

CORONAVIRUS DISEASE 2019 (COVID-19) FACT SHEET - ADDITIONAL GUIDANCE IN CONNECTION WITH THE COVID-19 EMERGENCY

Recent Actions by WHO and OMB

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. (See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.)

On March 12, 2020, the Acting Director of the Office of Management and Budget (OMB) issued a memorandum to the heads of Executive departments and agencies that encouraged agencies to make use of telework flexibilities. (See OMB Memorandum M-20-13 at <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-13.pdf> (PDF file).) First, OMB encouraged agencies to maximize telework flexibilities for telework-eligible employees who have a higher risk for serious complications from COVID-19. Second, OMB stated that weather and safety leave could be granted to such higher-risk employee who are not telework-eligible. Third, OMB encouraged agencies to consider extending telework flexibilities more broadly to all telework-eligible employees in areas of community transmission, based on consultations with the Centers for Disease Control and Prevention (CDC) and local public health officials and taking into account State and local responses to the outbreak (including school closures).

On March 15, 2020, the Acting Director of OMB issued a second memorandum to the heads of Executive departments and agencies that provided updated guidance on telework flexibilities in the National Capital Region (NCR). (See OMB memorandum M-20-15 at <https://www.whitehouse.gov/wp-content/uploads/2020/03/M20-15-Telework-Guidance-OMB.pdf> (PDF file).) OMB encouraged all NCR agencies to offer maximum telework flexibilities to all telework-eligible employees. OMB also reminded agencies of their discretion to authorize weather and safety leave to those employees not eligible to telework or who are not assigned portable work, including those not considered to have a higher risk for serious complications from COVID-19.

On March 17, 2020, the Acting Director of OMB issued a third memorandum to the heads of Executive departments and agencies that provided updated guidance related to COVID-19 for the Federal Government as a whole. (See OMB memorandum M-20-16 at <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf> (PDF file).) Based on the OMB memorandum, agencies should, within 48 hours, begin taking the following actions with respect to their employees:

- Ensure that employees are in a position to perform mission-critical functions, and adjust employee and work units' work assignments as necessary to higher-priority activities, and activities that can be performed remotely.
- Maximize telework for the entire Federal workforce, while maintaining mission-critical functions.
- Adjust operations and services to minimize face-to-face interactions, including at offices where employee would normally be gathered in close proximity. These operational adjustments could include directing certain employees to not report to the regular worksite, or an altered work schedule. Some of those employees would be expected to perform their assigned work remotely. Other employees may be not able to work remotely due to their job function, in which case, the agency would provide a portable work assignment or weather and safety leave would be provided.

- Determine which employees are able to telework, consistent with the OMB guidance. Under normal conditions, employees have an established status as a voluntary telework program participant. Telework-eligible employees may request to become a telework program participant at any time, including in response to an emergency such as the COVID-19 outbreak. However, if necessary, under a Continuity of Operations Plan (COOP) and/or by agency action under the evacuation pay regulations in 5 CFR 550.409, an agency may direct employees to perform telework (i.e., mandatory telework) even if they have not been a telework program participant or previously designated as telework-eligible, including for duties that were not typically within an employee's purview under "normal" circumstances. Additional information on evacuation pay is provided further below.

Collective Bargaining Obligations

With almost 60 percent of the Executive Branch workforce represented by labor unions, agencies are encouraged to review applicable collective bargaining agreement provisions to determine what, if any, collective bargaining obligations agencies may have under 5 U.S.C. chapter 71. However, we note that 5 U.S.C. 7106(a)(2) provides that an agency may "take whatever actions may be necessary to carry out the agency mission during emergencies" subject to 5 U.S.C. 7106(b)(2) and (b)(3). Agencies should consult with offices of human resources and general counsel to determine appropriate labor relations obligations as they relate to considering actions needed to address the emergency in accordance with 5 U.S.C. 7106. If the agency needs to act quickly due to the circumstances of the emergency, the agency is strongly encouraged to begin communicating with the appropriate union representatives as soon as possible and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest opportunity, including on a post-implementation basis.

Use of Weather and Safety Leave

Agencies have inquired about when it is appropriate to use weather and safety leave in connection with the COVID-19 outbreak. On February 7, 2020, OPM provided guidance that agencies may grant weather and safety leave when an asymptomatic employee is subject to movement restrictions under the direction of public health authorities in connection with a quarantinable communicable disease, such as COVID-19. (See www.opm.gov/Coronavirus.) This policy was based on the significant safety risks for other employees and the general public if such an employee is allowed to travel to and perform work at the employee's normal worksite. The OMB memorandum M-20-13 referenced above identified another appropriate circumstance for using weather and safety leave—when an employee with a higher risk of serious complications from COVID-19 is not telework-eligible. This policy is based on the significant risks to such employees if they are traveling to and performing work at their normal worksite. The OMB memorandum M-20-16 required agencies to ensure that individuals, including employees, with a higher risk of serious illness from COVID-19 be restricted from accessing Federal facilities. This policy is consistent with the determination that COVID-19 is a global pandemic posing magnified safety risks. The OMB memorandum M-20-15 referenced above raised the possibility of granting weather and safety leave for other employees in the NCR, but also the possibility of reassigning work outside of the typical scope of an employee or work unit's purview.

