2019 Novel Coronavirus Disease (COVID-19)
Army Frequently Asked Questions (FAQs) – Version 2
Date: 7 July 2020 / Time: 1630 EDT

Due to the rapidly evolving nature of COVID-19, Department of the Army Headquarters provides this consolidated list of frequently asked questions that pertains to Department of the Army Civilians. This listing of questions will not supersede any guidance provided by OMB, OPM, or DoD, but serves to supplement where not otherwise addressed. This document will be updated as needed.

This guidance is applicable to the appropriated fund (APF) workforce only.

This is version 2 of the Army FAQs. New or revised FAQs are denoted with a red asterisk (*) prior to the question.

A. Weather and Safety Leave

1. When is it appropriate to grant Weather and Safety Leave when dealing with COVID-19?

A: Weather and Safety Leave is a leave category provided in current government-wide regulations at Title 5, Code of Federal Regulations (CFR), Part 630, Subpart P (Weather and Safety Leave). It may be authorized to a civilian employee under the following circumstances:

- The employee is asymptomatic of COVID-19 and subject to movement restrictions (i.e. quarantine or isolation) under the direction of public health authorities.
- The employee is asymptomatic and directed by a medical professional, public health authority, commander, or supervisor, to not report to the worksite. Note that a commander or supervisor may direct the employee to stay home because of possible exposure or because the employee shows symptoms that might be COVID-19.

- The employee is at higher risk to COVID-19 as identified by the CDC and not telework eligible. (Review the OMB memorandum, "Updated Guidance on Telework Flexibilities in Response to Coronavirus," dated March 12, 2020, for more information about this scenario.)
- Other circumstances when an employee is not able to safely travel to or perform work at an approved location.

2. Is an exception needed to approve Weather and Safety Leave?

A: No. Consistent with the guidance provided in response to COVID-19, and when the criteria outlined in Subpart P are met, Weather and Safety Leave should be granted. No exception is necessary to do so.

3. DoD Instruction (DODI) 1400.25, Volume 610 (DoD Civilian Personnel Management System: Hours of Duty), contains relevant agency specific policy pertaining to Weather and Safety Leave. In Enclosure 3, paragraph 2.a.(2), it states, "It is within the administrative authority of a commander or head of activity to close all or part of an activity and to grant Weather and Safety leave to non-emergency DoD employees during such closure." As far as this pertains to Army locations, when would this be appropriate?

A: In more typical circumstances where group dismissals on Weather and Safety Leave are related to weather, as described in Enclosure 3, paragraph 2.a.(4) of the referenced DoDI, such leave is used in specified geographical areas. In geographical areas where conditions affect more than one DoD activity, the commander or head of the activity employing the largest number of civilian employees will make the determination whether an emergency exists and assess the appropriateness of authorizing a group dismissal for non-emergency employees. Decisions by other commanders and heads of activities within the same geographical area that vary with the decision of the major geographical area commander or activity head must be coordinated with the major geographic area commander or activity head in order to ensure consistent treatment of similarly affected employees.

However, in light of the unique situation we are encountering involving COVID-19, Commanders or other heads of activities, may choose to make such a decision for all or portions of their organization.

Group dismissal announcements for Army activities located inside the Washington DC area are controlled by, and should follow OPM's Washington, DC, Area Dismissal and Closure Procedures.

4. How does Weather and Safety Leave apply to Civilians who are subject to travel or movement restrictions?

A: Employees subject to travel or movement restrictions may be approved Weather and Safety Leave, when other leave is not appropriate and the employee is not able to telework.

5. When does Weather and Safety Leave apply for symptomatic employees?

A: Weather and Safety Leave does not apply for symptomatic employees. Sick leave would normally be used to cover such a period of sickness, as provided in 5 CFR 630.401(a)(2).

However, consistent with question A.1., DoD recognizes weather and safety leave as potentially appropriate when a commander or supervisor directs an employee to stay home because of possible exposure or because the employee shows symptoms that might be COVID-19. However, in most cases identified where an employee is sick, the employee will use their accrued sick leave

6. Are there any differences in guidance issued by OPM/OMB and DoD on the use of Weather and Safety Leave?

A: With regard to Weather and Safety Leave, the situation is rapidly evolving as the nature of the emergency develops. As conditions change, updated guidance is issued by OPM/OMB to support the civilian workforce and mission needs. DoD's questions and answers published on 15 March 2020 are consistent with OPM/OMB's guidance.

7. Are the health protection condition (HPCON) levels (e.g., 0 through Delta) that are used to determine the appropriate use of Weather and Safety Leave the same as the 'risk-based measured responses' described in the DoD policy memo "Force Health Protection (Supplement 2)", dated 25 February 2020?

A: HPCON levels are not addressed in Weather and Safety Leave regulations.

8. * Will we need to provide data reports on the usage of Weather and Safety Leave?

A: Currently, no reports have been requested. However, Weather and Safety Leave must be recorded in timekeeping systems separate from other leave and it is possible reports will be required due to COVID-19.

5 CFR 630.1607 (Records and reporting) states in agency data systems (including timekeeping systems) and in data reports submitted to OPM, an agency must record Weather and Safety Leave under 5 United States Code, section 6329c and 5 CFR, Subpart P as a category of leave separate from other types of leave. As such, in DoD's time and attendance system it is recorded as 'administrative leave ('LN'), with the 'Purpose' code for Weather and Safety Leave ('PS').

Though this is provided for in the CFR, and use of these timekeeping codes is required, OPM is not enforcing the "reporting" requirement, at this time. However, supervisors should maintain accurate records of Weather and Safety Leave.

9. * Can supervisors grant non-essential employees Weather and Safety Leave if they feel uncomfortable with the current situation?

A: Generally, no. Non-essential employees, if telework eligible and ready, should telework. If not telework eligible and ready, these employees should normally be placed on Weather and Safety Leave if the conditions are in accordance with the regulation and guidance. If the conditions are not met, the employee may request to use appropriate leave.

10. * (FFCRA) Can Weather and Safety Leave be used/approved in lieu of emergency paid sick leave under the Families First Coronavirus Response Act (FFCRA), where otherwise appropriate?

A: Yes, Weather and Safety Leave can still be used/approved where otherwise appropriate, regardless of whether there is overlap with the reason(s) for which emergency paid sick leave may be used under FFCRA.

B. Approved Leave or Absences

1. Can Civilian's annual leave be cancelled in support of COVID-19 containment, to prevent them from traveling?

A: No, the agency does not have the authority to cancel an employee's leave simply because they desire to prevent the employee from traveling. However, under current OPM and DoD guidelines, employees are subject to movement restrictions (quarantine or isolation) only under the direction of a public health authority due to a significant risk of exposure to a quarantinable communicable disease, such as COVID-19. An employee's immediate supervisor and/or the chain of command have the authority to cancel leave when there is a mission-based reason for the employee to return to work. Employees who are directed to return to work but fail to do so could be charged with absence without leave (AWOL). AWOL can result in disciplinary action.

2. Can commands/supervisors restrict Civilians' movement while they're on approved personal leave?

A: Commands/supervisors do not normally have the authority to restrict the movement of their civilian employees when on approved personal leave. Though the Secretary of Defense issued a memorandum on 13 March 2020 that directed a stop movement of all travel for Army personnel, for civilian employees this only applies to official, government-funded travel (i.e., travel related to Permanent Change of Station (PCS) moves, temporary duty, and home leave for employees assigned overseas who meet the requirements of 5 USC 6304(b)).

There will be instances in which supervisors may restrict employee movement, such as travel involving employees designated in an on-call status where the employee is required to remain within a reasonable call-back radius, consistent with 5 CFR 551.431 (Time spent on standby duty or in an on-call status). Such restrictions are, however, mission-related.

Commands (supervisors) should encourage employees to follow travel advisories issued by the CDC or State Department, and inform employees that exposure to a quarantinable communicable disease such as COVID-19 may result in subsequent movement restrictions (quarantine or isolation) by public health authorities.

3. * Should commands follow the DCS, G-1's guidance addressing leave?

A: Yes. Questions concerning the interpretation of that guidance and its application to specific facts should be addressed to a commander's servicing CPAC and/or legal office.

4. Are supervisors allowed to cancel an employee's leave/approved absence if it is known they will be traveling to countries (or locations) with reported cases of COVID-19, or throughout CONUS to locations with reported cases?

A: Currently, supervisors cannot disapprove a civilian employee's personal leave usage on this basis. They should remind employees they may be subject to movement restrictions, if traveling to locations in which the CDC has issued a Travel Health Notice.

5. What is Army's guidance for permitting supervisors to cancel previously approved leave/absences based on levels of force protection condition or HPCON operations?

A: It depends upon the type of leave/absence; however, related to accrued leave such as annual leave, credit hours, compensatory time, and compensatory time off for travel, an employee has a right to request and be approved for accrued leave for any purpose (with the exception of sick leave), subject to his or her leave approving official's right to approve the timing of when the annual leave may be taken, consistent with mission requirements. Supervisors have a right to schedule it in a manner that ensures mission accomplishment. Force protection condition and HPCON operations have no impact, unless connected to mission accomplishment.

Sick leave cannot be disapproved when there is an accrued amount available to the employee and it is otherwise consistent with Title 5, Code of Federal Regulations (CFR), Part 630.

6. * (FFCRA) Is there any Army guidance on the Families First Coronavirus Response Act (FFCRA)?

A: Yes, Assistant Secretary of the Army (Manpower & Reserve Affairs) issued a memorandum and accompanying fact sheet, dated 20 April 2020. Additional comprehensive guidance has also been provided by the Department of Labor (DOL), OPM, and DoD related to its implementation. These references should be reviewed for information regarding the benefits provided by the FFCRA.

OPM's Summary at the link below is the most comprehensive of the resources.

Details can be located at the below websites:

Links:
https://army.deps.mil/Army/CMDS/HQDAG1/CP/Ext_COORD/COVID-19

https://abc.chra/army.mil

https://www.dcpas.osd.mil/OD/EmergencyPreparedness

https://www.opm.gov/policy-data-oversight/covid-19/opm-summary-of-statutory-and-regulatory-requirements-in-connection-with-the-emergency-paid-sick-leave-act-epsla.pdf

https://www.dol.gov/Agencies/WHD/Pandemic

7. * How should time and attendance be coded for an employee OCONUS initially on annual leave in a country whose airports were or are closed, or that the employee is high-risk for travel, and therefore, they cannot return home?

A: Personal travel/ annual leave does not impact the employee's eligibility for weather and safety leave in this circumstance.

In this case, though the employee may be a telework participant, they are eligible for weather and safety leave due to their inability to safely perform work at their approved telework site because they are unable to travel home from an overseas location, consistent with 5 CFR 630.1605, and other applicable requirements.

