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STATE PERSONNEL OFFICE

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Repeal Memorandum

To: Cabinet Secretaries, Agency Heads and HR Managers

From: L. Teresa Padilla, Director

A handwritten signature in blue ink, appearing to read "L. Padilla", is written over the printed name of the Director.

Date: April 24, 2023

Subject: Repeal of General Memorandum 2022-001

Effective Saturday, May 6, 2023, State Personnel Memorandum 2022-001, Guidance on Administrative Leave for COVID-19 Related Conditions is repealed. (See attached)

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New Mexico State Personnel Board

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General Memorandum 2022-001

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

From: Ricky Serna, Acting Director

Date: January 31, 2022

Subject: Guidance on Administrative Leave for COVID-19-Related Conditions

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 meet one or more of the COVID-19-Related Conditions identified below beginning January 31, 2022.

This General Memorandum 2022-001 supersedes State Personnel Office General Memorandum 2020-001 and State Personnel Office General Memorandum 2020-004.

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 Board Rules, the State Personnel Office, and this General Memorandum only for State of New Mexico employees subject to the Personnel Act who meet the criteria set forth below, including term and temporary appointments.

Background:

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.

COVID-19-Related Conditions:

1. The employee is subject to isolation or quarantine related to COVID-19 pursuant to government order or Agency policy;
2. The employee has been advised by a healthcare provider or the employee's Cabinet Secretary or Agency Head or Agency Human Resources to isolate or quarantine due to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis/awaiting results of a COVID-19 test;
4. The employee is caring for an individual subject to an isolation or quarantine order related to COVID-19; or
5. The employee is caring for the employee's son or daughter under 18 years of age, if the school or childcare facility for the child has been closed or the caregiver or childcare provider of such son or daughter is unavailable because of a public health emergency.

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 31, 2022, paid administrative leave shall be available for employees who have one or more of the identified COVID-19-Related Conditions, as follows:

- A. For employees who meet COVID-19-Related Conditions 1-4 as described above:
 - i. Cabinet Secretaries or Agency Heads may authorize administrative leave with pay for up to five (5) consecutive workdays when it is in the best interest of the Agency to do so. Under this subsection (i):
 - a. Administrative leave shall be granted only for the period of time an employee is unable to work from home or telework as a result of COVID-19-Related Conditions 1-4.
 - b. Administrative leave may be granted intermittently to employees who meet COVID-19-Related Conditions 1-4 and are able to work from home or telework intermittently, but in no event shall extend past five (5) consecutive workdays total.
 - c. State Personnel Office Director approval is not required.
 - ii. Cabinet Secretaries or Agency Heads may authorize, and the State Personnel Office Director may approve, administrative leave with pay in excess of five consecutive workdays and up to ten (10) consecutive workdays when it is in the best interest of the Agency to do so. Under this subsection (ii):

- a. Administrative leave shall be granted only for the period of time an employee is unable to work from home or telework as a result of the COVID-19-Related Conditions 1-4.
 - b. Administrative leave may be granted intermittently to employees who meet COVID-19-Related Conditions 1-4 and are able to work from home or telework intermittently, but in no event shall extend past ten (10) consecutive workdays total.
- B. For employees who meet COVID-19-Related Condition 5 as described above (caring for a son or daughter because school is closed), 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. Under this subsection (B):
- i. Administrative leave shall be granted only for the period of time an employee is unable to work from home or telework as a result of COVID-19-Related Condition 5.
 - ii. Administrative leave may be granted intermittently to employees who meet COVID-19-Related Condition 5 and are able to work from home or telework intermittently, but in no event shall extend past twenty (20) hours per workweek for up to four (4) workweeks.
 - iii. Employees may work, work at home or telework, use accrued leave, or take leave without pay for the remainder of the workweek.
 - iv. 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.

Unable to Work from Home or Telework: An employee is “unable to work from home or telework” if the 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 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 or part of that schedule. Agencies should consider all viable options for work from home, telework, and flexible work schedules and cooperate with employees who meet COVID-19-Related Conditions 1-5 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.

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.

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: 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 months, the Agency may use the number of hours that the employee and the Agency agreed that the employee would work upon hiring. And if there is no such agreement, the 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 Procedure:

- Employees may submit a request to their 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 because school is closed). 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 by the State Personnel Office Director, if necessary, 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.
- Paid Administrative Leave for COVID-19-Related Conditions 1-4 should be coded by HR as "PDCVL" in SHARE with the relevant COVID-19-Related Condition(s) indicated in the comment bubble on the timesheet.
- Paid Administrative Leave for COVID-19-Related Condition 5 (caring for a son or daughter because school is closed) should be coded by HR as "PFCVL" in SHARE.
- The PDCVL and PFCVL TRCs are only available to and need to be entered into SHARE by Agency HR.
- The State Personnel Office has the authority to audit the use of paid administrative leave for COVID-19-Related Conditions.