



City of Philadelphia

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## **M e m o r a n d u m**

**TO:** Basil L. Merenda, Director, Department of Labor

**FROM:** Jo Rosenberger Altman, Senior Attorney

**DATE:** January 13, 2023

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

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I have reviewed the Third Supplemental Regulation Regarding COVID-19 and Chapter 9-4100 of The Philadelphia Code: Promoting Healthy Families and Workplaces, a copy of which is attached. I find the regulation to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these regulations to the Department of Records where they will be made available for public inspection.

A handwritten signature in black ink, appearing to read "Jo A".

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Jo Rosenberger Altman  
Senior Attorney

**CITY OF PHILADELPHIA DEPARTMENT OF LABOR**

**THIRD SUPPLEMENTAL 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 Third Supplemental regulation (the “Regulation”) 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 Regulation is promulgated by the Department pursuant to its authority under Sections 4-2300 and 8-407 of The Philadelphia Home Rule Charter.

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: the Accrued Leave Benefit, the Health Care Epidemic Leave Benefit,<sup>1</sup> and the COVID-19 Leave, all of which are defined below. This Regulation clarifies the circumstances under which each type of leave benefit may be used and the interaction between these leave types.

This 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”). This Regulation supersedes the Supplemental Emergency Regulation Regarding COVID-19 and Chapter 9-4100 of The Philadelphia Code: Promoting Healthy Families and Workplaces (“First Emergency Regulation”) and the Second Supplemental Emergency Regulations Regarding COVID-19 and Chapter 9-4100 of The Philadelphia Code: Promoting Health Families and Workplaces, which are hereby rescinded.

**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 Regulation shall have the meanings provided in Chapter 9-4100 of The Philadelphia Code and the Base Regulation.

**2.2 Accrued Leave Employee.** An “employee” as defined 9-4103(3) of the Code, as further clarified by the Base Regulation.

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<sup>1</sup> The term “healthcare” and “health care” are used interchangeably in Chapter 9-4100 and shall have the same meaning as the term “health care” as used in this Regulation.

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 Leave Employer.** An “employer” as defined in Section 9-4103(4) of the Code.

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

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

**2.6 COVID-19 Leave.** The COVID-19 leave benefit applicable to all COVID-19 Leave Employees under Section 9-4116 of the Code effective March 9, 2022 until the sunset date of December 31, 2023.

**2.7 COVID-19 Leave Employee.** An “employee” as defined under Section 9-4116(1)(d) of the Code, as further clarified in this subsection 2.7. Specifically, an individual who (i) works for a given COVID-19 Leave Employer within Philadelphia after March 9, 2022, (ii) normally works for a given COVID-19 Leave Employer within the City of Philadelphia but is currently teleworking from any other location as a result of COVID-19, or (iii) works for a given COVID-19 Leave Employer from multiple locations or from mobile locations, provided that 51% or more of such employee’s time is present within Philadelphia.

**2.8 COVID-19 Leave Employer.** An “employer” as defined under Section 9-4116(1)(c) of the Code, which excludes an employer who employs less than twenty five (25) COVID-19 Leave Employees, excluding any entity, person, or group of persons that the City is legally prohibited from regulating under federal or state law.

**2.9 Child.** A minor for whom the Accrued Leave Employee or COVID-19 Leave Employee, as applicable, 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.

**2.10 Health Care Employer.** Any employer, as defined in Section 9-4103(4) of the Code that is required to provide paid sick leave under Chapter 9-4100 , which exempts employers that employ fewer than ten (10) Employees for at least forty (40) weeks in a calendar year in Philadelphia, who provides Health Care Services and engages the services of one or more Health Care Epidemic Employees in Philadelphia either full-time or part-time at a Healthcare Organization. The term Health Care Employer excludes any entity, person, or group of persons that the City is legally prohibited from regulating under federal or state law.

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

A “Health Care Employee,” as defined under Section 9-4103(9) means any person who has full-time or part-time employment within a “Health Care Organization,” including but not limited to hospitals, nursing homes, and home health care providers. If the Health Care Organization is a unit or division of a larger entity, only those persons who work directly in the unit or division that constitutes a Health Care Organization qualify as a Health Care Employee. An employee who only provides services remotely does not qualify as a Health Care Employee.

A “Pool Employee” means 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, other than an employee of a temporary placement agency, who works only when he or she indicates that he or she is available for work and who has no obligation to work when he or she does not indicate availability.

