Supreme Court of Kentucky

2021-03

AMENDED ORDER

IN RE: WORK ALTERNATIVES FOR HIGH-RISK EMPLOYEES AND COVID-19 TESTING AND VACCINE LEAVE FOR KENTUCKY COURT OF JUSTICE EMPLOYEES IN A PANDEMIC OR PUBLIC HEALTH EMERGENCY

To protect the health and safety of court employees, elected officials, and the general public, the Supreme Court has limited in-person services and required court proceedings to be conducted remotely, except in limited circumstances. The Administrative Office of the Courts has also issued the Kentucky Court of Justice COVID-19 Health and Safety Requirements to provide guidance on leave policies and working remotely, reducing risk, and implementing social distancing among court personnel.

COVID-19 affects everyone differently. Individuals who have contracted the virus may be asymptomatic or have only mild symptoms, while others may experience severe symptoms. Additionally, some individuals are at a higher risk for severe illness from COVID-19 because of their age or an underlying medical condition. In an effort to protect our vulnerable employees and provide a safe work environment for those employees who are working in court facilities and offices across the Commonwealth, the Supreme Court hereby authorizes the following high-risk work alternatives and paid leaves:

A. Work Alternatives for High-Risk Employees.

1. Upon request, an employee shall receive a high-risk work alternative if:

    a. He or she is age 65 or older or provides medical documentation that establishes he or she suffers from a condition that the Centers for Disease Control and Prevention (CDC) has identified as placing him or her at a high risk for severe illness from COVID-19,[1] and

    b. Both doses of the COVID-19 vaccine have not been made available to the employee or the employee has provided

[1] The list of conditions identified by the CDC was updated on 9/11/20, and can be found here: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html.

documentation from a treating physician that he or she should not receive the COVID-19 vaccine.

2. An employee approved to receive a high-risk work alternative shall be provided an in-office work alternative consisting of a separate workspace and modified work duties, if needed, that either greatly reduce or eliminate his or her interaction with the public and other staff.

3. In the event that an in-office work alternative is unavailable, an employee approved to receive a high-risk work alternative shall be approved to telecommute from his or her home or other location, if approved by his or her appointing authority.

4. In the event that both an in-office work alternative and telecommuting are unavailable, an employee approved to receive a high-risk work alternative shall be authorized to claim Special Emergency Directed Leave (SEDL) or any other authorized leave.

5. In the event that an in-office work alternative cannot be provided for a full 37.5 hours each week, the remaining work hours shall be approved for telecommuting. If telecommuting is unavailable, then SEDL shall be authorized for the remaining work hours.

6. Requests for a high-risk work alternative must be on a form specified by and submitted to the AOC Department of Human Resources for approval. A new request should be submitted every sixty (60) days thereafter to determine continued eligibility for a high-risk work alternative.

7. An employee who was approved to receive a high-risk work alternative and/or SEDL prior to December 31, 2020, must submit a new request to the AOC Department of Human Resources by January 19, 2021, or otherwise report to work at his or her previously assigned workstation.

8. Employees must immediately notify their appointing authority and the AOC Department of Human Resources of any change in their eligibility to receive a high-risk work alternative and/or SEDL.

9. SEDL Requirements.

    a. No employee shall claim more than 7.5 hours of SEDL in any work day.

    b. Part-time employees shall not claim more than 80 hours of SEDL in a calendar month.

c. No employee shall be authorized to earn compensatory time and claim SEDL in the same work week. SEDL shall be reduced so that no more than a total of 37.5 hours of work and/or SEDL are claimed in a work week.

d. Unless otherwise ordered by this Court, SEDL shall only be authorized so long as both doses of the COVID-19 vaccine have not been made available to the employee or the employee has provided documentation from a treating physician that he or she should not receive the COVID-19 vaccine.

e. SEDL hours are not a guarantee to any employee, and within 24 hours of being notified, an employee may be required to resume work in-office or telecommuting based upon access to or receipt of the COVID-19 vaccine or availability of a high-risk work alternative.

f. A full-time employee approved for SEDL who does not have at least 100 work hours and/or other paid leave in a month will still receive health benefits and continue to accrue sick leave and months of service but will not accrue annual leave.

g. Employees approved to use SEDL must observe and strictly follow all restrictions and orders issued by the Governor or federal or state agency during the State of Emergency, including but not limited to restrictions on travel, social distancing, and isolation or quarantine. Evidence that an employee has failed to follow these restrictions and orders may result in loss of the claimed SEDL and any resulting pay and benefit for any previously approved absence from work.

B. Asymptomatic COVID-19 Testing Leave

1. An employee is eligible to claim COVID-19 Testing Leave if he or she:

   a. Is asymptomatic and works some hours in-office each week;

   b. Is scheduled to and actually works the day that the testing is obtained;

   c. Obtains prior approval from his or her appointing authority if testing is obtained during scheduled work hours; and

   d. Has not previously claimed COVID-19 Testing Leave during that

calendar month.

2. An eligible employee may receive up to two hours of paid leave to obtain a COVID-19 test once during a calendar month, through April 30, 2021, if he or she provides documentation of the testing to his or her appointing authority during the pay period in which the leave is claimed.

3. The appointing authority may specify the time in which the eligible employee is approved to be absent from work to obtain a COVID-19 test.

4. Eligible employees who obtain a COVID-19 test will be credited with compensatory time for any unused testing leave or if he or she does not miss any work hours.

5. An employee who attempts to get tested and is turned away by the testing center will be excused for the time spent attempting to be tested but will not qualify for COVID-19 testing leave that day and must provide proof to his or her appointing authority of the attempt to be tested.

6. Any employee who claims testing leave shall be subject to disciplinary action if he or she did not obtain COVID-19 testing on that day as he or she claimed.

C. COVID-19 Vaccine Leave

1. An employee is eligible to claim COVID-19 Vaccine Leave if he or she:

    a. Is scheduled to and actually works the day that the vaccine is obtained;

    b. Obtains prior approval from his or her appointing authority if the vaccine dose is obtained during scheduled work hours; and

    c. Has not previously claimed COVID-19 Vaccine Leave on more than one prior occasion.

2. An eligible employee may receive up to two (2) hours of paid leave to obtain a COVID-19 vaccine dose if he or she provides documentation of the vaccine treatment to his or her appointing authority during the pay period in which the leave is claimed.

3. Employees may claim COVID-19 Vaccine Leave on no more than two occasions, and for no more than a total of four (4) hours.

4. COVID-19 Vaccine Leave is authorized to be used through December 31, 2021.

5. The appointing authority may specify the time in which the eligible employee is approved to be absent from work to obtain a COVID-19 vaccine dose.

6. Eligible employees who receive a vaccine dose will be credited with compensatory time for any unused vaccine leave or if he or she does not miss any work hours.

7. An employee who attempts to get a vaccine dose and is turned away by the vaccine provider will be excused for the time spent attempting to obtain the vaccine dose but will not qualify for vaccine leave that day and must provide proof to his or her appointing authority of the attempt to obtain the vaccine.

8. Any employee who claims vaccine leave shall be subject to disciplinary action if he or she did not receive a COVID-19 vaccine dose on that day as he or she has claimed.

This Order shall be effective upon entry and until further Order of this Court.

Entered this 12th day of January 2021.

CHIEF JUSTICE

All sitting; all concur.