

HR Telework Flexibilities - 2019-nCoV

| Question/Scenario | | Answer |
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| Should an agency authorize weather and safety leave to a telework program participant who was exposed to a confirmed case of a quarantinable communicable disease, such as COVID-19? | | Use of weather and safety leave would be subject to the normal conditions—for example, weather and safety leave may be granted only if an employee is not able to safely travel to or perform work at an approved location. Thus, an employee who is not a telework program participant would be granted weather/safety leave for quarantine periods under the direction of local or public health authorities. However, in the case of telework program participants, the employee’s home is generally an approved location. Thus, the employee would generally be expected to perform telework at home as long as the employee is asymptomatic. (See 5 CFR 630.1605.) If a telework program participant in these circumstances needs time off for personal reasons, then the employee would be expected to take other personal leave or paid time off (e.g., annual leave or sick leave to care for a family member). |
| Generally, how should agencies manage telework during incidences of quarantinable communicable disease, such as COVID-19? | | For an employee covered by a telework agreement, ad hoc telework arrangements can be used as a flexibility to promote social distancing and can be an alternative to the use of sick leave for exposure to a quarantinable communicable disease for an employee who is asymptomatic or caring for a family member who is asymptomatic. An employee’s request to telework from home while responsible for such a family member may be approved for the length of time the employee is free from care duties and has work to perform to effectively contribute to the agency’s mission. The Telework Enhancement Act of 2010 requires agencies to incorporate telework into their continuity of operations plan. Agencies should have written telework agreements in place with as many employees who are willing to participate and communicate expectations for telework in emergency situations. It is important for an agency to have a solid technology infrastructure established to support a high level and volume of connectivity, so employees can work seamlessly from their alternate locations (e.g., home) and maintain established records and security requirements. Managers, employees, and organizations must remain flexible and adapt to the changing environment. |
| In the event that local school systems are closed due to COVID-19, but Federal offices remain OPEN, is it permissible for a telework program participant to perform telework with a child in the home? | | An agency that has a general bar on teleworking when there are young children or other persons requiring care and supervision may choose to adjust its policies to allow, as a special exception, telework in those circumstances in the case of an emergency, such as the COVID-19 situation. Under such an exception policy, a teleworking employee would be expected to account for work and non-work hours during his or her tour of duty and take appropriate leave (paid or unpaid) to account for time spent away from normal work-related duties (e.g., to care for small children). Agencies should address in their telework policies potential situations that may prevent or impact an employee’s ability to effectively perform his or her duties at home. This includes policies regarding the conditions under which employees may telework, even if they have a young child or other person requiring the presence of a caregiver in the home. (For additional information please see OPM Guidance on Telework and Dependent Care at: https://www.telework.gov/guidance-legislation/telework-guidance/telework-and-dependent-care/ .) If an agency policy bars an employee from teleworking at his or her home when there is a child or elder care situation, then the home is not an approved location under OPM’s regulations. Since Federal offices remain OPEN, agencies may not authorize weather and safety leave to employees who cannot telework with children in the home. Employees should either report to their worksite or request annual leave or other paid time off if they are unable to report to the worksite. |
| In the event that local school systems are closed due to COVID-19 and Federal offices are CLOSED, is it permissible for a telework program participant to perform telework with a child in the home? | | An agency that has a general bar on teleworking when there are young children or other persons requiring care and supervision may choose to adjust its policies to allow, as a special exception, telework in those circumstances in the case of an emergency, such as the COVID-19 situation. Under such an exception policy, a teleworking employee would be expected to account for work and non-work hours during his or her tour of duty and take appropriate leave (paid or unpaid) to account for time spent away from normal work-related duties (e.g., to care for small children). Agencies should address in their telework policies potential situations that may prevent or impact an employee’s ability to effectively perform his or her duties at home. This includes policies regarding the conditions under which employees may telework, even if they have a young child or other person requiring the presence of a caregiver in the home. (For additional information please see OPM Guidance on Telework and Dependent Care at: https://www.telework.gov/guidance-legislation/telework-guidance/telework-and-dependent-care/ .) If an agency policy bars an employee from teleworking at his or her home when there is a child or elder care situation, then the home is not an approved location under OPM’s regulations. Since Federal offices remain CLOSED, agencies may authorize weather and safety leave to employees who cannot telework with children in the home under agency policies and cannot safely travel to or perform work at the regular office location. |
| What happens if an employee does not have a sufficient amount of work to perform to cover the entire telework day during incidences of COVID-19? | | An employee must always have a sufficient amount of work to perform throughout the workday when he or she teleworks. An employee performing telework who does not have enough work must notify his or her supervisor and receive additional work or discuss leave options such as annual leave, advanced annual leave, other paid time off (e.g., earned compensatory time off, earned credit hours), or leave without pay. |
| Does an agency possess the authority to have their telework program participants work from home during an agency closure due to COVID-19? | | Yes. During an agency closure due to COVID-19, when an agency Continuity of Operation Plan (COOP) has not been initiated and the World Health Organization has NOT declared a pandemic, telework program participants will generally be expected to continue working from home. All telework program participants will be ineligible for weather and safety leave during a closure except in rare circumstances when one of the exceptions under 5 CFR 630.1605(a)(2) applies. They must telework for the entire workday, take other leave (paid or unpaid) or other time off, or use a combination of telework and leave or other paid time off. (Note: A telework program participant may also be referred to as a “telework-ready” employee.) For more information, please see: https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/dcdissmissal.pdf |

OTHER HR FLEXIBILITIES:

* **Alternative Work Schedules (AWS):** May be implemented instead of a traditional fixed work schedule to help an employee balance work and personal responsibilities. Under many AWSs, an employee can complete their work requirement in less than 10 workdays. Under other AWS, 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.

