



Michael L. Parson
Governor

State of Missouri
OFFICE OF ADMINISTRATION
Post Office Box 809
Jefferson City, Missouri 65102
Phone: (573) 751-1851
Fax: (573) 751-1212

Sarah H. Steelman
Commissioner

To: All State Departmental Employees

From: Sarah Steelman

Date: July 27, 2020

Re: Leave guidance related to Coronavirus Disease 19 (Version 5)
(Superseding all previous versions.)

To minimize the spread of illness during the Coronavirus Disease 19 (COVID-19) outbreak, we are asking all team members (including supervisors) to be flexible, consistent with this Guidance, regarding leave for team members who are or may be sick.

This Version contains the following changes as a result of changes in guidance issued by the Centers for Disease Control: adds symptoms to the definition of “sick” in Section B.1; amends the requirements for returning to the workplace after being “sick” or testing positive for COVID-19 in B.1 and B.3; specifies different return-to-work requirements depending upon whether a team member who tested positive for COVID-19 was symptomatic or had no symptoms in B.3; and adds a return-to-work restriction for team members with a household member who tested positive for COVID-19 in B.5. Additionally, this Version notifies team members that, beginning August 24, 2020, Borrowed Leave will no longer be available for school, daycare, and similar closures (A.2, B.7). Finally, this Version adds references to the state regulations regarding administration and repayment of Borrowed Leave (B.9).

A. New Federal Leave Laws Related to COVID-19.

1. **The Emergency Paid Sick Leave Act.** This Act provides state employees (subject to the exceptions discussed below) two weeks – up to 80 hours – of Emergency Sick Leave at the team member’s regular rate of pay when the team member is unable to work or telework because (a) the team member is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 that prevents the team member from working or teleworking (most “stay-at-home” orders exempt government work activities); (b) the team member has been advised by a health care provider to self-quarantine, either because the employee has or may have COVID-19 or because the employee is particularly vulnerable to the virus; or (c) the team member is experiencing any of the symptoms of COVID-19 (fever of 100.4° or above, dry cough, shortness of breath, or any other COVID-19 symptoms identified by the federal Centers for Disease Control and Prevention) and is seeking a medical diagnosis. If a team member fits within any of these categories, this new Emergency Sick Leave shall be made available for team members to take before they can be required to take any other kind of leave discussed in

Section B, State Leave Related to COVID-19, below. Team members eligible for this kind of leave should consult with their respective human resources staffs for information about how to document the applicability of their situation to this new federal law.

Additionally, team members are entitled to take two weeks – up to 80 hours – of this Emergency Sick Leave at two-thirds of the team member’s regular rate of pay when the team member is unable to work or telework because (d) the team member is caring for an individual who is subject to an order described in subsection (a) above or who has been advised as described in subsection (b) above; or (e) the team member is providing care to a son or daughter (including biological, adopted, foster, and step children under 18 and adult children with mental or physical disabilities incapable of self-care) if the school or place of care of the son or daughter has been closed, or if the child care provider of the son or daughter is unavailable, due to COVID-19 precautions. Missouri will allow its team members to supplement the two-thirds pay benefit from these categories of Emergency Sick Leave with additional state comp time, annual leave, sick leave or Borrowed Leave. This Act also provides for paid sick leave, under the circumstances set forth above, for part time employees. Part time employees with questions about Emergency Sick Leave should contact their Department’s human resources personnel. Team members should note that eligibility for Emergency Sick Leave is narrower than for many types of leave discussed in Section B, State Leave Related to COVID-19, below. However, eligibility for Emergency Sick Leave is broader than eligibility for State Leave Related to COVID-19 in at least one respect: an employee whose circumstances meet the criteria described by sections (b) or (d) above due to particular vulnerability to the virus would not, based solely on such facts, be eligible for State Leave Related to COVID-19.