8. * How is paid leave for intermittent employees determined?

A: Intermittent employees are not eligible for Weather and Safety Leave, nor do they accrue annual or sick leave. However, intermittent employees are eligible for emergency paid sick leave underneath the FFCRA, as prescribed.

9. * We have an employee whose Disabled Veteran Leave (DVL) is set to expire. Can the 12-month period be waived or extended?

A: No; not at this time. DVL has an established 12-month period in which to use the credited DVL (up to 104 hours) for the purposes of undergoing medical treatment for a qualifying service-connected disability rating of 30 percent or more. Leave not used within the 12-month period is forfeited. There are no carryover or payment provisions. Although OPM understands that the U.S. Department of Veterans Affairs has canceled some non-essential appointments for treatment of veterans' service-connected disabilities, OPM has no authority to extend the statutory 12-month period in which to use DVL (see 5 U.S.C. 6329).

10. * Will there be an extension of the amount of time afforded to use leave that would otherwise be forfeited at the end of the leave year ("use or lose"), and/or possible blanket leave restoration when leave has been forfeited?

A: Agencies already have the authority to restore annual leave that was forfeited due to an exigency of the public business or sickness of the employee if the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year, and otherwise meets the criteria (to include that the employee was prevented from using his/her annual leave for that stated reason).

However, additional information is anticipated regarding annual leave "use or lose" and restoration. On 18 June 2020, OPM issued a memorandum, subject: Annual Leave and Other Paid Time Off Guidance, addressing their intent regarding annual leave "use or lose" and restoration. The memorandum synopsized the normal rules, and provided information regarding their intent to issue new regulations.

OPM indicated they plan to issue regulations in the near future that will streamline the leave restoration process for agencies that have employees with "use or lose" annual leave who are unable to use this leave because of work-related requirements related to the COVID-19. The regulations will deem the COVID-19 national emergency to be an exigency of the public

business for the purpose of restoring forfeited annual leave. The regulations will provide that employees who would forfeit annual leave in excess of the maximum annual leave allowable carryover because of their essential work during the national emergency will have their excess annual leave deemed to have been scheduled in advance and subject to leave restoration. Agency heads will be required to identify any employees covered under this annual leave restoration authority and inform them in writing of this designation. This means that agencies and their employees will not be faced with the administrative burden of scheduling, canceling, and restoring such leave for these employees at a time when all available attention and energy should be focused on the national emergency.

Additionally, on 4 May 2020, a bill (H.R. 6733) was introduced in the House that would, if passed, expand the parameters surrounding restoration of annual leave for those responding to the COVID-19 pandemic, though it lacks specificity as to the applicability.

Until such time that a law is passed or OPM modifies its regulations, and under the framework of the applicable government-wide regulations, it is too early to make a determination regarding restoration of "use or lose" annual leave for Civilians.

Notwithstanding the above any changes that may occur, in 2020 the deadline to schedule annual leave is 21 Nov 2020. Civilian employees should schedule and use their annual leave to avoid the forfeiture of leave that surpasses the limits for carryover. Absent mission reasons, supervisors should actively encourage their employees to schedule/use leave; this applies for employees who are teleworking and those using Weather and Safety Leave, as well. An employee's inability to travel for leisure while on the annual leave is not a factor in the current regulations. Most Civilian employees are not prevented from using annual leave during the current period as a result of COVID-19.

Currently the authority to determine that an exigency of the public business exists is delegated to the Administrative Assistant to the Secretary of the Army and Commanders/ Heads of Army Commands, Army Service Component Commands, and Direct Reporting Units, but can be further delegated as deemed appropriate.

If there is additional information made available regarding forfeiture/ restoration, or additional guidance is warranted from Department of the Army Headquarters, we will ensure it is provided.

11. * Can the agency grant Civilian employees the ability to carryover "use or lose" leave beyond the amount permitted under normal conditions, similar to what the military received in the memorandum dated 16 April 2020, subject: Special Leave Accrual?

A: No, the amount of annual leave that may be carried over from one leave year to the next is outlined in OPM's regulations at 5 CFR 630.302. The agency cannot unilaterally allow carryover annual leave beyond those limits. See response to question B.10.

The 16 April 2020 memorandum indicated the special leave accrual was being provided as a result of the Service members' significantly limited ability to take leave during the national emergency. For most Civilian employees, their ability to take leave is not limited, but forfeited leave may still be requested for restoration due to exigent circumstances. The aforementioned memorandum recognized this for Civilian employees, where it stated, "Office of Personnel

Management (OPM) civilian workforce policies already make allowances for leave accrual under exigent circumstances pursuant to 5 U.S.C. 6304(d)."

Until such time that a law is passed or OPM modifies its regulations, and under the framework of the applicable government-wide regulations, the current rules apply regarding annual leave "use or lose."

12. * (FFCRA) If an employee is eligible for multiple types of leave, does the employee have the option to select the most advantageous?

A: Yes. If more than one option is appropriate, employees may choose which to utilize.

13. * (FFCRA) Were certain occupations exempt from FFCRA, like child care, etc.? Whose decision is it?

A: Yes, DoD proposed to OMB three categories of workers for exclusion from the FFCRA (Student interns in the Department of Defense; Intermittent Employees; and Temporary Employees at the Defense Commissary Agency). The law granted all agencies the authority to exclude health care providers or emergency providers. In addition to these potential exclusions, pursuant to the CARES Act, P.L. 116-136, March 27, 2020, the OMB Director may, for good cause, exclude certain categories of Federal employees from taking emergency sick leave. OMB has not rendered final decisions on recommended occupations for exclusion.

14. * (FFCRA) How is "son or daughter" defined under the FFCRA?

A: "Son or daughter" is defined differently in the context of FFCRA than it is under 5 CFR Part 630, and it relates to the other leave types that apply to the Civilian workforce.

OPM guidance in paragraph C.1.(5) has a note detailing the definition of "son or daughter" under FFCRA, and it's the definition that would customarily apply for those in the private sector. Specifically, the OPM guidance states the term "son or daughter'' has the meaning given that term in section 101(12) of FMLA (29 U.S.C. 2611(12))—i.e., a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability. The terms "child care provider," "place of care," and "school" are defined in 29 CFR 826.10(a).

15. * (FFCRA) Department of Labor (DOL) guidance states employees are entitled to use emergency leave if unable to work, including unable to telework – is that based on the employee's opinion?

A: It depends on the qualifying reason for which the EPSLA is requested. As long as the employee meets a qualifying factor's eligibility and provides the required documentation/ information, the leave should be approved. As such, each circumstance should be analyzed individually.

For example, for the first qualifying factor that covers those employees who are subject to a Federal, State, or local quarantine or isolation order related to COVID-19, the definition of

"subject to a quarantine or isolation order" as defined in 29 CFR 826.10 applies. 29 CFR 826.10 states:

> "For the purposes of the EPSLA, a quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (*e.g.,* of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them."

This specific qualifying reason is only for those employees "unable to work" and gives specific authorities that have the ability to order this, which do not include the employee's conclusions concerning his situation. A telework-ready employee in this scenario would normally be able to continue work, so EPSLA would be inappropriate.

However, for the fourth qualifying reason that applies to those circumstances involving an employee who is caring for a son or daughter due to their school/ provider's closure, these employees, though telework ready, may be able to request and utilize the EPSLA where, in accordance with the criteria and documentation requirements, the employee determines she/he is unable to work, including telework.

16. * (FFCRA) It appears that employees on LWOP cannot request emergency sick leave; is that correct?

A: Generally, employees must have scheduled hours of work to use the emergency sick leave. See OPM guidance dated 22 Apr 20, Section E.2., which lists specific reasons for LWOP that would preclude usage. Section E.2.f. states emergency sick leave usage is permitted if the sole reason for the LWOP is because of a qualifying circumstance in Section C of the guidance.

17. * In OPM's guidance, dated 22 Apr 2020, regarding the FFCRA, Section C.2.b. regarding isolation, it addresses the applicability of stay at home orders by State or local government, and indicates that it does not apply to Federal employees. Is this accurate, and what should employees do if there is a stay at home order issued by their State or local government?

A: OPM guidance provides that, in general, State or local government stay-at-home orders do not apply to Federal employees **when they are traveling for official purposes**. OPM also issued a statement on 14 Apr 2020 (link below) indicating that OPM, in consultation with the Department of Justice, determined that none of the orders issued up to that date restricted the ability of Federal employees from any travel necessary to perform official functions deemed essential by their employers.

Link: https://www.opm.gov/policy-data-oversight/covid-19/opm-statement-re-local-shelter-in-place-orders/

Regardless of whether a stay at home order is issued by a State or local government, agencies should be maximizing telework flexibilities for eligible employees. Organizations should review mission needs, and where needed, employees can normally be directed to report to their normal worksite despite State or local government orders. If an employee fails to report to the worksite as directed, disciplinary and/or adverse action could result.

18. * (FFCRA) Can an employee telework successfully for weeks, invoke their entitlement to 2 weeks of emergency sick leave under FFCRA, then return to telework at the end of 2 weeks without issue?

A: OPM guidance details the requirements and documentation, and supervisors should review it closely. Supervisors should provide the employee the advantage of the FFCRA's use where consistent with DOL and OPM's guidance, given the intent of the law was to extend flexibilities for eligible employees under qualifying circumstances.

19. * (FFCRA) Does the agency receive any additional funding from the recent stimulus bill? The new emergency paid sick leave was established under the bill and commands are asking if additional funding is available.

A: Department of the Army did not receive any additional funds for emergency sick leave. Commands need to treat this as they would any other leave, taking into account there are differences in the amounts/rates of pay provided within the provisions of the FFCRA.

C. Telework

1. What is the difference between telework and remote work?

A: A telework employee's official duty station is the location of the regular worksite for the employee's position (i.e., the place where the employee would normally work absent a telework agreement), as long as the employee is scheduled to report physically at least twice each biweekly pay period on a regular and recurring basis to the regular worksite.

A remote employee resides and works at a location typically beyond the local commuting area of the employing organization's worksite and is not scheduled to report to the regular duty station at least twice each bi-weekly pay period. A remote work employee's duty location is coded in DCPDS as the location that they remotely work from.

Reference: Department of Defense Instruction, 4 April 2012, subject: Telework Policy

2. Given DoD's temporary exception to policy of DoDI 1035.01, Telework, that permits Civilians to telework during an emergency with a child in the house, will Army issue its own telework policy?

A: Army follows DoD's policy so the exception was effective on 8 March 2020, the date DoD issued the exception. DoD clarified that in emergency circumstances, civilians may be permitted to telework with a child or other persons requiring care or supervision at their home. However, employees must still coordinate with their supervisor and account for work and non-work hours by taking appropriate leave (paid or unpaid) to account for time spent away from

normal work-related duties (e.g., to care for a child or dependent). Employees should be coded in DCPDS as telework eligible and have telework training and a current telework agreement. The telework agreement for DoD organizations and agencies is DD Form 2946.

