

Questions and Answers for Employees

During a pandemic health crisis, an agency may wish to employ alternative work arrangements in order to achieve its mission or accomplish its performance goals, while promoting the “social distancing” of its employees to ensure their safety and well-being. In addition, the Federal Government offers numerous leave benefits and other paid–time-off flexibilities to assist employees who are adversely affected by a pandemic health crisis.

The following questions and answers address issues such as telework; other alternative work arrangements; leave flexibilities; evacuation payments; health and safety issues; overtime; security clearances; and miscellaneous issues. Some of the questions posed and answered here are hypothetical in nature and do not reflect actual events or circumstances that have occurred (such questions are clearly marked as “[*hypothetical*]”).

Employees should consult with their agency human resources offices, since the administration of these programs and policies is addressed in agency internal policies and/or collective bargaining agreements. In addition, agencies will provide guidance and specific direction to their employees on the agency’s operating status, including whether employees should work from an alternative worksite for a period of time.

As circumstances warrant, the Office of Personnel Management will issue additional and updated guidance regarding the use of alternative work arrangements and pay and leave flexibilities to address issues that may arise during a pandemic health crisis.

Frequently Asked Questions on Telework

1. *What is telework?*

Telework is voluntarily working from home or another site, such as the home of a relative, official Federal telework site, etc. convenient to the residence of the employee.

2. *Do all Federal agencies have a telework policy?*

Most Federal agencies have a telework policy and are responsible for ensuring such policies meet Federal laws and regulations.

3. *How do employees request telework arrangements?*

You may request telework by writing or speaking with your supervisor, who will make a decision based on your agency's telework policy and his or her assessment of your eligibility to telework. You are eligible for telework if you are performing well and responsible for work that could be performed outside the office at least 1 day a week.

4. *Can management be forced to implement telework arrangements?*

No. There currently is no authority for agency heads or OPM to order management to implement telework arrangements. Telework arrangements are voluntary. OPM is committed to providing agencies, managers, supervisors, and employees with current guidance and support to facilitate the use of telework in the Federal sector, including guidance on teleworking during an emergency as part of agency contingency planning.

5. *Can my supervisor prevent me from teleworking?*

Your agency has the option of declining a telework request or terminating a telework agreement. Use of telework must meet the organization's needs. Subject to any applicable collection bargaining agreement, management decides whether the employee can work off-site, depending on the nature of the position and the level of the employee's performance.

6. *May Federal agencies cover additional costs incurred by employees as a result of telework?*

In accordance with the authorizing law, an agency may pay for some expenses incurred while an employee is conducting business for the Government at a telework site, such as a DSL line and an additional phone line.

- 7. *[hypothetical] Due to the pandemic, an employee teleworks from home and may not be able to report to their official worksite. Will locality pay be affected?***

During a pandemic health crisis, your regular office may be considered your official worksite, even if your telework arrangement requires you to report there once a week and you are unable to do so. In this emergency situation, you will be entitled to the locality rate of your official worksite.

- 8. *[hypothetical] While teleworking, an employee is injured at home. Is this a line-of-duty injury?***

Teleworkers who work from home must provide an appropriate workspace and should certify that it is free from hazards. Government employees causing or suffering work-related injuries and/or damages at the alternative worksite (home, telework center, or other location) are covered by the Military Personnel and Civilian Employees Claims Act, the Federal Tort Claims Act, or the Federal Employees' Compensation Act (workers' compensation), as appropriate.

Frequently Asked Questions on Alternative Work Schedules

- 1. *[hypothetical] I am on a flexible work schedule. I am teleworking from home during the pandemic. May I choose to work extra hours each day so I can earn credit hours?***

You must comply with your agency's policies for earning credit hours. Credit hours are any hours within a flexible work schedule which are more than your basic work requirement and which you choose to work to vary the length of a workweek or a workday. Your agency's plans should address any policies on limiting or restricting the earning and use of credit hours. The law prohibits carrying over more than 24 credit hours from one pay period to the next. For additional information, visit:

<http://www.opm.gov/oca/worksch/HTML/awsfws.asp>.

- 2. *Will I be able to continue working a flexible work schedule if a pandemic influenza reaches my area?***

If you work a flexible work schedule already, your agency may let you keep doing so during a pandemic health crisis. However, your agency may decide to have you work another schedule. Changes in your work schedule are within the discretion of your agency, as long they are consistent with law, regulations, and any applicable collective bargaining agreement. For additional information, visit:

<http://www.opm.gov/oca/worksch/HTML/awsfws.asp>.

