



THE CITY OF NEW YORK  
DEPARTMENT OF SANITATION  
GENERAL ORDER 2009 - 21

**EFFECTIVE DATE:** November 24, 2009

**SUBJECT:** GRANTING AND APPROVING EMERGENCY LEAVE  
FOR UNIFORMED AND CIVILIAN EMPLOYEES.

**AFFECTED DIRECTIVES:** RESCINDS OPERATIONS ORDER 2008-03  
Dated; February 1, 2008.  
FAMILY AND MEDICAL LEAVE ACT (FMLA)  
Enacted February 5, 1993 - Amended January 28, 2008  
DEPARTMENT OF PERSONNEL PPP 600-94

**GRANTING EMERGENCY LEAVES:**

The Department realizes that an employee may not be able to report to work or may have to leave work because of an emergency. When an employee has an emergency, the employee must notify their immediate supervisor that they have an emergency and cannot report to work. The employee will be told that he or she will be carried absent until proof of the emergency is submitted and approved by the Borough Chief/Division Head. The time book will be marked in pencil, with an -A- until the Borough Chief/Division Head determines how the employee is to be carried. Failure to provide documentation satisfactory to the Department may result in disciplinary charges preferred against the employee.

**Definition:** Emergency - A sudden unforeseen situation that requires  
Immediate action.

District Superintendents and Unit Supervisors will record the circumstances and date the leave was granted or denied and what disciplinary action was taken, if warranted, in the location's Absence Control Log D.S. 1426.

It is the responsibility of the employee to submit proof of the emergency, **within Two Scheduled Work Days** after the employee returns to work, to the employee's District Superintendent or Unit Supervisor. If the submitted proof is deemed unsatisfactory, the employee shall have five additional scheduled work days from the time he or she is notified of such insufficiency to submit proof satisfactory to the Department. If the proof is based on a medical emergency, the documentation must be from a health practitioner, as defined in CFR Title 29, Chapter V, Subpart H, Section 825800, (5), licensed by the state in which he or she practices to diagnose and certify illness or disability.

**APPROVING EMERGENCY LEAVES:**

The District Superintendent or Unit Supervisor will ensure that a D.S. 1005 is completed and attached to the proof of emergency within the approved time period. The District Superintendent/Unit Supervisor will immediately submit the completed forms, through channels, with endorsements, to the Borough Chief or Division Head. Authority for determining whether or not the proof submitted is "satisfactory" will be the sole responsibility of the Borough Chief/Division Head or their respective staff designee or the Personnel Management Division. The D.S. 1005 and the submitted proof, whether granted or denied, will be kept in the employee's personnel file.

The Borough Chief or Division Head can approve, subject to acceptable documentation, a combination of up to three (3) emergency leave occurrences, including Emergency Child Care leave, in a twelve (12) consecutive month period that may be charged to available compensatory time credited to such employee. A chart change, vacation time or non-FMLA Leave Without Pay can also be granted at the Borough Chief/Division Head's discretion.

Additional requests for emergency leave made within the twelve (12) consecutive month period may be approved by the Borough Chief or Division Head as non-FMLA Leave Without Pay only. When reviewing requests for emergency leave beyond the initial three, the Borough Chief or Division Head has the discretion to consider the circumstances upon which the request is made as well as the requesting employee's overall work history and performance. Approval of Emergency Leave with pay for the fourth and all subsequent requests can only be approved by the Chief of Personnel Management Division; in the Bureau of Waste Disposal, the Deputy Director; or in other divisions, the Deputy Commissioner or Division Head.

Absent an acceptable reason, an employee may be subject to disciplinary action for failing to submit proof of the emergency by the employee's second scheduled work day after the employee returns to work; or by submitting proof that is deemed unsatisfactory. Unsatisfactory proof includes but is not limited to the employee's failure to establish that an emergency existed or the failure to submit satisfactory proof verifying the emergency. In addition, the employee will not be paid for the time off granted for the emergency and will be carried absent ("A") in the time book. This applies to all requests for emergency leave.

If the proof for the emergency leave consists of a completed and acceptable DS # 275, submitted pursuant to the FMLA, the leave will not affect the three leave approvals discretionary with the Borough Chief/Division Head.

**CHILD CARE EMERGENCY:**

For the purpose of this order, the definition of Child Care Emergency shall be:

A sudden, unforeseen situation resulting in the inadequate supervision of a dependant child of which an employee of the Department is a parent or legal guardian.

A child care emergency may or may not also qualify for coverage under the FMLA depending on the severity and circumstances of the illness.

Employees who are single parents or reside in a household in which both parents are gainfully employed or who are otherwise legally responsible for a dependant child or children including step children, may be excused for instances of Child Care Emergencies providing that the employee is able to substantiate that the employee has a dependant child or children with the submission of a valid birth certificate, legal document that verifies that the employee is a parent or legal guardian for the child or other documentation acceptable to the Department. For emergencies involving non-FMLA child care, employees are required to submit both the general emergency leave form (Form DS 1005) and the form for non-FMLA Child Care Leave (Form DS 274).

In instances involving **non - FMLA medical emergencies**, the employee must submit a signed statement describing the emergency, why the employee was required to respond, why the other parent or guardian was unavailable and such other supporting documentation as may be available. As the occasional unavailability of a care giver is reasonably anticipated, such **repeated** unavailability of the child's care giver is not acceptable as a justification for granting a request for emergency leave.

Child care leave requests that are undocumented, unsatisfactory or fraudulent, will result in a DS 249 Complaint issued to the employee. The first five complaints (DS 249) issued, within a twelve month period, for undocumented or unsatisfactory documentation, may, at the discretion of the Department, be heard at a BCAD hearing. Subsequent Complaints will be referred to the Department Advocate for adjudication.

**The Family and Medical Leave Act (FMLA)** provides for leave chargeable to leave balances or without pay for, among other reasons, children's serious health conditions and the treatment of those conditions. (New York City PPP 600-94 requires the use of paid leave before unpaid leave.) A serious health condition as set forth in CFR, Title 29, Chapter V, Part 825, Section 825.800, does not include the common cold, upset stomach, head ache, and routine dental problems unless complications develop. Such leave is subject to proof of responsibility for the child, such as a birth certificate and medical documentation through completion of the United States Department of Labor Form WH-380-F, which is available to employees as DS 275. When prescribed, leave pursuant to the FMLA may be for a course of treatment requiring periodic treatment or for chronic conditions that recur from time to time.

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Notwithstanding any other order to the contrary, when the leave request is pursuant to the FMLA, the medical documentation required by this Order must be provided on United States Department of Labor Form WH-380-F, revised January 2009. (Attached hereto as **DS # 275**) Timely submission of form **DS #275** (WH-380-F) shall be in accordance with Section II of the Form.

The provisions of this order pertain only to emergency situations and it does not in any way change the established procedures for requesting vacation changes or leave for special situations, as outlined in Operations Order 99 -10 dated December 1, 1999, or such other orders, rules or regulations as may apply.

Borough Chiefs/Division Heads or their staff designee will monitor all the D.S. 1426 - Absence Control Logs in their command for completeness and accuracy.

**CANCELLATION:** This order shall remain in effect until rescinded

**ISSUING AUTHORITY:**

  
John J. Doherty  
Commissioner

**DISTRIBUTION:** All Management Personnel, Unit Supervisors, All Locations.