Online Telework training can be found at https://www.telework.gov

References:
- Memorandum, DoD/OUSD, 8 March 2020, subject: Civilian Personnel Guidance for DoD Components in Responding to Coronavirus Disease 2019.
- Department of Defense Instruction, 4 April 2012, subject: Telework Policy.

3. On 8 March 2020, the DoD issued guidance to provide limited exception to the DoD Telework Policy to allow Civilian employees to telework during an emergency (e.g. continuity of operations event, office closure due to adverse or inclement weather, or pandemic health crisis) with a child or other persons requiring care or supervision present at home through 31 December 2020.

a) Will Army issue a blanket waiver to this policy? If so, how long will the waiver apply (e.g., indefinitely or through 31 December 2020)?

A: DoD's waiver applies through 31 December 2020 and an Army waiver is not required. However, the Assistant Secretary of the Army (Manpower and Reserve Affairs) reiterated DoD's temporary waiver on 16 March 2020 in a memorandum that addressed telework flexibilities.

b) Can you clarify DoD's intent with this limited exception?

A: All organizations are encouraged to maximize the use of telework now for as many telework-eligible employees as possible. The situation surrounding COVID-19 is evolving. Commands are encouraged to identify and code positions that are appropriate for telework as telework eligible. Employees who agree to telework must take online telework training and complete telework agreements. The telework agreement for DoD components and agencies is the DD Form 2946.

4. * What are a supervisor's options if an employee refuses to telework?

A: Telework-ready employees (with telework agreements in place) are expected to telework for the duration of an emergency pursuant to a pandemic, and/or when the regular worksite is closed or closed to the public due to natural or manmade emergency situations (e.g. snowstorm, hurricane, act of terrorism, etc.); or when Government offices are open with the option for unscheduled telework when weather conditions or health conditions make commuting hazardous, or circumstances compromise employee safety. Telework-ready employees unable to work due to personal situations (e.g. illness or dependent care responsibilities), must take appropriate leave. Telework/work schedules and hours of duty may be modified for telework ready employees as necessary, but are subject to local management procedures and approval and/or may also be subject to collective bargaining agreement requirements. If a telework ready employee refuses to telework, then a supervisor can cancel the telework agreement. This could prevent the employee from teleworking post-pandemic/COVID-19. However, supervisors should consult with their servicing Civilian Personnel Advisory Center (CPAC) and/or legal

office, if they encounter this situation. Supervisors should consider this past refusal to telework if/when the employee requests telework in the future and can use their discretion when determining whether to approve post-pandemic related telework.

D. Work Schedules

1. Could a command incur night differential or other premium pay expenses when adjusting schedules under an AWS for COVID-19 related purposes? For example, a command changes schedules for its employees to 12 hours on, 12 hours off, to minimize the number of people coming onto post or to distribute the network load for teleworkers.

A: It depends upon the employee's schedule, whether they're in the Federal Wage System or General Schedule, how many hours the employee is working in the pay period, and whether the time worked in those eligible hours were directed. Normal requirements apply.

Night shift differential, which applies to employees in the Federal Wage System, is paid for regularly scheduled work performed at night. This generally means work scheduled before the beginning of the administrative workweek.

Night shift differential should not be paid solely because a prevailing rate employee elects to work credit hours, or elects a time of arrival or departure at a time of day when night differential is otherwise authorized, except that prevailing rate employees are entitled to night differential for regularly scheduled non-overtime work when a majority of the hours of a flexible work schedule (FWS) schedule for a daily tour of duty occur during the night. (Reference 5 U.S.C. §§ 5343(f) and 6123(c)(2).)

Night pay is paid for employees in the General Schedule and other employees who are covered by 5 U.S.C. § 5545(a), whose regularly scheduled work is performed at night. This generally means work scheduled before the beginning of the administrative workweek. If an employee's tour of duty includes 8 or more hours available for work during daytime hours (i.e., between 6 a.m. and 6 p.m.), he or she is not entitled to night pay even though he or she voluntarily elects to work during hours for which night pay is normally required (i.e., between 6 p.m. and 6 a.m.). Agencies must pay night pay for those hours that must be worked between 6 p.m. and 6 a.m. to complete an 8-hour daily tour of duty. Further, an employee is entitled to night pay for any non-overtime work performed between 6 p.m. and 6 a.m. during designated core hours.

Other premium pay entitlements, such as overtime and compensatory time, when used with respect to FWS programs, refers to all hours in excess of 8 hours in a day or 40 hours in a week that are officially ordered in advance, but does not include credit hours. With respect to compressed work schedules (CWS) programs, overtime hours refers to any hours in excess of those specified hours for full-time employees that constitute the compressed work schedule. For part-time employees, overtime hours are hours in excess of the compressed work schedule for a day (but must be more than 8 hours) or, for a week (but must be more than 40 hours). "Compensatory time off" is time off on an hour-for-hour basis in lieu of overtime pay.

Night Shift Differential for FWS: 5 CFR 532.505
Night Pay for GS: 5 CFR 550.121 & 122
Overtime for GS, exempt employees: 5 CFR 550.113
Overtime for GS, nonexempt employees covered by FLSA: 5 CFR 551 Subpart E

Overtime for FWS employees: 5 CFR 532.503

2. As members of management, what are our options and references for establishing AWS where they have not previously existed, or may warrant expansion with respect to flexibility applied?

A: OPM, DoD, and Army currently have guidance published that pertains to AWS. Links to relevant information are included below. Within this guidance is additional information that OPM published on 11 June 2020, titled "The Use of Flexible Work Schedules in Response to Coronavirus Disease 2019."

Army Regulation (AR) 690-990-2, Hours of Duty, Pay and Leave, Annotated, is the current regulation covering AWS effective now. However, this will soon be superseded in part by the publishing of AR 690-610, Hours of Duty, Alternative Work Schedules, and Holidays. This regulation is in the final stages of publication at Army Publishing Directorate. In the interest of ensuring all have the most up-to-date information in this regard, and in light of the current circumstances, the contents of the section in AR 690-610 pertaining to AWS are included as Appendix A as guidance.

OPM:
(Issued 11 June 2020) https://www.opm.gov/policy-data-oversight/covid-19/opm-fact-sheet-the-use-of-flexible-work-schedules-in-response-to-coronavirus-disease-2019-covid-19/#flexible-work-schedule

https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/

DoD Instruction 1400.25, Volume 610:
https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/140025/1400.25-V610.pdf?ver=2019-11-25-093150-147

AR 690-990-2:
https://armypubs.army.mil/ProductMaps/PubForm/Details.aspx?PUB_ID=56340

3. * Can an employee be forced to work a different shift to support mission accomplishment during this national emergency? For example, we have a 24-hour Operations Center that runs under normal circumstances. However, during emergencies like the current epidemic, we standup an enhanced operations center, which includes personnel from several additional divisions. Over the last week, 2 employees did not want to do a rotation and basically told their supervisors that they will not comply with the order to work a shift. These employees do not think they need to comply since they are not coded as emergency essential. The employees are not in a bargaining unit.

A: Yes, employees can be compelled to work a different shift to support mission accomplishment. The manner in which the shift/ work schedule is changed will depend upon whether an employee is in a bargaining unit and any negotiated provisions contained in their agreement(s); however, absent negotiated provisions that address these circumstances, management has the ability to make these changes consistent with the references cited below. In the circumstance posed in the question, the employees are not in a bargaining unit (i.e., not

represented by a labor union), so no labor obligations apply. In accordance with AR 690-990-2, Section S1-4i, as a minimum, tours of duty must normally be scheduled with known work requirements and cover a period of at least 1 week.

If/when an employee refuses to comply with a schedule change, management should consult with their servicing HR Specialist (Management-Employee Relations) in their CPAC, to determine action that may be appropriate to address the employee's failure to follow instructions. Disciplinary/adverse action may be appropriate.

Notably, though the employee raised concern about not being coded "emergency essential," it appears as though this does not apply in this context, absent additional information.

The employee was referencing "emergency essential" when they likely meant "mission essential." Determinations regarding a position being deemed "mission essential" are not required in order to make a determination to change an employee's work schedule. Mission essential is a term used to designate those employees who must report for work in emergencies or other situations where their presence is needed to ensure the organization can complete mission essential functions. Employees should be notified that they are designated as "mission essential" at least annually. The notice should include any specific requirements expected of the employee to include reporting for, or remaining at work in emergency situations and explain that dismissal or closure announcements do not apply to them, unless they are instructed otherwise. However, the absence of an annual notice to the employee does not reduce or eliminate the supervisor's authority to direct changes to employee status or schedule in emergency situations. The unique circumstances of this emergency involving COVID-19 provide reasonable cause for an agency to designate additional employees as mission essential, even if they hadn't previously been identified as such, and direct them to report for and/ or remain at work (i.e., reporting physically to their on-site work environment).

References:

- 5 USC, Chapter 61 (Hours of Work)
- 5 CFR, Part 610 (Hours of Duty)
- DoDI 1400.25, Volume 610 (Hours of Duty)
- Army Regulation 690-990-02 (Hours of Duty, Pay and Leave, Annotated); recommend review of pages 47-49 of the PDF.

For situational awareness, Army Regulation 690-990-02 will soon be superseded by Army Regulation 690-610 (Hours of Duty, Alternative Work Schedules, and Holidays). Once implemented, the revised regulation should be referenced in lieu of AR 690-990-02.

4. * Should management continue to ensure intermittent employees work less than the usual number of hours (130 hours), even when performing duties outside of their normal position? Intermittent employees can gain benefits if their duty hours exceed 130 hours per calendar month.

A: 5 CFR 890.102(j)(2) states that an employee working on a temporary appointment; an employee working on a seasonal schedule of less than 6 months in a year; or an employee working on an intermittent schedule for whom the employing office expects the total hours in pay status (including overtime hours), plus qualifying leave without pay hours, to be less than 130 hours per calendar month is generally ineligible to enroll in a health benefits plan under Part

890 (Federal Employee Health Benefits Program). If the expectation of hours of employment changes to 130 hours or more per month for an employee, that employee is eligible to enroll in a health benefits plan as described in paragraph (j)(1)(i) of Part 890. Supervisors should ensure they closely monitor their employees' hours to ensure they do not work greater than 130 hours per calendar month.