**2.12 Health Care Organization.** Any entity, or any portion of a larger entity, that operates with the primary purpose of providing health care services to individuals in an in-person setting.

In identifying a portion of an entity that constitutes a Health Care Organization for this purpose, the entity shall identify (1) those employees whose primary purpose is to provide in-person health care services; and (2) any employees who provide direct in-person support for those employees whose primary purpose is to provide in-person health care services. Any portion of a larger entity that performs remote work and does not perform in-person medical services does not constitute part of a health care organization.

**2.13 Health Care Services.** Any inpatient or outpatient medical or behavioral health, dental, nursing, medical first responder, pharmacological, assisted living residence, intermediate care, adult daycare, long term care facility, acupuncture, audiology, drug and alcohol, hearing aid, chiropractic care, naturopathic care, occupational therapy, physical therapy, athletic training as defined in Second Amendment to the Emergency Regulation Governing the Control and Prevention of COVID-19 Mandating Vaccines For Healthcare Workers and in Higher Education, Healthcare, and Related Settings, optometry, ophthalmology, or speech language pathology services.

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

**2.15 Time Period for Isolation.** The number of days the Philadelphia Department of Public Health recommends an individual isolate when infected with COVID-19 at the applicable time of contraction. The Time Period for Isolation may differ depending on whether the

individual falls within a specific class of individuals, such as those that are immunocompromised or those who are Health Care Workers.

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

**3.1 Employers and Employees.**

Accrued Leave Employers must provide Accrued Leave to Accrued Leave Employees; COVID-19 Leave Employers must provide COVID-19 leave to COVID-19 Leave Employees; and Health Care Employers must provide Health Care Epidemic Leave to Health Care Epidemic Employees. If an Accrued Leave Employer or a COVID-19 Leave Employer is a generous employer with respect to the applicable benefit as provided under Section 3.2, such employer may offset all or a portion of the applicable leave with the employer’s existing leave plan to the extent specifically provided in Section 3.2.

The following chart illustrates distinctions between the employers and employees covered by each leave type under Chapter 9-4100. The differences highlighted below are examples only and are not exhaustive. Precise details are provided in the applicable definitions.

	<b>Covered Employers</b>	<b>Covered Employees</b>
<b>Accrued Sick Leave</b>	An <b>Accrued Leave Employer</b> employs <b>at least 10 employees for at least 40 weeks in Philadelphia</b> in a calendar year or be a Chain Establishment.	An <b>Accrued Leave Employee</b> performs work <b>in Philadelphia for at least 40 hours</b> in a calendar year. Accrued Leave Employees are eligible to use Accrued Sick Leave <b>after 90 days</b> of employment.
<b>COVID-19 Leave</b>	A <b>COVID-19 Leave Employer</b> employs <b>at least 25 COVID-19 Leave Employees</b> .	A <b>COVID-19 Employee</b> works for a COVID-19 Leave Employer <b>after March 9, 2022 in Philadelphia</b> ; or normally works for the employer in Philadelphia but is <b>teleworking</b> from a different location <b>as a result of COVID-19</b> ; or works from multiple locations or a mobile location, provided that <b>at least 51%</b> of the employee’s time is <b>in Philadelphia</b> .
<b>Health Care Epidemic Leave</b>	A <b>Health Care Employer</b> employs <b>at least 10 employees for at least 40 weeks in Philadelphia</b> in a calendar year; and engages the services of a Healthcare Epidemic Employee either full or part time in circumstances where the <b>employer or a portion of the employer</b> operates with the <b>primary purpose</b> of providing <b>healthcare services</b> to individuals in an <b>in person setting</b> .	A <b>Health Care Epidemic Employee</b> is a Pool Employee or Health Care Employee, which includes people whose <b>primary work</b> is to provide <b>in person healthcare services</b> , who has <b>contracted COVID-19</b> ; and who worked for the Healthcare Epidemic Leave Employer for <b>at least 40 hours in the three months prior to contracting COVID-19</b> .

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

**3.2.1 Generous Employers – Accrued Leave.** Any Accrued Leave Employer that provides paid leave which can be used for the same purposes and under all the same conditions as the Accrued 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 to the extent the existing leave policy meets or exceeds the Accrued Leave an Accrued Leave Employee would otherwise be entitled to at the time such employee requests to use leave.

### **3.2.1.1 Partial Leave Benefit Plans. An Accrued Leave**

Employer that provides some but not the full Accrued Leave Benefit an Accrued Leave Employee is entitled to receive under Chapter 9-4100 must provide sufficient supplemental leave such that the total existing leave and supplemental leave, when combined, provides paid leave in the same or a greater amount as the Accrued Leave Benefit the employee is entitled to under Chapter 9-4100.

