



Contract Administration

TO: Executive Board
Council Leaders
Field Staff

FROM: William LeBeau
Director of Contract Administration

DATE: March 27, 2020

RE: Updated FAQs on COVID-19

PEF Members should contact their Division's local leaders with any concerns to ensure that workplace issues are being presented to management at local labor/management meetings. These meetings can and should be ongoing and may be conducted via tele-conferencing.

This is an update to the FAQs that were originally distributed on March 18, 2020, which have been updated regularly since that date. It is intended to help guide you through the ongoing and evolving public health emergency caused by the COVID-19 Virus. This FAQ will continue to be updated as needed.

- Q. I am concerned about in person visits to my health care provider. Will Telemedicine be available to Empire Plan enrollees?**
- A. Yes, PEF and the State reached an agreement to provide telemedicine to Empire Plan enrollees effective immediately. This will give Empire Plan enrollees access to a live doctor on a 24/7 basis. There is no co-pay or charge for this service. However, if an appointment is cancelled, there will be a \$25 cancellation fee. More information can be found here: The Empire Plan Telehealth [Services](#) and [LiveHealth Online Instructions](#)).
- Q. Is the EAP program still available to PEF members?**
- A. Yes. The EAP program is fully functioning and available to all PEF members. Please click on these links for [contact information](#) and [program details](#).

Q. There Are Rumors That Paychecks Will Be Delayed Due To The COVID-19 Emergency, Is This True?

A. There was a concern unrelated to COVID-19 that if the State Budget is enacted on March 31, the April 1 paycheck could be delayed. However, since the Governor and Legislative leaders are working towards an early budget, this is unlikely. We will monitor the situation and continue to ensure that there is no interruption in State salary payments.

Q. Who Has Been Directed Not To Report To Work by the Governor?

A. As of now, all non-essential State employees for New York State agencies and public authorities in every county, starting March 17, 2020, are directed not to report to work for two weeks.

Q. If I Was Directed Not To Report To Work During This Two-Week Period, Do I Have To Work From Home?

A. The directive requires that all non-essential employees shall work from home to the extent practicable. Employees do not have to charge accruals to fulfill the directive.

Q. Will Equipment Be Provided For Me To Work From Home?

A. Your agency may provide equipment, but they are not required to do so. Although it is expected that employees will use their own equipment if not provided equipment by the agency, employees are not expected to purchase new equipment to facilitate working from home.

Thus, even if you do not have the equipment needed to work from home, as long as you are cooperative with the agency and making your best effort to work from home with your available resources, you will be considered in compliance with the work from home directive and will not have to charge accruals.

Q. How Is It Determined Whether I am Essential or Non-Essential?

A. The State has the exclusive authority to designate whether employees are essential or non-essential. Employees must confirm their status with their supervisor. An employee's status may change on a day-to-day or shift-to-shift basis. Employees designated as essential or non-essential for a prior emergency will not necessarily have the same designation for all or part of this emergency. Employees working from home must call an agency contact no later than one hour prior to their regular start time, to ensure any change in status can be communicated.

Q. Can I Choose To Telecommute, Or Can I be Mandated To Do So?

A. Telecommuting can be mandated by the employer or requested by the employee in accordance with emergency Statewide Telecommuting Pilot Program Agreement. Right now, all non-essential employees have been mandated not to report to work for two weeks effective March 17, 2020 and to work from home to the extent practicable. The Pilot Program was designed to provide an alternate work arrangement to allow some employees to conduct some or all of their work at home during the COVID-19 emergency. Under the Agreement, telecommuting arrangements are subject to management approval but are to be approved to the greatest extent possible. Although some employees may be provided with

equipment to telecommute, the State is not required to do so. If requested and denied by the agency, the Pilot Program contains provisions for an appeal. Questions or concerns regarding eligibility to telecommute should first be raised with the employee's supervisor. Please contact your local PEF leader or Field Representative for assistance if needed. The Emergency Telecommuting Agreement and the Memo implementing the Agreement can be found here: [Telecommuting Bulletin](#), [Pilot Telecommuting Memo](#), [Pilot Telecommuting Application](#).

Q. Do Employees Designated As Non-Essential Who Were Directed Not To Report To Work Continue To Accrue Time?

A. Yes. Non-essential employees are still working from home and earning accruals.

Q. What if I am placed on a mandatory or precautionary quarantine by the State or a local Department of Health?

A. Any employee placed on a mandatory or precautionary quarantine by State or local health officials will be placed on leave with pay, without charge to accruals, for all workdays within the 14-calendar day period for the quarantine, regardless of whether they are displaying symptoms or not.