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| Can an agency order an employee to telework during a COOP event? | | Yes. The Telework Enhancement Act of 2010 states that “each executive agency shall incorporate telework into the continuity of operations plan of that agency.” Employees participating in an agency telework program can be leveraged during a COOP activation. If an agency COOP plan is in operation, that plan “shall supersede any telework policy,” (see 5 U.S.C. 6504(d)(2)) and allow greater flexibility to expand telework to a larger segment of the workforce in support of agency operations) so that as many employees as possible are working during a COOP activation. |
| If an employee is healthy but stays home because his or her asymptomatic family member has been quarantined due to exposure to COVID-19, in what pay/leave status is the employee placed? | | Currently, an employee may use annual leave, advanced annual leave, other paid time off (e.g., earned compensatory time off, earned credit hours), or leave without pay to care for a family member who is healthy but has been quarantined due to COVID-19. An employee, covered by a telework agreement, may be able to telework pursuant to an ad hoc arrangement with the permission of the supervisor during the quarantine period. Provided the employee has telework capabilities and sufficient work to perform, the agency should be flexible in determining whether the employee can accomplish his or her duties from home while caring for a family member. An employee may telework during the time he or she is not responsible for caring for a family member and must request annual leave, advanced annual leave, other paid time off (e.g., earned compensatory time off, earned credit hours), or leave without pay while caring for a family member. (See section B, Telework for more information.) |
| <p>If the WHO declares COVID-19 to be a pandemic, can an agency order one or more employees to evacuate their worksite and work from home?</p> <p>During a pandemic health crisis, can an agency order an employee to work from home (or an alternative location mutually agreeable to the agency and the employee) if the employee does not have a telework agreement?</p> <p>What type of work may an agency assign to an evacuated employee?</p> <p>If an employee is forced to incur additional costs due to working from home (e.g., purchasing a computer or internet service), may an agency provide payments to offset those expenses?</p> | | <p>Yes. 5 CFR 550.409(a) allows an agency to order its employees 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.</p> <p>Yes. An agency may order an employee to work from home (or an alternative location mutually agreeable to the agency and the employee) without regard to whether the agency and the employee have a telework agreement in place at the time the order to evacuate is issued. Agencies should consult with offices of human resources and general counsel to determine appropriate collective bargaining obligations where bargaining unit employees are impacted.</p> <p>Under OPM regulations, an agency may assign any work considered necessary 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.</p> <p>The agency head, in his or her sole and exclusive discretion, may grant 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(b).) An employee is not entitled to special allowance payments for increased costs during an evacuation unless specifically approved by the agency head.</p> |
| Does the employee need a telework agreement before he or she can telework (not in a WHO Pandemic declaration period)? | | Yes, the Telework Enhancement Act requires every employee who participates in telework to have a written agreement, regardless of the type of telework. The Federal Government uses telework, among other things, to promote continuity of operations by allowing Federal employees to continue their work at an approved alternative worksite. The Telework Enhancement Act of 2010 defines “telework” or “teleworking” as a work flexibility arrangement under which an employee performs the duties and responsibilities of his or her position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. Telework is a critical tool during emergency situations. OPM has strongly encouraged agencies to maintain a viable telework-ready workforce. This requires determining eligibility for employees to telework, encouraging employees to enter into written telework agreements, communicating expectations before an emergency situation occurs, and practicing and testing equipment and procedures regularly throughout the year, not just teleworking during emergencies that may occur infrequently. Telework arrangements may require collective bargaining obligations for employees represented by labor organizations. Agencies also need to implement and maintain a robust information technology system with the necessary infrastructure to accommodate widespread remote usage of agency systems as well as the accompanying technical support personnel to resolve remote connectivity issues. 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 www.telework.gov . |
| In a non-Pandemic Declation, Is telework voluntary? | | Yes. An agency may not compel an employee to telework, even if the duties of the position make that employee "telework eligible." However, although entering into a telework arrangement is voluntary, once the employee is under such an arrangement, he/she may be required to telework outside of his/ her normal telework schedule in the case of a temporary emergency situation if that understanding has been clearly communicated by the agency to the teleworking employee in the written telework agreement. |
| Can an agency force an employee to telework in a non-Pandemic declaration? | | No. The language of the Telework Enhancement Act supports that telework is a voluntary flexibility. In other words, an agency may not compel an employee to telework even if the duties of the position make that employee "telework eligible." However, although entering into a telework arrangement is voluntary, once the employee is under such an arrangement, he/she may be required to telework outside of his/her normal work schedule in the case of a temporary emergency situation if that understanding has been clearly communicated by the agency to the teleworking employee in the written telework agreement. |
| If the employee has a telework agreement in place and the manager requires them to telework during controlled monitoring period, does the employee have the option to refuse to telework? | | Yes. The employee will have the option to use leave flexibilities to such as annual leave, advanced leave, etc. |
| | | **For additional questions not answered above, please contact your local G-1 or Civilian Personnel Advisory Center L/MER Specialist. |