E. Travel

1. What is the policy or guidance for stop movements on PCS for Civilians?

A: From the most recent Secretary of Defense Memorandum, "Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions," dated 22 May 2020, all civilian employees and dependents whose travel is Government-funded will stop movement, both internationally and domestically, while Secretary of Defense Memorandum above is in effect, unless the circumstances are exempted. In regarding to delegation of authority to approve travel of Army personnel, please see Secretary of Army memorandum, "Delegation of Authority to Approve Travel of Army Personnel and Conditions for Return to Unrestricted Travel," dated 9 June 2020.

2. Are there any exceptions to these stop movements? If so, how do we obtain approval?

A: A waiver to the travel restrictions may be requested if the travel is: (1) determined to be mission-essential; (2) necessary for humanitarian reason; or (3) warranted due to extreme hardship. These waivers are to be executed on a case-by-case basis, must be determined to be in the best interest of the U.S. Government and shall be coordinated between the gaining and losing organizations.

For personnel currently assigned under the jurisdiction of the Secretary of the Army (SA), the waiver approval authority is the first General Officer or member of the Senior Executive Service in an individual's chain of command or chain of supervision.

For personnel not currently under the jurisdiction of the SA, the waiver approval authority is the combatant commander (or designee) if the individual is currently assigned or allocated to a combatant command (CCMD); the chairman of the Joint Chiefs of Staff (or Designee) if the individual is currently assigned to the Joint Staff; or the Chief of the National Guard Bureau (NGB) (or designee) for all personnel assigned, attached, or allocated to the NGB and, for travel using federal funds, all travel by Title 32 and Title 5 personnel assigned throughout the National Guard; or the Chief Management Officer (or designee) for personnel currently assigned under the Office of the Secretary of Defense, Defense Agencies, Defense Field Activities and any other DoD Entities not listed.

Approved circumstances exempt from travel restrictions are listed in Secretary of the Army Memorandum, "Delegation of Authority to Approve Travel of Army Personnel and Conditions for Return to Unrestricted Travel," dated 9 June 2020

3. How do we handle Civilians who are currently in transit for new assignments through PCS? Related to those impacted in this manner, will time be extended in the current location for additional periods?

A: Travel by authorized travelers who departed their permanent duty station and are "awaiting transportation," and have already initiated travel (including intermediate stops), are authorized to continue travel to their final destination on approved orders.

4. What are the funding implications for PCS delays?

A: Funds need to be adjusted when crossing FY time lines in accordance with fiscal law guidelines.

5. Are there ongoing discussions with the other DoD Components to determine the PCS impact on employees transferring between Components?

A: This travel restriction is DoD wide. Same policy will be applied regardless DoD Components.

F. Temporary Duty (TDY)

1. What is the Army guidance for Civilian employees returning to work from TDY in an area affected by reported cases of COVID-19?

A: Please see FRAGO 7 to HQDA EXORD 144-20 Army Wide Preparedness and Response to Coronavirus (COVID-19) Outbreak.

2. What leave status is used for a Civilian employee when a host nation is not allowing travelers into the country, and an employee was on TDY or approved leave/absence when this occurred and therefore cannot report back to work?

A: It depends upon the circumstances, and whether or not the employee is able to telework from his or her current location. If an employee is able to telework with proper approval from the supervisor, he or she should do so. Where telework is not feasible, employees should be placed into a Weather and Safety Leave status until told otherwise, given they are unable to safely travel to or perform work at an approved location.

G. Employee Relations

1. What is the Army policy on quarantining Civilians in overseas locations affected by reported cases of COVID-19? Who makes the decision to quarantine a civilian?

A: Only public health officials have the authority to determine who may quarantine an individual. For locations overseas, management should consult with their respective legal office to determine an appropriate authority in their location(s).

2. Can supervisors limit Civilians from returning to work when they traveled in or to areas significantly impacted by COVID-19?

A: DoD has indicated in their Questions & Answers dated 15 March 2020 that supervisors should identify whether the employee is telework-ready and offer the employee the option to telework. If the employee is not telework-ready because, for example, he or she cannot perform

their duties at an alternate location, then the supervisor should consider utilizing Weather and Safety Leave (if consistent with the guidance provided respective to that leave category), administrative leave, or other leave flexibilities (paid or unpaid) available.

Additionally, OPM emphasized in their questions and answers provided on 7 March 2020 that excused absence (administrative leave) may be used if other options are exhausted and if it is necessary to prevent an employee from being at the worksite and putting other employees at risk before a supervisor can appropriately place an employee on enforced leave or indefinite suspension.

3. * My Command has begun using a "screening questionnaire" and conducting temperature checks of all civilian employees entering the activity/base/workplace. What happens if I refuse to submit to screening or have my temperature taken?

A: Generally, measuring an employee's body temperature is a medical examination, which would normally be restricted under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. However, if pandemic influenza becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees' body temperature. Under the current circumstances this action is allowed. On 11 March 2020, the World Health Organization (WHO) declared the coronavirus disease (COVID-19) a pandemic. A "pandemic" is a global "epidemic." While the ADA and the Rehabilitation Act place strict limits on disability-related inquiries and medical exams, these limits must be implemented in a manner which is both consistent with the law and also with current Centers for Disease Control and Prevention (CDC) and state/local guidance for keeping workplaces safe during the pandemic.

If an employee refuses to submit to a temperature check and/or screening questionnaire, the employee may be denied entry. If an employee is denied entry, they may be required to telework or be asked to utilize other leave options available, such as accrued sick leave, if otherwise qualified, or annual leave. Refusal to submit to a screening questionnaire or temperature checks may result in disciplinary action, up to and including your removal from the federal service.

The EEOC website contains guidance, at section B, in their Q&As that discusses employer actions (e.g., like questions they may ask, taking temperatures, etc.) when the WHO and CDC report an influenza pandemic.

Link: https://www.eeoc.gov/facts/pandemic_flu.html#q7

4. * Can senior mission commanders direct their security guard, or other appropriate personnel, to question base entrants regarding any potential COVID-19 symptoms, any recent travel, and take their temperatures?

A: Yes. There are multiple authorities that empower military commanders to protect both persons and government property on a military installation. 10 U.S.C. § 2672(a) directs the Secretary of Defense to "protect the buildings, grounds, and property that are under the jurisdiction, custody, or control of the DoD and the persons on that property." DoDI 5200.08 declares as DoD policy that "DoD installations, property, and personnel shall be protected and that applicable laws and regulations shall be enforced."

To effectuate this policy, DoDI 5200.08 authorizes a commander "to take reasonably necessary and lawful measures to maintain law and order and to protect installation personnel and property." These measures may include "removal from, or the denial of access to, an installation or site of individuals who threaten the orderly administration of the installation or site." To enforce such removal actions, commanders may prohibit individuals from reentering an installation after they have been removed and ordered not to reenter pursuant to 18 U.S.C. § 1382.

FRAGO 14 to HQDA EXORD 144-20 directed the Army to assume a minimum health protection condition (HPCON) C at all locations. Commanders have wide latitude to dictate appropriate health measures in response to this heightened HPCON. Such measures will be synchronized with the installation's force protection condition level, and may include restricting access to the entire installation or specific activities within the post (unless directed otherwise by superior authority). Commanders may implement pre-conditions for gaining access to the installations, to include the use of an electronic thermometer to take a visitor's temperature, and the posing of various questions (such as the visitor's recent travels, to include to COVID-19 "hotspots," whether the visitor feels sick, or has experienced any of the symptoms of the virus, and/or whether they had been in close contact with someone who tested positive for COVID-19).

Additional information regarding the taking of employee's temperature is also covered on the EEOC's website, in Section III.B. which addresses this and other questions in detail. Specifically, #7, indicates that due to the acknowledged community spread of COVID-19, employers may measure employee's body temperatures. Questions 8 addresses asking questions of employees, despite being asymptomatic.

Link: Link: https://www.eeoc.gov/facts/pandemic_flu.html#q7

5. * If an employee is turned away at the installation due to recent travel or their temperature, what should the supervisor and the employee do?

A: Employees should call their supervisors if this occurs, in order to determine next steps.

Once a supervisor is contacted, the next step taken will depend upon the circumstances prompting the employee being turned away. If, presuming the security guards' questions are appropriate, and an employee is properly denied installation access, this decision does not impact decisions the employee's supervisor may choose to make regarding leave and telework. This decision, in and of itself, does not change other approvals or directions provided to an employee by their management chain. If an employee was denied access due to an installation policy, but the employee was required to report on-site, the employee could technically be considered AWOL, which is an unapproved leave status. However, in most cases, and depending upon the circumstances, the supervisor will work with the employee to determine an approved status (e.g., leave or telework). The supervisor is encouraged to seek assistance from a Management-Employee Relations Specialist at the servicing CPAC.

If the employee is not mission essential and there is no requirement for their physical presence in the on-site work environment, normally the remedy would be to allow for the employee to perform telework, if telework eligible/ ready, and not otherwise being directed to do so resulting from an evacuation order or COOP activation that contains that provision. However, if the

employee were not telework eligible/ ready, or otherwise properly directed, leave could be considered.

With respect to leave, weather and safety leave may be authorized. In this circumstance, it's consistent with the two reasons below contained in DCPAS' 20 Apr 2020 FAQs and these Army FAQs, to include:

a. The employee is asymptomatic and directed by a medical professional, public health authority, commander, or supervisor, to not report to the worksite. Note that a commander or supervisor may direct the employee to stay home because of possible exposure or because the employee shows symptoms that might be COVID-19.

b. Other circumstances when an employee is not able to safely travel to or perform work at an approved location.

The employee may also choose to use their own accrued leave, where otherwise appropriate (e.g., sick leave if they are symptomatic).

If the employee's denial from the installation was the result of employee negligence, or failure to follow instructions, the supervisor could choose to pursue disciplinary/ adverse action. This should normally be discussed with their servicing CPAC to determine what an appropriate action may be.

Another approach is for the first-level supervisor to elevate the issue through their chain of command to the installation commander, if integral to their mission to have the employee report on-site. Discussion may remedy the situation and provide for a solution, such as coming on-site but with appropriate social distancing.

6. * I am a supervisor, and I have an employee who is currently teleworking, but would not normally do so as often as they are currently, had it not been for COVID-19 impacts. I have concerns regarding my employee's performance, or lack thereof, as a result of their change in environment and oversight. What should I do?

A: Supervisors who encounter this scenario should connect with their servicing CPAC's Management-Employee Relations Specialist to discuss the circumstances and the best way to approach the situation.

If an employee does not appear to be working, or their work performance is declining, supervisors should discuss their concerns with the employee(s). It may be appropriate to approach this issue from a performance perspective (i.e., performance counselings, performance improvement plan), and/or from a disciplinary/ adverse action perspective. The CPAC will guide you in their recommendation.

Despite employees being in a telework status, the work expectations should be the same or similar, with the exception of any modifications needed due to potential inaccessibility to the worksite, or similar impacts. Supervisors are responsible for holding their employees accountable, regardless of their work location.

