



# Department of Public Safety and Correctional Services

## Office of the Secretary

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**OOS IB # 2020-09**  
**REVISED**

**Effective:** May 28, 2020

**Expiration:** Until the Secretary determines that the COVID-19 contagion is no longer a direct threat within the correction facilities.

## OOS INFORMATION BULLETIN

**SUBJECT:** Use of Unscheduled Sick Leave and Failure to Disclose COVID-19 Positive Status

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### 1. Call-In Procedure for Unscheduled Sick Leave and Enforcement

In accordance with The [Department of Budget and Management's Sick Leave Guidelines](#) (attached) and [DPSCS.050.0002 – Standards of Conduct and Internal Administrative Disciplinary Processes, Section III\(A\)](#), an employee that intends to use unscheduled leave due to illness must call their supervisor (or supervisor's designee) each day of absence until the employee notifies the supervisor (or supervisor's designee) of the date when the employee will return to duty.

A supervisor or designee may contact the employee to check general welfare. This does not change the duty of the employee to call.

An employee that fails to properly notify their supervisor of the use of unscheduled leave can be placed on leave without pay and may face disciplinary action. In accordance with [COMAR 17.04.04.03\(D\)](#), if an employee has been absent for five (5) working days without contacting their supervisor, the appointing authority can send them a certified letter indicating that the employee is considered as having resigned without providing proper notice.

### 2. Disclosure of COVID-19 Status or Symptoms.

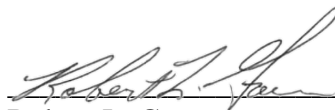
Generally an employer is not permitted to ask an employee to provide information as to a medical diagnosis or condition. However, as COVID-19 represents a threat to public health, the [U.S. Equal Employment Opportunity Commission](#) (EEOC) and Centers for Disease Control (CDC) have determined that an employer is allowed to ask an employee if they are suffering any symptoms, have been tested, and the

results of any test related to COVID-19. Moreover, an employee may be subject to discipline if they refuse to answer or misrepresent their symptoms, diagnosis, or test results. Regardless of whether an employer asks for the information, an employee has an affirmative and immediate obligation to advise the employer if they are experiencing symptoms, are waiting for COVID-19 test results, or have tested positive for COVID-19.

If you have any questions regarding this provision, please contact your Human Resources Operation Support Unit [dpscshrsupportservices@maryland.gov](mailto:dpscshrsupportservices@maryland.gov).

Attachments:

- DBM Sick Leave Guidelines



Robert L. Green  
Secretary

Distribution: A – Facility/Agency Reference Set  
B – All DPSCS Employees – Receipt Required  
S – Executive Leadership Team

History: This IB rescinds and replaces OOS IB # 2020-09 dated May 26, 2020.



OFFICE OF PERSONNEL SERVICES AND BENEFITS

## **SICK LEAVE GUIDELINES**

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### **1. Eligibility**

In accordance with State law, employees are entitled to sick leave with pay:

- a. for illness or disability of the employee;
- b. for death, illness, or disability of a member of the employee's immediate family;
- c. following the birth of the employee's child;
- d. when a child is placed with the employee for adoption; or
- e. for a medical appointment of the employee or a member of the employee's immediate family.

“Immediate family” is defined as: the employee’s spouse; the employee’s children (including foster and stepchildren); parents, stepparents, or foster parents of the employee or spouse, or others who took the place of parents; legal guardians of the employee or spouse; brothers and sisters of the employee or spouse; grandparents and grandchildren of the employee or spouse; and other relatives living as members of the employee’s household.

### **2. Notification**

When an employee is unable to work due to circumstances provided in Section 1, the employee or employee's designee will notify his/her immediate supervisor or designee at the work site at a time as established by existing agency policy/practice, unless extenuating circumstances preclude this notification. When an employee calls in accordance with established practice or policy, he/she shall leave a message if the supervisor or supervisor's designee is unavailable, or the Employer may instruct an employee to call a secondary number, and the employee will not be required to call back.

The employee or designee must call each day of absence until the employee notifies the Employer of a date he/she will return to duty. The Employer shall not ask the employee to provide information as to his/her diagnosis or condition except as permitted by applicable law.