**3.2.2 Generous Employers –COVID-19 Leave.** Any COVID-19 Leave Employer with an existing leave policy that meets one or more of the following subsections (3.2.2.1 – 3.2.2.3) below, is either not required to provided additional COVID-19 Leave or, with respect to Section 3.2.2.1, may reduce the amount of COVID-19 Leave provided, as provided in that Section. To qualify as a generous COVID-19 Leave Employer under this Section 3.2.2, the employer must allow immediate availability of leave, in the amount allowed under Section 5 of this Regulation, for any permissible purpose for which COVID-19 Leave may be used as stated under Section 4.2. This requirement may be satisfied by allowing the COVID-19 Leave Employee to borrow against such employee’s future leave benefit if the amount of time the employee has accrued during the leave benefit year would not otherwise reach the threshold for the COVID-19 Employer to be a generous employer under this Section 3.2.2.

### **3.2.2.1 COVID Leave Policies.** The COVID-19 Leave

Employer (a) adopted a policy that provides its COVID-19 Leave Employees with additional paid time specifically for use during the COVID-19 pandemic and that does not reduce any other leave balances; and (b) has not reduced any other leave benefit for such employees. In such cases, the existing COVID-19 leave provided by the employer may offset the C2COVID-19 Leave required to be provided on a pro rata basis.

### **3.2.2.2 Teleworking Employees.** With respect to COVID-19 Leave

Employees who complete the majority of their work responsibilities through telework, the COVID-19 Leave Employer policy that provides such teleworking COVID-19 Leave Employees at least eighty (80) hours of paid leave in 2022 that can be used for the same purposes and under all of the same conditions as COVID-19 Leave satisfies the requirement to provide COVID-19 Leave.

**3.2.2.3 120+ Hours of Paid Time Off. The COVID-19**

Leave Employer has adopted a policy that provides COVID-19 Leave Employees one hundred and twenty (120) hours or more of paid time off, or 112.5 hours for those employers that operate on a 7.5 hour work day and consider an employee working 37.5 hours a week to be full time, in the 2022 calendar year that can be used for the same purposes and under all of the same conditions as COVID-19 Leave, regardless of whether such leave is classified as sick leave, vacation leave, administrative leave, or any other type of paid leave. When an employer adopts such a policy and makes it available to a particular employee, regardless of when the policy was adopted, the requirement to provide COVID-19 Leave as to that COVID-19 Leave Employee is satisfied.

**3.2.3 Generous Employers – Health Care Epidemic Leave.**

Health Care Epidemic Leave is in addition to any other leave benefit Health Care Employers provide and no generous employer provisions apply to this leave benefit.

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

**4.1 Accrued Sick Leave.** Accrued Leave Employees are entitled to use the Accrued 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 Leave Employee, at a minimum, has the right to use the Accrued 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 as recommended by a Health Care provider; or pursuant to current recommendations issued by the Philadelphia Department of Public Health or the United States Center for Disease Control (“CDC”) in effect at the time the quarantine is needed.

(.3) 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, where such closure is related to the COVID-19 pandemic.

(.4) 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.

(.5) 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.

(.6) With respect to either an employee or a family member of an employee, in order to receive or recover from a COVID-19 vaccine (including a booster) or receive a COVID-19 test.

**4.2 COVID-19 Leave.** Beginning on March 9, 2022, COVID-19 Leave Employees are entitled to use the COVID-19 Leave for a COVID-19 related purpose immediately upon employment with a COVID-19 Leave Employer, and continuing until December 31, 2023, the sunset date of the provision, for a purpose described in this 4.2 section. A COVID-19 Leave Employee, at a minimum, has the right to use the COVID-19 Leave for the inability to work for one or more of the following purposes:

(a) being subject to a determination by a public official or public health authority with jurisdiction (including a Federal, State, or local quarantine or isolation order), advice given by a Health Care provider, or a direction given by the COVID-19 Employer related to the public health emergency that: is (i) applicable to the type of business or work the



employee engages in; or (ii) specific to the employee because the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to COVID-19 or because the employee is exhibiting symptoms of COVID-19; either of which regardless of whether the employee has been diagnosed with COVID-19;

**Note:** This does not include a business closure that is not specifically for the purpose of quarantine or isolation of the individuals working at the business either because of personal exposure or symptoms, or community spread.

