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SUBJECT: Human Resources Flexibilities during a Pandemic Health Crisis

To assist managers with questions they may receive regarding human resources flexibilities during a pandemic health crisis, the Washington Headquarters Services, Human Resources Directorate, Labor Management and Employee Relations (WHS/HRD/LMER), has developed a series of Frequently Asked Questions (FAQ's). The attached FAQ's will be updated on-line at <http://www.whs.mil/HRD/Civilian/LMER/index.cfm> as new information becomes available.

If further assistance is required, please contact the WHS/HRD/LMER office, (703) 699-1824.

Michael L. Rhodes  
Acting Director

Attachment:  
As stated

OSD 11338-09



# Attachment



***Washington Headquarters Services  
HR Flexibilities  
during a Pandemic  
Health Crisis***

*Frequently Asked Questions for Managers  
and Employees*

WHS Human Resources Directorate

September 2009

**WHS**

## **Human Resources Flexibilities during a Pandemic Health Crisis** **Frequently Asked Questions**

During a pandemic health crisis, any Washington Headquarters Services (WHS) serviced organization may wish to employ alternative Human Resources (HR) flexibilities in order to achieve its mission or accomplish its performance goals, while promoting “social distancing” of its employees to ensure their safety and well-being. The following “*Frequently Asked Questions*” explain the flexibilities available to management at any time, not only during a pandemic health crisis, under the following topics:

- A. Leave
- B. Telework
- C. Alternative Work Schedules
- D. Requiring Employees to Work
- E. Labor Relations

WHS, Human Resources Directorate, Labor and Management Employee Relations (WHS/HRD/LMER) is available for supervisors and/or managers having questions about the use of these flexibilities and can be reached at (703) 699-1824. Supervisors should consult LMER before implementing flexibilities for bargaining unit employees covered by collective bargaining unit agreements. Additionally, WHS will provide guidance and specific direction to its serviced organizations on the DoD operating status, including whether employees should work from an alternative worksite for a period of time.

## HR Flexibilities during a Pandemic Health Crisis

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### A. Leave

**1. If an employee exhibits signs of the flu, what may a supervisor or manager do?**

As with any illness, medical diagnosis by a supervisor or manager is very problematic and should be avoided. However, if a supervisor or manager observes an employee exhibiting possible signs of the flu, (s)he can express general concern regarding the employee's health and remind the employee of his/her leave options, such as requesting sick or annual leave. Managers should inform an employee that if (s)he is on approved sick or annual leave, (s)he will continue to be paid during his/her absence. If an employee has no accrued leave available, a supervisor may approve requests for advanced sick or annual leave or for leave without pay. The CDC identifies symptoms of H1N1 at <http://www.pandemicflu.gov/individualfamily/about/h1n1/index.html>. In addition, OPM has developed a decision chart entitled "What a Supervisor Should Do if an Employee Appears ill During a Declared Pandemic Influenza or Has Been Exposed To Pandemic Influenza" to assist managers and supervisors in determining the appropriate course of action when an employee appears to be ill with the flu at work (see [http://www.oklahoma.feb.gov/Forms/PG%20Decision%20Chart2%20\(Final\).pdf](http://www.oklahoma.feb.gov/Forms/PG%20Decision%20Chart2%20(Final).pdf)). OPM also has a list of specific examples for supervisors in addressing sick employees or employees who may have been exposed to pandemic flu located at <http://www.opm.gov/pandemic/WhatASupervisorShouldDo.asp>.

**2. May a supervisor require an employee to have a medical exam or physical or prevent an employee from returning to work until the results of an exam or physical show the employee is not contagious?**

Unless a supervisor has objective evidence (suspicion is not enough) that an employee is physically unable to perform his or her job, or poses a risk to himself/herself or others, the supervisor may not prohibit that employee from working. Management may require a medical examination only when the position occupied by the employee has properly established physical or medical requirements. Most positions do not have established physical or medical requirements. If the criteria are met for requiring a medical examination and the employee refuses the exam, the employee may be disciplined, up to and including removal from Federal service.



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

When a supervisor observes an employee exhibiting flu-like symptoms, the supervisor can express general concern regarding the employee's health and remind the employee of his/her leave options. It is preferable for a supervisor to obtain an employee's agreement to take sick leave, annual leave, or leave without pay, but in some circumstances, a supervisor may find it appropriate to enforce the employee's use of leave. Enforced leave may require adverse action procedures, and management should always consult with WHS/HRD/LMER before ordering an employee home on enforced leave.