3. *Can my agency mandate an alternative work schedule (i.e., a flexible or compressed work schedule)?*

Different rules apply depending on whether you are a bargaining unit or non-bargaining unit employee and whether your agency has a flexible or compressed work schedule. Bargaining unit employees may participate in an alternative work schedule program only under the terms provided in a collective bargaining agreement. Therefore, an agency that wishes to establish a flexible or compressed work schedule program for bargaining unit employees must negotiate the establishment and terms of the program with the exclusive representative of the bargaining unit.

A majority of affected employees in a non-bargaining unit must vote to be included in a compressed work schedule program when participation in the program is mandatory. For purposes of this vote, a majority is obtained when the number of affirmative votes exceeds 50 percent of the number of employees and supervisors in the organization proposed for inclusion in a compressed work schedule. (If participation in the compressed work program is voluntary for each employee, a vote is unnecessary because employees who elect not to participate are not included and are unaffected.) For additional information, see <http://www.opm.gov/oca/worksch/HTML/AWScws.asp>

Agencies may unilaterally install flexible work schedule (FWS) programs in units staffed by non-bargaining employees. For additional information, see <http://www.opm.gov/oca/worksch/HTML/awsfws.asp>.

4. *Must agencies request approval from OPM prior to establishing a flexible or compressed work schedule to deal with a pandemic influenza?*

Agencies do not need OPM approval to establish flexible or compressed work schedules. We encourage agencies to prepare for all emergency situations and address the use of flexible or compressed work schedules in their contingency plans. For additional information, see <http://www.opm.gov/oca/worksch/HTML/awsfws.asp>.

Frequently Asked Questions on Evacuation Payments

1. *If my agency orders me not to report during a pandemic influenza, will I continue to be paid? Will I be required to use my annual leave?*

There are a number of alternative work arrangements agencies may offer you to ensure work continues during a pandemic health crisis. For example, an agency may direct employees who are under an approved telework agreement to telework from home. Or an agency may order employees to evacuate their worksites, direct them to work from home, and pay them evacuation payments. Evacuation payments reflect the regular pay you would have received for the time period you would have been expected to work (but for the evacuation). An agency may require you to perform any work considered necessary during the period of the evacuation without regard to your rank or grade level.

If you refuse to work from home, you may lose your evacuation payments, and you may be required to use your accrued annual leave (i.e., “enforced leave”), you may be furloughed, or you may be disciplined, as appropriate. In addition, if you have a telework arrangement with your agency, you may be required to work from home.

In some circumstances, however, an agency may order a furlough, in which case an employee may be placed in a temporary nonduty, nonpay status.

2. *[hypothetical] My office is open, but the schools are closed and I cannot find child care. May I receive evacuation payments so I may work at home while caring for my children?*

You may receive evacuation payments only if your agency authorizes them. During a pandemic health crisis, your agency may order you to evacuate your worksite, authorize evacuation payments, and require you to work from home. You should arrange for child care during your work hours from home. If you are ordered to work from home, you may not care for your child while performing work. However, you may request a change in your work schedule so you can arrange to work during the time you are not responsible for child care.

Frequently Asked Questions on Leave Flexibilities

1. *What are my leave options if I have been diagnosed with the flu?*

If you've been diagnosed with the flu, you may use accrued sick leave or annual leave, request advance sick leave or annual leave, request donated leave under your agency's voluntary leave transfer or leave bank programs or an established emergency leave transfer program, or use any earned compensatory time off, earned compensatory time off for travel, or earned credit hours. In addition, if the flu develops into a serious health condition you may use your entitlement to unpaid leave under the Family and Medical Leave Act (FMLA) and take a total of up to 12 weeks of leave without pay. An employee may substitute his or her accrued annual leave and sick leave, as appropriate, for unpaid leave under the FMLA.

2. *May I take sick leave if I have been exposed to the flu?*

You may use accrued sick leave if you've been exposed, but only if your doctor or health authorities feel your exposure would put others at risk. You also have the option of using accrued annual leave or other paid time off if you've been exposed.

3. *May I request donated leave from my co-workers before using all of my annual and sick leave?*

Yes. You may request to become a leave recipient before you use up your annual and sick leave. However, your agency must confirm that your anticipated absence without paid leave will be at least 24 hours. (For part-time employees or employees on uncommon tours of duty, the period of absence without paid leave is prorated.) You may not use donated leave until you have exhausted your annual and sick leave.

If OPM has established an emergency leave transfer program, you are not required to exhaust your available paid leave before receiving donated annual leave.

