

## PERSONNEL SERVICES BULLETINS (PSBs)

**440-17**

**Subject:** Unlimited Paid Sick Leave for Employees with 9/11 Related Illnesses

**Source:** Agreement between the City of New York and District Council 37, AFSCME, AFL- CIO, dated October 23, 2018, to provide a WTC 9/11 line of duty injury and illness benefit for employees; MPO 2019/1.

**Date:** Updated October 15, 2020

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### I. INTRODUCTION

Pursuant to the agreement between the City of New York and District Council 37, AFSCME, AFL-CIO, dated October 23, 2018, as adopted by other employee organizations, to provide a WTC 9/11 line of duty injury and illness benefit for employees of the City of New York, the City will provide unlimited paid sick leave to eligible employees in active status who participated in World Trade Center rescue, recovery and cleanup operations who have contracted 9/11 related illnesses. Pursuant to Mayor's Personnel Order No. 2019/1, effective October 23, 2018, Managers and Original Jurisdiction employees with certified 9/11-related illness are also eligible for unlimited paid sick leave.

### II. DEFINITIONS

"World Trade Center Health Program's Centers of Excellence" means Centers created under the James Zadroga 9/11 Health and Compensation Act of 2010.

"Eligible employee" means an employee who:

- is in active status as of October 23, 2018;
- is in a "covered title";
- participated in World Trade Center ("WTC") rescue, recovery and cleanup operations as verified by an approved "Notice of Participation" from a NYC public retirement system or the employee's agency during the time of the WTC rescue, recovery and cleanup operations;
- contracted a "Qualifying World Trade Center Condition" as defined in Section 2 of the NYS Retirement and Social Security Law or a "9/11 Related Illness" covered under the federal WTC Health Program, as diagnosed by a "Qualified Medical Professional" (as defined herein) which renders the employee unable to perform his or her duties; and
- is not currently eligible for unlimited sick leave pursuant to applicable law and/or collective bargaining agreements.

“Covered title” means employees in titles represented by an employee organization which has agreed to be covered by the benefit or employees or a title covered by the Pay Plan for Management Employees and Original Jurisdiction Employees.

“Qualified Medical Professionals” means:

- For Emergency Medical Services (“EMS”) members and other non-uniformed employees of the New York City Fire Department (“FDNY”), a medical doctor in the FDNY Bureau of Health Services;
- For other employees in other covered titles, medical doctors in WTC Health Program Clinical Centers of Excellence.

“Diagnosis” means (1) the diagnosis of a Qualified Medical Professional or (2) any federal certification letter confirming the diagnosis of a 9/11-related illness issued in association with enrollment in any WTC Health Program Clinical Center of Excellence.

“Qualifying World Trade Center Condition” means one or more of the enumerated illnesses defined in Section 2 of the NYS Retirement and Social Security Law – see list of covered illnesses.

“9/11 Related Illness” means one or more of the covered conditions under the federal WTC Health Program – see list of [covered illnesses](#).

### **III. GENERAL PROVISIONS**

#### **A. 9/11 Unlimited Paid Sick Leave Benefit**

1. An eligible full-time or part-time employee shall be permitted to take paid leave without charge to annual, sick or other leave balances for treatment for or recovery from a Qualifying World Trade Center Condition or 9/11 Related Illness. This benefit shall be known as “9/11 Unlimited Paid Sick Leave.”
2. An eligible employee may use 9/11 Unlimited Paid Sick Leave immediately upon hire.
3. An employee using 9/11 Unlimited Paid Sick Leave must comply with the employee’s agency procedures for requesting leave.
4. 9/11 Unlimited Paid Sick Leave may be taken intermittently in full day increments only.

For pre-scheduled treatment, the employee’s work schedule must be pre-approved by the employee’s agency.

5. An employee will accrue annual and sick leave during the 9/11 Unlimited Paid Sick Leave period in accordance with the applicable leave regulations, provided, however, that the employee will not be credited with the annual and sick leave time accrued until the employee returns from 9/11 Unlimited

Paid Sick Leave or such other approved leave as shall continue after 9/11 Unlimited Paid Sick Leave.

