

## Memorandum

**TO:** Rich Lazer, Director of Labor

**FROM:** Lewis Rosman, Chief Deputy City Solicitor//lr

**DATE:** November 13, 2020

**SUBJECT:** Second Supplemental Emergency Regulations Regarding COVID-19 and Chapter 9-4100 of The Philadelphia Code: Promoting Healthy Families and Workplaces

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I have reviewed the attached:

**SECOND SUPPLEMENTAL EMERGENCY REGULATION  
REGARDING COVID-19 AND CHAPTER 9-4100 OF THE PHILADELPHIA CODE:  
PROMOTING HEALTHY FAMILIES AND WORKPLACES**

of the Department of Labor, which was submitted to the Law Department.

The Regulations are legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, the regulations may be forwarded to the Department of Records where they will be made available for public inspection.

As set forth in Section 1 of the Regulations, these Regulations shall be effective immediately upon filing with the Department of records pursuant to the Mayor's "Declaration of Extraordinary Circumstance: Suspending the Formal regulatory Process for Regulations Concerning a Novel Coronavirus" dated March 11, 2020.

Attachment

**CITY OF PHILADELPHIA DEPARTMENT OF LABOR**

**SECOND SUPPLEMENTAL EMERGENCY REGULATION  
REGARDING COVID-19 AND CHAPTER 9-4100 OF THE PHILADELPHIA CODE:  
PROMOTING HEALTHY FAMILIES AND WORKPLACES**

The Department of Labor (the “Department”) hereby adopts the following Second Supplemental Emergency regulations to interpret, implement, and reconcile the additions of Sections 9-4116 and 9-4117 to Chapter 9-4100 of The Philadelphia Code as applied to the pandemic caused by the novel coronavirus disease of 2019 (“COVID-19”).

**1. Purpose and Scope.**

This Emergency Regulation is promulgated by the Department pursuant to its authority under Sections 4-2300 and 8-407 of The Philadelphia Home Rule Charter and pursuant to the Mayor’s “Declaration of Extraordinary Circumstance: Suspending the Formal Regulatory Process for Regulations Concerning a Novel Coronavirus” dated March 11, 2020, this Supplemental Emergency Regulation will be in effect immediately upon filing with the Department of Records as a temporary regulation while the remainder of the regulatory process is carried out.

Chapter 9-4100 of The Philadelphia Code, “Promoting Healthy Families and Workplaces” provides for three distinct leave benefits during a health emergency, including the current COVID-19 pandemic: Accrued Sick Leave Benefit, Healthcare Epidemic Leave Benefit, and Public Health Emergency Leave Benefit, all of which are defined below. This Emergency Regulation clarifies the circumstances under which each type of leave benefit may be used and the interaction between these leave types.

This Emergency Regulation supplements but does not replace the Office of the Managing Director’s Regulations Regarding Chapter 9-4100 of The Philadelphia Code – Promoting Healthy Families and Workplaces (“Base Regulation”) and the Supplemental Emergency Regulation Regarding COVID-19 and Chapter 9-4100 of The Philadelphia Code: Promoting Healthy Families and Workplaces (“First Emergency Regulation”).

**2. Definitions.** Certain defined terms have different meanings depending on the code section in which they are used. The following provides clarity where these definitions diverge.

**2.1** Capitalized terms not defined in this emergency regulation shall have the meanings provided in Chapter 9-4400 of The Philadelphia Code, the Base Regulation, and the First Emergency Regulation.

**2.2 Accrued Leave Employee.** An “employee” as defined 9-4103(3) of the Code. For the purposes of this definition, working from home within the geographic boundaries of the City of Philadelphia constitutes the “perform[ance] of work within the geographic boundaries of the City of Philadelphia.”

**2.3 Accrued Sick Leave Benefit.** The sick leave benefit applicable to employees under Section 9-4104 of the Code.

**2.4 Code.** The term “Code” shall refer to The Philadelphia Code.

**2.5 Child of a Covered Individual.** A minor for whom the Covered Individual has legal responsibility or has assumed parental-like responsibility, whether as a parent, guardian, grandparent, or by acting *in loco parentis* with respect to the child.

