



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, July 31, 2009
CPM 2009-14

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: John Berry, Director

Subject: Pandemic Influenza 2009: Additional Guidance

In anticipation of the fall influenza season, and with the ongoing spread of H1N1, it is critically important that we continue and strengthen our efforts to protect the Federal workforce and ensure the continuity of operations. Based on lessons learned this spring and feedback from agencies, we have prepared a series of questions and answers on a wide range of human resources (HR) policies and flexibilities to supplement the "Planning for a Pandemic Influenza, Human Resources Information for Departments and Agencies," found on the U.S. Office of Personnel Management's (OPM's) website at http://www.opm.gov/pandemic/OPM-Pandemic_AllIssuances.pdf.

The questions and answers reflect the numerous inquiries we received from agencies and employees about pandemic influenza HR policies. The Chief Human Capital Officers Council worked closely with OPM to obtain clarification of various policies, and the H1N1 Human Resources Readiness Forum held at OPM on May 6, 2009, also generated a number of additional questions and concerns. Based on this dialogue, I am pleased to provide you with the attached, updated questions and answers on pandemic influenza, which are arranged under the following topics:

- Telework
- Leave
- Excused Absence (Administrative Leave)
- Employee Relations
- Evacuation during a Pandemic Crisis
- Evacuation Pay
- Work Assignments during an Evacuation
- Work Schedules
- Hazard Pay
- Benefits

In reviewing our spring 2009 experience, I must emphasize the importance of being telework ready. The Federal Government cannot shut down and will be expected to continue essential operations during all phases of a pandemic influenza. As we plan for the future, we recognize pandemic influenza is difficult to predict because it has the potential for quickly mutating and

spreading, but we can mitigate its effects on employees and Government services through social distancing interventions such as telework.

Telework can be an important tool in two different ways. First, as the pandemic influenza approaches and intensifies in a geographic area, telework can be used in advance of any formal evacuation orders and requirements to work at home (or at an alternative location mutually agreeable to the agency and the employee). Second, if an evacuation is ordered, and designated employees must work at home, agencies who have prepared for and tested telework capabilities as part of their normal HR flexibilities program, will be in a far better position to meet mission needs.

Agencies need to implement and maintain a robust IT system with the necessary infrastructure (including bandwidth and VPN access) to accommodate a sudden spike in remote usage of agency systems as well as the accompanying technical support personnel to resolve remote connectivity issues. Agencies also need to maintain a robust routine telework program. As many employees as possible should have telework capability; meaning that they have current telework arrangements, connectivity and equipment commensurate with their work needs, and frequent opportunities to telework so that systems are tested and known to be functional.

We look forward to continuing to assist agencies with their pandemic preparedness and welcome your continued questions. You may continue to send questions related to human resources issues and the pandemic influenza to pandemicflu@opm.gov

Additional Information

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

Attachment

cc: Chief Human Capital Officers
Human Resources Directors

Attachment

U.S. Office of Personnel Management

Pandemic Influenza 2009: Questions & Answers

A. Telework

(1) If an agency chooses to institute telework during a pandemic, how are employees managed:

- **with formal telework agreements**
- **without formal agreements**
- **with child care, able to work full-time**
- **with no child care, able to work full-time**
- **with no child care, able to work intermittently**

In order to prepare for a pandemic or any other emergency situation that will require employees to function in remote locations, agencies should have strong, regular telework programs in place. Employees need to be equipped to work seamlessly from their alternate locations; communications systems need to be in place between employees, managers, workgroups, and customers; a solid technology infrastructure must be established to support a high level and volume of connectivity. Without these regular systems already available, little real work can get done during an emergency.

As part of this process of establishing, maintaining, and updating telework arrangements, telework agreements should be in place between managers and employees, spelling out expectations for regular telework arrangements and expectations for telework during an emergency. That being said, the focus during a pandemic should be on getting as much work done as possible, given the situation as it evolves. Managers, employees, and organizations will have to remain flexible with each other and with their work, and will have to adapt to the changing environment.

