



STATE OF NEW JERSEY

In the Matter of COVID Testing
Requirements, Department of
Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE CHAIR/
CHIEF EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION**

CSC Docket No. 2025-1115

Grievance Appeal

ISSUED: January 17, 2025 (SLK)

Certain Department of Corrections (DOC) employees (Employees), represented by Sean Thom, Staff Representative, appeal the denial of their grievances regarding the DOC's COVID testing requirements.

In their request, the Employees state that in December 2023 and January 2024, they learned that the DOC was still requiring employees to obtain a PCR COVID test to be eligible for COVID leave. The Employees assert that most employers accept a rapid test as a viable and acceptable form of testing. However, they present that if an Employee submitted a rapid test from an accredited medical facility, they were still told that they needed to undergo PCR testing. Further, the Employees indicate that if they did not provide a positive diagnosis from a PCR test, they were ineligible for COVID leave and were told to either report to work or use their own paid time off (PTO).

The Employees highlight that the DOC had no internal, documented policy that mandated a PCR test that was communicated to them. Instead, the Employees state that they only found this out once they paid around \$45 for a rapid test at their local urgent care or medical facility. The Employees emphasize that a PCR test could cost \$100 more than a rapid test. They provide that this undocumented policy cost those who could afford a PCR more money, and those that could not, had to either use their PTO or report to work. The Employees highlight that after presenting their concerns to the DOC, the policy was changed, and as of January 16, 2024, the DOC

now only requires rapid testing, which they believe is proof that the DOC agreed that there was an issue with its policy.

Concerning the specific grievances, on January 7, 2024, Lisa Oquendo, an Assistant Supervisor of Education Programs tested positive for COVID via a rapid test from a health care facility. However, the DOC human resources advised her that she needed a PCR test, which caused her to use PTO from January 8, 2024 through January 10, 2024. Therefore, Oquendo requests to have her three PTO days refunded.

Additionally, Dipti Chauhan, an Information Technology Specialist, was informed that she needed a PCR test for COVID leave, and she had one administered on December 16, 2023. She had already tested positive for COVID via rapid test on December 14, 2023, and she had to use her PTO to cover her time off on December 14 and 15, 2023, until she had the PCR test administered. She requests to be refunded \$128 for her PCR test and two PTO days.

Further, Tohni Nicoll, a Technical Assistant ²¹, tested positive for COVID via rapid test on January 11, 2024, but was advised by human resources that she needed to provide a PCR test to be eligible for COVID leave. As she already spent money on the rapid test, and she did not want to pay over \$100 more for a PCR test, she used PTO on January 11 and 12, 2024. She is asking to be refunded for her two PTO days.

The Employees provide that during the departmental grievance hearing, the DOC stated that it always required a PCR test and it mandated that PCR saliva tests be used when the Employees were required to be tested weekly. While the Employees understand that this may have been the unwritten policy and practice, they found at least one instance where this practice was not followed. Specifically, in January 2021, this was not required for Nicoll as the Employees describe how Nicoll was not required to provide a PCR test when she tested positive for COVID at that time. Therefore, the Employees believe that if this happened to one of the grievants, this must have happened to others and this shows a clear inconsistency in the application of the policy.

Additionally, the Employees present that during the departmental grievance hearing, the appointing authority stated that in December 2023, management was not aware that only PCR tests were required before there was a meeting at that time. Therefore, the Employees question how the DOC can enforce a policy that it was not even aware existed.

The Employees summarize that the DOC's unwritten and apparently unknown policy to require PCR tests for COVID leave placed a significant financial burden on them or they had to use PTO. The Employees question how this policy kept the

¹ Nicoll's name was not identified in personnel records.

facilities safe since it encouraged staff not to report COVID diagnoses. They reiterate that only one of the subject grievants could afford the PCR test while the other two were forced to use PTO. The Employees assert that there were numerous others who reported similar issues, but they chose not to attempt to recuperate their losses.

The DOC states that Oquendo reported her COVID status to human resources on January 9, 2024, and she was advised on that date regarding the PCR test requirement, but she did not provide a PCR test. Additionally, the DOC presents that Chauhan reported her COVID status on December 14, 2023, and she was notified on that date concerning the PCR test requirement. On December 18, 2023, Chauhan provided a PCR test that was taken on December 16, 2023. Thereafter, Chauhan was authorized for paid COVID leave for five days following the test, and she returned to work on December 22, 2023. Moreover, Nicoll did not provide a PCR test after being made aware of the requirement. The DOC concludes by stating its staff can earn and use sick leave when needed. However, to receive paid COVID leave benefits, additional information is required. It submits the Employees' grievance which was dated January 30, 2024.

The Employees reply by reiterating their belief that the merits of their case were made in their initial submission in this matter. The Employees highlight the grievance hearing officer report and decision which they included as exhibits.

CONCLUSION

N.J.A.C. 4A:2-3.4(a) provides that a grievance must be filed within 30 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence.

N.J.A.C. 4A:2-3.7(b)2 provides that grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal. *N.J.A.C. 4A:2-3.7(f)1* provides that if that above standard is met, the employee shall have the burden of proof.

Initially, concerning Chauhan, the record indicates that she was advised on December 14, 2023, that she needed to present a PCR test to receive COVID leave. However, the grievance was not filed by the Employees until January 30, 2024, which is after 30 days from when she knew that a PCR test was required. Therefore, Chauhan's grievance is not timely and cannot be considered. *See N.J.A.C. 4A:2-3.4*. Regardless, it would otherwise be denied per below.

Concerning the merits, the record indicates that on January 16, 2024, the DOC changed its policy, and it no longer requires PCR tests to receive COVID leave as it will accept rapid tests. Therefore, Oquendo's and Noll's grievances no longer meet the standard of general applicability as required for a grievance appeal under

N.J.A.C. 4A:2-3.7(b)2 as the issues they present only impact them. Moreover, even if their grievances met the standard, generally, appointing authority final determinations in grievance proceedings will not be disturbed unless there is substantial credible evidence that such determinations were motivated by invidious or other improper considerations or were in violation of Civil Service law or rules. However, in these matters, the Employees have not argued or presented any evidence that the DOC's policy to require PCR tests to receive COVID leave was based on invidious or other improper motivations. Similarly, the Employees have not argued, nor have they presented evidence to support any argument that the DOC's prior policy to require PCR tests to receive COVID leave was a violation of Civil Service law or rule.² The question of the necessity or sufficiency of a departmental policy will not be reviewed or questioned absent the above conditions. Moreover, it is within an appointing authority's discretion to implement policies, so long as not prohibited under Civil Service law and rules, to ensure the health and safety of its workforce. Therefore, there is no basis to disturb the DOC's grievance determination in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
THE 17TH DAY OF JANUARY, 2025



Allison Chris Myers
Chair/Chief Executive Officer
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

² In this regard, it is noted that per the COVID-19 Leave – State Service rules under *N.J.A.C.* 4A:6-1.3A, approved by the Civil Service Commission on February 3, 2021, and which served as modification to the general sick leave rules found in *N.J.A.C.* 4A:6-1.3, no particular type of test is proscribed. As such, that issue was left to the discretion of each appointing authority.

c: Sean Thom
Jennifer Caignon
Division of Agency Services
Records Center