

MEMORANDUM

TO: Agencies, Boards and Commissions Leadership

FROM: Governor Laura Kelly

Date: April 2, 2020

RE: **UPDATED COVID-19 Operational and Workplace Guidance**

The information below is intended to provide executive branch employees, agencies, boards and commissions with updated guidance on workforce issues related to the COVID-19 virus. This information is supplemental to the guidance set out in my March 13, 2020 memo and supersedes any provisions of that previous memo regarding similar situations.

Employees Required to Report to Work. Any employee who has been reporting to work during the current pay period as necessary to provide the primary mission-essential functions (PMEF) of the agency will continue to be required to work on and after April 5, 2020 until further notice. Beginning April 5th, agencies may require additional employees to report to work in support of longer term PMEF's, in accordance with agency continuity of operations (COOP) plans and based on the changing needs of the State during this emergency. Any such employee is to be provided with at least 24 hours of notice regarding their requirement to report to work. Employees in this category should record their time as they regularly would.

Leave for Employees Required to Report to Work. If an employee or employee's household member is sick with anything other than COVID-19, the state's regular sick leave policies will remain in effect and the employee will report their time away from work due to the illness according to existing state policies within existing accrual balances.

If an employee or household member shows signs of the COVID-19 virus, the employee will be subject to a 14-day quarantine, which will be recorded as administrative leave.

Teleworking Employees. Any employee who has been performing duties remotely (i.e., teleworking) during the current pay period will continue to be required to work on and after April 5, 2020 until further notice. Beginning April 5th, in accordance with IT policy and subject to availability of equipment, agencies should make every effort to allow as many additional employees to telework as possible. Any such employee is to be provided with at least 24 hours of notice regarding their requirement to begin teleworking. Teleworking employees should record their time as they regularly would.

Leave for Teleworking Employees. If an employee or an employee's household member shows signs of the COVID-19 virus and is unable to continue teleworking as a result, the employee will record any time that they are unable to telework as administrative leave. Any employee in this situation should inform their agency of this fact and should make note of when they began exhibiting symptoms of COVID-19. In the event that the State of Kansas returns to full operations prior to the end of the employee's 14-day quarantine, the employee will receive administrative leave for any period of the quarantine remaining to be served.

If an employee or employee's household member is sick with anything other than COVID-19, the state's regular sick leave policies will remain in effect and the employee will report their time away from work due to the illness according to existing state policies within existing accrual balances.

Employees Unable to Report to Work or Telework Due to Childcare. In accordance with the Families First Coronavirus Response Act (FFCRA), any employee who is not considered a health care provider or first responder and is unable to report to work or telework due to a need to care for a child under the age of 18 whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19 is eligible for partial paid leave. Any employee in this situation is eligible for up to two weeks of such leave, and any employee who has been employed by the State for at least 30 days and is in this situation is eligible for up to ten weeks of such leave.

Pursuant to guidance issued by the United States Department of Labor (USDOL), a 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 institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions. This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions 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. This also includes any individual that the Governor determines is a health care provider necessary for the State's response to COVID-19.

USDOL provides that an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such 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 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. This also includes any individual that the Governor determines is an emergency responder necessary for the State's response to COVID-19.

To minimize the spread of COVID-19, USDOL has encouraged all employers to be judicious in using these definitions to exempt employees from the provisions of the FFCRA. Any employee who is unsure whether or not they fall within one of these definitions should contact their supervisor for verification.

The FFCRA is effective April 1, 2020, but since any eligible employee in this situation will have already been receiving administrative leave for the current payroll period, any such leave authorized by the FFCRA will not be necessary until the start of the next pay period on April 5, 2020.

Leave for Employees Unable to Report to Work or Telework Due to Childcare. Employees utilizing leave provided by the FFCRA will receive FFCRA leave in the amount of two-thirds of their regular pay and the remaining one-third will be recorded as administrative leave. The Office of Personnel Services within the Department of Administration will be providing additional guidance to HR staff on how this leave will be recorded.

If an employee or an employee's household member shows signs of the COVID-19 virus while away from work using leave provided by the FFCRA, they will record any such time as administrative leave. Any employee in this situation should inform their agency of this fact and should make note of when they began exhibiting symptoms of COVID-19. In the event that the State of Kansas returns to full operations prior to the end of the employee's 14-day quarantine, the employee will receive administrative leave for any period of the quarantine remaining to be served.

Employees Not Directed to Report to Work, Telework or Eligible for FFCRA Leave. Any employee who is not in any of the above categories should continue to remain away from work. State agencies are providing the Kansas Division of Emergency Management (KDEM) with information to determine whether any employee in this category could assist KDEM with critical tasks related to this emergency.

Depending on the skills and experience of the employee and the needs identified by KDEM, any employee in this category may be temporarily assigned to other duties. If that does occur, any such employee is to be provided with at least 24 hours of notice regarding the job duties that they will be expected to perform and where they are to report. In such instances, the employee will record any time worked as they would normally.