More concretely, this means that there is no single answer to the question of how employees should be managed, even within the categories given above. Some employees may be required to telework, if provided for by the terms of a formal written telework agreement or because of an evacuation order. Some employees may simply be asked to agree to telework, without an agreement or absent an evacuation order. In either case, in order for this to work, managers must take into account the environment in which that employee must operate. Do they have sufficient connectivity to get the work done? Do they have the skills to do the work that is needed? Do they have dependents who have been sent home due to the emergency? Do they have family members who are ill and need care? If the employee is not fully available for any of these reasons during regular duty hours (and few will be), then some flexible combination of schedule, telework, sick leave, annual leave, and/or administrative leave will be necessary, tailored to each situation.

(2) My child’s school has closed. Can I telework from home while caring for my child? If so, for how long?

While telework is not a substitute for child care, it can be very valuable to employees with caregiving responsibilities. Provided the employee has telework capabilities and work to perform, the agency should be flexible in determining whether an employee can accomplish his or her duties from home while caring for a child. An employee may telework during the time he or she is not responsible for child care and must take accrued annual leave or other paid time off while performing child care 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 child care. 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. An employee may also request a change in work schedule to perform work during the time he or she is not responsible for child care.

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.

(3) My child’s school has closed. I have been evacuated and ordered to work at home or at an alternative worksite, but I must care for my child. Can I telework?

If an employee is evacuated and ordered to work at home or at an alternative worksite mutually agreeable to the agency and the employee, the employee may continue to telework during the time he or she is not responsible for child care. An employee is expected to take accrued annual leave or other paid time off while performing child care responsibilities. Managers and supervisors should determine what work the employee may perform and assign work for the employee to perform during the period of evacuation.

B. Leave

(1) If an employee is sent home because he or she appears ill, in what pay/leave status are they placed?

When a supervisor observes an employee exhibiting medical symptoms, he or she can express general concern regarding the employee’s health and remind the employee of his or her leave options for seeking medical attention, such as requesting sick or annual leave. Obtaining an employee’s agreement to take sick leave, annual leave, or leave without pay is preferable, but in some circumstances, a supervisor may find it appropriate to enforce the employee’s use of leave (see question 3 in section D, Employee Relations, for more information on enforced leave). In rare circumstances, a supervisor may place the employee on indefinite suspension in a non-pay, non-duty status. 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 the employee may have the right to grieve or appeal the action taken.

In the case of a pandemic, agency personnel actions aimed at preventing the spread of a disease may be taken because of the guidance or directive of public health officials regarding the general danger to public health. Supervisors should consult their human resources staff prior to effecting either enforced leave or indefinite suspension.

(2) If an employee is healthy but stays home because he/she has been in direct contact with individuals infected with the flu, in what pay/leave status are they placed?

An employee may use accrued sick leave when he or she would, as determined by the health authorities or a health care provider, jeopardize the health of others because of his or her exposure to a communicable disease. This would not necessarily require individual medical examination and treatment; agencies and employees should monitor official announcements by Federal, State, or local officials, public health authorities, and/or tribal governments related to exposure to pandemic influenza. An employee may also request to take accrued annual leave or other paid time off if he or she was exposed to a communicable disease.

(3) If an employee is healthy but stays home because his or her child has been in direct contact with individuals infected with the flu, in what pay/leave status is the employee placed?

Currently, an employee may use annual leave or leave without pay to care for a family member who has been directly exposed to the pandemic influenza. In some cases, when appropriate, an employee may be able to telework with the permission of the supervisor. While telework is not a substitute for child care, it can be very valuable to employees with caregiving responsibilities. Provided the employee has telework capabilities and 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 child. An employee may telework during the time he or she is not responsible for child care and must request accrued annual leave or other paid time off while performing child care responsibilities. (See telework questions above.)

(4) My child's school has closed. Can I use "family friendly" sick leave to care for my child until the school reopens?

No. Sick leave is not appropriate if the child is not sick. An employee who is healthy and is caring for a family member who is healthy may request annual leave or other paid time off, such as earned compensatory time off, earned compensatory time off for travel, or earned credit hours for the period of absence from his or her job.

(5) Must an employee have a doctor's note if requesting to use sick leave for 3 days or more during a pandemic influenza?

No. Under OPM's regulations (5 CFR 630.403 (a)), an agency 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 as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. An agency may

also require a medical certificate or other administratively acceptable evidence as to 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 agency determines it is necessary. Supervisors must use their best judgment and follow their agency internal practices for granting sick leave.

C. Excused Absence (Administrative Leave)

(1) When should excused absence be used?