**2.6 Food Delivery Network Company.** An organization whether a corporation, partnership, sole proprietor, or other form, operating in the City of Philadelphia, that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or prepared food and beverages for an online order.

**2.7 Healthcare Epidemic Employee.** A Healthcare Employee or Pool Employee that has contracted COVID-19 and has worked for a given Healthcare Employer for at least at least 40 hours in the three months prior to contracting the disease.

**2.8 Healthcare Epidemic Leave Benefit.** The sick leave benefit applicable to Pool Employees and Healthcare Employees under Section 9-4117 of the Code.

**2.9 PHEL Employee.** An “employee” as defined under Section 9-4116(1)(b) of the Code.

**2.10 PHEL Benefit or Public Health Emergency Leave Benefit.** The public health emergency leave benefit applicable to all Covered Individuals under Section 9-4116 of the Code.

**2.11 Transportation Network Company.** An organization whether a corporation, partnership, sole proprietor, or other legal entity, licensed or required to be licensed operating in the City of Philadelphia, that offers prearranged transportation services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect passengers with drivers.

### **3. To Whom the Leave Requirements of Chapter 9-4100 Are Applicable.**

#### **3.1 Employers and Hiring Entities.**

##### **3.1.1 Accrued Sick Leave**

Employers that employ ten (10) or more Employees for at least forty (40) weeks in a calendar year are responsible for providing the Accrued Sick Leave Benefit. Employers are defined, in pertinent part, as “any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in

relation to any employee.” Act of January 17, 1968, P.L. 11, No. 5, § 3 (43 P.S. § 333.103(g)); *see also* Code Sections 9-4103(4) and 9-4116(1)(c).

### **3.1.2 Public Health Emergency Leave**

Any Hiring Entity that employs a Covered Individual is responsible for providing the Public Health Emergency Leave Benefit unless the Hiring Entity provides its Covered Individuals FFCRA or is a “generous employer” who meets the provisions of Section 3.1.4 of this Emergency Regulation with respect to the PHEL Benefit. A hiring entity that chooses to exercise an exception under the FFCRA and not provide FFCRA leave to Covered Individuals must provide PHEL Benefit to such individuals. A Hiring Entity may be an Employer, regardless of the number of employees such entity employs, or any individual, partnership, association, corporation, business trust or combination thereof that pays a wage or wages for the service of a Covered Individual, whether directly or indirectly. The term Hiring Entity excludes any entity, person or group of person that the City is legally prohibited from regulating under federal or state law.

### **3.1.3 Healthcare Epidemic Leave**

Any Employer that provides healthcare services (a “Healthcare Employer”), engages the services of one or more Healthcare Epidemic Employees in Philadelphia, and employs ten (10) or more Employees for at least forty (40) weeks in a calendar year are responsible for providing the Accrued Sick Leave Benefit is responsible for providing the Healthcare Epidemic Leave Benefit.

### **3.1.4 Generous Employers and Partial Leave Benefit Plans.**

**3.1.4.1 Generous Employers.** Any Employer or Hiring Entity, as applicable, that provides paid leave which can be used for the same purposes and under all the same conditions as the Accrued Sick Leave Benefit, the Public Health Emergency Leave Benefit, or the Healthcare Epidemic Leave Benefit, and provides leave in the same or greater amount as required under the applicable City law, has met the obligations of Chapter 9-4100, but only with respect to the applicable leave benefit or benefits that the Employer or Hiring Entity’s existing leave policy meets or exceeds, without respect to the balance of leave any Covered Individual has available at the time they request a leave benefit covered by these Regulations.

**3.1.4.2 Partial Leave Benefit Plans.** An Employer or Hiring Entity that provides some but not the full benefit an Employee or Covered Individual is entitled to receive under Chapter 9-4100 must provide sufficient supplemental leave or allow the Employee or Covered Individual to borrow against future leave that the Employee or Covered Individual is entitled to accrue in the same calendar year, such that the total existing leave (including any borrowed leave) and supplemental leave when combined provides paid leave in the same or a greater amount as the leave benefits the Employee or Covered Individual is entitled to under Chapter 9-4100.

