

Updated Guidance on NYCHA’s Leave Policy Applicable to COVID-19, eff. May 1, 2020

This document sets forth NYCHA’s leave policy to mitigate the risk of the spread of Coronavirus Disease 2019 (COVID-19). This Guidance incorporates the emergency leave required by Divisions C and E of the Families First Coronavirus Response Act (“FFCRA”), Pub. L. 116-127¹ into NYCHA’s existing leave policy for the COVID-19. It is effective May 1, 2020 and until further notice, and supersedes the Guidance issued on April 1, 2020.

I. Definitions

A. “Symptoms of COVID-19” means the following physical symptoms:

- Cough
- Shortness of breath (difficulty breathing)

Or at least two of these symptoms:

- Fever (temperature above 100.4 degrees Fahrenheit or 38 degrees Celsius)
- Chills
- Repeated shaking with chills
- Muscle pain
- Headache
- Sore throat
- Loss of taste or smell

B. “Health Care Provider” means:

1. A person licensed, when required, to provide health care as a doctor of medicine or osteopathy; podiatrist; dentist; clinical psychologist; optometrist; chiropractor; nurse; nurse practitioner; nurse-midwife; clinical social worker; physician assistant; technician, including, but not limited to medical, laboratory, or radiological technician; pharmacist; and home health-care provider and any employee who works at the Department of Health and Mental Hygiene, a hospital, health care center, health clinic, mobile health facility, nursing facility, nursing home, pharmacy; and

2. Whenever this policy requires an employee to submit documented advice provided by a licensed health care provider, such licensed health care provider must be performing within the scope of practice for the license, as defined by the law of the licensing jurisdiction. Documentation obtained from Teledoc or other on-line doctor’s services will be accepted.

¹ Division C of the FFCRA is entitled the “Emergency Family and Medical Leave Expansion Act.” Division E of the FFCRA is entitled the “Emergency Paid Sick Leave Act.”

- C. Two workweeks” means the number of hours that an employee is regularly scheduled to work in a two-week period. Examples: for an employee whose regular schedule is 40 hours per week, two workweeks is 80 hours; for an employee whose regular schedule is 35 hours per week, two workweeks is 70 hours.

II. Determination of Personnel Performing Essential and Non-Essential Services during the Outbreak

Every division shall continue to implement and refine as necessary determinations concerning which services it provides that are essential during the COVID-19 outbreak, consistent with the March 22, 2020 Guidance, and identify the employees who are necessary to ensure provision of those essential services.

A. Essential services are defined as follows in the order of importance:

1. Responding to the COVID-19 Emergency

Delivery of any service or function that is critical to the mitigation of the spread of COVID-19 and emergencies arising because of the outbreak or actions taken to mitigate the outbreak.

2. Lifesaving

The direct, in-person delivery of lifesaving services to the public.

3. Maintenance and Repairs

Direct, in-person delivery of services, including physical inspection or maintenance of properties, and removal / mitigation of environmental hazards, to ensure continued public safety and public health, and other maintenance, repair, and infrastructure to support these operations.

4. Workforce and Internal Service Continuity

Functions, systems, and support of critical equipment and networks that enable NYCHA’s workforce productivity and ability to deliver services to residents.

B. Non-essential services:

Agency-specific and whole of government roles, functions, and duties that are not critically essential to the continued performance of the above four categories.

III. Work Assignments During the COVID-19 Emergency

A. Employees Currently Performing Non-Essential Services

Employees who are currently not assigned to perform essential services, as defined in Part II of this guidance are designated “employees currently performing non-essential services.” If their presence at the worksite is necessary for the performance of an essential service, they may be designated by NYCHA as an employee providing essential service. For example, an administrative employee who performs a task for an essential service that cannot be made accessible to the employee’s home, may be designated as an employee currently providing essential service.

All personnel currently performing non-essential services are expected to perform work remotely in accordance with the terms of NYCHA’s Emergency Telework Policy. They are required to complete all work assignments which they are assigned by NYCHA and which they have the technological capacity to perform at home using personal equipment or equipment provided by NYCHA (e.g., computer, phone, internet access). Those employees may also be re-assigned to perform essential services within NYCHA or by the City in other agencies at a location other than at their home including, but not limited to, emergency services administered by the Department of Education, such as Regional Enrichment Centers, food services sites, and nursing care sites for vulnerable students, as circumstances require.