OPM does not anticipate the need for widespread use of excused absences (administrative leave), which should be regarded as a tool of last resort in dealing with a pandemic health crisis. If the need arises, OPM will work with agencies to develop a consistent Governmentwide policy on the use of excused absences.

(2) In determining whether to grant excused absence, is there a distinction between employees who develop influenza as a result of their work (e.g., working in a city with a high incidence of infection or working with the public or suspected sick individuals during an outbreak) versus employees who become sick after traveling on vacation to an outbreak area?

No. Employees who are sick are expected to use sick leave or other available leave options. However, OPM will continue to work with agencies to determine whether a new Governmentwide policy on the use of excused absences in these circumstances is warranted.

(3) If an employee is ordered to serve in a pandemic influenza high-risk area, is the employee eligible to use excused absence upon returning, to prevent the spread of the disease to others, even though the employee has no symptoms?

No, excused absence would not be appropriate in this circumstance. An employee may request sick leave if he or she has been exposed to influenza when a doctor or health authorities feel the employee's exposure to the influenza would put others at risk. The employee would also have the option of requesting annual leave or other available paid time off if he or she has been exposed. For social distancing, telework may also be appropriate.

(4) If the worksite is closed due to pandemic influenza, will employees be placed on excused absence (administrative leave)?

OPM does not anticipate the need for widespread use of excused absence (administrative leave), which should be regarded as a last resort in dealing with a pandemic health crisis. Excused absence may be appropriate if the employee is prevented from working due to an agency's action (e.g., closure) and the employee cannot be ordered to work from home or an alternative worksite because of work-related reasons.

D. Employee Relations

(1) If an employee shows symptoms of illness, what should the supervisor do? May the employee be placed on excused absence, and if so, how long? What is needed before the employee can return to work?

When a supervisor observes an employee exhibiting medical symptoms, he or she can express general concern regarding the employee's health and remind the employee of his or her leave options for seeking medical attention, such as requesting sick or annual leave. If the employee has no leave available, supervisors are authorized to approve requests for advanced leave or leave without pay in certain circumstances.

When these leave options are not practical, a viable alternative in many cases is for the employee to work from home, either under a voluntary telework agreement, or under an agency's order directing employees to work from home pursuant to an evacuation during a pandemic influenza. Of course, the feasibility of working from home is dependent on several factors, including the nature of the employee's duties, the availability of any necessary equipment (personal computer, etc.), and computer and communication connectivity.

If none of the above options is possible, supervisors have the authority to place an employee on paid, excused absence and order him or her to stay at home or away from the workplace. The duration of any such excused absence is dependent on the specific circumstances *but is typically a short period*. Placing an employee on excused absence is fully within an agency's discretion and does not require the consent or request of the employee. Supervisors should check with their human resources staff for agency policy on excused absence.

(2) If no medical official is present at a Federal building, who assesses employees and orders them home if they appear ill?

Supervisors may require an employee to take leave or stay away from the worksite based on objective evidence only (not suspicion). Supervisors should obtain assistance from human resources staff or on-site employee health services (if available), as the action may require compliance with adverse action procedures.

Objective evidence will depend on the facts of each case. Objective evidence could consist of a statement from a medical professional that the employee is physically unable to work or poses a danger to other employees or knowledge the employee resides in an area that has been quarantined. Less definitive, but potentially sufficient, evidence would be the employee making specific comments about being exposed to pandemic influenza (such as taking care of a sick relative or friend).

Human resources staffs have the necessary knowledge to assist supervisors and managers with determinations arising from pandemic influenza. The pandemic influenza will no doubt present unique issues, and HR staff should check OPM's website and the Centers for Disease Control and Prevention website on a regular basis to stay current. However, the nature and type of objective evidence that is necessary to support a potential adverse action, such as directing an employee to leave the workplace and either placing them on enforced leave or effecting an indefinite suspension, has been addressed in case law, including decisions of the Merit Systems

Protection Board (MSPB). HR staffs, along with agency legal counsel, have experience both in advising management on these types of adverse actions and defending them before third parties such as MSPB.

(3) Can the agency mandate that anyone with confirmed pandemic influenza remain at home for the recommended 7 days, since this is the period the individual continues to shed the virus and be contagious? We are concerned that, once the person feels better, he or she will want to return to work so as to conserve his or her sick leave.

