

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
ATTENDANCE AND LEAVE MANUAL

POLICY BULLETIN NO. 2018-04

Section 21.12

September 2018

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TO: Manual Recipients
FROM: Scott DeFrusco, Director of Staffing Services
SUBJECT: Line of Duty Sick Leave Related to World Trade Center Conditions

Introduction

Legislation enacted September 11, 2017 (Chapter 213, Laws of 2017) amended the New York State (NYS) General Municipal Law to authorize leave with pay without charge to accruals for State employees who are absent from work due to a qualifying World Trade Center (WTC) condition. There is no requirement that employees be subject to the Attendance Rules to be eligible for this benefit. The Law is set forth on page four of this bulletin.

Benefit

Specifically, Section 92-d of the General Municipal Law became effective on September 11, 2017 and now provides that an employee of the State of New York who filed a notice of participation in WTC rescue, recovery or cleanup operations shall be allowed unlimited workdays of paid Line of Duty Sick Leave for regular work hours during which the employee is absent from work due to a qualifying WTC condition. An employee who filed such notice of participation **and** subsequently develops a qualifying WTC condition as defined in section two of the Retirement and Social Security Law (RSSL), shall be granted Line of Duty Sick Leave commencing on the date such employee was diagnosed with a qualifying WTC condition regardless of whether the employee was employed by his/her current employer when performing WTC rescue, recovery or cleanup operations. Line of Duty Sick Leave is available each time an employee is absent from work due to a qualifying WTC condition and is in addition to any other leave allowed.

The law provides that on a prospective basis, eligible employees shall not have to charge sick leave but will instead receive leave with pay without charge to leave credits for any absences related to their qualifying condition. Furthermore, employees are eligible to have previously used sick leave restored to them if the absence is due to a qualifying WTC condition.

Eligibility

In order to be eligible for Line of Duty Sick Leave, an employee must have filed a notice of participation in WTC rescue, recovery or cleanup operations with any acceptable entity (e.g., New York State and Local Retirement System, New York City (NYC) Employee's Retirement System, NYC Fire Pension Fund, NYC Police Pension Fund, NYC Teacher's Retirement System, etc.), **and** must have a qualifying WTC condition as that term is defined in RSSL §2(36) which includes the following conditions:

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- (i) the member must have filed a written and sworn statement with his/her retirement system indicating the underlying dates and locations of employment not later than September eleventh, two thousand eighteen, and
- (ii) the member passed a physical examination for entry into public service, or has authorized release of all relevant medical records, if he/she did not undergo a physical examination for entry into public service; and
- (iii) there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to September eleventh, two thousand one except for certain exceptions found in RSSL §2(36).

In accordance with RSSL §2(36), eligible employees are those individuals who were **members of a covered public retirement system** when participating in the World Trade Center rescue, recovery or cleanup operations. However, they need not have been your employee on that date to be eligible for the law or for retroactive crediting of previously used sick leave – they just need to meet the eligibility requirements.

RSSL §2(36) is attached for your reference and includes a list of qualifying physical and psychological conditions which may entitle an employee to Line of Duty Sick Leave.

Required Documentation

As previously noted, any employee who has been diagnosed with a qualifying WTC condition and used accrued sick leave due to such condition shall receive a restoration of such sick leave accruals retroactive to the date the employee was diagnosed with a qualifying WTC condition.

In addition, agencies must restore sick leave at half-pay eligibility an employee used due to their qualifying WTC condition retroactive to the date the employee first used sick leave at half-pay for such condition.

To use Line of Duty Sick Leave and/or to request restoration of accruals or sick leave at half-pay eligibility, employees are required to submit appropriate proof that they meet the eligibility criteria. Employees must also furnish appropriate medical documentation for either prior absences, or for absences on an ongoing basis for which they continue to use Line of Duty Sick Leave.

Specifically, employees must submit a Notice of Participation in WTC rescue, recovery or cleanup operations **and** an acceptance letter from the retirement system of which they were a member when participating in such rescue, recovery, and cleanup operations.

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Furthermore, employees must submit documentary medical evidence of their qualifying WTC condition and the date the condition commenced. The agency may require proof that any absence requested under this law was due to incapacity, medical treatment, or medical testing related to the employee's qualifying WTC condition. The medical documentation may include a certification from a medical provider stating the purpose of the absence was due to a qualifying WTC condition, or may also include a certification from a facility stating the employee attended an appointment for treatment or testing related to the employee's qualifying condition.

Prospective Line of Duty Sick Leave

For absences on a prospective basis, the employee must submit documentation that falls within the agency's normal medical documentation requirements. Generally, in addition to a brief statement of the nature of the illness, satisfactory medical documentation will include: a statement confirming that the employee is unable to perform the duties of the position due to the illness, the dates of the disability, and the prognosis including anticipated date of return to work. Satisfactory medical documentation should, in some manner, indicate that the absence is related to the employee's qualifying WTC condition.