### **3. Certificate of Illness for Absences for Five (5) or More Consecutive Days**

The Employer shall require an employee to provide an original certificate of illness or disability only in cases where an absence is for five (5) or more consecutive workdays or in accordance

with the procedures described in Section 4 below. The certificate required by this Section shall be signed by one of the following:

- A. A medical doctor who is authorized to practice medicine or surgery by the state in which the doctor practices;
- B. If authorized to practice in a state and performing within the scope of that authority:
  - 1. a chiropractor;
  - 2. a clinical psychologist;
  - 3. a dentist;
  - 4. a licensed certified social worker – clinical;
  - 5. a nurse midwife;
  - 6. a nurse practitioner;
  - 7. an oral surgeon;
  - 8. an optometrist;
  - 9. a physical therapist; or
  - 10. a podiatrist;
- C. An accredited Christian Science practitioner; or
- D. A health care provider as defined by the federal Family Medical Leave Act.

#### **4. Certificate of Illness for Absences of Less Than Five (5) Consecutive Days**

The Employer may require an employee to submit documentation of sick leave use on the following conditions:

- A. When an employee has a consistent pattern of maintaining a zero or near zero sick leave balance without documentation of the need for such relatively high utilization; or
- B. When an employee has six (6) or more occurrences of undocumented sick leave usage within a twelve (12) month period. Sick leave use that is certified in accordance with this policy shall not be considered as an occurrence.

Note that after the first instance of an employee being absent for more than four (4) consecutive days without documentation, the Employer may place the employee on notice that future absences of more than three (3) days, within a rolling twelve (12) month period, will require documentation.

#### **5. Procedures for Certification Requirement**

Prior to imposing a requirement on an employee for documentation of sick leave use, the Employer shall orally counsel the employee that future undocumented absences may trigger a requirement for certification of future instances of sick leave.

If the employee has another undocumented absence after such counseling, the Employer may then put the employee on written notice that he/she must certify all sick leave usage for the next six (6) months if the undocumented absences accumulate in accordance with Section 4.

At the conclusion of the six (6) months, the certification requirement will be rescinded provided the employee has complied with the requirement. If the employee has not complied, the requirement shall be extended for six (6) months from the date of the lack of compliance with the requirement.

Although a requirement for certification is not a disciplinary action, an employee may grieve allegations of misapplication of this procedure.

## **6. Chronic Conditions**

Employees who suffer from chronic or recurring illnesses or disabling conditions that do not require a visit to a health care provider each time the condition is manifested, shall not be required to provide certification for each absence, provided that a general certification is provided, unless the absence is for five (5) or more consecutive days. Such frequent absences also shall not be used as the basis for a certification requirement.

Unless the employee has a condition identified as a permanent disabling condition, the Employer may require certification and follow-up reports from a health care provider no more frequently than every six (6) months of the continued existence of the chronic condition.

## **7. Acceptable Documentation**

For the purposes of absences of less than five (5) consecutive days, acceptable documentation shall consist of the following:

- A. A certificate from a health care provider that the employee (or member of the employee's immediate family) visited the office and/or the employee was unavailable for duty for the reasons specified in Section 1 on the day or dates of absence. For absences of four (4) hours or less, at the employee's option, he or she may submit a copy of the universal health insurance claim form or similar document from the health care provider's office showing the name of the provider, the date of treatment and address and telephone number of the provider.
- B. An employee who works less than his/her full work day due to having to provide care to the employee's child or member of his/her immediate family shall not be required to provide certification from an acceptable health care provider unless management has a basis to believe sick leave is being used for a purpose other than described in Section 1 above. Sick leave use in such circumstances shall not count as an occurrence under Section 4.

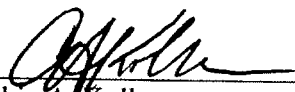
## 8. Disciplinary Actions

The Employer may take appropriate disciplinary action against an employee for using sick leave for purposes other than described in law, regulation, this policy, or an applicable MOU; for failing to properly notify the Employer of the use of sick leave; or for failure to provide appropriate documentation when properly required to do so.

The Employer may not penalize an employee with regard to scheduling, overtime eligibility, performance evaluations or other right or benefit for sick leave usage for being subject to a documentation requirement.

This does not preclude appropriate disciplinary action for use of sick leave for purposes other than described in Section 1.

RELEASED:

  
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Cynthia A. Kollner  
Executive Director  
Office of Personnel Services and Benefits  
Maryland Department of Budget and Management

10/31/08  
Date