For an employee placed on a precautionary quarantine, arrangements will be made to have the employee work from home if that can be done. If not, the employee will be placed on leave with pay, without charge to accruals, for all workdays, within the 14- calendar day period for the quarantine, whether healthy or displaying symptoms. More information on the difference between Mandatory and Precautionary Quarantine can be found here: [Policy Guidance Employee Status COVID-19](#)

Q. What If I Am Deemed Essential But I Cannot Work Because My Medical Provider Has Advised Me To Self-Isolate, Or I am Exhibiting Symptoms Associated With COVID-19 But Have Not Yet Been Tested?

A. Under the State law and policy, a recommendation from a health care provider to self-isolate is not sufficient to be eligible for full pay without charge to accruals.

However, under the federal law passed on March 18, 2020, based on guidance issued by the U.S. Department of Labor on March 24, 2020, an employee unable to work because they have been advised by a health care provider to self-quarantine related to COVID-19, or is experiencing COVID-19 symptoms and is seeking a medical diagnosis is qualified for two weeks of paid sick time, with a cap of \$511 per day. In other words, the federal law does not require a quarantine order from the Department of Health in order for the employee to be eligible for paid sick leave related to COVID-19.

We are still awaiting further guidance from the US. Department of Labor as to how this federal law will be applied, which may impact how it affects some or all PEF members. We are also in the process of working with GOER to clarify and coordinate the State law and policy with the federal law. In any case, at this time, we recommend that if your provider advises you to self-isolate, you should have the provider call the State or local Department of Health, or call them yourself, to try to obtain a quarantine order. If you are

able to obtain a quarantine order, then you will then be covered by the State's quarantine policy as described above.

The State has also directed that any COVID-19 symptomatic employee, that is, any employee experiencing a fever, cough, shortness of breath, or respiratory infection/distress, should not report to work. This applies to both essential and non-essential employees. Any employee experiencing symptoms associated with COVID-19 should immediately report their symptoms to their supervisor and/or the agency/authority's human resource personnel. An employee experiencing symptoms, or who had exposures, should also contact the State or local Department of Health to determine if they need to be placed on a mandatory or precautionary quarantine.

Q. If I Report To Duty And Am Sent Home Due To A Fever Or Cough, Do I Have To Charge Accruals?

A. Based on the above federal law and the State policy, we do not believe you should have to charge accruals. Therefore, if you are sent home and expect to have to charge accruals, please (1) contact your PEF Field Representative, (2) send an email to your supervisor(s) confirming that you were directed to leave work and go home and that you did not do so on your own accord, (3) contact your physician and obtain a doctor's note stating that you should not report to work due to symptoms that may be associated with COVID-19, and (4) have your physician contact the State or local Department of Health to try to obtain a quarantine order. As mentioned above, if a quarantine order is issued by the State or a local Health Department, then the employee would be placed on leave with pay, without charge to accruals, in accordance with GOER's March 11, 2020 Memorandum. While the federal law does not require a quarantine order issued by the government, we are still awaiting further guidance from the U.S. Department of Labor, and from GOER, as to how that law will be applied to our members.

Also, as a general matter, it is PEF's position that employees sent home from work should not have to charge accruals in the absence of the State complying with applicable provisions of the Civil Service Law.

Q. What If I Am Over 60 or 70, Have A Compromised Immune System, Am Pregnant, or Have an Underlying Illness That Makes Me Particularly Vulnerable to COVID-19?

A. We are currently talking with GOER about what sort of leave may be available to such employees and will update as soon as we have more information. In the meantime, if employees designated as essential are concerned about exposure in the workplace, we recommend that these employees obtain a doctor's note stating that they should not report to the work due to COVID-19 health concerns, and attempt to obtain a quarantine order from the State or local Department of Health.

Until we clarify how the federal law discussed above will be implemented by the State, unless the employee is subject to a mandatory or precautionary quarantine by the State or a local a local Department of Health, such employees, as of now, will have to use sick leave accruals for such approved absences. Again, if that changes due to the federal law recently passed, we will update this FAQ to reflect that.

Q. What if I am Deemed Essential, But Am Unable To Work Because My Child's School Or Day Care Is Closed?

A. The new federal law referenced above, which goes into effect on April 2, 2020, provides up to \$200 per day of paid leave (\$12,000 in total) for workers caring for a minor child whose school or day care is not operating. It expands the Family Medical Leave Act to provide up to 12 weeks of job protected leave for absences due to school closings. We are communicating with GOER regarding how this benefit will be implemented for PEF members, including how and which accruals may be used in conjunction with this federal benefit. We will update as more information becomes available.

Q. What If I Am Deemed Essential And Cannot Work Because I have A Family Member Who Has COVID-19 Who Needs Me To Care For Them?