### 3.2.3 Examples.

#### Example 1.

Femi, a healthcare worker who works for a hospital in Philadelphia with more than 500 employees, starts to show symptoms of COVID-19. Femi gets tested for COVID-19 on a Tuesday, he gets a positive test result back three days later, on a Friday. Femi tells his employer he had a positive COVID-19 test. Femi's Healthcare Epidemic Leave is back dated to the Tuesday he took the COVID-19 test and he is approved paid time away from work until he recovers. Femi is not required nor can he use any of his own paid time for this leave.

Three weeks later, Femi's daughter who is in fourth grade begins all virtual school. Femi needs to take some time off of work to help his daughter adjust and arrange child care. Femi is entitled to the average number of hours he works in a two-week period over the course of the six months prior to September 17th, 2020. Femi worked 37.5 hours a week on average over those six months. Femi is therefore entitled to use 75 hours of Public Health Emergency paid leave. Femi's employer is a generous employer and allows for the accrual of 78 hours of paid leave a year. Femi has accrued 72 hours this year but used 40 of those hours on a vacation in July. Femi will be paid for 38 hours which includes the six hours he has yet to accrue. His employer does not need to supply him with additional time since they are a generous employer and he already had over 75 hour available to him during the calendar year January 1, 2020 through December 31, 2020.

*Note: His employer must front load the six hours he has yet to accrue.*

#### Example 2.

Jessie works for a chain drug store 22 hours per week on average over the course of the six months prior to September 17, 2020. Jessie's mother becomes COVID-19 positive and needs care. Jessie is entitled to 44 hours of Public Health Emergency Leave to use while caring for their mother. Jessie only has the potential to earn 40 hours of Paid Sick Leave in a year (his employer provides the minimum required by the Philadelphia Ordinance Promoting Healthy Families and Workplaces.) Jessie has taken 1 sick day this year for a total of 7.5 hours. Jessie will be paid for a total of 36.5 hours to care for their mother.

*Note: The employer must front load any time Jessie would have accrued and supplement the additional four hours.*

#### Example

3.

Sanjay belongs to a Union at work. The Union and the Employer have not bargained an exclusive waiver, so therefore the employer must follow the Ordinance as written. Sanjay comes in contact with a person who recently tested positive and is told to quarantine by public health officials for 14 days or until he receives a negative COVID-19 test. Sanjay works on average 65 hours per week over the course of the six months prior to September 17, 2020. Sanjay is entitled to 160 hours

of Public Health Emergency Leave (the total allowable under this Ordinance.) Sanjay has not taken any paid time off this year. Sanjay’s employer front loads 80 hours of vacation time and allows for the accrual of 40 hours of paid sick leave a year. Sanjay will be paid for a total of 160 hours to quarantine for 14 days.

*Note: The employer in this case must supplement 40 hours and front load anytime Sanjay has not accrued.*

Example 4.

Heather drives for Uber. She begins to show symptoms of COVID-19. She drove on average 15 hours a week over the course of the six months prior to September 17, 2020. She is entitled to 30 hours of Public Health Emergency Leave. She has not used any paid time off during this year. Heather will be paid 30 hours at the average rate per hour she was making while driving for Uber or the Pennsylvania Minimum Wage, whichever is higher.

### **3.2 Individuals Entitled to Paid Leave Benefits Under Chapter 9-4100**

#### **3.2.1 Accrued Sick Leave**

Individuals who qualify as Accrued Sick Leave Employees are entitled to Accrued Sick Leave. An Accrued Sick Leave Employee is any individual employed by an Employer who performs work within the geographic boundaries of the City for at least 40 hours in a year, but excluding independent contractors, seasonal workers, adjunct professors, employees hired for a short term of less than six months, interns, pool employees, State and Federal employees, and employees covered by a bona fide collective bargaining agreement.