A viable alternative in some cases may be for the employee to work from home under a voluntary telework agreement. Supervisors also have the authority to place an employee on paid, excused absence and order him/her to stay at home or away from the workplace. The duration of any such absence is dependent on the specific circumstances of each situation, but excused absence may be granted only for a very short period of time. If a supervisor believes it may be appropriate to place an employee on excused absence for more than one workday, the supervisor should immediately consult with WHS/HRD/LMER regarding his/her options.

**4. If an employee has been diagnosed with H1N1, what leave options/flexibilities are available?**

If an employee has the flu, (s)he may request accrued sick leave, annual leave, earned compensatory time off, earned compensatory time off for travel, earned credit hours or leave without pay. If (s)he does not have any accrued leave options available, (s)he may request advanced sick leave or annual leave or donated leave under WHS's voluntary leave transfer programs.

Additionally, if the flu develops into a serious health condition, the employee may use his/her 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. For additional information see OPM's fact sheet on leave flexibilities to assist employees who are affected by pandemic influenza located at <http://www.opm.gov/pandemic/agency1d-leave.pdf>.

**5. As a supervisor, must an employee have a doctor's note if requesting to use sick leave for 3 days or more during a pandemic influenza?**

No, supervisors have flexibility when granting leave. Under OPM's regulations, a supervisor may grant sick leave only when the need for sick leave is supported

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by administratively acceptable evidence. A supervisor may consider an employee's self-certification as to the reasons for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. A supervisor may also require a medical certificate or other administratively acceptable evidence in support of the reason for an absence for any of the purposes for which sick leave is granted for an absence in excess of 3 workdays, or for a lesser period when the supervisor determines it is necessary. Supervisors should consult with WHS/HRD/LMER if they believe there may be a need to request medical documentation from an employee requesting sick leave.

**6. If an employee has exhausted all of his/her paid leave due to illness, what other options are there?**

If the employee has exhausted his/her paid leave options, (s)he may request advanced annual and/or sick leave. Requests for advanced annual leave cannot exceed the amount the employee would normally accrue during the remainder of the leave year. Requests for advanced sick leave cannot exceed 30 days for full-time employees. Employees may also request donated leave under WHS's voluntary leave transfer programs.

**7. May an employee request donated leave before (s)he depletes his/her entire annual and sick leave balance?**

Yes, an employee may request to become a leave recipient before (s)he uses all of his/her annual and sick leave. However, the organization must confirm that the 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.) Additionally, an employee may not use any donated leave until (s)he has exhausted all annual and sick leave balances.

**8. What is management's option for granting leave if an employee states he or she has been exposed to the flu, but is not experiencing any flu symptoms?**

At this time, if an employee suspects (s)he has been exposed to the flu, (s)he may request to use accrued sick leave, but only if his/her doctor or health care provider certifies that exposure would put others at risk. Without medical certification, an employee also has the option of using accrued annual leave, other paid time off, or leave without pay. In some cases, the supervisor may grant permission for an employee to telework.

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**9. If an employee is afraid of catching the flu and does not want to come to work, what are his or her leave options?**

An employee who is healthy may request annual leave for the period of absence from his or her job. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. In addition, an employee may request to use other paid time off, such as earned compensatory time off, earned compensatory time off for travel, or earned credit hours.

**10. What leave options does an employee use if his/her child's school has been closed because of the flu pandemic and (s)he cannot find child care?**

If an employee needs to be at home because of a school closure, (s)he may request annual leave for the duration of the closure. (S)he 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. The employee may not use sick leave unless his/her child is sick. In some case where has employee has telework capabilities and work to perform, the supervisor may grant permission for an employee to telework.

**11. What leave options can an employee use if (s)he has to care for a family member that has the flu or complications from the flu?**

Full-time and part-time employees 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 an employee has 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. The amount of sick leave that part-time employees and employees with uncommon tours of duty may use is pro-rated. For purposes of family friendly leave, a family member includes a spouse, and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

An employee 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 FMLA to care for a spouse, son or daughter, or parent with a serious health condition. An employee may substitute his/her accrued



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annual leave and sick leave, as appropriate, for unpaid leave under the FMLA.

**12. Can an employee receive donated annual leave from co-workers to care for sick family members?**

Yes, an employee can receive donated annual leave from co-workers if (s)he has exhausted his/her available paid leave. However, the organization must confirm that the 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.) Additionally, the employee may not use any donated leave until (s)he has exhausted his/her annual and sick leave balances.