A. The federal law discussed above provides paid leave for this purpose at up to \$200 per day, capped at \$2,000 in the aggregate. Further, employees can generally use accruals for such an absence, including up to 15 days of sick leave accruals for family illness. We will update based on conversations with GOER if the 15-day sick leave cap is increased and also if there is further information about how accruals can be used in conjunction with the federal benefit discussed above.

If someone in your home has COVID-19, we recommend that you contact your State or local Department of Health to obtain a quarantine order for yourself, or have your medical provider do so. If you are subject to a quarantine order issued by the State or a local Department of Health, then you would be placed on leave with pay, without charge to accruals in accordance with the State's quarantine policy.

As noted above, for an employee placed on a precautionary quarantine order, if such employee can perform work at home, arrangements should be made to do so.

Q. If I Am SG 22 Or below Or I Am Otherwise Eligible For Overtime Pay, Can I Be Mandated To Work Beyond My Normal Schedule, Including Being Directed To Work Overtime?

A. Yes, such employees can be directed to work overtime beyond their normal work schedule. For employees eligible for overtime pay, that is employees in Salary Grades 22 and below and certain other employees, there is no change to such employees' overtime eligibility under the PEF/State Contract. Employees will continue to receive overtime pay at their normal overtime rate for mandated overtime.

Further, mandatory overtime for nurses is subject to New York State Labor Law Section 167, which prohibits health care employers from mandating overtime for nurses, subject to certain exceptions, including specified emergencies and health care disasters, and sets forth steps that the employer is to take prior to mandating overtime in such situations. If you believe your employer is in violation of this law, please contact your Field Representative for assistance.

Q. If I Am SG 23 Or Above, Can I Be Mandated To Work Beyond My Normal Schedule, Including Being Directed To Work Overtime, And Will I Be Compensated For The Overtime Hours?

A. Generally, employees in Salary Grades 23 and above may be required to work beyond their normal work hours without additional compensation. However, based on the COVID-19 crisis, the State approved overtime pay for otherwise overtime ineligible employees in Salary Grades 27 and below for overtime work for only those hours in excess of 47.5 hours per week, if it is essential and directly related to activities associated with the State's preparation and response to COVID-19. A link to the State budget bulletin can be found here.

<https://www.budget.ny.gov/guide/bprm/h/h0501.html> Employees should keep track of all hours worked over 47.5 and a description of the job duties performed, in case there is any dispute that the hours worked are not eligible for overtime. If you believe you should be entitled for overtime pay but are not receiving it, please send supporting documentation to your Field Representative for assistance.

For employees in Salary Grades 28 and above, such employees may be directed to work overtime hours beyond their normal schedule without any overtime compensation. Unlike the employees in Salary Grades 23 to 27, employees in Salary Grades 28 and above are not eligible for the overtime pay for hours in excess of 47.5 per week. However, it should be noted that the employing State agency can request an a Waiver of Overtime Compensation from the Division of Budget to demonstrate that extraordinary overtime is critical to activities associated with the State's preparation and response to COVID-19. These requests are decided by Division of Budget on a case-by-case basis. PEF can advocate that an agency put in such a request for staff in Salary Grades 28 and above who are working extraordinary hours on the COVID-19 response. Such overtime hours should be documented for both presentation to the agency and potentially to DOB.

Q. How Does On-Call Pay Work?

A. Nurses, nurse anesthetists and employees who are overtime eligible are entitled to on-call pay at a rate of 25% of their daily rate of pay for each eight hours or part thereof that the employee is scheduled to and remains available for recall to duty. This means that if an employee is on-call for 12 hours, they receive 50% of their daily rate of pay; 25% for the first 8 hours and another 25% for the additional four hours. Employees on a list for voluntary overtime are not eligible for on-call pay, though of course they would need to be compensated for the overtime hours voluntarily worked. To be eligible for on-call pay, the employee must be required to respond to contact by the agency and be available for recall to duty. The provisions for on-call pay are contained in Article 31 of the PEF/ State Agreement.

Q. Is There A Minimum Amount of Hours For Which I Must Be Compensated If I am Recalled To The Workplace? And, What If I Am Recalled Twice In One Day?

A. Employees who are recalled to the workplace are guaranteed compensation for a minimum of ½ the day. If recalled twice in one day, for example, each time for two hours, the employee would be entitled to compensation for a full day's pay; a half day for the first two hours of recall and a half day for the second two hours. This applies only to recall situations. If an employee is required to work extra hours immediately before or after their scheduled shift, the compensation will be based on the extra hours work with no minimum of a half day for the extra hours.

Q. Will I Be Paid At The Overtime Rate For Recall Hours?

A. Hours worked during the week between 37.5 and 40 will be compensated as compensatory time and hours over 40 will be compensated at the overtime rate.