7. * Employees diagnosed with COVID-19 may be required to receive and provide evidence of clearance from a medical authority before returning to work. However, what happens if an employee refuses?

A: If an employee refuses to obtain evidence of clearance from a medical authority before returning to work, management may pursue disciplinary/ adverse action as a result of the employee's failure or refusal to follow the instruction, insubordination, AWOL, etc.

Such inquiries are permitted under the Americans with Disability Act (ADA) either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be unable to provide the documentation during and immediately after a pandemic outbreak. As such, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

H. Defense Performance Management and Appraisal Program

1. How should we handle the end of the DPMAP rating cycle, considering the impacts of COVID-19?

A: If as a result of the current COVID-19 concerns, Rating Officials are unable to conduct their final performance appraisal discussions in a face-to-face manner, Rating Officials may perform the discussions telephonically and should have performed them within the customary timeframes for doing so. In the event the employee does not have access to the electronic MyPerformance appraisal tool, it is recommended the employee email their written self-assessment to their supervisor, if they have the ability to do so properly. Current guidance regarding COVID-19 should be followed in the event the employee mails or hand-delivers their written self-assessment to their supervisor.

If, as a result of the current COVID-19 concerns, the initial performance plan discussions for the 2021 performance cycle are unable to take place in a face-to-face manner, they may also be conducted telephonically. Within the memorandums cited at question H.2., all employees must have an approved performance plan in place not later than 90 days following the start of the next appraisal period. In the event the employee does not have access to the electronic MyPerformance appraisal tool, it is recommended the employee email their input into their performance elements and standards to their rating official, if they have the ability to do so properly. Current guidance regarding COVID-19 should be followed in the event the employee mails or hand-delivers their input into their performance elements and standards.

In accordance with DoD Instruction 1400.25, Volume 431, DoD Civilian Personnel Management System: Performance Management and Appraisal Program, at paragraph 3.2.d., "[e]mployees who perform under an approved performance plan for a minimum of 90 calendar days will be rated based on the period of demonstrated performance. Further, at 3.2.g.(2), it states, "[w]hen supervisors or employees do not have access to the electronic My Performance appraisal tool, they must use the paper copy of DD Form 2906 to document the performance plan progress review(s), and rating of record."

Coordinate paper copy DD Form 2906s with your respective servicing CPAC for proper recording and upload of the DD Form 2906 to the electronic Official Personnel Folder (eOPF). DD Form 2906s completed outside of the MyPerformance appraisal tool are not maintained in that system.

2. * Has any additional guidance been provided regarding the DPMAP rating cycles and performance plans?

A: Yes, the Under Secretary of Defense, Defense Civilian Personnel Advisory Service (DCPAS), and the Assistant Secretary of the Army (Manpower & Reserve Affairs), have all issued guidance regarding the impacts and temporary exceptions related to DPMAP, stemming from COVID-19. See below references.

a. Memorandum, Assistant Secretary of the Army (Manpower and Reserve Affairs), subject: Temporary Exception – Department of Defense Performance Management and Appraisal Program (DPMAP), dated May 5, 2020.

b. Defense Civilian Personnel Advisory Service (DCPAS) Message, subject: Temporary Exception – Department of Defense Performance Management and Appraisal Program, dated May 1, 2020.

c. Memorandum, Under Secretary of Defense, subject: Temporary Exception – Department of Defense Performance Management and Appraisal Program, dated April 29, 2020.

3. * Can we extend the rating cycle based on COVID-19?

A: Though the Under Secretary of Defense provided the Components the discretion to adjust the effective date of all appraisals, the date of the 2020 rating cycle in his 5 May 2020 memorandum (subject: Temporary Exception – DPMAP), the dates of the established appraisal cycle were not affected by the exception to policy. .

4. * When must we have performance plans created for the 2021 rating cycle, for the majority of the employees in DPMAP (i.e., all, with exception of those on different cycles at academic institutions)?

A: The DoD temporary exception afforded an exception to the processing timeline for establishing and approving performance plans for the 2021 rating cycle to no later than 90 calendar days following the start of the rating cycle (i.e., no later than 29 June 2020, for the majority of employees in DPMAP).

5. * Are awards going to be handled any differently in light of the COVID-19 impacts?

A: No, awards must be handled in their customary manner, consistent with Army Regulation 672-20, Incentive Awards. Awards effective prior to 30 September 2020 but paid after 1 October 2020 will count against the FY21 awards limitation. For an award to be counted against the FY20 award limitation, it must both be effective in FY20 and also paid to the employee prior to 30 September.

6. * If we have supervisors and/or employees who do not have computer and/or internet access at home, and they're in a weather and safety leave status, how should we handle these employees' appraisals?

A: The way in which this is approached will depend upon the specific scenario, to include: who lacks access (supervisor, employee, or both), scanner accessibility, and accessibility to the installation.

If the installation is still accessible, the supervisor and employee can explore whether it is feasible to access the installation at different times to complete their input/ appraisals on-site, in a socially distanced manner.

If the installation is not accessible, and the MyPerformance appraisal tool is otherwise inaccessible to the supervisor and/or the employee, DoD Instruction 1400.25, Volume 431, section 3.2.g.(2) indicates that they must use the paper copy of DD Form 2906 to document the performance plan, progress review(s), and rating of record.

For supervisors and employees who find themselves in this scenario as a result of COVID-19 impacts, this is the way in which it should be handled. If email is available for either the supervisor or employee, either on a government-furnished laptop or personal computer, the appraisal steps can be accomplished through those means. If email is not available to both the supervisor and the employee, and/or there is no scanner capability, the DD Form 2906 can be mailed and wet signature can be obtained on the hard copy document. Commands are encouraged to work with their supervisors to ensure they're aware of any impacts of this nature and mail any blank hard copy DD Form 2906s, if necessary.

The Civilian Human Resources Agency Headquarters (CHRA HQ) created a functionality in AutoNOA where completed DD Form 2906s and ratings of record can be uploaded when necessary, due to MyPerformance appraisal tool inaccessibility. Commands were informed of this functionality in an AG-1CP message, number 2020054, on 15 June 2020. Either the rating official or a Command super user can complete this upload once they ensure all requirements or met on the DD Form 2906.

I. Labor Relations

1. Is Army expecting DoD to issue labor relations or bargaining guidance related to COVID-19?

A: Any labor relations guidance prepared by DoD or Army is considered internal management labor guidance that will be distributed to the labor relations' practitioner community.

J. Position Designations

1. What are the requirements for designating Emergency Essential (E-E), Non-Combatant Essential (NCE), Key, and Mission Essential (ME) positions and the differences between the various designations?

A: In accordance with section 1580 of title 10, United States Code, Emergency Essential (E-E) is a position-based designation where: (1) it is the duty of the employee to provide immediate and continuing support for combat operations or to support maintenance and repair of combat essential systems of the armed forces; (2) it is necessary for the employee to perform that duty in a combat zone after the evacuation of nonessential personnel, including any dependents of members of the armed forces, from the zone in connection with a war, a national emergency declared by Congress or the President, or the commencement of combat operations of the armed forces in the zone; and (3) it is impracticable to convert the employee's position to a position authorized to be filled by a member of the armed forces because of a necessity for that duty to be performed without interruption.

In addition to E-E, positions can be designated Non-Combatant Essential (NCE), position-based designation to support expeditionary requirements in other than combat or combat support situations. An NCE employee could be deployed to support emergency operations, humanitarian missions, disaster relief, or other expeditionary missions in the continental United States or overseas, that are not considered "combat" locations. DD Form 2365 includes an option to designate NCE status of employees. The key difference between E-E and NCE designations is that E-E includes all types of contingency missions even those in support of combat operations and NCE includes everything other than combat operations.

As defined in DoD Directive (DoDD) 1200.7, "Screening the Ready Reserve," a Key position is a Federal position that shall not be vacated during a national emergency or mobilization without seriously impairing the capability of the parent Federal Agency or office to function effectively.

A position may also be designated as Mission Essential (ME), consistent with the criteria described in DoD Instruction (DoDI) 3020.42, "Defense Continuity Plan Development," dated February 17, 2006, certified as current as of April 27, 2011, and any other component-unique policies or definitions. Mission essential positions are those that are needed to ensure the continued operation of mission essential functions of an activity, as defined in DoDI 3020.42.

2. How are positions designated and who has the authority to determine E-E, NCE, Key, and ME position designations?

A: Positions are designated based on the work requirements under various conditions associated with mission needs. For positions designated as E-E and NCE, the official position description must be annotated as such. Personnel filling E-E positions must meet and maintain certain requirements pertaining to physical health, training and mobility. Employees must agree to the conditions of employment required for E-E and NCE. The agreement must be maintained in the employee's OPF.

The determination of functions that are "essential" to the position in support of the mission requirements is typically a local or command decision. This decision is based on the type of work and supporting activities necessary to ensure organization or facility continuity of operations and/or completion of tasks that are considered essential to the mission. A designated mission essential position could also be coded as E-E, NCE, or Key, or may just remain ME, without any other requirements and associated designations.

3. Is there a need to review and update position descriptions with E-E, key, or mission essential designations as a result of COVID-19?

A: Yes. When a pandemic is declared, Civil Authorities reserve the right to evacuate personnel to mitigate or contain the spread of the virus. In the event such operation is directed by the Federal Government, it is imperative that commands can quickly identify the personnel that must stay in place to continue the execution of critical activities and mission that impacts national security. Assistant G-1, Civilian Personnel Message # 2020015, Subject: For Action - Position Coding DCPDS, dated 13 Mar 2020, directs all ACOMS, ASCCs and DRUS to ensure all organizations in the C2 scope and area of operations review and correct the coding of every position and employee in their workforce.

K. Hiring Actions

1. Are there any current hiring restrictions and if so, what are they?

A: In accordance with Secretary of Defense memorandum, 22 May 2020, subject: Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions, all DoD civilian personnel whose travel is Government-funded will stop movement, both internationally and domestically, while the memorandum is in effect, unless the conditions contained in the memo are met. Absent an exemption or approved waiver, this stop movement applies to all official travel, including temporary duty (TDY) travel; Government-funded leave travel; permanent duty travel, including Permanent Change of Station (PCS) travel; and travel related to Authorized and Ordered Departures issued by the Department of State.