Designation of an employee as performing non-essential services is temporary and may change to essential as the COVID-19 emergency develops. An employee who refuses to perform assigned work or to obtain equipment provided by NYCHA to perform assigned work shall be charged accrued leave and may be subject to discipline. An employee designated as currently performing non-essential services who in the rare circumstance is unable to work remotely because of inadequate equipment or lack of assignment shall be granted excused leave with pay without charge to leave accruals.

B. Employees Currently Performing Essential Services

1. Employees currently performing essential services are required to work at home or other alternate location if NYCHA has determined that is feasible pursuant to the NYCHA’s telework plan implemented in accordance with NYCHA’s Emergency Telework Policy, dated March 15, 2020.
2. Employees who are unable to perform essential services at home, for example all frontline staff, skilled trades, and support services staff, must continue to work at the locations to which NYCHA has assigned them.
 - a. Such employees performing essential services who exhibit symptoms of COVID-19 that are not due to a pre-existing condition must stay home. An employee who does not fall within the provisions of Section IV below but who has been exposed to another person who is or may be infected with COVID-19 is not authorized to receive excused leave under this paragraph.

- b. If an employee is exhibiting symptoms of COVID-19, the employee's supervisor should instruct the employee to go home. Before instructing an employee to go home under this circumstance, the employee's supervisor or manager must notify NYCHA's human resources department at hr.covid19@nycha.nyc.gov.

IV. Leave Policy

A. Excused Leave

1. General Provisions

- a. Excused leave at full or partial pay under this Policy is immediately available to an employee who is unable to work or telework without regard to length of service.
- b. Length of excused leave: pursuant to new federal leave requirements of the Emergency Paid Sick Leave Act (Division E of the FFCRA) effective April 1, 2020, full-time employees may receive up to two workweeks of excused leave. Part-time employees may receive excused leave for the number of bi-weekly hours that the employee was expected to work. Where expected hours cannot be readily determined, part-time employees may receive excused leave for the average number of bi-weekly hours that the employee worked over the six months preceding the leave. Any questions about the calculation of excused leave for which an employee might be eligible should be directed to hr.covid19@nycha.nyc.gov.
- c. Excused leave under this Policy is in addition to existing rules and entitlement regarding leave, e.g. accrued annual leave and anticipated leave.
- d. An employee may waive excused leave at partial (two-thirds) pay authorized by section 3 of this policy and instead use accrued annual leave (at full pay), if applicable, during the period of excused leave at partial pay. Any request to waive excused leave at partial pay should be directed to hr.covid19@nycha.nyc.gov. NYCHA shall not require employees to charge absences to other accrued leave during the period of excused leave authorized by this policy.
- e. Leave that an employee has taken prior to April 1, 2020 shall not be counted toward the amount of excused leave authorized by this Policy.
- f. An eligible employee may use excused leave intermittently as agreed upon by NYCHA and the employee. This leave must be taken in full day increments if the employee is not teleworking. Excused leave may be taken in partial day increments if the employee is teleworking and by

agreement between NYCHA and the employee. All requests to use excused leave intermittently should be directed to hr.covid19@nycha.nyc.gov. Absences pursuant to this policy must be documented. All required documentation should be submitted to hr.covid19@nycha.nyc.gov.

g. After the first workday (or portion thereof) that an employee receives excused leave under this Policy, NYCHA may require the employee to follow reasonable notice procedures in order to continue receiving excused leave.

h. NYCHA must post the attached bulletin entitled “Employee Rights” at office locations, via e-mail to all employees, and/or by posting on the agency’s intranet site.

2. Excused Leave at Full Pay – Employees are eligible for up to two workweeks of excused leave at full pay as follows:

a. An employee who has a documented positive COVID-19 test shall receive excused absence without charge to leave balances until the employee is cleared to return to work.

b. An employee is eligible for excused pay for up to two workweeks, without any additional leave charged to applicable leave balances as follows:

i. The employee is exhibiting symptoms of COVID-19

a. If the employee has any documented symptom of COVID-19, the employee must not report to work for seven days after the symptoms started or for three days after the fever has stopped, whichever is longer.²

b. Any further absence beyond two workweeks may be charged to accrued annual leave. If the employee has exhausted his/her accrued annual leave balances, the employee may seek approval for anticipated leave by sending a request to hr.covid19@nycha.nyc.gov.

c. The employee should provide documentation that he or she has exhibited symptoms of COVID-19 to be eligible for excused leave, provided that an employee who teleworks must provide such documentation only if the absence lasts for five or more consecutive days.. This documentation should be sent to hr.covid19@nycha.nyc.gov.

