



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Friday, January 18, 2013  
CPM 2013-02

**MEMORANDUM FOR: Chief Human Capital Officers**

FROM: John Berry, Director

Subject: Workplace Flexibilities for 2013 Seasonal Influenza

On September 26, 2012, the U.S. Office of Personnel Management (OPM) and the U.S. Department of Health and Human Services issued a joint memorandum regarding the Immunization of Federal Workers with Seasonal Influenza Vaccine as an effort to reduce the spread of flu viruses in our workplaces and communities. See the memorandum located at <https://www.chcoc.gov/content/immunization-federal-workers-seasonal-influenza-vaccine-0>

As you are undoubtedly aware, influenza is causing disease in many locations throughout the country. For the most up-to-date information on the influenza season, please consult [www.flu.gov](http://www.flu.gov) or [www.cdc.gov/flu](http://www.cdc.gov/flu). Vaccination remains the best way to prevent influenza and is recommended for all persons aged 6 months and older. But given current widespread disease, it is also an appropriate time to remind agencies of considerations in the workplace that could reduce the chances of transmission. As part of our continued efforts to protect the Federal workforce and ensure the continuity of operations, we are providing guidance and Qs & As (attached) on the use of workplace flexibilities to promote social distancing and encourage sick employees to stay home. We stand by to assist agencies in their use of these flexibilities as the flu season progresses.

**Contact Information**

Agency headquarters-level human resources offices may contact OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov). Agency field offices should contact their appropriate headquarters-level agency human resources office. Inquiries to OPM from individual employees will be returned or forwarded to the appropriate agency human resources office.

cc: Chief Human Capital Officers  
Human Resources Directors

## **Attachment 1- Workplace Flexibilities Available for Seasonal Influenza Outbreaks**

The U.S. Office of Personnel Management (OPM) reminds agencies that a wide range of workplace flexibilities are available to assist employees and agencies.

Federal departments and agencies must achieve two equally important goals: (1) Protect the Federal workforce, and (2) Ensure the continuity of operations. As we plan for the future, we recognize seasonal 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 leave, alternative work schedules, and telework.

This attachment provides information regarding the various workplace flexibilities available for this purpose. Agencies are expected to implement policies consistent with laws, regulations, collective bargaining responsibilities and OPM guidance, but at the same time are encouraged to be flexible and creative when using these authorities where possible. As the influenza spreads, agencies should encourage good health habits and encourage sick employees to stay home. Where necessary, agencies should consider implementing social distancing, including the use of telework as described below. Agency actions and the use of human resources (HR) flexibilities should be tailored to the specific situations in the locality.

### **Leave Flexibilities**

The Federal Government offers numerous leave flexibilities to assist employees who are affected in emergency situations, including severe outbreaks of influenza. Under current law and regulations, employees may use sick leave, annual leave, advanced annual or sick leave, leave without pay, donated leave under the Voluntary Leave Transfer and Leave Bank Programs, and other paid time off such as compensatory time off and alternative work schedule (AWS) credit hours. Employees should use sick leave when they are unable to perform their duties due to their own illness or when they need to take care of sick family members (i.e., up to 13 days per leave year for routine family care or illness and up to 12 weeks for a serious health condition). 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. Annual leave may be used when a childcare center or school is closed and the child is not ill. 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 an influenza outbreak. OPM requests that agencies consult with us prior to granting excused absence (administrative leave) in order to facilitate a consistent Governmentwide approach. The following fact sheets provide additional information on the types of leave available--

Annual Leave (<http://www.opm.gov/oca/leave/HTML/ANNUAL.asp>)

Sick Leave (<http://www.opm.gov/oca/leave/HTML/sicklv.asp>)

Sick leave for Family Care (<http://www.opm.gov/oca/leave/HTML/sickfam.asp>)

Sick leave to Care for a Family Member with a Serious Health Condition  
(<http://www.opm.gov/oca/leave/HTML/12week.asp>)

Sick leave to Care for a Family Member with a Communicable Disease

(<http://www.opm.gov/oca/leave/HTML/perssklv.asp>)

(<http://www.opm.gov/oca/leave/HTML/sickfam.asp>)

Advanced Annual Leave (<http://www.opm.gov/oca/leave/HTML/advANNUAL.asp>)

Advanced Sick Leave (<http://www.opm.gov/oca/leave/HTML/advsk.asp>)  
Voluntary Leave Transfer (<http://www.opm.gov/oca/leave/HTML/VLTP.asp>)  
Voluntary Leave Bank (<http://www.opm.gov/oca/leave/HTML/VLBP.asp>)  
Family and Medical Leave (<http://www.opm.gov/oca/leave/HTML/fmlafac2.asp>)

### **Alternative Work Schedules**

An agency may implement an alternative work schedule (AWS) for employees instead of a traditional fixed work schedule to help an employee balance work and personal responsibilities. Under many types of alternative work schedules, an employee is able to complete his or her biweekly work requirement in less than 10 workdays. Under other alternative work schedules, with supervisor approval, 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. Agencies should discuss options with their employees to help maximize productivity at work, while assisting them in meeting their family and personal needs. For additional information on alternative work schedules, please see Handbook on Alternative Work Schedules at [www.opm.gov/oca/AWS/INDEX.asp](http://www.opm.gov/oca/AWS/INDEX.asp).