2. **The Emergency Family and Medical Leave Expansion Act.** Expanded Family and Medical Leave (Emergency FMLA) builds on the existing FMLA, allowing those employed for at least thirty days (subject to the exceptions discussed below) up to twelve weeks of leave for a new purpose – where a team member is unable to work or telework due to a genuine need for leave to care for a son or daughter, as defined above, whose school or child care provider is closed or unavailable for reasons related to COVID-19. The first two weeks of leave taken under Emergency FMLA are unpaid, but a team member may utilize the new Emergency Sick Leave discussed above, as well as available leave discussed below in Section B, State Leave Related to COVID-19, to be paid during this two-week period. Thereafter, federal law requires that this use of Emergency FMLA be paid at two-thirds of the team member’s regular rate of pay. Missouri will allow its team members to supplement the Emergency FMLA’s two-thirds pay benefit with comp time, annual leave, sick leave or Borrowed Leave. As stated in Section B.7, beginning August 24, 2020, Borrowed Leave will no longer be available for school, daycare, and similar closures, including for purposes of supplementation referenced in this paragraph.

3. **Exceptions Applicable to both Federal Acts.** The federal law creating Emergency Sick Leave and Emergency FMLA permits employers to exclude from the application of these leave provisions “health care providers” and “emergency responders,” as these terms are defined by the U.S. Department of Labor (USDOL). The USDOL defines “health care

provider,” in part, as “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, [e]mployer, or entity” and including “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.” The USDOL defines “emergency responder,” in part, as “anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to 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, child welfare workers and service providers, 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.” Consistent with the federal government’s authorization, the State hereby excludes both health care providers and emergency responders, as those terms are defined by the USDOL, from the application of these federal leave provisions and from these new types of federal leave.

Both the Emergency Sick Leave and Emergency FMLA laws were effective April 1, 2020 and will expire December 31, 2020.

B. State Leave Related to COVID-19

1. Team members who are or may be sick. Influenza and other respiratory infections including COVID-19 have similar if not identical signs and symptoms. Team members who feel sick or who develop COVID-19 symptoms as discussed in this paragraph should take their temperature twice a day to accurately track their temperature and call their physician. A team member who is sick should NOT report to work. “Sick” in this context means the team member has a fever at or above 100.4° F; or unexplained body aches, headache, or sore throat; or chills, new loss of taste or smell, cough, shortness of breath, difficulty breathing, fatigue, congestion, runny nose, nausea, vomiting, or diarrhea. If a team member is sick, the team member should not return to the workplace until after their fever has reduced below this level for 24 hours after they have stopped taking fever reducing medicines, the COVID-19 symptoms they experienced have improved, and at least 10 days have passed since the team member’s symptoms first appeared (your healthcare professional may extend this 10 day period in instances of severe illness). The team member should use their available leave so that the team member can recover and does not cause others to become sick. If the team member does not have any sick leave, the team member shall be authorized to use Borrowed Leave for the absence rather than taking annual leave, comp time, or leave without pay. If the team member’s duties can be performed from home and the team member feels able, supervisors should request authorization

through the division director for the team member to work from home. Unlike Emergency Sick Leave provision A.1(c) above, under this provision a team member does not need to be seeking a medical diagnosis before this provision applies.

2. Team members with pending COVID-19 test results. A team member who has been tested for COVID-19 because they are sick or have been exposed (within six feet for 15 minutes or longer) to person with a positive case should not report to the workplace while results are pending. In this circumstance, team members should use their available leave. If the team member does not have any sick leave, the team member shall be authorized to use Borrowed Leave for the absence rather than taking annual leave, comp time, or leave without pay. Instead of taking leave, if the team member's duties can be performed from home and the team member feels able, supervisors should request authorization through the division director for the team member to work from home until test results are received.

3. Team members who test positive for COVID-19. In accordance with the guidelines of the Centers for Disease Control and the Missouri Department of Health and Senior Services, a team member who has had symptoms of and who tests positive for COVID-19 cannot return to the workplace until their recovery is demonstrated by (1) the absence of a fever – without fever-reducing medications – for at least 24 hours; (2) the improvement in COVID-19 symptoms; AND (3) the passing of at least 10 days since symptoms first appeared (in the event of severe infection your healthcare professional may extend this period up to an additional 10 days). A team member who tests positive for COVID-19 but is asymptomatic cannot return to the workplace until at least 10 days have passed since the team member's first positive test OR the team member has subsequently had two negative tests in a row, at least 24 hours apart. A team member in the circumstances described in this category may be eligible for two weeks of Emergency Sick Leave at their regular rate of pay as outlined in Section A.1, if the team member has been advised by a health care provider to self-quarantine and following that advice prevents the team member from being able to work or telework. After two weeks of Emergency Sick Leave have been utilized, team members should use their available state leave if they are unable to return to the workplace. If the team member does not have any sick leave, the team member shall be authorized to use Borrowed Leave for the absence rather than taking annual leave, comp time, or leave without pay. Instead of taking leave, if the team member's duties can be performed from home and the team member feels able, supervisors should request authorization through the division director for the team member to work from home.