#### **3.2.2 Public Health Emergency Leave**

**3.2.2.1** Subject to the limitations of Section 3.2.2.2 of this Emergency Regulation, the following individuals are Covered Individuals entitled to Public Health Emergency Leave, provided they perform work within the geographic boundaries of the City of Philadelphia for at least 40 hours in a year for one or more Hiring Entities:

- (i) An individual who provide domestic services, as further specified under Code Section 9-4116(1)(a)(i);
- (ii) An individual providing services under a participant directed and agency homecare model;
- (iii) An individual who works for a Food Delivery Network Company, including as a driver;
- (iv) An individual who works for a Transportation Network Company, including as a driver;

(v) An individual that works as a health care professional only when such individual indicates that the individual is available for work and who has no obligation to work when the individual does not indicate availability; and

(vi) An individual that qualifies as a PHEL Employee. There is a rebuttable presumption that any individual performing work for a Hiring Entity is a PHEL Employee unless the Hiring Entity can demonstrate the following conditions are satisfied:

- (1) The individual is free from the control and direction of the hiring entity in connection with the performance of the labor or services, both under the contract for the performance of the work and in fact;
- (2) The individual performs labor or services that are outside the usual course of the hiring entity's business;
- (3) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed.

**3.2.2.2 Covered Individuals Performing Work For Multiple Hiring Entities.** A Covered Individual who qualifies for the PHEL Benefit but performs work for less than 40 hours in a year within the geographic boundaries of the City of Philadelphia for a given Hiring Entity may not seek the PHEL Benefit from any such Hiring Entity unless such Covered Individual notifies such Hiring Entity that such Covered Individual is entitled to the PHEL Benefit and provides facts establishing the entitlement.

### **3.2.3 Healthcare Epidemic Leave**

The following individuals qualify for Healthcare Epidemic Leave:

(i) Any person who has full-time or part-time employment within a healthcare organization, including but not limited to hospitals, nursing homes, and home healthcare providers (“Health Care Employees”); and

(ii) Any person licensed under Federal or Pennsylvania law to provide medical or emergency services, including but not limited to doctors, nurses, and emergency room personnel (each a “Health Care Professional”), but excluding an employee of a temporary placement agency who works only when such Health Care Professional indicates that such Health Care Professional is available for work and who has no obligation to work when such Health Care Professional does not indicate availability.

## **4. When Leave May Be Taken**

**4.1 Accrued Sick Leave.** Accrued Sick Leave Employees are entitled to use the Accrued Sick Leave Benefit beginning on the 90th calendar day following commencement of their employment. After the 90th calendar day of employment, employees may use sick time as it is

accrued. An Accrued Sick Leave Employee, at a minimum, has the right to use the Accrued Sick Leave Benefit for the following purposes:

- (a) An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;
- (b) Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care; or
- (c) Absence necessary due to domestic abuse, sexual assault or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:
  - (.1) Medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence or stalking;
  - (.2) Services from a victim services organization;
  - (.3) Psychological or other counseling;
  - (.4) Relocation due to the domestic or sexual violence or stalking; or
  - (.5) Legal services or remedies, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.
- (d) Preventive medical care includes, but is not limited to, the following:
  - (.1) The evaluation of a person under investigation for COVID-19.
  - (.2) The act of engaging in a self-quarantine for two-weeks:
    - (i) due to symptoms of COVID-19, such as fever, dry cough, or shortness of breath.
    - (ii) after the return of an individual to the United States after travel to a Tier 2 or Tier 3 country as defined by the United States Center for Disease Control ("CDC") with respect to COVID-19.
    - (iii) as the result of having come into contact with an individual who has been diagnosed with COVID-19.
- (e) With respect to a family member of an employee, such family



member remaining home as the result of the closure of a school, daycare, adult care facility, or other care facility where care would otherwise be provided for such family member.

(f) With respect to an employee, such employee remaining home as the result of a requirement by the Governor, the Secretary of Health of the Commonwealth of Pennsylvania, the Mayor, or the Health Commissioner that businesses, or a particular type of business, must remain closed.

(g) With respect to either an employee or a family member of an employee, self-quarantine due to a requirement by the Governor, the Secretary of Health of the Commonwealth of Pennsylvania, the Mayor, the Health Commissioner of the Department of Public Health of the City that residents of certain areas of the Commonwealth must not travel, and such travel would be necessary to report to work.