There are four travel authorization categories under the current COVID-19 conditions-based environment: exempt, unrestricted, restricted, and waivered. Exempt travel does not require a waiver - a complete list of authorized travel restriction exemptions is listed in Secretary of Defense memorandum, 22 May 2020, subject: Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions. The travel authorization category is unrestricted if the origin, destination, and all intermediate stops are designated unrestricted locations IAW HQDA EXORD 210-20 (and all subsequent FRAGOs). If any one of the origin, destination, or intermediate stop locations is designated restricted, the travel authorization category is restricted. Travel in the restricted authorization category is not authorized. Such travel can only proceed if the appropriate authority approves a waiver. A waiver to travel restrictions may be requested if the travel is necessary because the Civilian has an extreme hardship, the travel is for humanitarian reasons, or the Civilian is deemed mission essential by the gaining unit. For personnel currently assigned under the jurisdiction of the Secretary of the Army (SA), the approval authority is delegated to the first General Officer (GO) or member of the Senior Executive Service (SES) in the Civilian's chain of command. For personnel not currently under the jurisdiction of the SA, the approval authority is the Combatant Commander (or designee) if the individual is currently assigned or allocated to a Combatant Command (CCMD). The authority to approve waivers may be delegated in writing no lower than the first Flag Officer or SES in the chain of command or supervision.

2. * Can we have clarification on the Exception to Policy (ETP) for travel from another agency TO Army (if the travel is *funded by the Army* then ETP are through the USA/VCSA)?

A: In accordance with Secretary of Defense memorandum, 22 May 2020, subject: Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions, all DoD civilian personnel whose travel is Government-funded will stop movement, both internationally and domestically, while the memorandum is in effect, unless the conditions contained in the memo are met. Absent an exemption or approved waiver, this stop movement applies to all official travel, including temporary duty (TDY) travel; Government-funded leave travel; permanent duty travel, including Permanent Change of Station (PCS) travel; and travel related to Authorized and Ordered Departures issued by the Department of State. This same 22 May 2020 Secretary of Defense memo indicates DoD Components may onboard civilian employees within the local commuting area and civilian employees whose travel to the local commuting area is not government-funded.

As an example, an Army organization selects an individual from another federal agency and the Army organization is funding the selectee's PCS. Since the organization is funding the selectee's PCS, the selectee must either be covered by an existing exemption as outlined in Secretary of Defense memorandum, 22 May 2020, subject: Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions or the organization must obtain a waiver to the stop movement restrictions in order to onboard this individual. Waivers should be requested IAW FRAGO 29 to HQDA EXORD 144-20 Army wide Preparedness and Response to Coronavirus (COVID-19) Outbreak, 29 May 2020 and Secretary of the Army memorandum, subject: Delegation of Authority to Approve Travel of Army Personnel and Conditions for Return to Unrestricted Travel, 9 June 2020.

3. * Our organization has positions we are trying to hire in support of COVID-19. Is there any special way to advertise for these positions?

A: Yes, OPM launched the COVID-19 Response Program, which allows federal agencies to post details and temporary assignments in support of COVID-19, https://openopps.usajobs.gov. OPM also launched https://www.usajobs.gov/coronavirus to promote job opportunities related to the Federal Government's COVID-19 response. Job seekers now see an alert on the USAJOBS home page, all search results pages, and the Explore Opportunities tab that will direct job seekers to this new page. Please work with your CPAC Specialist to ensure any positions in support of COVID-19 are properly identified on USAJOBS.

4. * I am interested in supporting COVID-19 efforts, to include applying for detail opportunities. Is there a special place to apply for such opportunities?

A: Yes, you can find job opportunities in support of COVID-19 at https://www.usajobs.gov/coronavirus and detail opportunities in support of COVID-19 at https://openopps.usajobs.gov. Please work with your supervisor and servicing CPAC Specialist to ensure all requirements are met for any detail opportunities being considered with other federal agencies.

5. * Our organization selected a candidate outside of the local commuting area even though we made it clear that we would not be paying for PCS expenses. May we onboard this selectee if they relocate at their own expense to the local commuting area?

A: Yes. In accordance with Secretary of Defense memorandum, 22 May 2020, subject: Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions, DoD Components may onboard civilian employees within the local commuting area and civilian employees whose travel to the local commuting area is not government-funded. Please note however that individuals traveling under an exemption or waiver are subject to the travel screening protocols as provided in Under Secretary of Defense memorandum, 11 March 2020, subject: Force Health Protection Guidance (Supplement 4) – Department of Defense Guidance for Personnel Traveling During the Novel Coronavirus Outbreak and any applicable subsequent guidance.

6. * We selected a candidate outside of the local commuting area and made a commitment to pay for PCS expenses. Can we change our mind and allow the selectee to relocate at their own expense in order to onboard them now so that we do not have to request waiver?

A: No. Doing so creates a liability for the Army since the organization already made a commitment to pay for PCS expenses. The selectee could later claim reimbursement for expenses to which they were originally deemed eligible and entitled. If it is critical for the selectee to come on board, the organization should request a waiver IAW FRAGO 29 to HQDA EXORD 144-20 Army wide Preparedness and Response to Coronavirus (COVID-19) Outbreak, 29 May 2020 and Secretary of the Army memorandum, subject: Delegation of Authority to Approve Travel of Army Personnel and Conditions for Return to Unrestricted Travel, 9 June 2020.

7. * Under what circumstances are civilian selectees allowed to enter on duty during COVID-19?

A: There are currently five (5) circumstances under which civilian entrance on duty (EOD) dates may be established during COVID-19. Specifically, civilian selectees are allowed to enter on duty when (1) the selectee is covered by one of the exemptions outlined in Secretary of Defense Memorandum, Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions, 22 May 2020; (2) the selectee is covered by an approved waiver (i.e., mission critical/humanitarian/extreme hardship) based upon the process outlined in FRAGO 29 to HQDA EXORD 144-20 Army wide Preparedness and Response to Coronavirus (COVID-19) Outbreak, 29 May 2020 and Secretary of the Army memorandum, subject: Delegation of Authority to Approve Travel of Army Personnel and Conditions for Return to Unrestricted Travel, 9 June 2020; (3) the selectee is one who works remote to the installation or office; (4) the selectee is already within the local commuting area; or (5) the selectee is one whose travel to the local commuting area is not government-funded. Selectees whose EOD is based upon (1), (2), or (5) are subject to the travel screening protocols outlined in Under Secretary of Defense for Personnel and Readiness Memorandum: Force Health Protection Guidance (Supplement 4) – Department of Defense Guidance for Personnel Traveling During the Novel Coronavirus Outbreak, 11 March 2020 and any applicable subsequent guidance. Hiring officials should coordinate with their servicing CPAC Specialist to identify selectees who meet one of the above conditions under which EOD dates may be established.

L. Priority Placement Program (PPP)

1. What, if any, impacts will apply to the PPP policy as a result of the stop movement on PCS?

A: If an overseas PPP registrant matches a CONUS position, the PPP match should be worked in accordance with standard PPP policy, including extension of the PPP job offer. If the job offer is accepted, a reporting date will be established after the COVID-19 travel restrictions are lifted unless the travel meets one of the four travel authorization categories under the current COVID-19 conditions-based environment: exempt, unrestricted, restricted, and waivered (see question # K-1).

If a CONUS vacancy has been committed to a PPP registrant who is unable to report due to COVID-19 travel restrictions, the CONUS vacancy cannot be filled with another candidate on a permanent basis. ACOMs/ASCCs/DRUs and the AASA may contact the Army PPP Component Coordinator within the Assistant G-1 for Civilian Personnel to request approval to fill the vacancy on a temporary basis without further PPP clearance. The Army PPP Component Coordinator will coordinate with the DoD Workforce Shaping Office as necessary to obtain such approval.

2. * Will I receive an automatic tour extension if I am currently registered in PPP?

A: No. If you are registered in PPP because your overseas tour was not extended, you will remain in PPP until you are either placed, removed for cause, or until you voluntarily resign or retire.

3. * I received a PPP job offer but cannot PCS yet due to the COVID travel restrictions. Will I therefore be entitled to TQSA?

A: No. There is no authority to grant TQSA to an employee who was otherwise not entitled to TQSA.

M. Compensation / Travel Allowances / Overseas Entitlements

1. What is the Army guidance for authorizing Separate Maintenance Allowance as a result of COVID-19?

A: Separate Maintenance Allowance (SMA) may be granted when the commander of geographic ASCCs (e.g. USARPAC, USAREUR, USAREUR, USARCENT, USARNORTH, USARSO and USARAF) determines that adverse, dangerous, unhealthful living conditions, such as lack of medical facilities, warrant exclusion of an employee's family from the employee's assigned post or determines that there is a need to exclude family members from accompanying an employee to the area. This may be further delegated, in whole or in part, to the lowest practical level (e.g. USAREUR Civilian Personnel Directorate or USARPAC Human Resources Directorate)

2. What is the impact on entitlements and allowances for the early return of dependents from overseas locations affected by COVID-19?

A: Post Allowance and Living Quarters Allowance payment can be reduced in result of the early return of dependents (Reduced size of family members)

3. Can we request approval to have the annual pay cap lifted for Korea as a result of COVID-19?

A: No. The waiver of annual pay limitation was only granted for certain employees who perform qualifying work while in an overseas location that (1) is in the area of responsibility of the United States Central Command (CENTCOM) or (2) was formerly in the CENTCOM area of responsibility, but moved to the areas of responsibility of the Commander of the United States Africa Command in 2019, as identified in section 1104 of National Defense Authorization Act (NDAA) for 2019.

However, if AASA, Commanders/Heads of ACOMs, ASCCs, and DRUs determine that an employee is needed to perform emergency work that is critical to the mission of the agency, at their sole discretion, annual pay limitation is allowed, instead of bi-weekly pay limitation. "Emergency" means a temporary condition posing a direct threat to human life or property, including a forest wildfire emergency (5 CFR 550.103). Such a condition may occur because of a natural disaster, such as a flood, hurricane, or epidemic.

4. * Do Combatant Commanders have the authority for ETP on travel per the recently released ALARACT, 3.c.1.?

A: Where Civilian employees are assigned or allocated to a Geographic Combatant Command (GCC) in foreign country, the GCC Commander has the authority for ETP. This may be delegated down to the first G0/SES in the Chain of Command.

5. * Is there any effort underway to raise the annual pay cap?

A: DoD has released a memorandum, subjected: Exemption of Premium Pay from Otherwise Applicable Limitations on Pay for Services Primarily Related to Coronavirus Disease 2019, dated 19 May 2020. DoD memorandum exempts premium pay from biweekly and aggregate annual pay limitations for services performed during fiscal year 2020 primarily relating to the preparation, prevention, or response to the Coronavirus Disease 2019. In regards to the SA delegation and Army instruction, please refer to AG-1 CP message #2020061, distributed on 6 July 2020.

6. * Our Command is receiving requests for authorized departures. Will there be further delegation within DoD/Army?

A: Authorized Departure issued by Department of State also required ETP since DoD confirms that DoD Travel restriction will apply to the authorized departure. The Secretary of the Army delegated approval authority to the first 1-star GO or member of the Senior Executive Service in an employee's chain of command or chain of supervision.