Direct care staff, as determined by your departments, at state institutions should receive guidance from their respective departments about returning to the workplace following a positive COVID-19 test.

4. Team members who test negative for COVID-19. A team member with COVID-19 symptoms who tests negative for COVID-19 cannot return to the workplace until any fever has reduced below 100.4° F for 24 hours after they have stopped taking fever-reducing medicines and any other symptoms have improved. In this circumstance, team members should use their available leave. If the team member does not have any sick leave, the team member shall be authorized to use Borrowed Leave for the absence rather than taking annual leave, comp time,

or leave without pay. Instead of taking leave, if the team member's duties can be performed from home and the team member feels able, supervisors should request authorization through the division director for the team member to work from home.

5. Team members with an impacted household member. A team member may feel well but may have a household member who is sick. If a team member has a household member who is sick as defined in B.1 above or who is in a situation described in categories B.2 – B.4 above, the team member should NOT report to work and should follow the instructions applicable to the household member's category. However, if the household member tests positive for COVID-19, then the team member shall not report to work until at least 14 days after their household member would be permitted to return to work using the criteria specified in B.3 above. If the household member is a spouse, child, other relative or household member requiring the team member's personal care and attention, the team member may use sick leave. If the team member does not have any sick leave, the team member shall be authorized to use Borrowed Leave for the absence rather than taking annual leave, comp time, or leave without pay. Instead of taking leave, if the team member's duties can be performed from home and the team member is able to work in light of their care responsibilities, supervisors should request authorization through the division director for the team member to work from home.

Depending on their relationship, the team member with an impacted household member as described in this category may be eligible for two weeks of Emergency Sick Leave at two-thirds of their regular rate of pay as outlined in Section A.1 above if the team member is unable to work or telework as discussed therein. See Section A.1 (d) above.

6. Borrowed Leave uses under categories 1 – 5. The team member's HR staff shall contact the team member to confirm that Borrowed Leave as specified in categories 1 – 5 is still appropriate to use after each use of 140 hours of Borrowed Leave in any combination from categories 1 – 5 above.

7. School, daycare, and similar closings due to COVID-19. In the event of school, daycare, or adult care closings due to COVID-19, a team member may need to be home with their children or their adult child or parent for whom they need to provide care, even if no one is sick. In such circumstances, the team member should use their available annual and sick leave and may use comp time. Prior to August 24, 2020, if the team member does not have any sick leave, the team member shall be authorized to use Borrowed Leave for the absence rather than taking annual leave, comp time, or leave without pay, but only after all of the following options have been considered and determined not viable by the team member's supervisor or manager and only as consistent with necessary business operations:

- a. *Expand work hours or allow flexible schedules.* For example, allow early morning, evening, and/or weekend work so that team members can care for their children or parents during the day but work in the evenings when a spouse can be home to care for the children or parents.
- b. *Increase the capacity for telecommuting.* ITSD recently communicated instructions to department directors regarding obtaining remote computer access. But supervisors

should also think creatively about whether non-technology-based options that might not traditionally have been considered could facilitate work from home.

- c. *Allow job-sharing or job-splitting.* For example, team members who do the same type of job could split the day – one of them could work the first four hours and the other could work the second four hours, thus reducing the amount of leave that each must take.

Unlike Borrowed Leave used in categories 1-5 above, the initial use of Borrowed Leave in this category (7) requires documentation. The team member shall provide documentation to their Department HR staff evidencing the closing of the applicable facility due to COVID-19 during the time period when the team member is requesting to use Borrowed Leave. The team member shall provide this documentation to their HR staff every 14 days during the use of Borrowed Leave, and HR staff shall track this leave use and maintain the relevant documentation.

Beginning August 24, 2020, Borrowed Leave will no longer be available for school, daycare, and similar closings. Team members should begin planning accordingly. Additionally, when Borrowed Leave is no longer available, supervisors should authorize options 7. a. – c. above where viable and consistent with necessary business operations.