The Centers for Disease Control and Prevention or other health agency should provide information related to the length of time an individual remains contagious, as well as current recommendations for social distancing, etc. In the case of an epidemic or pandemic, agency personnel actions aimed at preventing the spread of a disease may be taken because of the guidance or directive of public health officials regarding the general danger to public health.

Unless an agency has 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, it may not prohibit that employee from reporting to work. Without adequate support, such action would constitute a constructive suspension and would be an adverse action requiring due process (including advance notice and possibly appeal or grievance rights). A supervisor can require an employee to leave the worksite or prevent an employee from coming to work if the supervisor has evidence that the employee poses a risk of infection, and in many cases the supervisor will place the employee on administrative leave during the absence. Administrative leave is a paid, non-duty status that does not require the employee's consent or request. In other cases, such as when an employee refuses to take leave voluntarily, a supervisor may find it appropriate to enforce the employee's use of leave. Enforced leave is an adverse action that requires due process (i.e., advance notice, an opportunity to reply, and an agency decision) before actually enforcing the use of leave. Enforced leave lasting longer than 14 days may be appealed to the Merit Systems Protection Board or grieved under the agency's negotiated grievance procedure. Supervisors need to consult with their Human Resources Office and Office of General Counsel when deciding to enforce the use of leave, to ensure that the action is permissible and defensible before a third party.

(4) Does an agency have the right to solicit a diagnosis when the employee is requesting sick leave? Generally after 3 days we can ask for medical documentation, but what about initially, under an emerging epidemic? Would the agency have to activate an emergency "letter of requirement" for all staff so it knows who has been tested and treated for H1N1?

Agency policy and collective bargaining agreements may have provisions for requesting medical documentation from an employee, and should be followed.

An employee may use sick leave when he or she (1) is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth; (2) receives medical, dental, or optical examination or treatment; or (3) would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease. An agency may grant sick leave only when supported by evidence administratively acceptable to the agency. For absences in excess

of 3 days, or for a lesser period when determined necessary by the agency, an agency may require a medical certificate or other administratively acceptable evidence.

Under current rules, management may require medical evaluation or screening only when the need for such evaluation is supported by the nature of the work (see 5 CFR 339.205). Attempts on the part of a supervisor to assume a particular medical diagnosis based on observable symptoms is very problematic and should be avoided. However, when a supervisor observes an employee exhibiting symptoms of illness, he or she may express concern regarding the employee's health and remind the employee of his or her leave options for seeking medical attention, such as requesting sick or annual leave. If the employee has no leave available, supervisors are authorized to approve requests for advanced leave or leave without pay in certain circumstances. Agencies should also note the provisions of 5 CFR 630.401(a)(5), which requires the approval of requests for sick leave if an employee is determined by health authorities or by a health care provider, to "jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease."

(5) Under what circumstances should an agency communicate to its employees that there is a confirmed case among one or more of its employees (without identifying the person/specific office)?

The infected employee's right to privacy should be protected to the greatest extent possible; therefore, his/her identity should not be disclosed. In the case of pandemic influenza, or any communicable disease, management should share only that information determined to be necessary to protect the health of the employees in the workplace. If social distancing, information sharing, or other precautions to assist employees in recognizing symptoms or reducing the spread of the illness can be taken without disclosing information related to a specific employee, that is the preferred approach.

Managers should work with their workplace safety contacts and local health officials to determine appropriate information regarding transmission of the illness and precautions that should be taken to reduce the spread of pandemic influenza or any other contagious disease in the workplace. While much media attention has been devoted to pandemic influenza, managers should treat this as they would any other illness in the workplace, and continue to protect employee privacy interests while providing sufficient information to all employees related to protecting themselves against the spread of illness.

E. Evacuation during a Pandemic Health Crisis

(1) Who orders an evacuation?

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 the law (5 U.S.C. 5522 and 5523) and the Department of State *Standardized Regulations* (DSSR), responsibility for ordering an evacuation in overseas locations rests with the Department of State.

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.

(2) Why are employees evacuated during a pandemic?

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.

(3) How is an evacuation during a pandemic influenza different from other evacuations?