Retroactive Restoration of Sick Leave or Sick Leave at Half-Pay

For prior absences related to an employee's qualifying WTC condition (for which an employee is seeking restoration of previously used sick leave accruals or sick leave at half-pay eligibility), the employee may not have specific medical documentation available from the time the absences took place. In such a case the employee may submit an attestation from their medical provider indicating the purpose of the absence was related to their qualifying WTC condition. Such an attestation must list the date of absence and that the absence was specifically related to the employee's qualifying WTC condition. Questions concerning restoration of sick leave at half-pay eligibility should be directed to the Attendance and Leave Unit.

Denial of Line of Duty Sick Leave

If the employee does not produce the required documentation or if it is reasonably determined that the use of Line of Duty Sick Leave credits is unjustified for a specific absence, the use of such leave at full pay may be denied. Agencies **must** contact the Attendance and Leave Unit prior to any denial (prospective or retroactive) of Line of Duty Sick Leave for a qualifying WTC condition.

Use of Line of Duty Sick Leave

Line of Duty Sick Leave may be used for either full or partial day absences. Like the use of accrued sick leave under the Attendance Rules, employing agencies may not require employees to use Line of Duty Sick Leave in units greater than 1/4 hour, but may permit use of Line of Duty Sick Leave in smaller units of time.

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The leave is available only to the extent that it conflicts with the employee's work schedule. For example, an employee who attends appointments or receives treatment on a pass day, does so on their own time.

Any employee absent on a holiday for such purpose is considered to be observing the holiday and is not granted compensatory time off for the holiday.

Use of Line of Duty Sick Leave includes any necessary travel time, calculated to or from the employee's workplace.

Agencies are reminded to develop a new code in their paper or electronic timekeeping systems to manage usage of such leave by affected employees.

Any questions on these provisions should be directed to the Attendance and Leave Unit of this Department at (518) 457-2295.

§92-d. Sick leave for officers and employees with a qualifying World Trade Center condition

Section 1. The general municipal law is amended by adding a new section 92-d to read as follows: Notwithstanding any other law, rule or regulation to the contrary, officers and employees of the state, a public authority or any municipal corporation outside of a city with a population of one million or more who filed a notice of participation in World Trade Center rescue, recovery or cleanup operations and subsequently develop a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, while employed by the state, a public authority or such municipal corporation or public authority shall be granted line of duty sick leave commencing on the date that such employee was diagnosed with a qualifying World Trade Center condition regardless of whether such officer or employee was employed by his or her current employer at the time that such officer or employee participated in World Trade Center rescue, recovery or cleanup operations. The officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the officer or employee is absent from work. Such leave shall be provided without loss of an officer or employee's accrued sick leave.

Section 2. The state shall reimburse any public authority or municipal corporation of less than one million people for the cost of any line (of) duty sick leave granted pursuant to this act.

Section 3. This act shall take effect immediately; provided, however, that any officer or employee who is currently employed by the state, public authority or municipal corporation who has been diagnosed with a qualifying World Trade Center condition and is using sick leave due to such

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condition shall receive a restoration of such sick leave retroactive to the date such officer or employee was diagnosed with a qualifying World Trade Center condition.

Retirement and Social Security Law §2

36 (a) "Qualifying World Trade Center condition" shall mean a qualifying condition or impairment of health resulting in disability to a member who participated in World Trade Center rescue, recovery or cleanup operations for a qualifying period, as those terms are defined below, provided the following conditions have been met:

- (i) such member, or eligible beneficiary in the case of the member's death, must have filed a written and sworn statement with the member's retirement system on a form provided by such system indicating the underlying dates and locations of employment not later than September eleventh, two thousand eighteen, and
- (ii) such member has either successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if the member did not undergo a physical examination for entry into public service; and
- (iii) there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to September eleventh, two thousand one except for such member, or eligible beneficiary in the case of the member's death, of a local retirement system of a city with a population of one million or more that is covered by section 13-551 of the administrative code of the city of New York, or by section twenty-five hundred seventy-five of the education law and for such member who separated from service with vested rights, or eligible beneficiary of such member who separated from service with vested rights in the case of the member's death, of a local retirement system of a city with a population of one million or more who are covered by sections 13-168, 13-252.1 or 13-353.1 of the administrative code of the city of New York or sections five hundred seven-c, six hundred five-b, six hundred five-c, or six hundred seven-b of this chapter. The deadline for filing a written and sworn statement required by subparagraph (i) of this paragraph shall be September eleventh, two thousand twenty-two for such member, or eligible beneficiary in the case of the member's death, of a local retirement system of a city with a population of one million or more that is covered by section 13-551 of the administrative code of the city of New York, or by section twenty-five hundred seventy-five of the education law and for such member who separated from service with vested rights, or eligible beneficiary of such member who separated from service with vested rights in the case of the member's death, of a local retirement system of a city with a population of one million or more who are covered by sections 13-168, 13-252.1 or 13-353.1 of the administrative code of the city of New York and sections five hundred seven-c, six hundred five-b, six hundred five-c,

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or six hundred seven-b of this chapter. Every retirement system shall keep a copy of every written and sworn statement that is presented for filing not later than September eleventh, two thousand twenty-two, including those that are rejected for filing as untimely.