**4.2 Public Health Emergency Leave.** Covered Individuals are entitled to use the Public Health Leave Benefit for a COVID-19 related purpose beginning on September 17, 2020, and continuing until the earlier of one month after the conclusion of the Public Health Emergency or December 31, 2020. A Covered Individual, at a minimum, has the right to use the Accrued Sick Leave Benefit for the inability to work for one or more of the following purposes, provided that a Hiring Entity is not required to allow a Covered Individual to take the PHEL Benefit if the Covered Individual is reasonably able to perform work remotely taking into consideration all relevant circumstances that affect the Covered Individual's ability to perform such remote work:

(a) being subject to a Federal, State, or local quarantine or isolation order related to the public health emergency;

**Note:** This does not include a business closure order that is not specifically for the purpose of quarantine or isolation of the individuals working at the business.

(b) being advised by a health care provider to self-quarantine due to concerns related to the public health emergency;

(c) experiencing symptoms related to the public health emergency and seeking a medical diagnosis;

(d) caring for an individual who is subject to an order as described in subsection (a) or has been advised as described in subsection (b);

(e) caring for a child of such Covered Individual if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to precautions taken in accordance with the public health emergency response;

(f) experiencing any other substantially similar condition specified by the United States Secretary of Health and Human Services in consultation with the United States Secretary of the Treasury and the United States Secretary of Labor.

#### 4.2.1 Ability to Work Remotely

In determining whether a Covered Individual is reasonably able to perform work remotely in a manner that precludes the need for the PHEL Benefit, the Hiring Entity may consider the following non-exhaustive factors, and provide the Covered Individual an opportunity to provide input on these factors and any other circumstances that affect such individual's ability to work from home:

- (a) The nature of the job duties of the Covered Individual seeking leave;
- (b) Whether the Hiring Entity has provided the Covered Individual the resources necessary to facilitate working remotely;
- (c) The extent to which the Covered Individual's job duties could be performed at alternative times so that leave would not be needed;
- (d) The projected duration of the leave;
- (e) If the leave is for the purpose of caring for a child or other individual, the age, capabilities, and specific needs of the of the child or individual; and
- (f) If the Covered Individual has flexibility with respect to determining the precise scheduling of the leave:
  - (1) The availability of other employees or contractors to provide coverage of the Covered Individual's job duties during the leave, provided that no hiring entity may force a Covered Individual to find replacement coverage in order to take leave;
  - (2) The number of individuals in the same job classification seeking to take leaves of this nature at the same time; and
  - (3) The impact of the timing of the leave on the hiring entity's ability to perform its core business functions.

**4.3 Healthcare Epidemic Leave.** A Healthcare Epidemic Employee is entitled to the Healthcare Epidemic Leave Benefit for the time period such employee is unable to work due to the employee's contraction of COVID-19 at a time when the World Health Organization, the Center for Disease Control and Prevention, or another recognized public interest health Organization has declared that the COVID-19 virus is an epidemic or pandemic, and either the Department of Health or the Department of Labor have indicated publicly that such epidemic or pandemic affects the City of Philadelphia. The date leave begins shall be the earlier of (i) the date of the first positive COVID-19 test; or (ii) the date the Healthcare Epidemic Employee's isolation

begins pursuant to either a federal, state, or local governmental isolation order; or a written isolation recommendation from either a Healthcare Employer or a healthcare provider.

**4.3.1 Priority of Healthcare Epidemic Leave.** A Healthcare Epidemic Employee that chooses to take the Healthcare Epidemic Leave benefit from a given Health Care Employer is not entitled to take any other leave benefit for the same purpose nor may the Health Care Employer force Healthcare Epidemic Employees to use the Accrued Leave Benefit or the Public Health Emergency Leave Benefit concurrently.

**4.3.2 Effect of Use of Healthcare Epidemic Leave on other leave types.** A Healthcare Epidemic Employee that takes Healthcare Epidemic Leave from a given Health Care Employer for such employee's own illness, may use such employee's Accrued Leave Benefit or PHEL Benefit for any permitted purpose other than such Healthcare Epidemic Employee's own COVID-19 illness. Such Healthcare Epidemic Employee may not use the PHEL Benefit for such employee's own COVID-19 illness from any employer that provides such employee Healthcare Epidemic Leave.

**4.4 Comparison of Frequent Reasons for Leave.** The following chart is intended to be illustrative of some common circumstances where leave may be permitted for one leave benefit type but is not permitted for others. These are examples only and are not intended to be exhaustive.