Evacuation procedures are normally followed when employees are evacuated from their worksites because of natural disasters (e.g., hurricanes, flooding, wildfires) or for military or other reasons that create imminent danger to their lives. An evacuation due to pandemic influenza is different from other evacuations because in this unique circumstance, employees may be ordered to work at home or at an alternative worksite not under the Government’s control that is mutually agreeable to the agency and the employee (e.g., a relative’s home). OPM notes that this unique evacuation authority does not interfere with an agency’s normal authority to reassign employees either temporarily or permanently to new worksites under existing laws and regulations or to direct employees to travel outside of their worksite on temporary duty assignments.

(4) If an employee receiving evacuation payments develops an illness and is not able to work, do the evacuation payments cease? Is the employee placed on sick leave? Do the evacuation payments resume when the employee is again able to resume working?

In the context of a pandemic emergency, evacuation payments are used to protect employees’ pay until standard time and attendance procedures can be followed. In other words, the employee’s evacuation pay would continue until he or she can accurately report the illness and request leave. After an order to evacuate is terminated, agencies must make adjustments to the employee’s pay records to reflect any changes needed to 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 laws and regulations. Any leave taken will be reconciled during the post-evacuation adjustments.

(5) Can an agency make evacuation payments to an employee who cannot work from home or at an alternative location due to the kind of work performed (e.g., jet mechanic, classified materials, clerical work) when the worksite is evacuated due to pandemic influenza?

Managers and supervisors have the responsibility to manage their workforce and anticipate what kind of work, if any, their employees could perform from home (or at an alternative location) if they cannot perform their regular jobs. Agencies should plan in advance for the possibility that employees may need to perform different duties during a pandemic influenza. Assignments under the evacuation pay authority may include any work considered necessary or required to be performed during the period of the evacuation, without regard to an employee's grade level or title, provided the employee has the necessary knowledge and skills to perform the assigned work. In some cases, excused absence may be substituted for the evacuation pay if an employee

is prevented from working and cannot be ordered to work from home or alternative work site because of work-related reasons. For example, if a jet mechanic is ordered to evacuate, and, despite the best efforts of all concerned, there is no other work the employee can accomplish, excused absence may be the last resort. If the need arises, OPM will work to develop a consistent Governmentwide policy on the use of excused absence in these unique circumstances.

F. Evacuation Pay

(1) What is evacuation pay?

Evacuation pay is a form of pay protection that allows employees to continue to receive their normal pay, allowances, and differentials on their regular pay days, as feasible, when employees are ordered to evacuate from their regular worksites to work from home (or an alternative worksite mutually agreeable to the agency and the employee) under an evacuation order during a pandemic health crisis. Evacuation pay is used only when the standard time and attendance procedures cannot be followed, e.g., the employee cannot report the use of annual or sick leave or the agency and payroll providers cannot process normal time and attendance reports. Upon return to work, the employee will be required to report any annual leave, sick leave or leave without pay that could not be documented because of the inability to communicate with the time and attendance and/or payroll offices.

G. Work Assignments during an Evacuation

(1) If employees are ordered to work outside their position description, are they eligible for additional pay?

No. 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. 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. 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 a lack of knowledge or skills may not be a basis for terminating evacuation payments or taking disciplinary action.

H. Work Schedules

(1) Can agencies modify an employee's hours of work to accommodate employee and mission needs to avoid unintended overtime costs?

Changes in an employee's work schedule are within the discretion of the employing agency, as long as the changes are consistent with law, regulations, and any applicable negotiated agreement. In addition, agencies may require employees to perform overtime work. There is no limit in law or regulations on the amount of overtime work that may be ordered each day or on weekends. For additional information, see <http://www.opm.gov/oca/pay/HTML/FACTOT.asp>.

I. Hazard Pay

(1) May an employee who is exposed to a pandemic virus through the performance of assigned duties (e.g., a poultry handler or health care provider) receive hazard pay?

A General Schedule employee may be eligible to receive additional pay if he or she performs a duty or type of work listed in OPM's hazard pay regulations. (See appendix A to subpart I of part 550 of title 5, Code of Federal Regulations.) A 25 percent hazard pay differential is authorized for employee exposure to "virulent biologicals," which is defined as "work with or in close proximity to . . . [m]aterials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection."

To be eligible for the hazard pay differential, the agency must determine that the employee is exposed to a qualifying hazard through the performance of his or her assigned duties and that the hazardous duty has not been taken into account in the classification of the employee's position. (See 5 CFR 550.904 for further information and exceptions.) OPM does not determine when hazard pay differentials must be paid; agencies have the responsibility and are in the best position to determine whether duties performed by employees meet the regulatory requirements for hazard pay. Thus, agency managers, in consultation with occupational safety and health experts, must determine whether an employee is entitled to hazard pay on a case-by-case basis.