Leave for Employees Not Directed to Report to Work, Telework or Eligible for FFCRA Leave. Employees who are not able to begin teleworking or assigned to new duties by KDEM and are not receiving FFCRA leave will record their time as administrative leave.

Even though such employees will already be recording their time as administrative leave, if an employee or household member shows signs of the COVID-19 virus while away from work, the employee should inform their agency of this fact and should make note of when they began exhibiting symptoms of COVID-19. In the event that the State of Kansas returns to full operations prior to the end of the employee's 14-day quarantine, the employee will receive administrative leave for any period of the quarantine remaining to be served.

At-Risk Populations. As indicated in my March 13, 2020 memo, certain individuals have a higher risk of severe illness if they were to contract the COVID-19 due to underlying medical conditions or any of a number of other factors. To this point, employees have been self-identifying their at-risk status and agencies have provided paid administrative leave for any such circumstance. However, given the ongoing nature of this emergency and for purposes of equity, the policy will now be as follows.

Leave for At-Risk Employees. If an employee or an employee's household member is at-risk and the employee believes that they are unable to perform their duties, either in-person or via telework, and is not eligible for FFCRA leave, the employee will record their time as administrative leave. However, some employees who would fall within the broad definitions of emergency responders or health care providers referenced above in the section dealing with the FFCRA may be required to report to work, as determined by their agency. Any employee who is unsure whether or not they fall within one of these definitions should contact their supervisor for verification.

Even though such employees will already be recording their time as administrative leave, if an employee or household member shows signs of the COVID-19 virus while away from work, the employee should inform their agency of this fact and should make note of when they began exhibiting symptoms of COVID-19. In the event that the State of Kansas returns to full operations prior to the end of the employee's 14-day quarantine, the employee will receive administrative leave for any period of the quarantine remaining to be served.

Employees Who Choose Not to Report to Work. While it is completely normal to have concerns and apprehensions about the COVID-19 virus, it is important that we not let fear and rumors dictate our actions. Every agency is taking every precaution that it can to ensure the safety of its employees, but some employees have expressed concern that those precautions are not enough. While every employee has a right to do what they feel is best for their health and safety, any employee who is required to report to work and is not exhibiting symptoms of COVID-19, does not have a household member exhibiting symptoms and is not in an at-risk population but chooses to remain away from work will be required to utilize their own accrued leave or may record that time as leave without pay.

Reward/Recognition for Employees. The response to this unprecedented emergency has required many employees from multiple different agencies to put in long hours and done much more than what would normally be expected of them in a non-emergency setting. As a result, many agencies have

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requested to reward such employees for their efforts, and while I agree that they are indeed worthy of recognition, this must be done in a consistent manner throughout the agencies under my jurisdiction.

Therefore, I have asked the Office of Personnel Services within the Department of Administration to prepare guidance for agencies to provide bonuses for those employees who have truly distinguished themselves and gone above and beyond in performing their duties during this challenging time. This guidance will be issued within the next week and will include contact information for staff to whom agencies can address any questions they may have.

Vacation Leave Overage. Given the tremendous amount of work that many employees have been required to do these past several weeks and with more undoubtedly required in the weeks to come, many employees have either already been forced to or may soon have to forego the use of planned vacation leave. Since the State's vacation leave policy enforces maximum accumulations of vacation leave at the end of each fiscal year, this could adversely impact many employees who have already been asked to sacrifice their plans.

In order to offset this potential loss, any employee who is scheduled to lose vacation leave overage at the end of the current fiscal year as a result of their efforts during this emergency will have the amount of such overage in excess of any administrative leave that they may have received since March 13, 2020 carried over into the new fiscal year as administrative leave to be used as they otherwise would use their own accrued leave. This administrative leave will be required to be used on or before December 31, 2020.

Employee Mental and Emotional Health. This has been a trying time for our entire country, and in addition to the many suggestions on how to maintain their physical health, everyone must not neglect their mental and emotional health as well. Employees that may need assistance with coping with stress or other issues during this time may seek support by reaching out to the **Employee Assistance Program**. Information can be found at: www.kdheks.gov/hcf/healthquest

COVID-19 Information. As we have all seen over these past few weeks, events can and do change very quickly. As a result, it is important that employees stay up-to-date with the latest information from official sources. If you have any questions, please visit the **Kansas Department of Health and Environment's** COVID-19 website at www.kdheks.gov/coronavirus or the **Centers for Disease Control's** COVID-19 website at www.coronavirus.gov.

KDHE also has a phone bank available to answer questions from the public or health care professionals, Monday thru Friday from 8:00 AM to 5:00 PM. The toll-free number is: 1-866-534-3463 (1-866-KDHEINF).

Note: Only official government websites pertaining to COVID-19 should be shared with members of the public, unless specifically authorized to do otherwise by agency leadership.