- 4. *[hypothetical] I have “use or lose” annual leave, which I scheduled to use before the end of the leave year. My agency has cancelled all scheduled annual leave until further notice because employees must be at work due to a pandemic influenza. It looks like this situation will continue through the beginning of the new leave year. Will I be forced to forfeit my “use or lose” annual leave?***

If you schedule “use or lose” annual leave in writing before the third biweekly pay period prior to the end of the leave year, and the leave is cancelled because you are required to work during a pandemic influenza, you may request restoration of the forfeited annual leave. See the fact sheet on *Restoration of Annual Leave* at <http://www.opm.gov/oca/leave/HTML/RESTORE.asp>.

- 5. *If I take sick leave to care for my wife, will my “use or lose” annual leave be restored?***

No, only “use or lose” annual leave forfeited because of a period of absence due to your own sickness or injury may be restored. If you are using sick leave, donated leave, or other paid time off during a pandemic health crisis, you must be diligent about scheduling and using any excess annual leave (“use or lose” annual leave) by the end of the leave year. There is no statutory or regulatory authority to restore forfeited “use or lose” annual leave in this situation.

- 6. *[hypothetical] A family member has the flu, or complications from the flu, and I must care for him or her. What are my leave options?***

You may use a total of up to 104 hours (13 days) of sick leave each leave year to provide general medical care to a family member and up to 12 weeks of sick leave to care for a family member who develops a serious health condition. If you have already used any portion of the 13 days of sick leave for general medical care of a family member, subsequent sick leave must be subtracted from the 12 weeks. If you have used up to 13 days of sick leave to care for a family member with a serious health condition, the already used sick leave must be subtracted from the 13 days of sick leave for general medical care of a family member. You may also choose to use annual leave, accrued compensatory time off, compensatory time off for travel, or credit hours; request to receive donated annual leave; or take up to 12 weeks of unpaid leave under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. You may substitute your accrued annual leave and sick leave, as appropriate, for unpaid leave under the FMLA.

- 7. *If I exhaust all of my annual and sick leave, what are my options?***

If you have used up all annual and sick leave, you may request advance annual and/or sick leave. Annual leave requests cannot exceed the amount you'd normally accrue during the remainder of the leave year.

A maximum of 30 days of sick leave may be advanced if you have a serious disability or ailment. You may also request donated leave under your agency's leave transfer or leave bank programs or the emergency leave transfer program (if established by OPM.)

8. *[hypothetical] My child's school has been closed because of the flu pandemic. My child is not sick, but I cannot find a babysitter. What are my leave options?*

If you need to be at home because of a school closure, you may request annual leave for the duration of the closure. You may also request to use other paid time off, such as earned compensatory time off, earned compensatory time off for travel, or earned credit hours. You may not use sick leave unless your child is sick.

In addition, if your agency has ordered you to evacuate your worksite and work from home during a pandemic health crisis, you may receive evacuation payments. However, you may not care for your child while you perform work.

9. *[hypothetical] My fiancé is very sick with the flu and I am the only person available to take care of him/her. May I use sick leave?*

You may use up to 12 weeks of accrued sick leave to care for a family member. The term "family member" includes any individual who has a close association with the employee that is equivalent to a family relationship. Your agency will determine whether your fiancé is covered by this definition.

10. *May I receive donated annual leave from my co-workers to care for a sick family member?*

Only if you have exhausted your own available paid leave. If OPM has established an emergency leave transfer program, you may also receive donated leave from the emergency leave transfer program.

Frequently Asked Questions Regarding Mandated Leave

1. *If someone exhibits signs of the flu, may a supervisor order him/her to leave work? If so, will the employee be paid during the absence?*

A supervisor can remind you or your colleague of the leave options for seeking medical attention, such as requesting sick or annual leave. If you're on approved sick or annual leave you will continue to be paid during your absence. Although an employee's use of leave is generally voluntary, in some situations you could be directed to take leave. This action generally requires advance notice, opportunity to reply, and an agency decision.

2. *If a supervisor orders an employee to leave work, will the employee be placed on administrative leave, or be required to use his/her annual or sick leave?*

Excused absence (administrative leave) is not an entitlement, and supervisors are **not** required to grant it. Agency policy on excused absences should be consistent with the Administration's Governmentwide policy on granting excused absence during a pandemic influenza, which will be addressed in separate guidance.