A Federal Wage System (FWS) employee may also be eligible to receive additional pay if he or she performs a duty or type of work listed in OPM's environmental differential pay (EDP) regulations. (See appendix A to subpart E of part 532 of title 5, Code of Federal Regulations.) EDP may be authorized for FWS employees "[w]orking with or in close proximity to micro-organisms which involves potential personal injury such as death, or temporary, partial, or complete loss of faculties or ability to work due to acute, prolonged, or chronic disease." The EDP category for micro-organisms has only an 8 percent differential for direct contact with primary containers of pathogenic organisms required on the job and a 4 percent differential for incidental contact on the job. Under the EDP category, appropriate medical prophylactic procedures (vaccines) would practically eliminate the risk of serious illness. Each agency is responsible for evaluating local situations to determine if it should pay EDP to FWS employees.

(2) May an employee who has been exposed incidentally to the pandemic virus (i.e., in a manner not directly associated with the performance of assigned duties) receive a hazard pay differential for exposure to "virulent biologicals"?

No. OPM's regulations define exposure to "virulent biologicals" as "work with or in close proximity to . . . [m]aterials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection." (See appendix A to subpart I of part 550 of title 5, Code of Federal Regulations.) Agencies may pay a hazard pay differential to a General Schedule employee for exposure to "virulent biologicals" only when the risk of exposure is directly associated with the performance of assigned duties. An employee may not receive a hazard pay differential under the "virulent biologicals" category if exposure to a qualifying virus was not triggered by the performance of assigned duties. The hazard pay differential cannot be paid to an employee who may come in

contact with the virus or another similar virus through incidental exposure to the public or other employees who are ill rather than being exposed to the virus as a direct result of the performance of assigned duties (e.g., as in the case of a poultry handler or health care worker). Also, the virus must be determined to be likely to cause serious disease or fatality for which protective devices do not afford complete protection.

FWS employees may not be paid EDP for incidental exposure to the pandemic virus. EDP for FWS employees is additional pay for job-related exposure to hazards, physical hardships, or working conditions of an unusually severe nature which cannot be eliminated or significantly reduced by preventive measures. EDP is not intended to compensate employees for exposure to a safety risk unrelated to their assigned duties.

J. Benefits

(1) Will the FEHB carriers pay for routine flu testing?

Federal Employees Health Benefits (FEHB) Plan carriers will provide benefits for medically necessary services. If a patient presents himself/herself to the physician or emergency room with symptoms of the flu and the provider conducts an exam and lab test, the health plan will provide benefits.

(2) Will FEHB carriers pay for testing on demand by the patient and, if so, are the participating physicians aware that the carriers will defray those costs?

See the answer to the preceding question. FEHB carriers will provide benefits only for medically necessary services.

(3) Has any consideration been given to suspending normal co-pays and deductibles for testing, given the current circumstance?

No; usual co-payments and deductibles will apply.

(4) Is OPM encouraging carriers to cover the cost of out-of season flu vaccinations and/or the available treatment drugs?

The U.S. Preventive Services Task Force recommends all patients 50 years of age or older be offered influenza vaccine annually. Most FEHB carriers provide benefits for one routine immunization per flu season. If a patient has not had a flu shot already this season, the carrier would provide benefits for the inoculation. If a patient is diagnosed with flu, including the H1N1 virus, the health plan will provide benefits for prescription drugs and other medically necessary treatment.

(5) If an employee is without benefits and is forced to take sick leave, is there an obligation to provide benefits?

No. If the employee has no benefits (i.e., no insurance benefits), he or she does not become eligible for such benefits as a result of illness or because the individual's employer takes precautionary measures to protect the workforce.

(6) Might an employee be eligible for workers' compensation payments if he or she contracts the influenza virus from a coworker?

If an employee believes his or her illness resulted from a work-related incident, the employee can file a workers' compensation claim. Workers' compensation benefits are administered by the U.S. Department of Labor, and each case will be judged on its own merit. To apply for workers' compensation benefits, the employee must first contact his or her local servicing human resources office. Information on workers' compensation benefits for Federal employees can be found at dol.gov/esa/regs/compliance/owcp/fecacont.htm.