6. Leave provided pursuant to the Family and Medical Leave Act (“FMLA”) shall run concurrently with 9/11 Unlimited Paid Sick Leave, if the eligible employee is eligible for FMLA leave.
7. Group Health Insurance must be maintained for an employee on 9/11 Unlimited Paid Sick Leave on the same terms as if the employee had continued to work. If the employee contributes to the cost of their health insurance, the employee must continue to pay their portion of the premium cost while on 9/11 Unlimited Paid Sick Leave.
8. An employee may be required to provide a fitness for duty certification upon return to work.
9. Employees may separate from City service directly from 9/11 Unlimited Paid Sick Leave.
10. An employee who returns from 9/11 Unlimited Paid Sick Leave must be restored to his or her previous position or to an equivalent position. An equivalent position is a position in the same civil service title which has the same pay, benefits, and working conditions (including the same worksite or a geographically proximate worksite). A geographically proximate worksite is one that does not involve a significant increase in commuting distance or time. If the employee is denied restoration or other benefits, the employee’s agency must be able to show that the employee would not have continued to be employed, or to have received the benefits, if the employee had been continuously employed during the leave period.
11. An employee who was a member of an applicable NYC public retirement system on 9/11 must have their participation in WTC Rescue, Recovery, and Cleanup Operations verified by the appropriate retirement system.
12. An employee who was not a member of an applicable NYC public retirement system on 9/11 must have their participation in WTC Rescue, Recovery, and Cleanup Operations verified by the employee’s current agency. The current agency must:
  - a) Review the employees completed HC-0027 Verification of Participation form.
  - b) Forward the HC-0027 Verification of Participation form to the original employing agency to verify the employee’s participation (if applicable). If the current agency was the employing agency at the time of participation, the current agency should proceed with verification. Agencies should process verifications as expeditiously as possible.

NOTE: The Verification of Participation must be sent directly to the original employing Agency, rather than provided by the employee.

Denials – If the employee’s Verification of Participation is denied, a copy should be held on file. DCAS will issue guidance regarding next steps.

## **B. Duration of Leave**

1. Duration of the employee’s expected leave is to be determined by a Qualified Medical Professional pursuant to procedures to be established in collaboration with WTC Health Program Clinical Centers of Excellence, with consultation and input from other medical professionals as deemed necessary and appropriate. Duration determinations shall be based solely on the nature of the illness/injury of the affected employee and the impact it would have on their ability to perform their duties.

## **C. Retroactive Reimbursements**

The 9/11 Unlimited Sick Leave benefit will retroactively restore sick, annual, and compensatory leave; and reimburse pay to employees for unpaid leave taken due to WTC- related illnesses. City agencies must verify the leave and employees must provide documentation or doctor’s notes that cover the time taken to receive this benefit.

The retroactive reimbursement will proceed in two stages in order to reduce the burden on agencies. In the first stage, which is covered by this guidance, employees may only submit for leave taken in a single calendar year between 2001 and 2019 (e.g., an employee will submit for all leave taken in CY 2015). Employees may only submit in Stage 1 if claiming more than 150 hours of leave taken for a 9/11-related illness in the year they are submitting. Any employee who did not take 150 hours of qualifying leave in a calendar year will submit as part of Stage 2. Retirees may submit in Stage 1 for leave taken in a single calendar year, even if less than 150 hours is being claimed.

Employees must submit for Stage 1 reimbursement within 90 days of the issuance of this bulletin. Exceptions to this deadline may be made on a case-by-case basis if COVID-19 or other extraordinary circumstances prevent the employee from submitting within 90 days.

The second stage will deal with any remaining retroactive reimbursement, and guidance will be issued at a future date.