(b) to care for a family member of the employee who is subject to an order or has been advised to remain home from work out of the community as provided for an employee subsection (a).

(c) an employee's need to: (.1) self-isolate and care for oneself because the employee is diagnosed with or has tested positive for COVID-19; (.2) self-isolate and care for oneself because the employee is experiencing symptoms of COVID-19; (.3) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19;

(d) To care for a family member who: (.1) is self-isolating due to being diagnosed with COVID-19; (.2) is self-isolating due to experiencing symptoms of COVID-19; (.3) needs medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19;

(e) To care for a child 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 response to COVID-19;

(f) An employee's need to obtain immunization (vaccination), including a booster, related to COVID-19; or

(g) An employee's need to recover from any injury, disability, illness or condition related to such vaccination.

**4.3 Health Care Epidemic Leave.** A Health Care Epidemic Employee is entitled to the Health Care Epidemic Leave Benefit immediately upon qualifying as a Health Care Epidemic Employee (which requires working for a Healthcare Epidemic Leave Employer for at least forty (40) hours within the prior three months) 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 Health Care Epidemic Employee's isolation begins pursuant to either a federal, state, or local governmental isolation order specific to such employee; or a written isolation recommendation from either a Health Care Employer or a Health Care provider.

**4.3.1 Priority of Health Care Epidemic Leave.** A Health Care Epidemic Employee that chooses to take the Health Care 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 Health Care Epidemic Employees to use the Accrued Leave Benefit or the COVID-19 Leave concurrently.

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

**4.3.3 Returning to Work from Health Care Epidemic Leave.** A Health Care Epidemic Employee will be presumed to be unable to work due to the employee's contraction of COVID-19 for the Time Period for Isolation from the date the employee's leave first began, unless such employee receives a written medical opinion stating that the employee cannot return to work due to such employee's COVID-19 illness after such Time Period for Isolation.

**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>COVID-19 Leave Benefit</b>	<b>Health Care Epidemic Leave Benefit</b>
<b>Individual Contracts COVID-19 When No Qualifying Emergency is declared</b>	Yes	Yes	No
<b>Individual Contracts COVID-19 When a Qualifying Emergency <u>is</u> declared</b>	Yes	Yes	Yes
<b>Time off needed to Care for a family member who has COVID-19 or has symptoms of 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 (Only if closure mandated by State or Local Order or due to spread of illness at the business)	Maybe (Only if closure is mandated by State or Local Order or due to spread of illness at the business)	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
<b>To Receive a COVID-19 Vaccine</b>	Yes	Yes	No
<b>Due to side-effects of a COVID-19 vaccine</b>	Yes	Yes	No

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

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

**5.1.1** Beginning the date of employment, an Accrued Leave Employee shall accrue a minimum of one hour of an Accrued Leave Benefit for every 40 hours worked in Philadelphia. Accrued 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 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 Leave Benefit that accrues in any calendar year shall not exceed 40 hours, unless the employer chooses to provide a higher limit.

## **5.2 COVID-19 Leave.**

**5.2.1** A COVID-19 Leave Employee who works for forty (40) hours or more per week is entitled to 40 hours of COVID-19 Leave, unless the employer designates a higher limit.

**5.2.2** A COVID-19 Leave Employee who works fewer than forty (40) hours in a week is entitled to COVID-19 Leave in an amount equal to the number of hours the COVID-19 Leave Employee is otherwise scheduled to work or actually works on average in a 7-day period, whichever is greater, unless the COVID-19 Employer provides a more generous benefit. For an employee whose schedule varies from week to week, the COVID-19 Leave Employer shall use the following in place of a number to determine the amount of time worked on average in a 7-day period:

(a) The average number of daily hours that the employee was scheduled over the past 90 (ninety) days of work, including any hours for which the employee took leave of any time;

(b) Multiplied by seven.

**5.2.3 Rate of Pay.** The hours calculated above shall be paid out at the (a) employee's regular rate of pay at the time the leave was taken or (b) the state minimum wage for tipped employees, as provided in the Base Regulation.

### **5.3 Health Care Epidemic Leave.**

**5.3.1** A Health Care Epidemic Leave Employee entitled to Health Care Epidemic Leave is entitled to such leave from each Health Care Employer the employee would have worked for if such employee had not contracted COVID-19. Any right to Health Care 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.