<i>Reason for Leave</i>	<b>Accrued Sick Leave Benefit</b>	<b>PHEL Benefit</b>	<b>Healthcare Epidemic Leave Benefit</b>
<b>Individual Contracts COVID-19 During a Qualifying Emergency</b>	Yes	Yes	Yes
<b>Individual Contracts COVID-19 When No Qualifying Emergency Is Declared</b>	Yes	No, unless within 1 month following the end of the a declared emergency and such leave concludes before December 31, 2020	No
<b>Time off needed to Care for a family member who has COVID-19</b>	Yes	Yes	No
<b>Time off because no work hours were given because of business closure related to the pandemic</b>	Maybe (If Closure mandated by State or Local Order)	No, unless quarantine or isolation of Covered Individual is mandated	No
<b>Individual is Required to Quarantine due to Potential Exposure to COVID-19</b>	Yes	Yes	No
<b>Leave Needed to Care for a Family Member Whose School or Daycare is Closed Due to COVID-19</b>	Yes	Yes	No

## **5. Amount of Leave Benefit**

**5.1 Accrued Sick Leave.** The Accrued Sick Leave Benefit shall be calculated as provided under Code Section 9-4104.

**5.1.1** Beginning the date of employment, an Accrued Sick Leave Employee shall accrue a minimum of one hour of an Accrued Sick Leave Benefit for every 40 hours worked in Philadelphia. Accrued Sick Leave Employees will not accrue more than 40 hours of sick time in a calendar year, unless the employer selects a higher limit.

**5.1.1.1** Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of sick time accrual unless their normal work week is less than 40 hours, in which case sick time accrues based upon that normal work week.

**5.1.2** Employees shall be entitled to use Accrued Sick Leave Benefit beginning on the 90th calendar day following commencement of their employment. After the 90th calendar day of employment, employees may use sick time as it is accrued.

Sick time shall be carried over to the following calendar year unless the employer provides at least 40 hours of sick time at the beginning of each calendar year, provided that the amount of Accrued Sick Leave Benefit that accrues in any calendar year shall not exceed 40 hours, unless the employer chooses to provide a higher limit.

## **5.2 Public Health Emergency Leave.**

### **5.2.1. Single Hiring Entity – Covered Individual Works 40 Hours Per Week or More.**

A Covered Individual who works for 40 hours or more per week for a single Hiring Entity, and is not entitled to leave under the FFCRA from that specific hiring entity, is entitled to, a Public Health Emergency Leave Benefit that is the greater of the following:

(1) 80 hours or

(2) The average hours worked over a 14-day period as calculated as follows:

(a) The average hours that the Covered Individual worked per day over the 6-month period ending on September 17, 2020, multiplied times fourteen (14), including any hours for which the Covered Individual took leave of any type up to a maximum of one hundred and twelve (112) hours; or

(b) If the Covered Individual did not work over such period, the reasonable

expectation of the Covered Individual at the time of hiring of the average hours that the Covered Individual would normally receive within a typical 14-day period.

### **5.2.2 Single Hiring Entity – Covered Individual Works Less Than 40 Hours Per Week.**

A Covered Individual who works for less than 40 hours per week for a Hiring Entity, and is not entitled to leave under the FFCRA from that specific Hiring Entity, is entitled to a Public Health Emergency Benefit provide public health emergency leave in an amount equal to the amount of wages or other compensation the Covered Individual receives on average in a 14-day period, unless the hiring entity chooses to provide more.

In the case of a Covered Individual whose wages or other compensation varies from week to week, the hiring entity shall the following to determine the average wages or compensation in a 14-day period:

(1) The average wages or other compensation that the Covered Individual received per day over the 6-month period ending on September 17, 2020, multiplied times fourteen (14), including wages or compensation for any hours for which the Covered Individual took leave of any type.

(2) If the Covered Individual did not work over such period, the reasonable expectation of the Covered Individual at the time of hiring of the average wages or other compensation that the Covered Individual would normally receive within a typical 14-day period.