In regard to the Department State ordered and DoD approved authorized departures, the criteria for approval of request for authorized departure of Army civilians and eligible family members is outlined in AG-1CP numbered message #2020028 and approving allowances will be made by the Commander of geographic Army Service Component Commands (ASCCs): U.S. Army

Pacific (USARPAC), U.S. Army Europe (USAREUR), U.S. Army Central (USARCENT), U.S. Army North (USARNORTH), U.S. Army South (USARSO), and U.S. Army Africa (USARAF); this can be further delegated in whole or in part, to the lowest practical level.

7. * (FFCRA) Will there be any option established, or can an option be established, to set up a payment plan for repayment of a debt under the FFCRA?

A: Yes, through a Voluntary Repayment Agreement (VRA). VRAs allows an employee to pay less back per pay period until the debt is paid in full; they allow the employee to pay back the debt, but at less than 15%. There are two stipulations, the repayment can only be lowered so much that the entire debt is paid off in 78 pay periods, and it cannot be less than $25. Employees should contact their CSR to establish the VRA.

8. * (FFCRA) When the leave codes are corrected in the system to account for the proper pay, how long will it be between that date and the date that the debt collections begin to be taken from the employee's future pay?

A: This depends on when the emergency paid sick leave (EPSL) under FFCRA was used and when the timecard corrections are submitted. Debts created within four pay periods or if less than $50 Gross are considered to fall within Debt Collection Improvement Act (DCIA) and debt collections can begin immediately at 15% the Net Disposable Income. Notification is given by a Leave and Earning Statement (LES) Remark. Debts created after four pay periods have passed are considered full due process debts. A Debt Letter is sent to the employee informing them of the debt and collections do not begin until 30 days. In both cases employees can submit a Voluntary Repayment Agreement through their CSR to lower the debt collection amount. Examples below:

-If an employee used EPSL in pay period ending (PPE) 04/11/2020, which is the first PPE employee were authorized to use EPSL, and they submitted their timecard correction this current PPE, 06/20/2020, then the debt being created is past four pay periods and is considered a full due process debt and the employee will be getting a Debt Letter and collections will not begin for another 30 days.

-If an employee used EPSL in PPE 05/09/2020 and submitted their timecard corrections this PPE, then this debt is being created within four pay periods and collections will begin immediately at 15% Net Disposable Income with a Remark about the Debt on the LES.

Please note that it is possible to have a portion of the debt created under DCIA rules and a portion of the debt created as a full due process debt depending on the timing.

* N. Overseas Tours and Return Rights

1. * Will I get an automatic overseas tour extension due to COVID-19?

A: No. There is no authority to grant an overseas tour extension on the basis of COVID-19. Employees without return rights who are not extended, will either register in PPP or will apply for CONUS positions as an alternative to PPP.

Employees with return rights must follow the requirements for exercising return rights as outlined in AR-690-300 chapter 18-10. Employees must formally apply to exercise return rights up to 6 months before, but no later than 30 days following the completion of the tour, or any approved extension.

EXAMPLE 1. Return Rights with no Tour extension:
Overseas tour began 1 Nov 2017 and ends 31 Oct 2020. Employee's tour was not extended. Employee is not eligible to register in PPP because he or she still has return rights; therefore, the employee must formally apply to exercise his or her return rights 6 months prior to 31 Oct 2020 (i.e., April 2020), but no later than 30 days after 31 Oct 2020 (i.e., NLT 30 Nov 2020). The CPACs will coordinate reporting date to former organization.

EXAMPLE 2. Return Rights with Tour extension:
Overseas tour began 1 Nov 2015 and ended 31 Oct 2018. Employee received a 24 month tour extension to 31 Oct 2020. The employee must formally apply to exercise their return rights 6 months prior to 31 Oct 2020 (i.e., April 2020), but no later than 30 days after 31 Oct 2020 (i.e., NLT 30 Nov 2020). The CPACs will coordinate reporting date to former organization.

2. * I have return rights but am unable to travel due to the stop movement restrictions that are currently in place. Will I lose my return rights eligibility due to the stop movement?

A: No. Employees with return rights to a position in CONUS or in a non-foreign OCONUS location, must follow the requirements of AR-690-300 and inform their servicing CPAC and former employer within established timelines that they will be exercising their return rights. If travel is restricted due to COVID-19, the CPACs will coordinate a release date taking into account the current movement restriction guidelines. Note however that IAW Secretary of Defense Memorandum, Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions, 22 May 2020, travel by civilian employees complying with overseas tour rotation agreement requirements is now considered an approved exemption to the travel restrictions.

3. * If I have return rights, should I wait until after the stop movement restrictions are lifted to inform my former employer of my intention to return to my former position?

A: No. Employees with Return Rights must continue to follow the requirements for exercising return rights IAW AR 690-300.

4. * Can my former employer refuse to honor my return rights if they are not exercised until after the 5 year limitation date due to travel delays associated with COVID-19?

A: No. Your former employer must still honor your return rights if your return travel is delayed due to COVID-19. Note however that IAW Secretary of Defense Memorandum, Transition to Conditions-based Phased Approach to Coronavirus Disease 2019 Personnel Movement and Travel Restrictions, 22 May 2020, travel by civilian employees complying with overseas tour rotation agreement requirements is now considered an approved exemption to the travel restrictions. It is imperative that all employees whose return rights are within the five-year

window, contact their servicing CPAC and former employer to start coordinating their return from overseas.

5. * Can I forfeit my return rights and register in PPP?

A: No. Employees with return rights are no longer eligible to register in PPP. Please contact your servicing CPAC to obtain the specific DoD guidance and the AG-1CP message relating to the DoD PPP streamlining procedures that removed the eligibility of individuals with return rights to register in PPP.

O. General Questions

1. Can Civilians be quarantined or isolated the same as military personnel?

A: No. Under normal circumstances, OPM and DoD guidance provides that Civilian personnel are subject to movement restrictions (quarantine or isolation) only under direction of "local or public health authority." Within CONUS, this is typically the CDC, under the delegated authority they have received from the Health and Human Services. DoDI 6200.03, Public Health Emergency Management Within the DoD, grants military commanders additional authorities to restrict movement of civilians when the military commander has declared a DoD public health emergency. It also states coordination with civilian public health officials, including the CDC, may be required. This is generally reinforced in the Force Health Protection Supplement 2 (Attachment 1 of the DoD Civilian Workforce Guidance) and Force Health Protection Guidance Supplement 4.

2. What is the definition of "local or public health authority?" Does this include an employee's non-government, private primary care provider?

A: It depends upon the state and what authorities have been provided (if any) to local health authorities. Based on what's included in the below CDC link addressing these authorities, "local" should not be broadly interpreted to include primary care physicians.

Link: https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html

From a Federal perspective, CDC indicates that they may issue a federal isolation or quarantine order, under the authority provided to them as delegated from the U.S. Secretary of Health and Human Services. Related to state, local, and tribal authorities, the CDC's website indicates that these laws can vary from state to state and can be specific or broad. In some states, local health authorities implement the state law.

Though primary care physicians may encourage individuals to self-isolate or self-quarantine, unless there a "police power" provided by the state, local, or tribal authority (an associated power that accompanies these terms), primary care physicians lack the authority to direct quarantine and isolation (despite physicians potentially using these terms while encouraging individuals to do so due to their assessment of risk).

3. * Given our Command has intermittent employees, the desire is to use these employees to backfill in some other areas to maintain mission readiness. That being the

case, can an intermittent employee be used to perform other work in an other than intermittent capacity?

A: If the organization is able to schedule work in advance on a regular basis, then the employee would no longer be considered intermittent but rather full-time or part-time (which could entitle him or her to benefits if he or she is a career/career-conditional employee). A detail would need to be processed to document the different duties; a personnel action to change the work schedule would only occur if the new duties would be performed on a regular basis.

4. * Which agency is responsible for enforcing compliance with the provisions of the Emergency Paid Sick Leave Act (EPSLA) for Federal employees?

A: On 14 May 2020, OPM provided the following answer:

The U.S. Department of Labor (DOL) is responsible for issuing regulations regarding EPSLA. DOL is also generally responsible for enforcing employer compliance with EPSLA; however, the U.S. Office of Personnel Management (OPM) is tasked with certain duties related to employing agency compliance for certain Federal employees.

Section 5105 of the Families First Coronavirus Response Act (FFCRA) provides that employers (such as Federal agencies) who violate the EPSLA paid sick leave provisions shall be considered to have failed to pay minimum wages in violation of the Fair Labor Standards Act (FLSA) (29 U.S.C. 206).

OPM is authorized to administer the FLSA for most Federal employees. (See 29 U.S.C. 204(f).) Under its FLSA authority, OPM adjudicates FLSA minimum wage and overtime claims under 5 CFR part 551, subpart G. (See section 551.701(a), which specifically includes claims for FLSA minimum wages.) Accordingly, DOL and OPM have determined that Federal employees covered by OPM's FLSA regulations would file any EPSLA paid sick leave claims with their employing agency or with OPM in accordance with the claim filing requirements in 5 CFR part 551, subpart G. As with other FLSA claims covered under that subpart, employees who want to file EPSLA paid sick leave claims are not required to obtain a final agency decision before filing with OPM. (For more information on OPM's FLSA claims filing procedures, go to https://www.opm.gov/policy-data-oversight/pay-leave/claim-decisions/fair-labor-standards-act/#url=Overview.)

OPM regulations describe which Federal employees are covered by OPM's FLSA regulations. (See 5 CFR 551.102, 551.103, and the definitions of "agency" and "employee" in 551.104.) In general, employees of executive branch agencies are covered by OPM's FLSA regulations, except for employees of the United States Postal Service, the Postal Regulatory Commission, and the Tennessee Valley Authority. Certain executive branch employees may not be covered by the FLSA based on a special agency personnel authority.

NOTE: For more information on EPSLA paid sick leave, go to Caution-https://www.opm.gov/policy-data-oversight/covid-19/opm-summary-of-statutory-and-regulatory-requirements-in-connection-with-the-emergency-paid-sick-leave-act-epsla.pdf.

5. * Who is considered the "agency head" in the context of the memorandums published by OMB?

A: DoD is Army's agency head. 5 USC 101 defines the Department of Defense as an Executive department. Department of the Army is named a military department at 5 USC 102. 5 USC 105 indicates that, for the purposes of this Title (Title 5), "Executive agency" means an Executive department, a Government corporation, and an independent establishment. For the purposes of matters related to Title 5, Department of Defense falls within the scope of an Executive agency, and the agency head responsibility therefore rests with the Department of Defense.

6. * Who has the authority to furlough Civilians for COVID-19 reasons, if there isn't enough work to be performed and/or there's a reduction in goods/services?