You may be required to use your sick or annual leave, or be placed on leave without pay if your medical condition warrants. These actions generally require advance notice, opportunity to reply, and an agency decision. The agency must have documentation sufficient to prove that its action was justified, and you may have the right to appeal.

3. *Can my supervisor require me to have a medical exam or physical and prevent me from returning to work until a doctor clears me?*

If your job requires you to be in a certain physical condition to perform adequately, you may be required to submit to a medical exam before returning to work. Most positions do not have established physical or medical requirements. If the criteria are met for requiring a medical examination and you refuse the exam, you risk discipline up to and including removal from Federal service.

Frequently Asked Questions Regarding Requiring Employees To Work

1. *If I have direct contact with the public in my job (e.g., investigator, park ranger, healthcare professional, police officer, firefighter), will I be required to report for work? If I refuse, do I risk sanction?*

You are expected to report for work. Failure to report for work without an administratively acceptable reason runs the risk of you being considered absent without leave and may warrant disciplinary action. Your agency will decide if the reason for your absence is acceptable.

Employees and supervisors should discuss any precautions—including personal protective equipment, hand hygiene and cough etiquette, social distancing measures, and other administrative policies—that might reduce the risks associated with work involving direct contact with the public.

2. *May I leave work or remain home because I feel I may contract the flu from co-workers?*

Any concern you may have about contracting the flu from a co-worker must be addressed with your supervisor. He or she can recommend an appropriate solution such as teleworking, changing work areas, or taking annual leave. If you refuse to report without cause, you risk disciplinary action.

3. *May my agency discipline me if I am absent without leave (AWOL), despite my good faith efforts to report for work?*

At their discretion and after consideration of the facts and circumstances, your agency may discipline you. If you feel you will have difficulty reporting, be sure to discuss the situation with your supervisor.

4. *May I refuse to use required safety equipment (e.g., protective equipment or decontamination stations) provided by my agency?*

Your agency may require you to follow certain procedures or use protective equipment when your health or safety is in jeopardy. You are expected to comply with agency safety and health policies, and failure to do so may result in disciplinary action.

Frequently Asked Questions Regarding Security Clearances and Background Checks

1. *How are security clearances and background checks affected by emergency hiring during a pandemic?*

The requirements for such checks would remain unchanged for emergency hires; however, activities to complete them might vary (e.g., alternatives may be needed for face-to-face interviews with persons affected by a pandemic). Likewise, the requirements for background checks for ID badges (minimum NACI review) for Government building access would apply to emergency hires as well. As with other temporary appointees, suitability rules would not apply.

Frequently Asked Questions Regarding Overtime

1. *What are the rules about the number of overtime hours a supervisor may require me to work?*

No statutory or regulatory limits apply to the amount of overtime work a manager may require an employee to perform. However, an employee may be excused from overtime work for reasons such as the employee's illness or the illness of a family member. For information on computing overtime pay, see <http://www.opm.gov/oca/pay/HTML/FACTOT.asp> and <http://www.opm.gov/oca/pay/HTML/computeflsa.asp>.

2. *[hypothetical] I am working from home because of a pandemic influenza. I chose to work 4 hours in addition to my regular 8 hour per day work schedule. May I receive overtime pay for the additional 4 hours I worked?*

No, unless your agency required you to work the additional 4 hours. In unusual situations, your agency may approve overtime after the fact, if warranted. You should check with your servicing human resources office for the requirements for receiving overtime pay.

3. *Can management direct me to work on a Saturday or Sunday if my normal work schedule is Monday through Friday?*

Yes. Changes in your work schedule are permissible as long as they are consistent with law, regulations, and any applicable collective bargaining agreement.

Frequently Asked Questions Regarding Hazardous Duty Pay or Environmental Differentials

1. *May employees receive hazardous duty pay or environmental differential pay for potential exposure to pandemic influenza?*

No. There is no authority to pay hazardous duty pay (HDP) or environmental differential pay (EDP) for potential exposure to pandemic influenza.

Miscellaneous Questions

1. *If I'm asked to work during the pandemic and I contract the flu while at work, will I be covered by workers' compensation?*

If an employee (or family member of an employee) believes illness or on-the-job death resulted from a work-related incident, he or she will be able to file a workers' compensation claim. However, the Department of Labor rules on entitlement to workers' compensation, and each case will be judged on its own merit. To apply for workers' compensation benefits, you will first need to contact your local servicing human resources office. Information on workers' compensation benefits for Federal employees can be found at <http://www.dol.gov/esa/regs/compliance/owcp/fecacont.htm> or by telephone at 866-OWCP-IVR (866-692-7487).