

U.S. Office of Personnel Management Fact Sheet



Evacuation Payments During a Pandemic Health Crisis

Description

An Executive agency (as defined in 5 U.S.C. 105) may provide evacuation payments to its employees who are ordered to evacuate their regular worksites and work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. The head of an agency may delegate authority to one or more designated officials to order the evacuation of agency employees, employees assigned to certain geographic areas, or employees in certain components/divisions of the agency. In this unique situation, the agency may designate an employee's home (or an alternative location mutually agreeable to the agency and the employee), including a location under quarantine or confinement, as a safe haven during the period of evacuation. A policy to evacuate to a safe haven promotes the "social distancing" of employees and protects them from being exposed to additional viruses or mutations of a pandemic virus.

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 Standardized Regulations, responsibility for ordering an evacuation in overseas locations rests with the Department of State.

Assignment of Work to Evacuated Employees

An evacuated employee at a safe haven 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.

Payments for Employees Ordered To Evacuate

Evacuation Payments

An agency may provide evacuation payments to an employee who is ordered to evacuate his or her regular worksite and work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. 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.)

An agency must compute evacuation payments based on the employee's rate of pay (including any applicable allowances, differentials, or other authorized payments) to which the employee was regularly entitled immediately before the issuance of the order to evacuate, regardless of the employee's work schedule during the evacuation period. For example, an employee is considered to be regularly entitled to night pay differential (5 U.S.C. 5545(a) and 5343(f)) and Sunday premium pay (5 U.S.C. 5544(a) and 5546(a)) for applicable hours in the employee's normal basic workweek. An employee is considered to be regularly entitled to law enforcement availability pay (5 U.S.C. 5545a), administratively uncontrollable overtime pay (5 U.S.C. 5545(c)(2)), standby duty premium pay (5 U.S.C. 5545(c)(1)), regular overtime pay for firefighters (5 U.S.C. 5545b), physicians' comparability allowances (5 U.S.C. 5948), supervisory differentials (5 U.S.C. 5755), and nonforeign area cost-of-living allowances and post differentials (5 U.S.C. 5941), as applicable. An employee will receive recruitment, relocation, and retention incentive payments (5 U.S.C. 5753 and 5754) and extended assignment incentive payments (5 U.S.C. 5757) consistent with the employee's signed service agreement. The agency must make all deductions from evacuation payments that are required by law, including retirement or Social Security (FICA) deductions, authorized allotments, and income tax withholdings.

An employee's evacuation payments must cover the period of time during which an applicable order to evacuate remains in effect, unless terminated earlier. However, evacuation payments may not continue for more than 180 calendar days after the effective date of the order to evacuate. 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 550.408.)

Additional Allowance Payments

The head of the agency or designated official, in his or her sole and exclusive discretion, may grant additional special allowance payments, 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 a pandemic health crisis. (See 5 CFR 550.409.) This may include increased costs for a computer, printer, fax machine, scanner, and telecommunications equipment incurred by an employee ordered to work from home (or an alternative location mutually agreeable to the agency and the employee) during the evacuation period. An employee is not entitled to additional allowance payments for such increased costs unless the allowance

payments are specifically approved by the agency head or designated official. An agency may not require an employee to absorb increased expenses (e.g., long-distance calls, supplies, or delivery services) incidental to performing work from home (or an alternative location) if the increased expenditures primarily benefit the Federal Government, unless the agency has specific statutory authority to do so.

Employees who are ordered to evacuate their official duty stations may receive additional allowance payments as necessary to offset the direct added expenses incident to travel outside the limits of their official duty station—e.g., travel and subsistence expenses. During a pandemic health crisis, payment of travel and subsistence expenses should not be necessary in most situations. (See 5 CFR 550.405.).

An advance salary payment may be made to an employee who is ordered to evacuate his or her official duty station when an agency official has determined that payment in advance of the date on which the employee otherwise would be entitled to be paid is required to help the employee defray immediate expenses incidental to an employee's departure. An advance salary payment is equivalent to a loan and must be treated as a debt owed to the Federal Government. During a pandemic health crisis, it is highly unlikely advance salary payments will be necessary, since employees will receive evacuation payments on their regular pay days. In addition, payroll providers may continue to provide employees "emergency pay" based on a "standard tour of duty" and make corrections after the fact.

Termination of Payments

An authorized agency official must terminate an employee's advance salary payments or evacuation payments on the date of the earliest of the following events, as applicable:

- The employee is assigned to another duty station outside the evacuation area.
- The employee is separated from his or her position with the agency.
- The elapsing of 180 days since the effective date of the order to evacuate.
- The employee resumes his or her duties at the regular worksite from which he or she was evacuated after the applicable order to evacuate is rescinded.
- The agency determines payments are no longer warranted (e.g., based on guidance provided by the Centers for Disease Control and Prevention or local health officials regarding the status of the pandemic health crisis).

Agency Plan

Agencies must establish a plan and procedures for providing evacuation payments during a pandemic health crisis. A Sample Agency Plan is available on OPM's Website at <http://www.opm.gov/oca/pay/html/PandEvacPlan.asp>.

References

- 5 U.S.C. 5522 – 5524 and 5 U.S.C. 5526 – 5527
- 5 CFR part 550, subpart D