A: [This response supersedes the response in V1.] Though furlough can be an option when there is a lack of work in some circumstances, it is not anticipated that this option will be pursued as a potential remedy for impacts stemming from COVID-19, given the uncertainty of the current situation and that there are generally other less impactful solutions available. Notably, furloughs cannot extend beyond 30 days unless reduction-in-force procedures are taken, which require a lengthier, more complicated process and a minimum of a 60 day notice to employees.

A furlough of 30 days or less, that is resulting from the need to place an employee in a temporary status without duties and pay because of a lack of work or funds, or other non-disciplinary reasons, is an adverse action covered under 5 USC Chapter 75 and 5 CFR 752, in addition to 10 USC 1597, within DoD. Although, generally, these types of furloughs are proposed by the first-level supervisor and a final decision to suspend is made by the deciding official (typically a supervisor higher in the employees chain of command), within DoD, further coordination is required in accordance with the requirements set forth in 10 USC 1597 and Secretary of Defense memorandum, "Policy and Procedures for Reductions in Force in the Civilian Workforce," dated 19 January 2017. Pursuant to this memorandum, a furlough may not be implemented until it is first coordinated with Office of the Under Secretary of Defense (Personnel and Readiness) and a 45-day advance congressional notification is made (both of which would be accomplished through the Army Assistant G-1 for Civilian Personnel). As always, supervisors should consult with their servicing Civilian Personnel Advisory Center and ensure labor obligations are fulfilled prior to effecting an action of this nature, where not addressed in a current, in-force collective bargaining agreement.

Appendix A. – Excerpt from draft AR 690-610, Hours of Duty, Alternative Work Schedules, and Holidays (not yet published; included as guidance.)

"Chapter 3
Alternative Work Schedules

3–1. General
a. An AWS is a work schedule option that permits an employee to work a non-traditional schedule including a compressed work schedule or a flexible work schedule. Employees have a right to request an alternative work schedule. These types of work schedules enable managers and supervisors to meet their mission goals, while at the same time, help employees better balance work, personal and family responsibilities.

b. Absent adverse agency impact resulting from an AWS, commanders, and directors/heads shall adopt and publish policies permitting AWS programs that balance mission achievement with the personal benefits to employees. Implementation or termination of an AWS program covering bargaining unit employees is subject to existing and applicable labor obligations (for example, any applicable collective bargaining agreement) and must be coordinated with the servicing CPAC labor relations specialist and the local labor union(s). In the event a decision is made to pursue termination of an existing AWS Program, or where it is determined not to adopt a proposed AWS Program, because the AWS has, or will have, an adverse agency impact, the ACOM, ASCC, and DRU commanders and directors/heads have the delegated authority to make an adverse agency impact determination. This authority may be further delegated in writing to no lower than local commanders and activity heads.
c. There are two categories of AWS authorized for adoption and implementation within DA: compressed work schedules (CWS) and flexible work schedules (FWS). The basic work requirement (that is, the number of hours during biweekly pay period, excluding overtime hours, which an employee is required to work) for full-time employees working either category of AWS is 80 hours per pay period.

3–2. Compressed work schedules
a. CWS are fixed work schedules that enable full-time employees to complete the basic 80–hour biweekly work re-quirement in less than 10 workdays. Although a supervisor may change or stagger the arrival and departure time of employees, there are no provisions for employee flexibility in daily reporting and quitting times under a CWS program.
b. Employee participation in a CWS program is voluntary. Non-bargaining unit employees cannot be required to participate in a CWS unless a majority of the employees in the non-organized unit vote to be included in a CWS. For employees in a bargaining unit, the CWS program must be successfully negotiated with the union prior to implementation.
c. The two most common types of CWS arrangements in Army are the 4–10 and the 5/4–9 compressed plans.
(1) The 4 –1 0 compressed plan is a CWS in which a full-time employee has a basic work requirement of 10 hours per day, for 4 days, 40 hours per week, and 80 hours per biweekly pay period.
(2) The 5/4–9 compressed plan is a CWS in which a full-time employee has a basic work requirement of eight, 9–hour days and one 8–hour day for a total of 80 hours in a biweekly pay period.
d. There is no legal authority for credit hours under a CWS program.
e. The regular day off (RDO) for an employee on a CWS is/are a fixed day(s) of each pay period that the employee is not scheduled to work. Employees on an RDO are not in a pay or leave status.
f. Arrival and departure times should be established for employees on a CWS.
g. When an employee covered by a CWS program is assigned to a temporary duty station, the employee may be per-mitted to continue to work the approved CWS schedule (if appropriate) or required to change their schedule to conform to operations at the temporary worksite. Additionally, employees scheduled for training will be required to change to a regular schedule where necessary to meet the requirements of the training.

3–3. Flexible work schedules
a. FWS are work schedules that consist of workdays with core hours and flexible hours. Core hours are the designated period of the day when all employees on an FWS must be at work (for example, 0900 to 1500). Flexible hours are the part of the workday when

employees on an FWS may, within limits, choose their arrival and departure times (for example, start no earlier than 0600 and end no later than 1800).
b. For employees in a bargaining unit, the FWS program must be successfully negotiated with the union prior to implementation. FWS schedules may be established for non-bargaining unit employees without a vote from the employees but actual participation in the FWS is voluntary.
c. There are five models of FWS arrangements available within DA.
(1) Flexitour schedules allow an employee to elect start/stop times within the flexible hours which then become fixed.
(2) Gliding schedules require an employee to work 8 hours in each day and 40 hours in each week. Employees may select a start/stop time each day and may change those times within the established flexible hours.
(3) Variable day schedules contain core hours on each workday in the week. A full-time employee has a basic work requirement of 40 hours in each week of the biweekly pay period, but the employee may vary the number of hours worked on a given workday within the week, within the limits established for the organization.
(4) Variable week schedules contain core hours on each workday in the biweekly pay period. A full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but the employee may vary the number of hours worked on a given workday or the number of hours each week, within the limits established for the organization.
(5) Maxiflex schedules contain work hours on fewer than 10 workdays in the biweekly pay period. A full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which the employee may vary the number of hours worked on a given workday or the number of hours each week, within the limits established for the organization.
d. A command or activity's FWS plan may permit employees to earn credit hours. Credit hours are any hours within a FWS that are in excess of an employee's basic work requirement that the employee elects to work, with supervisory approval. Only employees on an FWS may elect to work credit hours in excess of a basic work requirement.
(1) A supervisor cannot require an employee to work credit hours; an employee should seek supervisory approval to work credit hours. If overtime has been previously approved, credit hours cannot be worked in conjunction with the over-time. Commands and activities should require that an employee obtain supervisory approval prior to working credit hours.
(2) The employee's tour of duty defines the limits within which an employee on an FWS must complete the basic work requirement.
(3) Senior executive service employees participating in FWS programs are not permitted to accumulate credit hours.
(4) Full-time employees may carry no more than 24 credit hours over to the next pay period. Part-time employees may carry no more than one-fourth of the hours in the employee's biweekly basic work requirement over to the next pay period.
(5) Credit hours are only paid out at the employee's current rate of pay if: (a) their Federal employment ends, (b) the employee's participation in an FWS is terminated (for example, the employee opts out of a FWS or changes to a CWS), or (c) the employee transfers to another agency.
(6) Credit hours may not be earned during excused absences, (for example, weather emergencies).
(7) Employees must obtain approval from their supervisor prior to working credit hours on a non-workday. In deciding whether to grant the employee's request, supervisors should consider the amount of leave, if any, the employee has taken during the pay period.

e. When an employee covered by an FWS program is assigned to a temporary duty station, the employee may be permitted to continue to work their approved FWS schedule (if appropriate) or required to change their schedule to conform to operations at the temporary work site. Additionally, employees scheduled for training will be required to change to a regular schedule when necessary to meet the requirements of the training.

3–4. Hybrid work schedules

a. Establishment or implementation of hybrid work schedules (that is, schedules that combine unique attributes of CWS and FWS) is not authorized. (For example, allowing an employee to combine a compressed 5/4/9 schedule with a flexible schedule that allows the employee to work any time during the morning flexible band and depart after completing the required number of hours, is contrary to Office of Personnel Management (OPM) guidance and DOD policy and cannot be permitted).

b. Employees on a maxiflex schedule, however, may work fewer than 10 workdays in a pay period provided that the employee does not work a fixed number of days per pay period in excess of 8 hours.

3–5. Modifying or terminating an alternative work schedule

a. An existing AWS may be modified or terminated when continuation of the AWS creates adverse agency impact.

b. Where a proposed AWS would have an adverse impact on the agency, the AWS may not be established.

c. A finding of adverse agency impact must be documented in writing. Authority to make this finding is delegated to the Administrative Assistant to the Secretary of the Army, and the commanders/heads of ACOMs, ASCCs, and DRUs and can be further delegated to the appointing authority, but not lower than an installation commander or activity head. The finding must be based upon a demonstration of one or more of the following:

(1) A reduction of an Army productivity.

(2) A diminished level of Army services furnished to the public.

(3) An increase in the cost of Army operations (other than an administrative cost to process the establishment of an AWS program) as demonstrated by the organization or activity at issue.

d. Subject to any applicable collective bargaining agreement provisions and fulfillment of associated labor obligations, individual employee participation in an AWS program may be discontinued at any time by a supervisor if there are documented concerns regarding the employee's job performance or misconduct, or if mission achievement would be significantly impacted by the employee's continued participation in the program.

(1) Employee's must be provided with written notification stating the reason for termination of the AWS. The notification should be provided at least one biweekly pay period prior to discontinuing the employee's participation in the program.

(2) Supervisors must adhere to any applicable collective bargaining agreements and the requirements of 5 USC 6131 prior to terminating an AWS schedule (even for just an individual employee in a bargaining unit) or when determining not to implement a proposed AWS because of adverse agency impact. For bargaining unit employees, a decision to terminate an existing AWS because of adverse agency impact must be coordinated with the exclusive representative prior to implementation and in accordance with any collective bargaining agreement provisions. If an impasse results involving a management determination of adverse agency impact, the dispute goes to the Federal Service Impasses Panel (the Panel), which will determine within 60 days whether the agency's determination is supported by adequate evidence. If it is, the Panel must act in favor of

the agency. An existing AWS schedule may not be terminated or modified until a negotiated agreement is reached or the Panel acts on the impasse. In all cases, implementation, modification, or termination of an AWS program covering bargaining unit employees requires appropriate coordination with the exclusive representative.

e. Once the decision has been made to pursue modification or termination of an AWS program or individual employee participation in a program, short of unusual circumstances (for example, short notice special projects, military action, natural disaster, temporary duty, training, and furlough.), management shall provide the impacted employees with at least one biweekly pay period of advance notice."