Q. Can I Be Compensated For Work Performed Remotely While On-Call?

A. Yes, if the agency has authorized the “recall” work to be performed remotely. This would only apply to employees eligible for on-call and recall pay.

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Q. Will I Be Paid Out-Of-Title Pay For Duties Performed Above My Paygrade?

A. Although out-of-title pay is not necessarily available in certain temporary emergency situations, the determination is very fact specific. Therefore, if you are performing out-of-title work, it is best to file an out-of-title grievance as soon possible to assure that any potential back pay covers as much of the work as possible. If you need assistance, please contact your PEF Field Representative or local PEF leader. Provisions related to out-of-title work are contained in Article 17 of the PEF/State Agreement.

Q. What If I Cannot Take Time Off Before April 1, 2020 Due To The COVID-19 Response And Will Therefore Forfeit Accruals In Excess Of 40 Days?

A. In accordance with an agreement between PEF and the State, employees engaged in response efforts related COVID-19 or unable to utilize vacation leave due to ongoing response efforts who would otherwise forfeit accrued vacation leave on 4/1/20 will be given until close of business on 12/31/20 to use such excess vacation credits. We recommend that anyone who expects to have over 40 days of vacation accruals on April 1 who is either directly involved in the COVID-19 response, or, who expects to be able to use those accruals because of the ongoing response efforts, should put in vacation requests to use that time by April 1 so that the request can be denied and it can be clear that the employee's excess accruals should be carried over until 12/31/20. In the alternative, the employee can request that the supervisor put something in writing saying that the employee cannot use any vacation accruals between now and 3/31/20.

Q. Will I have to forfeit personal days if I cannot take personal leave due to the COVID-19 response?

A. No. Employees unable to take personal leave due to the COVID-19 response will be able to carry such days over until their next personal leave anniversary date if the leave would have been forfeited between March 9, 2020 and May 31, 2020 due to the COVID-19 response.

Q. What Is The Status Of Exams Scheduled By The State Department of Civil Service?

A. All State civil service examinations scheduled for March 28 and 29, 2020 have been postponed. All impacted candidates will be notified when exams are rescheduled. For information on the status of civil service exams administered by local governments, contact the applicable local civil service agency.

Q. Am I Going To Receive Hazardous Duty Pay As My Essential Duties Have Increased My Risk Of Infection?

A. Entitlement to hazardous duty pay is determined by criteria set forth by the Department of Civil Service and will depend on the particular facts presented. We will be

monitoring in conjunction with PEF's Civil Service Enforcement Unit to make applications where appropriate to the Department of Civil Service for hazardous duty pay as a result of our members' being exposed to unavoidable, clear and direct risks to health and safety. Employees should document the hours they are performing such duties. Any exposures should be reported to your supervisor and Field Service Representative.

Q. What if I come in contact with a co-worker or family member who had contact with someone who has tested positive for Covid-19?

A. If an asymptomatic individual is contacted by a local health department to be notified that they are a contact of a confirmed case, they will be required to be under mandatory quarantine or precautionary quarantine in their home, depending on if contact was close or proximate respectively, following the guidelines provided by the State.

Any spouse, children or other household members, assuming both they and the individual under quarantine are asymptomatic, are considered a "contact of a contact" and therefore are not required to be in quarantine. They can go to school, work, and engaged other activities following recommendations for social distancing as appropriate.

If an asymptomatic employee calls their supervisor and notifies them that they are required to stay home in quarantine because they were a contact of a confirmed case, the contacts they had at work are considered "contacts of a contact" and therefore not at risk. These "contacts of a contact" are not required to be in quarantine and should be permitted to continue to work, following recommendations for social distancing as appropriate.

Q. What if I contracted COVID-19 and am sick for a longer period of time?

A. There is a lot that we don't know about this disease, but we do know it affects everyone differently. Some members' may experience extended conditions as a result of contracting COVID-19 and in some rare instances, members' may have long-term issues from exposure that may keep them from returning to work. While it may be difficult to determine where a person contracted the virus, if you serve in a position with greater risk of on-the-job exposure, it is critical that you maintain any records regarding your illness and any correspondence you may have had with your manager and your union regarding any work-related situation that may have increased your risk of contracting the virus –i.e., direct on-the-job interaction with infected clients or inmates, lack of appropriate or complete PPE, etc. If you experience ongoing problems associated with contracting COVID-19 that preclude you from returning to work and you feel it is work-related, it is important to understand you may be eligible for workers' compensation benefits. To determine eligibility, file a claim, visit the NYS Workers' Compensation Board at <http://www.wcb.ny.gov/content/main/Workers/Workers.jsp>. It is equally critical that you keep your union informed if your condition does not improve!