



# CONTINUATION OF PAY

**& COVID-19**

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**W**hile COVID-19 numbers are on the decline after the perfect storm of the Omicron variant and holiday gatherings, many Sisters and Brothers are still contracting the virus. The system previously put in place by management to protect employees from the spread of the virus crumbled under the rapid spread of the Omicron variant. After two years of this pandemic, many members wonder how they will pay their bills if they are forced to quarantine due to testing positive for the virus.

In 2020 and 2021, federal employees had access to two different types of paid leave for COVID-19 related absences, those being the Families First Coronavirus Response Act (FFRCA) and Emergency Federal Employee Leave (EFEL) created by the American Rescue Plan Act (ARPA).

Now that both FFCRA and EFEL have expired, management will not grant administrative leave for contracting COVID-19. Management will offer sick leave, annual leave, or leave without pay. However, many employees have had to exhaust their own leave due to their kid's school going to remote learning or needing to care for a loved one and they cannot afford to be without pay for two weeks. A common question that members ask their Union Steward is if there is another type of paid leave they can use if they are forced to quarantine. The answer is yes.

Initially, on March 31, 2020, the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) Division of Federal Employees Compensation (DFEC) established certain conditions for federal employees (including mail handlers and other postal employees) to qualify for Continuation of Pay (COP) due to contracting COVID-19. These conditions were fully set forth when DFEC published the Federal Employees' Compensation Act (FECA) Bulletin No. 20-05, Subject: Federal Employees Contracting COVID-19 in Performance of Duty.

FECA Bulletin No. 20-05 outlined the process for federal and postal employees to file a CA-1 to receive Continuation of Pay (COP) in a similar manner to any other traumatic injury sustained at work. Except for employees considered to work high-risk jobs (such as members of law enforcement, first responders, and front-line medical and public health personnel), OWCP required quite a bit of evidence to approve a request for COP due to contracting COVID-19. (Special case

handling considerations applied to employees who worked in high-risk jobs. Those employees were given the benefit of the doubt that they contracted the virus at work.)


Of most importance, these March 2020 guidelines have been changed. On April 28, 2021, DFEC published new standards in FECA Bulletin No. 21-09, Subject: Processing FECA Claims for COVID-19 under the American Rescue Plan Act of 2021.

### **FECA BULLETIN NO. 21-09 STATES IN PART:**

On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) was signed into law. This new legislation streamlines the process for federal workers diagnosed with COVID-19 to establish coverage under the FECA. Specifically, Section 4016 of the ARPA provides that a "covered employee" as defined below shall, with respect to any claim made by or on behalf of the covered employee for benefits under the FECA, be deemed to have an injury proximately caused by exposure to COVID-19 arising out of the nature of the covered employee's employment.

- Under Section 4016 of the ARPA, the term "covered employee" means an individual:
- Who is an employee under Section 8101(1) of title 5, United States Code, employed in the Federal service at any time during the period beginning on January 27, 2020, and ending on January 27, 2023;
- Who is diagnosed with COVID-19 during such period; and
- Who, during a covered exposure period prior to such diagnosis, carries out duties that—
  - » require contact with patients, members of the public, or co-workers; or
  - » include a risk of exposure to the novel coronavirus.

**In other words, Section 4016 of the ARPA has made it far easier for federal and postal employees to receive COP due to contracting COVID-19.** These changes mean that you are only required to show that your job puts you at risk of exposure to COVID-19. Working around other people is where the risk comes in. You no longer have to prove you were engaged in high-risk employment; that you were actually exposed to the virus; or that you were exposed to someone who had



the virus while at work. Also, if you establish that you are a “covered employee” (see above), any diagnosed COVID-19 will be deemed to have been caused by your federal or postal employment. This means that you no longer have to establish a causal link between your employment and your COVID-19 diagnosis.

Additionally, 21-09 also stated that a claim for COVID-19 would not be considered a new injury unless the date of injury was more than 1 year from the date of injury of any prior accepted COVID-19 claim for the same employee. Rather it would be combined with the existing claim and developed as necessary as a consequential or recurrence claim.

On February 16, 2022, the FECA Program further amended some of the processing procedures for claims for COVID-19 filed under the ARPA in FECA Bulletin 22-06.

Bulletin 22-06 amended; Reinfection and Self-Administered COVID-19 Testing. Those amendments state:

### **REINFECTION:**

Effective the date of this Bulletin, a claim for COVID-19 will be considered a new injury when the employee tests positive for COVID-19 90 days or more from the date of the employee’s previous positive COVID-19 test. The 90 days is from the date the initial COVID-19 test is performed to the date the current COVID-19 test is performed.

### **SELF-ADMINISTERED COVID-19 TESTING:**

Self-administered COVID-19 testing as defined above is insufficient to establish a diagnosis of COVID-19 under the FECA. This is because there is no way for FECA claims staff to affirmatively establish (1) the date and time the sample was collected and (2) that the sample collected is that of the injured Federal employee making the claim.

The only exception to this policy is where the administration of the self-test is monitored by a medical professional and the results are verified through documentation submitted by such professional.

### **WHAT IS NEEDED FROM YOU WHEN YOU FILE THE CA-1?**

If you file a claim requesting COP due to contracting COVID-19, two pieces of information/documents should be provided along with your CA-1:

1. Evidence of being at work within 21 days of showing symptoms or a positive test, i.e., clock rings, statement, etc.; and
2. Acceptable evidence of a COVID-19 diagnosis.

On August 28, 2021, the FECA Program issued FECA Bulletin 21-10, which further amended the processing procedures for claims for COVID-19 to the extent that in order to establish a diagnosis of COVID-19, an employee (or survivor) should submit medical evidence as noted below:

- A. A positive Polymerase Chain Reaction (PCR) or Antigen COVID-19 test result; or
- B. A positive Antibody test result, together with contemporaneous medical evidence that the claimant had documented symptoms of and/or was treated for COVID-19 by a physician (a notice to quarantine is not sufficient if there was no evidence of illness); or
- C. If no positive laboratory test is available, a COVID-19 diagnosis from a physician together with rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result is not available.

In certain rare instances, a physician may provide a rationalized opinion with supporting factual and medical background as to why the employee has a diagnosis of COVID-19 notwithstanding a negative or series of negative COVID-19 test results.

As you can see from the different FECA Bulletins, this information is continually changing as we all learn more about living with this virus. Your National Union will continue to keep you updated on these changes. Access to COP for contracting COVID-19 is your right under ARPA. Do not let management convince you otherwise. Keep in mind that, even if you are asymptomatic or have light symptoms, we do not know if there will be long term effects from contracting COVID-19. Protect yourself by filing a CA-1 as you would for any other injury.