



New Mexico State Personnel Board

State Personnel Office

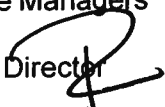
Michelle Lujan Grisham
Governor

Pamela D. Coleman
Director

State Personnel Board
Christine B. Romero, Chair
Laura A. Liswood, Vice Chair
Jerry Manzagol, Member

General Memorandum 2020-004

To: Cabinet Secretaries, Agency Heads, Elected Officials,
and Human Resource Managers

From: Pamela D. Coleman, Director 

Date: December 30, 2020

Subject: Guidance on Administrative Leave for COVID-19-Related Conditions
Beyond the Families First Coronavirus Response Act

Purpose

In consultation with the Governor's office, and pursuant to State Personnel Board (SPB) Rule 1.7.7.14 in the New Mexico Administrative Code (NMAC), Administrative Leave, the purpose of this memorandum is to authorize paid administrative leave for certain employees subject to the Personnel Act who are **unable to work from home or telework** and experience one or more of the COVID-19-Related Conditions identified below beginning January 1, 2021.

Scope

Paid Administrative Leave for COVID-19-Related Conditions, as described herein, is not an entitlement under federal law; it is a benefit authorized by the Governor, the State Personnel Office, and this General Memorandum only for State of New Mexico employees subject to the State Personnel Act who meet the criteria set forth below, including term and temporary appointments.

Background

The COVID-19 pandemic continues to present an unprecedented challenge to New Mexico.

On March 11, 2020, Governor Michelle Lujan Grisham issued Executive Order 2020-004, Order Declaring A State of Public Health Emergency and Invoking the Powers Provided by the All Hazard Emergency Management Act and the Emergency Licensing Act, declaring a public health

emergency due to the spread of COVID-19 in New Mexico. That Order and the public health emergency have been renewed in subsequent Executive Orders.

On March 13, 2020, the Governor issued Executive Order 2020-005, authorizing, and directing the closure of all New Mexico public schools beginning March 16, 2020, through April 6, 2020, due to the public health emergency declared in Executive Order 2020-004. On March 26, 2020, the Governor issued Executive Order 2020-012, authorizing, and directing the closure of all New Mexico public schools for the remainder of the 2019-2020 Academic Year due to the public health emergency. On September 3, 2020, the New Mexico Public Education Department announced that, as of September 8, 2020, New Mexico public schools could choose to re-open *only* in a hybrid mode and *only* in counties with COVID-19 test positivity rates and new daily case rates below certain State-established thresholds. At no point between March 13, 2020, and the present time have New Mexico public schools re-opened fully.

On March 18, 2020, the federal Families First Coronavirus Response Act (H.R. 6201) (FFCRA) was signed into law requiring employers with fewer than 500 employees and government employers to grant paid leave or expanded family and medical leave for specified reasons related to COVID-19.

To implement FFCRA, on March 31, 2020, the State Personnel Office issued General Memorandum 2020-001 (Updated), providing:

A. Paid COVID-19 Leave:

Up to eighty (80) hours of paid administrative leave for employees unable to work from home or telework and with one or more of the following COVID-19-related conditions:

1. The employee is subject to a government quarantine or isolation order related to COVID-19;
2. The employee has been advised by a healthcare provider or the employee's Cabinet Secretary or Agency Head to self-isolate due to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis or awaiting results of a COVID-19 test;
4. The employee is caring for an individual subject to a quarantine order or self-isolation;
5. The employee is caring for the employee's son or daughter under 18 years of age if schools are closed or their caregivers are unavailable because of a public health emergency; or
6. The employee is experiencing substantially similar conditions as those specified by the federal Secretary of Health and Human Services Department ("COVID-19-Related Conditions"); and

B. Emergency Family and Medical Leave (EFML):

Once the eighty (80) hours of Paid COVID-19 Leave for Condition 5 is exhausted, up to an additional ten (10) weeks of job-protected, paid administrative leave for employees unable to work from home or telework who must:

Care for a son or daughter under 18 years old if the school or place of care for the child has been closed, or the childcare provider of such son or daughter is unavailable, due to a public health emergency.

FFCRA expires December 31, 2020.

Additional Paid Administrative Leave for COVID-19-Related Conditions

Due to the continuing public health emergency, and pursuant to SPB Rule 1.7.7.14, Administrative Leave, beginning January 1, 2021, the State Personnel Office Director is authorizing administrative leave for employees unable to work from home or telework who have one or more of the identified COVID-19-Related Conditions, as follows:

- A. For employees unable to work from home or telework who have COVID-19-Related Conditions 1-4 as described above, Cabinet Secretaries or Agency Heads may request, and the State Personnel Office Director may approve, up to eighty (80) consecutive hours of paid administrative leave in a two (2) week period when it is in the best interest of the department or agency to do so; and
- B. For employees unable to work from home or telework who have COVID-19-Related Condition 5 as described above (caring for a son or daughter), Cabinet Secretaries or Agency Heads may authorize up to twenty (20) hours of paid administrative leave per workweek for up to four (4) workweeks per employee request. Employees may work, use accrued leave, or take leave without pay for the remainder of the workweek. Employees must have been employed with the State of New Mexico for at least thirty (30) days to be eligible for this paid administrative leave.

Health care providers and emergency responders: Health care providers and emergency responders, as defined below, may be eligible to use Paid Administrative Leave for COVID-19-Related Conditions 1-4, subject to: the department's or agency's essential business operations, and considering the employee's specific COVID-19-Related Condition(s), including the health and safety of the employee and others. Health care providers and emergency responders are not eligible for Paid Administrative Leave for COVID-19-Related Condition 5.