### **1. Verification**

- a) Employees must submit the Retroactive Unlimited Sick Leave Request Form (HC-0030) to agency Human Resources for reimbursement for sick or other leave taken in a single calendar year.
  - Submission for leave that covers more than one calendar year is acceptable only if there is one doctor’s note that covers a period of continuous absence crossing the calendar year.
  - Guidelines for restoration of additional time shall be issued at a further date.

- Agencies should prioritize employees who are pending retirement and those employees with low leave balances.
- b) Submit the HC-0030 form to the original employing agency to determine if there are relevant medical records on file that demonstrate that the employee's absences were due to a WTC-related illness.
  - If the current agency, was the employing agency at the time the leave was taken, the current agency should proceed with verification.
  - If the original employing agency cannot find records within 15 business days of initiating a search for relevant records, the employee will be asked to locate and provide the medical records within six (6) months. For agencies that need access to paper records during the COVID-19 outbreak and are limited in their ability to do so, agencies should process the paper work as expeditiously as possible. In no circumstances should the form be processed without sufficient documentation. After six months, agencies may close an open request if they do not receive sufficient documentation from the employee.
- c) The medical documentation must show that the reason for the leave was due to the employee's World Trade Center related illness. If the agency does not have records that show that the was due to the WTC-related illness, the employee must provide documentation showing that the leave was due to the qualifying WTC-related illness in order for it to be restored.

## **2. Restoration Process**

- a) General annual, sick, and compensatory leave restoration should be processed as a manual leave adjustment.
- b) The employee may choose to have 175 hours of annual leave paid as cash, paid at their current salary. The balance of any additional annual leave to be restored will be restored to the employee's annual leave bank.
- c) Any sick leave or leave without pay used will be restored to the employee's sick leave bank.
- d) For Retirees, all annual leave will be paid as a non-pensionable lump sum.

## **3. Examples of Acceptable Documents**

These documents are only considered if they include specific dates.

- a) Leave records – Paper or electronic records including but not limited to timesheets, timecards, letters, memos, emails and reports.
- b) Personnel records – Paper or electronic records including but not limited to letters, memos, emails and reports.
- c) Worker's compensation injury reports documenting treatment dates for a WTC-related illness.
- d) Medical records documenting treatment for a WTC-related illness.

## **D. Separation**

1. A covered employee entitled to terminal leave upon separation from City service, shall have any leave time for which the employee was on leave utilizing the 9/11 Unlimited Paid Sick Leave, including any retroactive reimbursement, deducted from the employee's sick leave balance.
2. A covered employee entitled to a managerial lump sum payment upon separation from City Service, shall have any leave time for which the employee was on leave utilizing the 9/11 Unlimited Paid Sick Leave, including any retroactive reimbursement, deducted from the employee's sick leave balance.

## **IV. Application Procedures**

- A. Before applying for 9/11 Unlimited Paid Sick Leave, an employee seeking 9/11 Unlimited Paid Sick Leave must confirm with her or his agency's human resources department that he or she is in a covered title.
- B. The employee must provide the agency human resources department with documentation that he or she has received a diagnosis of a Qualifying World Trade Center Condition.
- C. Within five (5) business days after an employee in a covered title submits the required documentation to her or his agency's human resources department, the agency must notify the employee in writing whether the employee has been approved to use 9/11 Unlimited Paid Sick Leave.
- D. If an employee is in a covered title, but his or her participation in WTC rescue, recovery and cleanup operations has not been verified, the agency must contact the applicable NYC public retirement system or the employee's agency during the time of the WTC rescue, recovery and cleanup operations to confirm the employee's status.
- E. Once an employee's eligibility for leave has been approved pursuant to Section IV(C) above, intermittent absences of three days or fewer shall not require additional medical documentation. Documentation for absences of greater than three days in duration will be required pursuant to the procedures to be developed as referenced in Section III (B) above.

Attachments

[HC-0027 Verification of Participation Form](#)

[HC-0030 Retroactive Unlimited Sick Leave Request Form](#)

Lisette Camilo  
Commissioner