**13. An organization cancelled all scheduled annual leave until further notice because employees must be at work due to a pandemic influenza. It looks like the situation will continue through the beginning of the new leave year. Will employees be forced to forfeit their “use or lose” annual leave?**

If an employee scheduled “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 the employee is required to work during a pandemic influenza, the employee may request restoration of the forfeited annual leave. For additional information see OPM’s fact sheet on Restoration of Annual Leave at [www.opm.gov/oca/leave/HTML/RESTORE.asp](http://www.opm.gov/oca/leave/HTML/RESTORE.asp)

**14. An employee forfeits his or her “use or lose” annual leave because (s)he is taking care of a spouse who has the flu. Can the lost leave be restored?**

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

## B. Telework

Telework is voluntarily working away from the traditional workplace. It may be working from an employee's home, in an official Federal telework center, or from another approved site such as from the home of a relative.

LMER has telework program guidance available on the WHS, HRD website. To access the WHS/HRD telework guidance click on the link below.

<http://www.whs.mil/HRD/Civilian/LMER/Telework.cfm>

WHS offers two types of telework: "**Regular and Recurring**" and "**Ad Hoc**" telework.

**Regular and Recurring telework** means an approved work schedule in which employees regularly work at least one day per biweekly pay period at an alternative worksite.

**Ad Hoc telework** means approved telework performed on an occasional, one-time or irregular basis. Ad-hoc telework can be used as an HR flexibility during emergencies, or other closures including a pandemic.

### 1. Who is eligible for telework?

All WHS serviced employees are eligible for telework unless there is an express reason to disqualify the individual. WHS has asked its supervisors to evaluate the use of alternative work arrangements, including alternative work schedules and telework, to ensure continuity of operations while encouraging social distancing. Supervisors have the responsibility for determining an employee's eligibility for telework. Telework may not be appropriate for all jobs, such as those that require extensive face-to-face contact with supervisors, co-workers and clients; frequent access to classified material; special facilities or equipment that the agency cannot readily or economically provide; for employees who require on-the-job training; and/or for employees who need close supervision. An employee who is approved for telework will be required to complete the Department of Defense Telework Agreement. For more details go to

<http://www.whs.mil/HRD/Civilian/LMER/Telework.cfm>

### 2. What is management's responsibility if there is an evacuation during a pandemic health crisis?

An agency may order an evacuation upon an official announcement by Federal, State, or local officials or public health authorities of a pandemic health crisis affecting certain geographic areas. Evacuation to a safe haven promotes social distancing of employees and protects them from being exposed to additional viruses or mutations of a pandemic influenza. An evacuation due to a pandemic influenza

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may be an order for employees to work at home or at an alternative work site. Managers should make sure that telework arrangements are in place and that employees are equipped, or have access to equipment (such as in a telework center), to work seamlessly from an alternate location.

### 3. **Can management be forced to implement telework arrangements?**

During a declared public health emergency such as pandemic influenza the DoD Public Health Emergency Officer may recommend that organizations practice social distancing to prevent the spread of infection. WHS managers and supervisors have options available to assist employees during a pandemic health crisis, such as utilizing the telework program (employee's home or a telework center) as a safe haven to promote social distancing. Telework is an option that should be explored and planned prior to the onset of a pandemic health crisis.

### 4. **Can management prevent an employee from teleworking?**

Management has the option of declining a telework request or terminating a telework agreement. The use of telework must meet the organization's needs. Subject to any applicable collective 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.

However, in the case of social distancing, WHS supports telework on an ad-hoc basis to prevent the spread of communicable diseases. Telework agreements must be in place and management must ensure that employees have the necessary equipment.

### 5. **If an employee needs to be home because his/her child's school is closed due to pandemic influenza, may he or she telework from home while caring for his/her child? If so, for how long?**

While telework is not a substitute for childcare, it can be very valuable to employees with care giving responsibilities. Provided the employee has telework capabilities and work to perform, WHS supports flexibility in determining whether an employee can accomplish his or her duties from home while a child is at home due to a pandemic. An employee may telework during the time he or she is not responsible for childcare and must take accrued annual leave or other paid time off while performing childcare responsibilities. For example, a young child or infant who requires constant care and attention should not be left alone; therefore, the employee's ability to telework would be limited to only the time the employee is not responsible for childcare. An older child who requires minimal supervision may be at home with the employee, as long as the child is independently pursuing his or her own activities.

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An employee may also request a change in work schedule to perform work during the time he or she is not responsible for childcare. It is possible that schools and day care centers will be closed for extended periods of time in order to reduce the spread of pandemic influenza. An employee's request to telework from home while caring for a child may be approved for the length of time the employee has work to perform to effectively contribute to the agency's mission. An employee requesting to telework must plan ahead to ensure he or she has sufficient work to perform at home. If the employee has completed all work assignments and can no longer contribute to the agency's mission while working at home, he or she should contact his or her supervisor to discuss what other work or leave options are available.

