



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 10, 2020

The Honorable Andy Gipson
Commissioner of Agriculture and Commerce
Post Office Box 1609
Jackson, Mississippi 39215-1609

Re: Interpretation of Mississippi Code Annotated Section 49-17-29(3)(f)

Dear Commissioner Gipson:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Question Presented

May the Department of Agriculture and Commerce, as an “appointing authority,” pursuant to Mississippi Code Annotated Section 25-3-92, grant continued administrative leave to employees who, because of COVID-19 illness or quarantine, are unable to return to work after June 30, 2020, and are unable to work from home?

Background

On March 14, 2020, Governor Tate Reeves issued a Proclamation declaring a State of Emergency for the State of Mississippi as a result of the COVID-19 outbreak. On March 16, 2020, Governor Reeves issued Executive Order 1458, giving authority to state agencies, boards, commissions and other state entities to grant administrative leave with pay to their employees in order to prevent COVID-19 transmission within the workplace.

On June 10, 2020, Governor Reeves issued Executive Order 1495, which provides, in part:

Effective July 1, 2020, the administrative leave provisions in paragraph 4 of Executive Order 1458 are rescinded, and the Appointing Authorities of agencies, boards, commissions and other state entities shall ensure that all offices have resumed normal operations no later than that date. All leave granted to employees after the normal resumption of business operations on or before July 1, 2020, shall

be in accordance with applicable federal and state laws and Mississippi State Personnel Board regulations,"

Since Executive Order 1495 was issued, the level of confirmed and suspected COVID-19 cases has consistently increased. The State of Emergency remains in place at this time.

Brief Response

Pursuant to Section 25-3-92(2), the Department of Agriculture and Commerce, as the appointing authority, may grant administrative leave with pay to its state employees in the event of extreme weather conditions or in the event of a man-made, technological or natural disaster or emergency. Whether COVID-19 constitutes an emergency, as contemplated by Section 25-3-92(2), is a factual determination that must be made by the appointing authority.

Applicable Law and Discussion

Section 25-3-92(2) states, in relevant part:

State employees may be granted administrative leave with pay. For the purposes of this section, "administrative leave" means discretionary leave with pay, other than personal leave or major medical leave.

* * * * *

(b) The Governor or the appointing authority may grant administrative leave with pay to state employees on a local or statewide basis in the event of extreme weather conditions or in the event of a man-made, technological or natural disaster or emergency. Any employee on a previously approved leave during the affected period shall be eligible for such administrative leave granted by the Governor or appointing authority, and shall not be charged for his previously approved leave during the affected period.

Miss. Code Ann. § 25-3-92(2). An "appointing authority" is defined by Mississippi Code Annotated Section 25-3-91(a) as "such person, agency or authority authorized by law to employ individuals in state government,"

An "employee" is defined as "a person appointed to a position in the state service or nonstate service as defined in Section 25-9-107, for which he is compensated on a full-time permanent or provisional basis, a temporary basis, or a part-time basis." Miss. Code Ann. § 25-3-91(c). "State service" employees include all those of state departments, agencies and institutions as defined by Section 25-9-107(d), except those excluded as nonstate service employees, as defined by Section 25-9-107(c). Miss. Code Ann. § 25-9-107(b). "Nonstate service" employees include officers and officials elected by popular vote and contract personnel. Miss. Code Ann. § 25-9-107(c).

It is our opinion that the provisions of Section 25-3-92(2)(b) are clear and unambiguous. The plain language of this statute empowers an appointing authority to grant administrative leave, with pay,

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to state employees in the event of extreme weather conditions or in the event of a man-made, technological or natural disaster or emergency. However, whether illness and/or quarantine related to COVID-19 constitutes an emergency contemplated by Section 25-3-92(2) is a factual determination that must be made by the appointing authority prior to granting its employees administrative leave.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Kim P. Turner*

Kim P. Turner
Assistant Attorney General

OFFICIAL OPINION