Health care providers and emergency responders serving during this challenging time are essential in providing critical services for the health and safety of the New Mexicans. For purposes of the "health care providers and emergency responders" exclusions identified in this Memorandum:

"Health care provider" is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar agency or department. This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. The Cabinet Secretary or Agency Head will determine the employees who fall into these categories as well as those who are necessary for health and safety reasons or to prevent the spread of the COVID-19 virus or necessary for the agency's response to COVID-19. The Governor may also determine who is a health care provider necessary for the state's response to COVID-19.

“Emergency responder” is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and other persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. The Cabinet Secretary or Agency Head will determine the employees who fall into these categories as well as those who are necessary for health and safety reasons or to prevent the spread of the COVID-19 virus or necessary for the agency's response to COVID-19. This also includes any individual that the Governor determines is an emergency responder necessary for the state's response to COVID-19.

Unable to Work from Home or Telework: An employee is **“unable to work from home or telework”** if the department/agency has work or duties for the employee and one of the COVID-19-Related Conditions set forth in this Memorandum prevents the employee from being able to perform that work at home or by telework. If the department/agency agrees that the employee will work the normal number of hours, but outside of the employee's normally scheduled hours (for instance early in the morning or late at night), then the employee is able to telework or work from home and leave is not necessary unless a COVID-19-Related Condition prevents the employee from working that schedule. Departments and agencies should consider all viable options for work from home, telework, and flexible work schedules and collaborate with employees to achieve flexibility and meet mutual needs.

Work from Home or Telework: For purposes of this memorandum, **“telework”** means an employee who is working from home doing their normal/regular duties, making use of the Internet, email, or phone. **“Work from home”** is broader and means that an employee is working from home doing work, including work other than their normal/regular duties, that may not require internet, email, or phone. To the extent an employee has a COVID-19-Related Condition and is able to work from home or telework, they will work from home or telework consistent with the department or agency Telework during Emergencies Policy.

Part-time employees: Part-time employees subject to the Personnel Act who are unable to work from home or telework are eligible for Paid Administrative Leave for COVID-19-Related Conditions under the same conditions as stated herein. This includes part-time employees in term and temporary appointments subject to the Personnel Act.

Intermittent Leave: Paid Administrative Leave for COVID-19-Related Conditions 1-4 cannot be taken intermittently. This limitation is imposed because if the employee is sick or possibly sick with COVID-19 or caring for an individual who is sick or possibly sick with COVID-19, the intent of this Memorandum is to provide such paid leave as necessary to keep the employee from spreading the virus to others. In contrast, Paid Administrative Leave for COVID-19-Related Condition 5 (caring for a son or daughter) is available to eligible employees for only up to twenty (20) hours per workweek and will necessarily be intermittent leave if taken across multiple weeks.

Interaction with Family and Medical Leave Act (FMLA) Leave: Paid Administrative Leave for COVID-19-Related Conditions will not count toward an employee's FMLA Leave entitlement.

Calculating Paid Administrative Leave for COVID-19-Related Conditions: Department or agency Human Resources (HR) will calculate Paid Administrative Leave for COVID-19-Related Conditions 1-4 and enter it into SHARE based on the employee's average number of work hours in a two-week period (the employee's normal hours scheduled). (For example, if an employee works an average of 76 hours per two-week period, and is otherwise eligible, they may receive 76 hours of Paid Administrative Leave for COVID-19 Related Conditions 1-4.) If an employee's normal hours scheduled are unknown, or if the employee's schedule varies, the department or agency may use a six-month average to calculate the average daily hours. If this calculation cannot be made because the employee has not been employed for at least six (6) months, the department or agency may use the number of hours that the employee and the department or agency agreed that the employee would work upon hiring. And if there is no such agreement, the department or agency may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of their employment.

Additional Procedural Guidance:

- Employees may submit a request to their department/agency HR for Paid Administrative Leave for COVID-19-Related Conditions. The State Personnel Office will provide agency HR with two (2) forms to request Paid Administrative Leave for COVID-19-Related Conditions, one for Conditions 1-4 as described above and one for Condition 5 as described above (caring for a son or daughter). Due to social distancing requirements during this public health emergency, employees may sign and scan the form to HR. If they are unable to do so, they may contact their HR by email or telephone and HR may submit the form on their behalf. HR should include a copy of the email or specific reference to the telephone call on the form.
- For Conditions 1-4 as described above, once approved by the Cabinet Secretary or Agency Head and the State Personnel Office Director, HR will notify the employee of Paid Administrative Leave status. The employee will then be required to follow department/agency leave policy and procedures.
- For Condition 5 as described above (caring for a son or daughter), once approved by the Cabinet Secretary or Agency Head, HR will notify the employee of Paid Administrative Leave status. The employee will then be required to follow department/agency leave policy and procedures.
- Paid Administrative Leave pursuant to this Memorandum is in addition to any sick or other leave the employee has accrued.
- Upon notification of approval from the State Personnel Office Director, Paid Administrative Leave for COVID-19-Related Conditions 1-4 should be coded by HR on the employee's timesheet in SHARE using the Time Reporting Code (TRC) "PDCVL" with the relevant COVID-19-Related Condition(s) indicated in the comment bubble.
- Once approved by the Cabinet Secretary or Agency Head, Paid Administrative Leave for COVID-19-Related Condition 5 (caring for a son or daughter) should be coded by HR on the employee's timesheet in SHARE using the TRC "EMFL." [Please note that this TRC will be updated.]
- The State Personnel Office's Quality Assurance Division has the authority to audit the use of Paid Administrative Leave for COVID-19-Related Conditions.