



**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**DIRECTOR'S OFFICE**

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MEMORANDUM

August 27, 2020

TO: All Agencies

FROM: Laura E. Freed, Director  
Department of Administration

SUBJECT: **Guidance on Paid Administrative Leave Related to Distance Learning and Daycare for Employees' Children**

On March 16, 2020, the Department of Administration issued a guidance memorandum regarding the use of paid administrative leave due to the coronavirus pandemic. On June 29, 2020, the Department issued a follow-up memo. As the new academic year begins, school districts across the state are grappling with how to provide instruction to students. As we know, some districts have chosen entirely distance learning, some have chosen in-class instruction, and some have chosen a combination of the two. Therefore, it is appropriate for updated guidance to be issued to state agencies regarding the use of paid administrative leave for distance learning purposes, as well as paid administrative leave in the case of difficulty obtaining daycare for pre-school-age children. Please note that the guidance provided in this memorandum is prospective, rather than retrospective.

**Distance Learning and Daycare Guidance for Essential and Nonessential Employees**

For this guidance, the Department of Administration distinguishes essential employees from nonessential employees. "Essential employees" are defined as:

1. An employee who has been determined "emergency responder" by the highest official of a state necessary for that state's response to COVID-19<sup>1</sup>;

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<sup>1</sup> This is based upon the Families First Coronavirus Relief Act (FFCRA) definition, which is provided in the third footnote. The highest official means the head of a department since it would be impractical for the Governor, as the highest state official, to designate specific emergency responders in each department. An employee who has been so designated may also be listed as essential in each department's, division's, or agency's Continuity of Operations Plan (COOP).

2. A health care worker<sup>2</sup>; or
3. An emergency responder<sup>3</sup>.

An essential employee may be required to return to work by department management despite the employee's school-age child(ren) needing to remain at home for distance learning, or despite the difficulty of obtaining daycare for younger children not yet in school. Paid administrative leave for these employees is not automatic. However, department management should do its best to remain flexible with essential employees and enable them to switch shifts, work non-standard hours, and telecommute if the employee's duties allow for that.

"Nonessential employees" are defined as anyone not meeting the definitions above. For nonessential employees, the Governor's Office has authorized an hourly total equivalent to 15 weeks of paid administrative leave for distance learning purposes. This is a maximum, and agency supervisors are to work with agency pay clerks to track the hours of paid administrative leave taken for schooling-related or daycare-related purposes and notify an employee when that employee is getting close to the maximum, and discuss the arrangements made for the care and supervision of children. Again, this is prospective guidance, and the calculation of paid administrative leave taken begins upon the date of issuance of this memorandum. Any employee on paid administrative leave is to be available to his/her supervisor.

In the case of both essential and nonessential employees, it should be noted that if the employee is able to work from home and supervise distance learning for children at the same time, that does not count toward any maximum hours. In that circumstance, the employee is considered to be working. However, to ensure productivity, employees and supervisors are to work out in a teleworking agreement what tasks are to be accomplished and how progress on work tasks is to be monitored.

The Department of Administration notes that the total amount of paid administrative leave permitted for distance learning and daycare closure is greater than the federal Families First

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<sup>2</sup> Pursuant to the federal Families First Coronavirus Relief Act (FFCRA), 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 entity. **This also includes any individual that the highest official of a state determines is a health care provider necessary for that state's response to COVID-19.** Nevada is utilizing the FFCRA definition of health care provider to apply to health care workers in state service.

<sup>3</sup> Pursuant to FFCRA, an emergency responder is defined as (but 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. **This also includes any individual whom the highest official of a state determines is an emergency responder necessary for that state's response to COVID-19.** Nevada is utilizing the FFCRA definition of emergency responder to apply to emergency responders in state service.

Coronavirus Relief Act (FFCRA), which permits a maximum of 12 weeks' pay at 2/3 the employee's normal rate of pay. As you will recall, the Division of Human Resource Management (DHRM) sent out a memorandum on April 7, 2020, (HR 33-20) stating that the State of Nevada would not be implementing the FFCRA since the state's administrative leave policy was more generous than the federal law. That continues to be the case. Agencies are not authorized to implement the FFCRA on their own. Furthermore, the 15-week paid administrative leave maximum does not count toward any Family and Medical Leave Act (FMLA) qualifying event allowance. In other words, the 15-week maximum allowance of paid administrative leave incorporates the FFCRA's 12 weeks, but any other qualifying event pursuant to the FMLA would provide the normal 12 weeks in addition to that. The 12 weeks of FMLA leave over and above the state's 15 weeks is not usable for additional time for children's distance learning and/or daycare. If an agency has questions regarding any use or potential abuse of leave, please refer to federal Department of Labor Pandemic Questions and Answers available at this address: <https://www.dol.gov/agencies/whd/fmla/pandemic#q1>

**No Policy Change for Employee Illness, Quarantine, or Secondary Exposure to COVID-19**

As a reminder, any employee who reports a positive COVID-19 test is entitled to paid administrative leave to recover and may not return until they meet the criteria to discontinue home isolation. Administrative leave should also be granted when an employee is caring for a household member who has tested positive for COVID-19. All employees who test positive, or have household members test positive, are required to report that information to their employer. Furthermore, the guidance previously issued in the memorandum of June 29, 2020, regarding secondary exposures to employees remains in effect.

Neither sick leave nor annual leave is to be utilized for employee illness or household member illness due to COVID-19. Furthermore, the Department of Administration is aware that some employees believe that 80 hours is the maximum for COVID-19 illness or quarantine. This is incorrect; the limit is 80 hours per episode.

As always, we appreciate your continued flexibility and patience with the changing circumstances of this pandemic. The Department of Administration is committed to working with agencies to assess specific circumstances around the juggling of work tasks with child care, elder care, and other aspects of home life that have been rearranged by the pandemic, and we will issue additional guidance as necessary.