OPM's guidance of February 7, 2020, and OMB Memorandum M-20-13 did not exhaust all scenarios where granting weather and safety leave in connection with the COVID-19 outbreak may be appropriate. The COVID-19 outbreak is a rapidly evolving situation, which necessarily requires flexibility in applying general principles to new circumstances. Rather than develop specific guidance that covers all possible scenarios, OPM expects agencies to make decisions regarding the granting of weather and safety leave based on the general principle of allowing weather and safety leave in circumstances in which allowing an employee to travel to or perform work at the normal worksite would pose significant safety risks for the employee, other employees, or the general

public. However, note that under pandemic procedures, an employee can be required to telework, which would likely diminish the need for weather and safety leave for this purpose. An agency has considerable discretion in this situation, subject to the statutory and regulatory parameters. An agency may consider such factors as (1) the level of likelihood that an employee has been exposed to COVID-19, (2) the fact that an employee is in a category for which there is a higher risk of serious complications from COVID-19, (3) transmission of the disease in the local community, and (4) current guidance from CDC and other public health authorities. Based on the OMB's Memorandum M-20-16 of March 17, 2020, we expect that agencies will determine that, for safety reasons, certain non-emergency employees should not report to their normal worksites. Such a determination would permit the use of weather and safety leave for any affected employees who are not expected to telework.

By regulation, weather and safety leave is generally granted only to employees who are not telework program participants. (See 5 CFR 630.1605.) The weather and safety leave regulations provide that an employee who is participating in a telework program may generally not receive weather and safety leave, since the employee is not prevented from safely performing work. Thus, weather and safety leave would be granted only to those employees who are not expected to telework. The expectation of telework by an employee can be affected by an agency's implementation of a Continuity of Operations Plan (COOP), an agency action under the evacuation regulations in 5 CFR part 550, subpart D (in particular, section 550.409), or a decision by the agency head to reassign work or redeploy work units to perform work outside of the typical work assignment. Under 5 U.S.C. 6504(d)(2), during any period when an agency is operating under a COOP, the COOP supersedes any agency telework policy. Thus, an agency is not bound by the telework policy developed under 5 U.S.C. 6502. Accordingly, under a COOP, an agency may direct more employees to telework (i.e., become telework program participants). In addition, an agency may use the evacuation pay authority in 5 CFR 550.409 to direct employees to telework even if they have not been telework program participants. More information on evacuation pay is provided in the next section of this fact sheet.

Evacuation Pay

Agencies have discretionary authority to provide evacuation pay for evacuations within the United States pursuant to OPM regulations in 5 CFR part 550, subpart D. (See 5 U.S.C. 5521-5524 and 5527; E.O. 10982). OPM's regulations recognize that an evacuation from an employee's normal worksite may be authorized in connection with a pandemic health crisis. (See 5 CFR 550.409.) Based on the WHO declaration, COVID-19 is a qualifying pandemic health crisis. This evacuation pay authority provides agencies with an additional option in dealing with the COVID-19 outbreak. In particular, in the context of a pandemic health crisis, the evacuation pay regulations allow an agency to direct employees to work at home (or an alternative location agreeable to the employee and the agency) without regard to whether the employee and the agency have a telework agreement in place. Also, an employee may be assigned to perform any work considered necessary without regard to the employee's grade, level, or title. (See 5 CFR 550.406(a) and 550.409(a).)

An agency does not need to evacuate an entire building to use this authority and instead could choose to evacuate certain employees or sections of an agency building at risk. An agency could choose to evacuate any employee considered to be at higher risk for serious illness from COVID-19 as defined by CDC. (See <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.) However, an agency could, alternatively, determine that all employees (except those who are performing mission-critical functions that cannot be performed remotely) at a worksite be evacuated to effectuate social distancing of employees and continuity of operations. (See OMB's Memorandum M-20-16 of March 17, 2020.)

Evacuated employees will be paid evacuation payments "based on the rate of pay (including allowances, differentials, or other authorized payments) to which the employee was entitled immediately before the issuance of the order of evacuation." (See 5 CFR 550.404(a) and 550.408.) An agency can assign the employee

to perform work to the extent possible during the evacuation pay period. Failure or refusal to perform assigned work may be a basis for terminating evacuation payments or disciplinary action. (See 5 CFR 550.406(a) and 550.409(a).)

During an evacuation pay period, an employee is entitled to the pay to which he or she would otherwise have been entitled under all applicable statutes and regulations (5 CFR 550.408(b)). If the employee is performing work, the employee is in work status and is entitled to his or her regular pay for those hours. If an employee requests to be excused from performing assigned work, the employee would need to take an appropriate form of personal leave (e.g., annual leave, sick leave, or leave without pay). If an agency does not have work to assign to an evacuated employee, the agency would provide weather and safety leave to that employee. Thus, timekeepers and payroll providers would be using normal coding practices for each hour in an employee's work schedule based on the status of the hour.

An agency head, in his or her sole and exclusive discretion, may grant special allowance payments to an evacuated employee, based on a case-by-case analysis, to offset the direct added expenses incidental to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during the evacuation. (See 5 CFR 550.409(b).) An employee is not entitled to special allowance payments for increased costs during an evacuation unless specifically approved by the agency head. These special allowances could include the costs for a computer, printer, fax machine, scanner, and telecommunications equipment incurred by an employee ordered to work from home during the evacuation period, if the employee can demonstrate that they are necessary. It could also include additional costs to run equipment the employee already possesses if the employee can demonstrate both the necessity and the actual costs. Agencies are encouraged to strategically consider the costs and benefits of providing special allowances during an evacuation.

Additional Resource

- [Frequently Asked Questions on Evacuation Payments During a Pandemic Health Crisis](#)