### **Telework**

The Federal Government uses telework as a means to allow Federal employees to complete their work at an approved alternative worksite. The Telework Enhancement Act of 2010 (the Act) 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. Over the past few years, telework has become a critical tool during emergency situations. Beginning with the passage of the Act, agencies have been migrating to increasing their usage of telework. In particular, the Act requires that all agencies incorporate telework into their continuity of operations (COOP) plans. (Note: OPM has incorporated telework as a standard human resources tool during emergency situations in the Washington, DC, Area Dismissal and Closure Procedures (Procedures). The Procedures advise agencies to make telework arrangements a part of all agency emergency planning to ensure the Federal Government is well positioned to carry out its essential functions for continuity of operations. Agencies may wish to consult the Procedures for further guidance on this matter.) OPM has strongly encouraged agencies to maintain a viable telework-ready workforce. This requires 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 only infrequently over time. Agencies also need to implement and maintain a robust IT system with the necessary infrastructure to accommodate a sudden spike in remote usage of agency systems as well as the accompanying technical support personnel to resolve remote connectivity issues that might occur during a severe influenza outbreak.

## Attachment 2- Questions and Answers for Dealing with Seasonal Influenza

### A. Telework

(1) Generally, how should agencies manage telework during a seasonal influenza outbreak?

Telework can be used as a flexibility to promote social distancing. The Telework Enhancement Act of 2010 (the Act) requires that all agencies incorporate telework into their continuity of operations plan. Agencies should have written telework agreements in place and communicate expectations for telework in emergency situations. Telework-ready employees should anticipate what they may need to telework effectively.

Employees need to be equipped to work seamlessly from their alternate locations (e.g., home). Employees, managers, workgroups, and customers should have a good communications plan in place. A solid technology infrastructure must be established to support a high level and volume of connectivity. Without these regular systems in place, little real work can get done during an emergency. Managers, employees, and organizations will have to remain flexible and adapt to the changing environment.

(2) My child's school is 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 sufficient 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 caring for a child 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 the influenza. An employee's request to telework from home while responsible for a child may be approved for the length of time the employee is free from childcare duties and 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) What happens if an employee does not have a sufficient amount of work to perform to cover the entire telework day during an influenza outbreak?

An employee must always have a sufficient amount of work to perform throughout the workday when he or she teleworks. An employee who does not have enough work must notify his or her supervisor for additional work or take annual leave or leave without pay.

## B. Leave

(1) May supervisors send an employee home when her or she is ill? What would be the employee's pay status in this situation?

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 the case of a severe influenza outbreak, 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 enforced leave.

(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?

The use of sick leave for exposure to a communicable disease would be limited to circumstances where exposure alone would jeopardize the health of others and would arise in cases of serious communicable disease. The flu can encompass many variations of influenza and does not automatically meet the criteria of a serious communicable disease for sick leave purposes. Determinations of a serious communicable disease are made by the Centers for Disease Control and Prevention (CDC). (Cholera, diphtheria, infectious tuberculosis, plague, smallpox, and yellow fever are among the diseases currently recognized by CDC as communicable diseases.) In other words, even a declaration of a State emergency would not meet the threshold of a serious communicable disease for sick leave purposes until the CDC has declared that exposure alone is enough to jeopardize the health of others. The use of sick leave for exposure to a communicable disease should be used only in very limited circumstances, and agencies should not grant sick leave for this purpose until they receive guidance from the appropriate officials. Employees should consult with their agency human resources office to determine how their agency policy applies to their situation. 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 influenza. Additionally, an employee could use sick leave for the child's exposure if the CDC declares this version of influenza to be a serious communicable disease. Seasonal influenza does not meet the threshold of a serious communicable disease until the CDC has declared that exposure alone is enough to jeopardize the health of others.

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 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 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 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 an outbreak of influenza?

Not necessarily. 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's 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 an influenza outbreak. 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 high-risk influenza 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 an outbreak of influenza, will employees be placed on excused absence (administrative leave)?

OPM does not anticipate the need for use of excused absence (administrative leave), which should always be regarded as a last resort. 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.

#### **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, for 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 for social distancing purposes under a voluntary telework agreement. 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 not place an employee on excused absence without first checking 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 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 an influenza outbreak 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 an agency mandate that anyone with confirmed influenza remain at home for a specified period? 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. 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. Supervisors should consult with appropriate human resources specialists before taking such a step, because enforced leave is an adverse action that imposes procedural requirements (i.e., advance notice, an opportunity to reply, and an agency decision) before actually enforcing the use of leave. Enforced leave up to 14 days may be grieved. 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 a known circulating virus?



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 339.301). 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 privacy should be protected to the greatest extent possible; therefore, his/her identity should not be disclosed. In the case of an influenza outbreak, 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 influenza or any other contagious disease in the workplace. While much media attention has been devoted to influenza outbreak, 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.