



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

MAY 5 2009

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:

JOHN BERRY
Director

A handwritten signature in blue ink that reads "John Berry". The signature is written over the printed name and title.

SUBJECT:

Human Resources Flexibilities Available to Assist Federal Employees During Emergencies

The U.S. Office of Personnel Management (OPM) reminds agencies that a wide range of human resources (HR) policies and flexibilities are available to assist in meeting employees' and agencies' needs for all kinds of emergencies. During the past several years, we have developed policies and procedures to prepare for a pandemic influenza, and a substantial amount of information and advice on HR rules and flexibilities is available on OPM's Website. In addition, agencies have prepared their own pandemic influenza preparedness and continuity of operations (COOP) plans. Finally, we have had considerable experience over the years in many areas of our country that have been affected by severe weather conditions and natural disasters, and agencies and employees have consistently demonstrated their ability to meet their personal and work needs with creativity and resiliency.

Federal departments and agencies must achieve two equally important goals: (1) Protect the Federal workforce, and (2) Ensure the continuity of operations. For example, in any geographic area affected by an epidemic or pandemic influenza, there is a potential for increased absenteeism of the Federal workforce due to illness or the need to care for sick family members or for children if schools/day care centers close. The flexibilities referenced below can help agencies address the issues that may arise when there are high levels of absenteeism. We, like all Federal agencies, are continuing to monitor the situation and work with appropriate authorities. OPM will publish additional HR guidance as needed.

For online resources and a full range of the latest human resources flexibilities and benefits relating to pandemic influenza, much of which can also be used during an epidemic, see OPM's Website at www.opm.gov/pandemic/. Agencies are expected to implement policies consistent with laws, regulations, collective bargaining responsibilities and OPM guidance, but at the same time are encouraged to be flexible and creative when using these authorities where possible. If there are incidences of influenza in a locality, agencies should encourage good health habits and encourage sick employees to stay home. Where necessary, agencies should consider implementing social distancing, including the use of telework as described below. Agency actions and the use of HR flexibilities should be tailored to the specific situations in the locality.

Pay and Leave

The following information may be relevant during an epidemic or pandemic situation:

Leave Flexibilities

The Federal Government offers numerous leave flexibilities to assist employees who are affected in emergency situations, including an epidemic or pandemic influenza. Under current law and regulations, employees may use sick leave, annual leave, advanced annual or sick leave, leave without pay, donated leave under the Voluntary Leave Transfer and Leave Bank Programs, and other paid time off such as compensatory time off and alternative work schedule (AWS) credit hours. Employees should use sick leave when they are unable to perform their duties due to their own illness or to take care of sick family members (i.e., up to 13 days per leave year for routine family care or illness and up to 12 weeks for a serious health condition). Annual leave may be used when a child care center or school is closed and the child is not ill. OPM requests that agencies consult with us prior to granting excused absence (administrative leave) in order to facilitate a consistent Governmentwide approach.

Alternative Work Schedules

An agency may implement an alternative work schedule for employees instead of a traditional fixed work schedule to help an employee balance work and personal responsibilities. Under AWS, an employee is able to complete his or her work requirement in less than 10 workdays. With supervisor approval, the employee may choose to adjust arrival and departure times to accommodate doctor appointments, childcare or eldercare issues, or other pressing issues surrounding the related emergency. Agencies should discuss options with their employees to help maximize the employee's productivity at work, while assisting them in meeting their family and personal needs. For additional information on alternative work schedules, please see *Handbook on Alternative Work Schedules* at www.opm.gov/oca/AWS/INDEX.asp.

Evacuation Payments

In the context of a pandemic emergency, evacuation payments are used to protect employees' pay. An agency may provide evacuation payments to an employee who is ordered to (1) evacuate his or her regular worksite and (2) work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. Agencies may require employees to work at home or an alternative worksite whether or not they have a telework agreement.

An agency may order an evacuation upon an official announcement by Federal, State, or local officials, public health authorities, and/or tribal governments, of a pandemic health crisis affecting certain geographic areas. Consistent with 5 U.S.C. 5522 and 5523, and the Department of State's Standardized Regulations, responsibility for ordering an evacuation in overseas locations rests with the Department of State.

Evacuation payments should be paid on the employee's regular pay days, since these payments reflect the employee's regular pay. (Since most employees use electronic fund transfer to deposit pay checks to their accounts, this should not impose an additional burden on the agency.) After an order to evacuate is terminated, agencies must make adjustments in an employee's pay on the basis of the rates of pay, allowances, and differentials, if any, to which the employee otherwise would have been entitled during the period of evacuation under applicable statutes. (See 5 CFR 550.409.)

Assignment of Work to Evacuated Employees

An employee who works at home or another safe haven during a pandemic emergency may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to the employee's grade or title. However, an agency may not assign work to an employee unless the agency knows the employee has the necessary knowledge and skills to perform the assigned work. For example, a supervisor may assign different or lower-level duties than are normally performed by the employee. In addition, if a supervisor is sick and cannot perform his or her duties during the period of evacuation, an agency may assign the higher-level work to a subordinate employee who would, under normal circumstances, be designated as "acting" when the supervisor is on leave. Additionally, the agency must provide reasonable accommodation under the Rehabilitation Act for qualified employees with disabilities.