### **5.2.3 Multiple Hiring Entities**

**5.2.3.1 Covered Individuals That Receive a W-2.** A Covered Individual that works for multiple hiring entities shall be entitled to the Public Health Emergency Leave Benefit from each Hiring Entity for whom the Covered Individual receives a W-2, calculated as follows from each such Hiring Entity:

(1) The average wages or other compensation that the Covered Individual received per day over the 6-month period ending on September 17, 2020, multiplied times fourteen (14), including wages or compensation for any hours for which the Covered Individual took leave of any type; or

(2) If the Covered Individual did not work over such period, the reasonable expectation of the Covered Individual at the time of hiring of the average wages or other compensation that the Covered Individual would normally receive within a typical 14-day period.

**5.2.3.2 Covered Individuals That Do Not Receive a W-2.** A covered individual that works for multiple hiring entities shall be entitled to the Public Health Emergency Leave Benefit from each Hiring Entity in an amount determined by calculating the hours of leave as provided in Section 5.2.3.2.1 of this Emergency Regulation multiplied by the Rate of Pay as provided in Section 5.2.3.2.2.

**5.2.3.2.1 Hours of Leave.** The average number of hours the Covered Individual worked for the hiring entity each day of the 6-month period ending on September 17, 2020, multiplied times fourteen (14), including any hours for which the Covered Individual took leave of any type. If the Covered Individual did not work for the Hiring Entity during this time frame, the reasonable expectation of the Covered Individual at the time of hiring of hours that the Covered Individual would normally work within a typical 14-day period.

**5.2.3.2.2 Rate of Pay.** The hours calculated above shall be paid out at the greater of (a) the average rate per hour that the worker earned over the time period provided in Section 5.2.3.2.1 of this Emergency Regulation (whether the 6-month period or from the date of hire, if less than 6-months) or (b) the state minimum wage.

**5.2.4** For the purpose of calculating the Public Health Emergency Leave Benefit any tipped employee or commission paid employee is entitled to under Section 5.2.1, 5.2.2, or 5.2.3 of this Emergency Regulation, the average rate of hourly pay shall be at a rate not less than the minimum hourly rate for hours worked, as required under the Pennsylvania Minimum Wage Act of 1968, 43 P.S. Section 333.104(a), or by Section 17-1305 of The Philadelphia Code, where applicable.

### **5.3 Healthcare Epidemic Leave.**

**5.3.1** A Healthcare Epidemic Leave Employee is entitled to a Healthcare Epidemic Leave Benefit in an amount equal to the number of days such employee is unable to work as the result of the need to isolate or quarantine due to such employee contracting COVID-19 calculated as follows:

(1) with respect to any time period for which the Healthcare Epidemic Leave Employee was already scheduled to work for a given Healthcare Employer, any scheduled hours that were not worked as a result of such Healthcare Epidemic Leave Employee contracting COVID-19; plus

(2) for any time periods for which the Healthcare Epidemic Leave Employee had not yet been scheduled to work for a given Healthcare Employer, the number of work days the Healthcare Epidemic Leave Employee would have worked if such employee had not contracted COVID-19 will be determined by (a) determining the number of days that the employee worked, on average per week during the three months prior to contracting the disease; multiplied by (b) such employee's normal rate of pay.

A Healthcare Epidemic Leave Employee entitled to Healthcare Epidemic Leave is entitled to such leave from each Healthcare Employer the employee would have worked for but for the such employee contracting COVID-19. Any right to Healthcare Epidemic Leave shall date back to the date the employee was first symptomatic or, if asymptomatic, the date the positive COVID-19 test was taken.

**5.4 Selection of Leave Benefit.** No individual may receive more than one leave benefit from a given employer or hiring entity for the same time off work.



## **5.5 Examples of Use of Leave.**

## **6. Requesting to Use the Leave Benefit.**

### **6.1 Accrued Sick Leave and Public Health Emergency Leave**

When the need for the leave benefit is known to the Accrued Sick Leave Employee or Covered Individual in advance, such as for a scheduled appointment with a health care provider, the Accrued Sick Leave Employee or Covered Individual shall provide notice of the need for such time to the employer in advance of the use of the leave benefit, the type of leave benefit being used, and shall make a reasonable effort to schedule the use of the leave benefit in a manner that does not unduly disrupt the operations of the Employer or Hiring Entity. For all other absences, the Accrued Sick Leave Employee or Covered Individual shall notify the Employer or Hiring Entity before the start of such employee or individual's scheduled work hours, or as soon as practicable if the need arises immediately before or after such employee or individual has reported for work.