**6. If an employee teleworks from home and is unable to report to his or her official worksite due to pandemic influenza, will locality pay be affected?**

During a pandemic health crisis, the employee's official duty station is considered his/her official worksite, even if the employee's telework arrangement requires him/her to report to the office once a week and the employee is unable to do so. In this emergency situation, an employee will receive the locality rate of his/her official worksite.

**7. If an employee is teleworking due to a Pandemic, how would Transit Subsidy Benefits be adjusted?**

H1N1 is no different than the current situation where an employee goes on long-term training, a detail, TDY, is out sick, goes on vacation, etc.

**8. While teleworking, an employee is injured at home. Is this an on-the-job injury?**

Teleworkers who work from home must provide an appropriate workspace and should certify that it is free from hazards. Government employees suffering from work-related injuries that occur at an alternative worksite (home, telework center, or other approved locations) may be covered by the Federal Employees' Compensation Act (workers' compensation), as appropriate. Worker's compensation benefits are administered by the U.S. Department of Labor, and each case is judged on its own merits. To apply for workers' compensation benefits, an employee must first contact WHS/HRD/LMER. Information on workers' compensation benefits for Federal employees can be found at

<http://www.dol.gov/esa/regs/compliance/owcp/fecacont.htm>.



### C. Alternative Work Schedules

1. **An employee has a flexible work schedule. The employee is teleworking from home during a pandemic health crisis. Can the employee independently choose to work extra hours each day so (s)he can earn credit hours?**

No, prior supervisory approval is required. Credit hours are any hours within a flexible work schedule which are more than the employee's basic work requirement and which the employee chooses to work to vary the length of a workweek or a workday. The employee's continuation of credit is up to the discretion of his/her supervisor. The law prohibits carrying over more than 24 credit hours from one pay period to the next.

2. **If a pandemic influenza reaches the commuting area, will employees be able to continue working a flexible work schedule?**

Organizations serviced by WHS with employees that work a flexible work schedule can continue to work the same schedule during a pandemic health crisis. However, the employee's organization may decide to change his/her work schedule. Changes in the employee's work schedule are within the discretion of management. However, if the organization has bargaining unit employees, supervisors should continue to comply with the collective bargaining agreement.

3. **What flexibilities do managers have regarding shift work?**

Management has broad discretion to change duty hours, as well as to direct work on Saturdays and Sundays for those with a Monday - Friday work schedule. There are premium pay entitlements related to changed duty hours which may not be waived. However, there is a limitation on the amount of premium pay an employee (exempt from the Fair Labor Standards Act) may receive. Specifically, premium pay may not cause the total for any pay period to exceed the maximum rate payable for GS-15. The calculation (or limitation) of the premium pay will occur automatically when the hours and appropriate codes are entered into the time and attendance system.

Changing duty hours is one of many options available during emergency situations, such as a flu pandemic, and can be used as part of an exercise to determine the impact or practicality of such measures in advance of an actual emergency situation. For members of bargaining units, such changes require compliance with labor relations requirements to negotiate impact and implementation with the exclusive representative. Even if there are no requirements for compliance with labor relations regulations, if an organization plans to order shift work it should do so as far in advance as possible to allow employees to make necessary arrangements for commuting, childcare, etc.

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In the event that shift or Sunday work is ordered, timekeepers will need to adjust the coding in the timekeeping system to authorize differential or Sunday pay for the affected employee(s). The coding can be found in the DCPS Manual under section H, chapter 1.

(<https://dfas4dod.dfas.mil/systems/dcps/consolid/manuals/csruser/csr093.pdf> )

### D. REQUIRING EMPLOYEES TO WORK

- 1. If DoD activates an emergency preparedness or pandemic plan and sends designated employees to alternative worksites, may a designated employee refuse to go? If an employee is on travel during the order to deploy, may (s)he go home instead of deploying to the designated worksite? If an employee refuses to deploy to the designated worksite from a travel status, who pays for the employee's transportation home?**

Any such designated employees are expected to report for work where deployed or remain at work in dismissal or closure situations, unless otherwise directed by their supervisor. A supervisor may determine that circumstances justify excusing a designated employee from duty and allowing the employee to use accrued leave because of an individual hardship or circumstances unique to the employee. For example, factors such as the illness of a family member or lack of available alternatives to childcare or eldercare may be considered. An employee may not go home instead of deploying to the designated worksite, and an employee who refuses to follow emergency related orders may be subject to appropriate discipline, up to and including removal from Federal service. Unauthorized travel expenses are not reimbursable.