² See “Stay Home, New Yorkers: What you need to Know about COVID-19,” New York City Department of Health and Mental Hygiene (March 15, 2020) at <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/coronavirus-factsheet.pdf>

- ii The employee is subject to a governmental quarantine or isolation order and is unable to telework while observing the governmental quarantine or isolation order.
 - iii The employee has been advised by a licensed health care provider to self-quarantine either because of exposure to COVID-19 or because of heightened risk associated with exposure to COVID-19. The employee must provide documentation from the health care provider that the employee is unable to telework as a result of the need to self-quarantine. This documentation should be sent to hr.covid19@nycha.nyc.gov.
3. Excused Leave at Partial Pay. Employees are eligible for two workweeks of excused leave at partial pay (two-thirds of the employee's regular rate of pay, not to exceed \$200 per day or a total of \$2,000) as follows:
- a. The employee is caring for an individual subject to a governmental quarantine or isolation order and the employee must demonstrate that the individual depends on the employee for care and that the employee is unable to telework while caring for the individual under the government quarantine or isolation order. .
 - b. The employee is caring for an individual who has been advised by a licensed health care provider to self-quarantine either because of exposure to COVID-19 or because of heightened risk associated with exposure to COVID-19. The employee must provide documentation of the health care provider's advice and must demonstrate that the individual depends on the employee for care and that the employee is unable to telework while under quarantine.to hr.covid19@nycha.nyc.gov.
 - c. The employee is caring for a son or daughter under 18 years of age whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 precautions.

B. Leave to Care for a Child Under the Emergency Family and Medical Leave Expansion Act

- 1. Leave to care for a child under the Emergency Family and Medical Leave Expansion Act (Division C of the FFCRA) is available only to employees who have been employed for thirty (30) days or longer.
- 2. Eligible employees may take up to 12 weeks of Family Medical Leave to care for a son or daughter whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 precautions and is unable to

telework. All requests for leave pursuant to the Family Medical Leave Act (FMLA) should be directed to hr.covid19@nycha.nyc.gov.

3. During the first ten work days of such leave, the employee may:
 - a. Receive excused leave at two-thirds of the regular rate of pay not to exceed \$200 per day or a total of \$2,000, in accordance with paragraph IV (A)(3)(c) above, or
 - b. Elect to utilize accrued annual leave or compensatory time and receive full pay during this initial ten day period. All requests to use accrued annual leave or compensatory time should be directed to hr.covid19@nycha.nyc.gov.
4. After the first ten work days of leave to care for a child under this section, leave shall be paid at two-thirds of the regular rate of pay not to exceed \$200 per day or a total of \$10,000. The employee may not utilize accrued leave or anticipated leave during this ten-week period.
5. An eligible employee may utilize leave to care for a child intermittently as agreed upon by NYCHA and the employee. This leave must be taken in full-day increments if the employee is not teleworking. Excused leave may be taken in partial-day increments if the employee is teleworking and by agreement between NYCHA and the employee. All requests to utilize leave to care for a child intermittently must be directed to hr.covid19@nycha.nyc.gov.
6. The maximum 12 weeks of leave under this section is reduced by the amount of the FMLA leave entitlement taken in that year. If an employee has exhausted his or her 12 weeks of leave, he or she may still take two weeks of partial pay leave for a COVID-19 qualifying reason as outlined in Section IV(A)(3).
7. As required by federal regulation, the employee must provide documentation containing the following information:
 - a. Employee's name;
 - b. Date(s) for which leave is requested;
 - c. Qualifying reason for the leave;
 - d. Oral or written statement that the employee is unable to work because of the qualified reason for leave (in this case care for a child);
 - e. Name and age of son or daughter being cared for;
 - f. Name of the school, place of care or child care provider that has closed or become unavailable; and
 - g. A representation that no other suitable person will be caring for the child during the period of the leave.