## **7. Documentation Required.**

### **7.1 Accrued Sick Leave and Public Health Emergency Leave.**

**7.1.1** Reasonable documentation may include, but is not limited to, a public statement from a government official, the City Department of Public Health, or the Center for Disease Control if the statement specifically addresses the Covered Individual or Accrued Sick Leave Employee's circumstances. A Covered Individual or Accrued Sick Leave Employee, as applicable, need not provide their hiring entity documentation from a governmental official, however an employer may require a signed statement from an employee affirming that the conditions described in such public statement apply to the employee or the individual for whom the Covered Individual or Accrued Sick Leave Employee is taking leave to care for under the applicable leave benefit.

**7.1.2** In circumstances where the statement from a governmental official does not address the reason the leave benefit is needed, a signed statement from the employee affirming that the relevant conditions apply, shall constitute reasonable documentation. Consistent with CDC guidance, employers may not require a note from a health care professional.

**7.2 Healthcare Epidemic Leave.** Upon request, Healthcare Epidemic Employees must provide the employer from whom the Healthcare Epidemic Leave Benefit is requested evidence that the Healthcare Epidemic Employer has contracted COVID-19. The following are examples of acceptable documentation for this purpose: (i) a positive COVID-19 test or written communication from a healthcare provider indicating a positive COVID-19 test, (ii) a federal, state, or local governmental isolation order, or (iii) a written isolation recommendation from a healthcare provider.

**8. Retaliation.** It is unlawful for any Employer, Hiring Entity, or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under

Chapter 9-4100 of the Code, or to take retaliatory personnel action or otherwise discriminate against any individual because that individual has exercised rights protected under Chapter 9-4100 of the Code. This prohibition and all provisions of Section 9-4106 of the Code apply to all benefit types provided under Chapter 9-4100.

## **9. Notice Requirements.**

The Notice Requirements of § 9-4107 apply to providing Notice of all leave benefit types required by Chapter 9-4100. Employers shall post a notice, in the form provided by the Department, in a conspicuous place accessible to all employees and Covered Individuals, and shall provide electronic access if employees or Covered Individuals are not working on site. If the hiring Entity produces a handbook for employees or independent contractors, this information shall also be included in such handbook, promptly in the case of an electronic version, and upon the handbook's next revision in the case of a printed version.

## **10. Effect of Separation on Right to Use Leave Benefit.**

**10.1 Accrued Sick Leave and Public Health Emergency Leave.** No Employer or Hiring Entity is required to provide financial or other reimbursement to a Accrued Sick Leave Employee or Covered Individual, as applicable, upon the termination, resignation, retirement or other separation from employment or a contracting relationship for any leave benefit that has accrued but not yet been used, provided this limitation does not relieve an Employer or Hiring Entity from providing any leave benefit that was owed to such Employee or Covered Individual at or before the time of an involuntary separation.

**10.1.1 Involuntary Termination or Separation When Right to Use Leave Benefit Has Accrued.** The termination or other involuntary separation of an Accrued Sick Leave Employee or Covered Individual at the time such employee or individual is entitled to use leave, or at such time the Employer or Hiring Entity knows such employee or individual would be entitled to use such leave but for the involuntary separation, shall not extinguish the rights of such employee or individual.

**10.1.2 Rehire Rights.** A Covered Individual who is laid off or whose employment is otherwise terminated as the result of a public health emergency who is entitled to use a leave benefit at that time but chooses not to use all or a portion of such Covered Individual's Public Health Emergency Leave Benefit at the time of being laid off or terminated shall be entitled, if rehired by the same Hiring Entity within six months of separation, to the same amount of PHEL Benefit when such Covered individual returns to work as such Covered Individual was entitled to on the day such Covered Individual was laid off or terminated, provided that any such leave must be used before December 31, 2020.

**11. Enforcement.** The Department of Labor will enforce the Accrued Sick Leave Benefit, Healthcare Epidemic Leave Benefit, and Public Health Emergency Leave Benefit in accordance with the enforcement provisions provided in paragraphs 16 through 22 of the Base Regulation.