

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

Date: February 15, 2019

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.

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;
- in a “covered title”;
- who 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;
- 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.

“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.

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

1. Sick leave, annual leave and unpaid leave time that were used due to an approved Qualifying World Trade Center Condition shall be restored to an active employee as sick leave for sick leave or unpaid leave, and as annual leave for annual leave time; provided that with respect to restored annual leave, an active employee may choose to receive a lump sum cash payment for up to 175 hours of annual leave used due to an approved Qualifying World Trade Center Condition, with the balance of any such used annual leave to be restored as annual leave time.
2. Guidelines for determining what constitutes satisfactory evidence including, but not limited to, appropriate documentation and/or payroll system data, will be developed and consistently applied to all agencies to the extent possible.

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 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

[List of Covered Unions](#)

Lisette Camilo
Commissioner