(b) "Qualifying condition or impairment of health" shall mean a qualifying physical condition, or a qualifying psychological condition, or both, except that for any member identified in paragraph (vi) of paragraph (e) of this subdivision, it shall only mean a qualifying psychological condition.

(c) "Qualifying physical condition" shall mean one or more of the following: (i) diseases of the upper respiratory tract and mucosae, including conditions such as rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, and upper airway hyper-reactivity, or a combination of such conditions; (ii) diseases of the lower respiratory tract, including but not limited to tracheo-bronchitis, bronchitis, chronic obstructive pulmonary disease, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic; (iii) diseases of the gastroesophageal tract, including esophagitis and reflux disease, either acute or chronic, caused by exposure or aggravated by exposure; (iv) diseases of the skin such as conjunctivitis, contact dermatitis or burns, either acute or chronic in nature, infectious, irritant, allergic, idiopathic or non-specific reactive in nature, caused by exposure or aggravated by exposure; or (v) new onset diseases resulting from exposure as such diseases occur in the future including cancer, asbestos-related disease, heavy metal poisoning, and musculoskeletal disease.

(d) "Qualifying psychological condition" shall mean one or more of the following: (i) diseases of the psychological axis, including post-traumatic stress disorder, anxiety, depression, or any combination of such conditions; or (ii) new onset diseases resulting from exposure as such diseases occur in the future including chronic psychological disease.

(e) "Participated in World Trade Center rescue, recovery or cleanup operations" shall mean any member who: (i) participated in the rescue, recovery, or cleanup operations at the World Trade Center site, as defined in paragraph (f) of this subdivision; (ii) worked at the Fresh Kills Land Fill in New York; (iii) worked at the New York city morgue or the temporary morgue on pier locations on the west side of Manhattan; (iv) manned the barges between the west side of Manhattan and the Fresh Kills Land Fill in New York; (v) repaired, cleaned or rehabilitated vehicles or equipment, including emergency vehicle radio equipment owned by the city of New York that were contaminated by debris in the World Trade Center site, as defined in paragraph (f) of this subdivision, regardless of whether the work on the repair, cleaning or rehabilitation of said vehicles and equipment was performed within the World Trade Center site, provided such work was performed prior to decontamination of such vehicles or equipment; or (vi) worked in the following departments, worksites and titles: (A) New York City Police Department at 11 Metrotec Center in Brooklyn or 1 Police Plaza in Manhattan as a Police Communication Technician (PCT), Supervisor Police Communication Technician (SPCT), Principal Police Communication Technician I, Principal Police Communication Technician II, Principal Police Communication Technician III, Administrative Manager - Communications, or in the

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Police Administrative Aide title series; (B) Fire Department of the City of New York at 35 Empire Boulevard in Brooklyn, 79th Street Transverse in Manhattan, 83-98 Woodhaven Boulevard in Queens, 1129 East 180 Street in the Bronx, 65 Slosson Avenue in Staten Island, 9 Metrotec Center in Brooklyn, or 25 Rockaway Avenue in Brooklyn as Fire Alarm Dispatchers (FAD), Supervising Fire Alarm Dispatchers I (SFAD), Supervising Fire Alarm Dispatchers II (Borough Supervisor), Deputy Director & Director Fire Dispatch Operations, or Assistant Commissioner for Communications; (C) for the Fire Department of the City of New York's Emergency Medical Service at 1 or 9 Metrotec Centers in Brooklyn, or 55-30 58 Street in Maspeth Queens as Emergency Medical Specialist-Level I (EMT), Emergency Medical Specialist Level II-(Paramedic), Supervising Emergency Medical Specialist Level I (LT), Supervising Emergency Medical Specialist Level II (Capt), Deputy Chief EMS Communications, or Division Commander EMS Communications. (f) "World Trade Center site" shall mean anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan. (g) "Qualifying period" shall mean: (i) any period of time within the forty-eight hours after the first airplane hit the towers, for any member identified in paragraphs (i) through (v) of paragraph (e) of this subdivision; (ii) a total of forty hours accumulated any time between September eleventh, two thousand one and September twelfth, two thousand two, for any member identified in subparagraphs (i) through (v) of paragraph (e) of this subdivision; or (iii) any period of time within the twenty-four hours after the first airplane hit the towers, for any member identified in subparagraph (vi) of paragraph (e) of this subdivision.