A Health Care Epidemic Leave Employee is entitled to a Health Care Epidemic Leave Benefit for 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:

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

(b) for any time periods for which the Health Care Epidemic Leave Employee had not yet been scheduled to work for a given Health Care Employer, the number of work days the Health Care Epidemic Leave Employee would have worked if such employee had not contracted COVID-19, which shall equal the number of days that the employee worked, on average per week during the three months prior to contracting the disease.

The dollar value of the Health Care Epidemic Leave Benefit that the Health Care Epidemic Leave Employee is entitled to shall be calculated by multiplying the number of days calculated pursuant to subsection 5.3.1(a) and (b), above, by such employee's normal rate of pay.

A Health Care Epidemic Employee will be presumed to be unable to work due to the employee's contraction of COVID-19 for the Time Period for Isolation from the date the employee's leave first began, unless such employee receives a written medical opinion stating that the employee cannot return to work after that Time Period for Isolation due to such employee's COVID-19 illness.

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

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

### **6.1 Accrued Sick Leave and COVID-19 Leave.**

When the need for the leave benefit is known to the Accrued Leave Employee or COVID-19 Leave Employee in advance, such as for a scheduled appointment with a health care provider, the Accrued Leave Employee or COVID-19 Leave Employee 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 COVID-19 Leave Employer. For all other absences, the Accrued Leave Employee or COVID-19 Leave Employee shall notify the Employer or COVID-19 Employer 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.** An Accrued Leave Employer may ask for Reasonable Documentation for sick time of more than two (2) consecutive days. Reasonable Documentation includes, but is not limited to, the following:

(a) With respect to the types of preventative medical care identified in Section 4.1(d) reasonable documentation includes, but is not limited to, a public statement from a government official, the Philadelphia Department of Public Health, or the CDC, provided that 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 family member of the employee.

(b) With respect to an employee who is out of the office as a result of the physical illness or health condition involving a fever, dry cough, or shortness of breath or other respiratory illness of such employee or such employee's family member known to be symptoms of COVID-19, a signed statement from the employee affirming that the relevant conditions apply. Consistent with guidance from the Philadelphia Department of Public Health, employers are encouraged not to require a note from a healthcare professional when sick time is used for this purpose.

**7.2 COVID-19 Leave.** An employer is permitted only to request that an employee submit a self-certified statement, subject to the provisions of Section 1-108 of the Code (Certification), asserting that leave was used according to the purposes listed under Section 4.2 of this Regulation. This provision only applies to the amount of COVID-19 Leave required under Section 5.2 of this Regulation.

**7.3 Health Care Epidemic Leave.** Upon request, Health Care Epidemic Employees must provide the employer from whom the Health Care Epidemic Leave Benefit is requested evidence that the Health Care Epidemic Employee has contracted COVID-19; or a doctor's note evidencing that such Health Care Epidemic Employee must remain out of work for the Time Period for Isolation as a result of such employee's COVID-19 illness, as applicable. The following are examples of acceptable documentation for the purpose of establishing that the employee has contracted COVID-19: (i) a positive COVID-19 test or written communication from a Health Care provider indicating a positive COVID-19 test, (ii) a federal, state, or local governmental isolation order requiring such Health Care Epidemic Employee to isolate, or (iii) a written isolation recommendation specific to such Health Care Epidemic Employee from a qualified Health Care provider. A direction or recommendation to quarantine does not meet the requirements of this Section.

**8. Interference, Restraint, or Retaliation.** It is unlawful for any Accrued Leave Employer, COVID-19 Leave Employer, Health Care Employer 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 Section 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 shall provide electronic posting access if employees are not working on site. If the employer 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 COVID-19 Leave.** No employer is required to provide financial or other reimbursement to an Accrued Leave Employee or COVID-19 Leave Employee, 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 from providing any leave benefit that was owed to such employee 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 employee at the time such employee is entitled to use leave, or at such time the employer knows such employee would be entitled to use such leave but for the involuntary separation, constitutes

interference with such employee's leave benefit and shall not extinguish the rights of such employee.

**10.1.2 Right to Return.** Any COVID-19 Leave Employee who takes COVID-19 Leave pursuant to this Regulation shall be entitled, on return from such leave, to be restored by the COVID-19 Leave Employer to the position held when the leave commenced.

**11. Enforcement.** The Department of Labor will enforce the Accrued Leave Benefit, Health Care Epidemic Leave Benefit, and COVID-19 Leave in accordance with the enforcement provisions provided in paragraphs 16 through 22 of the Base Regulation, or any superseding regulation regarding enforcement.