116-127, which required certain employers to provide their employees partial paid family leave because the employee is unable to work (or telework) due to a need for leave to care for their child under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such child is unavailable, due to the public health emergency. Both EPSLA and EFMLEA expired on December 31, 2020.

Given the significant rate of reported new COVID-19 cases across all New Jersey counties, it is anticipated that some State employees will be unable to work because of one or more reasons related to the COVID-19 pandemic. And as recognized in Executive Order No. 103 (2020), the protection of the health and well-being of New Jersey residents and the State’s workforce is a primary concern. It is equally important to ensure the continuous delivery of essential State

services while also providing flexibility to government entities to address staffing capabilities so that essential operational needs are met. In order to reduce additional new infections as well as to ensure the consistent delivery of critical State services, the Commission finds it necessary to authorize a limited form of COVID-19 Sick Leave and COVID-19 Family Leave for the duration of the Public Health Emergency or until otherwise modified by the Commission. Accordingly, the Commission is modifying its rules to establish COVID-19 Sick Leave and COVID-19 Family Leave for State employees that exists separately and in addition to the current sick leave entitlement.

Full text of the proposed modification follows (additions indicated in boldface **thus**);

§ 4A:6-1.3A COVID-19 Leave - State service

(a) State employees in the career, unclassified, or Senior Executive Service shall be entitled to COVID-19 Sick Leave and COVID-19 Family Leave, as set forth below, that is separate and in addition to current sick leave entitlements, see N.J.A.C. 4A:6-1.3.

(1) COVID-19 Sick Leave and COVID-19 Family Leave shall not qualify as or count toward the earned sick leave required to be provided to an employee under P.L.2018, c.10 (C. 34:11D-1 et seq.)

(2) Days designated as COVID-19 Sick Leave and COVID-19 Family Leave shall be considered unaccumulated and unearned and shall not be compensable under the Supplemental Compensation on Retirement program (N.J.A.C. 4A:6-3.1 et seq).

(3) The COVID-19 Sick Leave and COVID-19 Family Leave programs established by this rule modification shall expire 30 days following the expiration of the Public Health Emergency declared in Executive Order No. 103 of 2020, unless modified by the Commission.

(b) COVID-19 Sick Leave shall be available for immediate use by the employee for the purposes described in subsections (c) and (d), regardless of how long the employee has been employed by the State.

(1) An employee may use COVID-19 Sick Leave only for the purposes described under (c) and (d).

(2) An appointing authority shall not require an employee to use or exhaust other State paid leave entitlements before using available COVID-19 Sick Leave.

(c) COVID-19 Sick Leave may be used by an employee who is unable to work (including telework) because:

(1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

(2) the State appointing authority has instructed the employee to remain out of the work site for COVID-19 related reasons, including because the employee

has been identified as a close contact of an individual who has tested positive for COVID-19.

(3) the employee has been advised by a licensed health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.

(4) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis, including but not limited to a test for COVID-19; or the employee has tested positive for COVID-19 and has not yet met the criteria for discontinuing isolation.

(5) the employee is the primary caretaker for an individual who is subject to an order as described in paragraph (1), who has been advised to self-quarantine or self-isolate as described in paragraph (3), or who is experiencing symptoms of COVID-19 and seeking a medical diagnosis or has tested positive for COVID-19 as described in paragraph (4).

(d) In addition to the above, State employees are entitled to up to one (1) day of COVID-19 sick leave to receive a COVID-19 vaccination or if they are unable to work or telework due to an adverse reaction to a COVID-19 vaccination. This application of COVID-19 sick leave need not be exhausted for a single circumstance, and may be divided between multiple days of vaccination or reaction to vaccination, but in no case may exceed one (1) day.

(e) State employees in the career, unclassified, or Senior Executive Service shall be entitled to COVID-19 Family Leave, which shall not exceed 10 days in total and that is separate and in addition to current sick leave entitlements.

(f) COVID-19 Family Leave shall be available for immediate use by the employee for the purposes described in subsection (g), regardless of how long the employee has been employed by the State.

(1) An employee may use COVID-19 Family Leave only for the purposes described under (g).

(2) An appointing authority shall not require an employee to use or exhaust other State paid leave entitlements before using available COVID-19 Family Leave.

(g) COVID-19 Family Leave may be used by an employee who is unable to work (including telework) because:

(1) The employee is caring for a child, as defined, for purposes of this rule only, in N.J.S.A. 34:11B-3, whose school has been closed to in-person instruction, or whose child care provider is unavailable, due to COVID-19 precautions.

(2) Employees that have been designated as essential by the appointing authority and who are unable to telework may still be required to report to the physical work site.

(h) When requesting COVID-19 Sick Leave or COVID-19 Family Leave, the employee shall present documentation to the employer, within five business days, as follows:

(1) the employee's name;

(2) the date(s) for which leave is requested;

(3) For COVID-19 Sick Leave due to the employee's own illness or exposure to COVID-19 as set forth in (c) (1)-(4) above the following is required:

(i) For leave due to quarantine or isolation, the employee must provide the name of the government entity that issued the order;

(ii) For leave due to self-quarantine or self-isolation, the employee must provide the name of the health care provider who advised the employee to self-quarantine or self-isolate due to concerns over COVID-19 or proof of a positive COVID-19 test.

(iii) For leave because the individual is experiencing symptoms and seeking a medical diagnosis, appropriate documentation from the medical provider.

(4) For COVID-19 Sick Leave due to care for quarantined or isolated individuals, either:

(i) the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or

(ii) the name of the health care provider who advised the individual being cared for to self-quarantine self-isolate due to concerns related to COVID-19; or

(iii) appropriate documentation from the medical provider where care is being provided to a symptomatic individual who is seeking a medical diagnosis, or proof of a positive COVID-19 test.

(5) For COVID-19 Sick Leave for vaccination purposes, the employee must submit documentation of vaccination.

(6) For COVID-19 Family Leave, where the employee is unable to work (including telework) because of the need to care for a child, as defined, for purposes of this rule only, in N.J.S.A. 34:11B-3, under 18 years of age whose school has been closed to in-person instruction, or whose child care provider is unavailable, due to COVID-19 precautions, should provide within five business days:

(i) the name of the child being cared for;

(ii) the name of the school that has been closed for in-person instruction or the child care provider that has been closed or become unavailable due to COVID-19; and

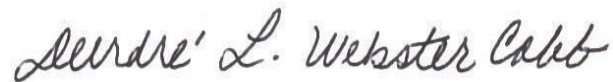
(iii) a statement from the employee that no other suitable person is available to care for the child during the period for which the employee takes COVID-19 Family Leave.

(i) Use of COVID-19 Sick Leave and/or COVID-19 Family Leave shall not count against an employee's entitlement to family leave (FLA) under State or family and medical leave (FMLA) under federal law. See N.J.A.C. 4A:6-1.21A and N.J.A.C. 4A:6-1.21B).

At its meeting on , 2021, the Commission found that modification of the above rules is necessary, and that the absence of such a provision would be detrimental to the public welfare during this emergency.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON FEBRUARY 3, 2021

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission



FEBRUARY 3, 2021

Date

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