Team members in the circumstances described in this category may be eligible for two weeks of Emergency Sick Leave at two-thirds of their regular rate of pay, and up to an additional ten weeks of Emergency FMLA leave at two-thirds of their regular rate of pay, both of which are outlined in Section A above, if the team member is unable to work or telework as discussed therein. See Section A, above.

8. Leave upon returning from international or cruise ship travel. Team members and team members who share household living space with a person returning from international or cruise ship travel should stay home or 14 days following the date of return from travel, monitor their health and practice social distancing. These team members should NOT report to work. In these circumstances, team members should use their available leave. If the team member does not have any sick leave, the team member shall be authorized to use Borrowed Leave for the absence rather than taking annual leave, comp time, or leave without pay. Instead of taking leave, if the team member's duties can be performed from home and the team member feels able, supervisors should request authorization through the division director for the team member to work from home. If, during this 14 day period, the team member's or their household member's condition would bring them within categories 1 – 5 above, team members should follow the directions in the applicable category, but in no circumstance may team members return to work during the initial 14 days following their return or their household member's return from international or cruise ship travel. Link to CDC Travel Notices: <https://wwwnc.cdc.gov/travel/notices>.

9. Borrowed Leave. Borrowed Leave is leave made available to team members without accumulated sick leave for use only in the circumstances identified in this memo. Borrowed Leave will be repaid from sick leave, as it is earned, at the normal rate of accrual for sick leave.

At the team member's option, Borrowed Leave may be repaid from annual leave or comp time, in addition to sick leave. For team members separating from state service with a Borrowed Leave balance, salary and comp time (both in excess of minimum wage) and annual leave shall be applied toward repayment of Borrowed Leave until the balance is depleted. Borrowed Leave shall be administered and repaid in accordance with 1 CSR 20-5.030 and 1 CSR 10-3.020, 45 Mo. Reg. 773 – 775 (June 1, 2020), including Borrowed Leave owed at the time of separation.

10. Leave during suite or building closure. As COVID-19 progresses, there may be times that a positive COVID-19 test will cause a suite within a building or an entire building to close so that it can be cleaned and disinfected. When that happens there will be communication about the closure. Team members assigned to the closed area may be relocated to other suites or buildings in appropriate circumstances, may be instructed to work remotely if remote work is an option, or may be excused from work pending further instructions. Consistent with past practices, team members excused from work because they cannot work in their closed suite or building or at an alternative location should be granted administrative leave.

11. Leave guidance if state government buildings are closed to the public. During the time that the Governor has closed state owned and leased buildings or office suites to the public to minimize the spread of COVID-19, team members are expected to maintain vital state services and must work remotely to the extent possible. Team members who previously had 24/7 access to their work locations will maintain that access and additional team members will be granted 24/7 access so that they can perform necessary tasks in their workplaces. All team members who are to report to their workplace will be notified by their Department. Team members should be excused from work if they are not required to perform tasks in their workplace and cannot work remotely. These team members should be granted administrative leave with pay for that time in which they were ready to work but cannot work remotely or have no necessary tasks to be performed in their workplace. Team members eligible to use Borrowed Leave under any provision of the Leave Guidance memo who are excused from work as set forth in this paragraph should have their time coded as administrative leave. Team members excused from work during this time period shall remain available for recall unless the team member is utilizing annual leave, sick leave, Borrowed Leave, or comp time. Recalled team members who are in a circumstance that would make them eligible for federal leave or Borrowed Leave under any provision of this Leave Guidance memo must follow the instructions applicable to that circumstance. In no event shall a team member earn more administrative leave with pay per day than their regularly scheduled work hours, nor more than 40 hours per work week.

12. Team members with portable equipment (e.g., laptops, iPads) that would allow them to work from home under the conditions set forth above should consider taking such equipment home with them each evening.

13. Guard against unlawful discrimination and stigma by learning the facts about COVID-19 from trusted sources such as the Centers for Disease Control and Prevention and the Missouri Department of Health and Senior Services.

<https://www.cdc.gov/coronavirus/2019-ncov/about/related-stigma.html>.

<https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/>.

14. Questions regarding this memo should be addressed to your agency's HR staff. We will monitor the progression of the outbreak and issue additional or different guidance or directives as may become necessary.