- 2. Will an employee who has direct contact with the public (e.g., police officers, firefighters, and investigators) be required to report for work and perform the normal duties of his or her position? If an employee refuses, will the employee be fired?**

An employee is expected to report for work and perform the normal duties of his or her position. If an employee fails to report for duty without an administratively acceptable reason for his or her absence, the employee could be considered absent without leave (AWOL) and may be subject to disciplinary action in accordance with Disciplinary and Adverse Actions (AI-8) up to and including removal from Federal service. WHS/HRD/LMER can assist managers in determining if the employee has an administratively acceptable reason for his or her absence.

When an employee reports for work, the employee is expected to first carry out lawful supervisory orders to work and may later choose to appeal or grieve an order after complying with it. An employee who refuses to comply with a supervisor's order may be disciplined up to and including removal from Federal service.

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### 3. **May an employee leave work or refuse to report for work because he or she is afraid of contracting the flu from co-workers?**

No, if an employee is concerned about contracting the flu from a co-worker, the employee should first discuss his or her concern with the supervisor and determine the appropriate action, such as social distancing (moving to a different work area, taking annual leave or teleworking). An employee who leaves his or her duty station without approval may be considered absent without leave (AWOL). AWOL may result in disciplinary action, up to and including removal from Federal service in accordance with AI-8.

WHS stresses the value of workplace hygiene for preventing H1N1. This is extremely important, especially once an infection is in a workspace. Employees are reminded to:

- Cover your nose and mouth with a tissue when you cough or sneeze;
- Throw the tissue in the trash after you use it;
- Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners with at least 60% alcohol are also effective;
- Avoid touching your eyes, nose or mouth. Germs spread that way;
- Stay home if you are sick. The CDC recommends that you stay home from work and limit contact with others to keep from infecting them.

### 4. **May an employee who is not sick call in sick because he or she is afraid of contracting the flu?**

Generally, an employee may only use sick leave when he or she is unable to work due to a physical or mental illness or to obtain medical examination or treatment. An employee may request annual leave. An employee has the right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. If an employee's request for leave is denied and the employee still refuses to report for work, the employee may be considered AWOL and may be subject to disciplinary action.

### 5. **May an agency take disciplinary action against an employee who is absent without leave (AWOL) despite the employee's good faith efforts to report for work?**

An agency may discipline an employee who is AWOL. The decision to take such action is at the discretion of the supervisor, after consideration of the facts and circumstances of the unauthorized absence and in accordance with AI-8. An employee having difficulty reporting to work should discuss the circumstances of his



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or her absence with the supervisor as soon as possible or within 2 hours of his/her reporting time for work.

6. **May an employee call in sick after a supervisor has cancelled annual leave and ordered the employee to report for work?**

An employee is entitled to use sick leave under certain conditions. However, a supervisor may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. An agency may consider an employee's self-certification regarding the reasons for his or her absence as administratively acceptable evidence. An agency may also require a medical certificate or other administratively acceptable evidence in support of the reason for an absence for any of the purposes for which sick leave is granted. Because CDC guidance covering medical treatment of pandemic influenza is fluid, a supervisor should seek assistance from LMER if he or she believes there may be a need to request medical documentation from an employee requesting sick leave.

### **E. LABOR RELATIONS**

**1. Is there any flexibility on labor-management agreements during an emergency?**

Yes, there is some flexibility. Management must normally follow procedures outlined in an applicable collective bargaining agreement, including notification and bargaining obligations that the Agency must fulfill before making changes that impact conditions of employment of bargaining unit employees. However, in limited circumstances where a “compelling need” exists, such as during an emergency, the Agency may be able to take actions prior to bargaining with the union. Please contact LMER for assistance with specific situations.

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Listed below are websites that provide additional, updated information on pandemic influenza:

**U.S. Department of Defense Pandemic Influenza Watchboard:**

<http://fhp.osd.mil/aiWatchboard/>

This is a one-stop information source on the H1N1 Flu Outbreak.

**U.S. Department of Defense Civilian Personnel Management Service (CPMS):**

<http://www.cpms.osd.mil/disasters/pandemic.html>

This DoD civilian personnel website provides links to pandemic influenza guides and pamphlets.

**Centers for Disease Control and Prevention (CDC) Website:**

<http://www.cdc.gov/h1n1flu/>

This website provides key facts and updated information on the H1N1 influenza.

**Department of Health & Human Services (HHS) Website:**

<http://www.flu.gov>

The HHS Interagency Group on Influenza Preparedness & Response coordinates pandemic-related information across the Federal Government. This website provides government-wide information on pandemic influenza for the general public, health and emergency preparedness professionals, policy makers, government and business leaders, school systems, and local communities.