Managers and supervisors are encouraged to communicate regularly with employees who are performing work from home during a pandemic health crisis. Regular communication with employees will ensure they understand their work assignments and management's expectations during the period of the evacuation. Failure or refusal to perform assigned work may be a basis for terminating evacuation payments, as well as disciplinary action under 5 CFR part 752 (Adverse Actions). However, an employee's inability to perform assigned work because of lack of knowledge or skills may **not** be a basis for terminating evacuation payments or taking disciplinary action. See www.opm.gov/oca/pay/html/PandEvac.asp.

General Summary of Pay and Leave Benefits

OPM's Handbook on Pay and Leave Benefits for Federal Employees Affected by Severe Weather Conditions or Other Emergency Situations provides a general summary of the pay and leave benefits available to Federal employees prevented from working, or required to work, in an area affected by emergency situations. The Handbook is available at www.opm.gov/oca.

Employee and Family Support Benefits

Benefits for Federal employees and eligible family members remain unchanged during emergency situations. Information about employee and family support benefits and policies are available in OPM's Plan for Pandemic Influenza guide, Chapter OPM-VI-H-1 located at www.opm.gov/pandemic.

Telework Prior to an Evacuation Order

(Note: This paragraph deals with telework outside the context of an evacuation order. Under an evacuation order, employees may be ordered to work at home, while under the normal telework program working at home is always voluntary.)

Telework is a particularly important tool to mitigate the spread of influenza by promoting social distancing and to assist employees in balancing their ongoing work responsibilities with the need to care for their families. Agencies should maximize their telework capacity by entering into telework agreements with as many telework-eligible employees as possible and by conducting exercises to test employees' ability to access agency networks from home. Managers should ensure that there are effective processes in place for communicating efficiently with employees who are teleworking. For additional information on telework, please see OPM's Plan for Pandemic Influenza guide, Chapter OPM-VI-I-1 located at www.opm.gov/pandemic. This guide also addresses safety responsibilities for telework and how to protect the integrity and confidentiality of information in a telework environment.

Emergency Critical Hiring

Under 5 CFR 213.3102(i)(2), an agency may make 30-day appointments in the excepted service to fill a critical hiring need. An agency may extend these appointments for an additional 30 days. This authority may be used to fill Senior Level positions, as well as positions at lower grades; the agency determines what qualifications are required. Career Transition Assistance Plan (CTAP), Reemployment Priority List (RPL), and Interagency CTAP (ICTAP) requirements under 5 CFR part 330 do not apply to these appointments.

Direct-Hire Authority

Agencies are reminded of current OPM-authorized Governmentwide direct-hire authorities. These authorities allow agencies to appoint candidates directly for GS-0602 Medical Officers, GS-0610 and GS-0620 Nurses, GS-0647 Diagnostic Radiologic Technicians, and GS-0660 Pharmacists at all grade levels and all locations. In addition, OPM recently authorized a nationwide direct-hire authority for Veterinary Medical Officers, GS-0701, at the GS-11 through GS-15. Agencies may give individuals in the categories, occupations and specialties, and grades listed above competitive service career, career-conditional, term, or temporary appointments, as appropriate. In all cases, an agency must adhere to the public notice requirements in 5 U.S.C. 3327 and 3330 and all ICTAP requirements. Additional information on these authorities is available at www.opm.gov/hr_practitioners/lawsregulations/appointingauthorities/index.asp#directhire.

An agency should contact its OPM Human Capital Officer if it believes it has one or more occupations for which an agency-specific direct-hire authority may be appropriate in support of relief and recovery efforts.

Other Hiring Flexibilities

An agency may contract with private sector temporary employment firms for services to meet emergency staffing needs. These contracts may be for 120 days and may be extended for an additional 120 days, subject to displaced employee procedures.

An agency may make competitive service appointments for 120 days or less without clearing CTAP or ICTAP. However, these programs may help identify one or more well-qualified displaced Federal employees who are available for immediate employment

Current and former employees on an agency's Reemployment Priority List (RPL) are another immediate source of qualified individuals available for temporary, term, or permanent competitive service appointments. Conversely, in some cases, an agency may make an exception to the RPL provisions to appoint someone else under 5 CFR 330.207(d).

Should additional personnel be required for relief efforts, OPM may authorize other options upon agency request. These include temporary emergency need appointments (up to 1 year) and Senior Executive Service limited emergency appointments. In addition, OPM may authorize waivers that facilitate the re-employment of annuitants or the rehiring of retirees or others who left the Federal Government with buyouts.

Special Solicitations for Charitable Contributions During Emergency Situations

The Director of OPM may grant permission for special solicitations of Federal employees, outside of the Combined Federal Campaign (CFC), in support of victims in emergency situations. Agency written requests should include the following: information on the agency(ies) and location(s) where the special solicitation will be conducted; dates on which the special solicitation will be conducted; and information on the charitable organization(s) that will be the recipient of special solicitation funds. For information on the CFC, please visit www.opm.gov/cfc.

Additional Information

If you have questions or need additional information, please contact your OPM Human Capital Officer. Employees should contact their agency's human resources offices for assistance.

cc: Chief Human Capital Officers
Human Resources Directors