

375 FSS Civilian Personnel COVID-19 SUPPLEMENTARY GUIDANCE

Phase 2

7 April 2021

This provides information for civilian employees, supervisors, and managers returning to the work place.

- Consistent with the mission, commanders should seek to minimize the number of high risk emergency employees required to work, by deliberately identifying the required skills, assessing mission impact and considering alternative approaches (such as whether those not at high risk possess similar skills). Wing Commanders or equivalent retains the ultimate decision authority with respect to mission criticality and safety when there is a disagreement between management and individual employees with respect to their recall.
- Commanders and supervisors should consider creative, flexible and tailored solutions to meeting the various needs; there is no 'one-size-fits-all' approach to returning employees to the worksite.
- Commanders and supervisors are encouraged to take a collaborative approach to develop a plan for each civilian employee's transition to optimized operations, including potential return to a traditional worksite, on a case-by-case basis.
- All employees on Weather and Safety Leave (WSL) are subject to recall for duty, consistent with their individual medical status, and changes to the evolving public health situation and guidance. Supervisors should periodically reassess WSL to determine whether the factors driving WSL have changed and/or whether other alternatives may be available.
- Employees on Weather and Safety Leave must remain in the local area so they are available for recall or changes in their leave status.
- Employees are not prohibited from requesting and taking personal leave (annual, sick, compensatory time off, time off awards) during periods when Weather and Safety Leave is approved.
- After decision to return employees to the worksite, supervisors must notify those employees that Weather and Safety Leave will be terminated and the reporting date. Supervisors will also consult with Civilian Personnel prior to returning employees.
- EEOC has specifically deemed telework, including full-time telework, to be a potential reasonable accommodation, even in situations where employees without a disability are not permitted to telework.
- COVID-19 vaccinations are voluntary for all employees until a vaccine receives full Food and Drug Administration (FDA) approval and licensure, beyond the current emergency approval only. All personnel are encouraged to get vaccinated to protect their health as well as the health of their coworkers and families.

- Administrative leave is authorized for the purpose of receiving the COVID-19 vaccination. DoD civilian employees who voluntarily accept an offer to get vaccinated through either DoD or private providers shall receive the time necessary to obtain the vaccination, generally up to 4 hours per vaccination event. Employees should NOT be charged personal leave, and other statuses (such as on-duty status or weather/safety leave) are not appropriate.

QUESTIONS AND ANSWERS

WEATHER AND SAFETY LEAVE

Q1. Under what circumstances may a commander authorize Weather and Safety Leave or COVID-19?

A1. A commander may authorize Weather and Safety Leave to a civilian employee under the following circumstances:

- The employee is asymptomatic of COVID-19, but 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.
- Other circumstances when an employee is not able to safely travel to or perform work and an approved location.
- The employee is asymptomatic and at higher risk to COVID-19 under the criteria identified by the Center for Disease Control (CDC).

Q2. Are there any limitations on how much Weather and Safety Leave can be authorized for an employee, at one time or yearly?

A2. No. There is no cap on the number of hours of Weather and Safety Leave that may be granted

Q3. If an employee comes to work and exhibits symptoms of respiratory illness, can he/she be sent home?

A3. When a supervisor observes an employee at the workplace exhibiting symptoms of respiratory illness, he/she should express general concern regarding the employee's health and remind the employee of leave options available, including advanced leave. If the employee is able to perform work (i.e., they are not incapacitated), supervisors should identify whether the employee is telework-ready, or can be made telework-ready on a just-in-time basis, and offer the employee the option to telework. If the employee cannot telework, and if the supervisor wants to keep the employee away from the worksite for the safety of other workers, then the supervisor should utilize Weather and Safety Leave.

Q4. Why are employees who participate in a telework program generally excluded from receiving Weather and Safety Leave?

A4. The Administrative Leave Act of 2016 authorizes Weather and Safety Leave "only if the employee or group of employees is prevented from safely traveling to or performing work at an

approved location...” For employees who participate in a telework program, the telework site (usually the employee’s home) is an “approved location” – i.e., a location that has been approved by the agency for the performance of work. Employees who can work at their home are not prevented from safely traveling to work.

Q5. Can I grant Weather and Safety Leave if the school/daycare my employee’s child attends is closed?

A5. Civilian personnel may telework even when a child or dependent requiring care or supervision is present at the alternative worksite. Where an employee is teleworking and providing care to a child or dependent during duty hours, the employee must account for this time using appropriate leave as approved by his or her supervisor. For example, an employee who feeds and supervises a young child multiple times during the day will need to take leave or, if on a flexible work schedule, adjust his or her hours. Commanders and supervisors are encouraged to extend telework flexibilities more broadly to accommodate state and local responses to the outbreak, including, but not limited to, school closures.

Commanders and supervisors may also authorize alternative work schedules that allow employees to complete their tour of duty in less than 10 days if applicable. For example, a maxiflex schedule would allow an employee to meet his or her basic work requirement for a biweekly pay period on fewer than 10 days and vary the number of hours worked on a given workday. Additional tools available include annual and advanced annual leave, compensatory time, credit hours, and other leave flexibilities. Weather and Safety Leave would not be appropriate for the periods required to render care to the dependent.

WEATHER AND SAFETY LEAVE – RETURN TO WORK

Q6. If an employee is healthy but, out of caution, chooses to stay home even though they are not considered high risk, should they be authorized Weather and Safety Leave?

A6. If the worksite is “open” and employees have not been mandated to telework or otherwise told to stay home, then Weather and Safety Leave would not be appropriate for this employee. Supervisors should develop a plan for returning employees to the worksite. If the work permits, employees can volunteer to telework. Employees can also request and supervisor may approve leave (e.g. annual leave, LWOP), as mission permits.

Q7. My position is not telework eligible, and I have been told to report to work. I have young children in my home because their school/daycare is closed. Shouldn’t my supervisor grant me Weather and Safety Leave?

A7. Once the worksite is open and employees are expected to return, Weather and Safety Leave is not appropriate for an employee who needs to remain home to care for children. Employees who cannot telework may request annual leave or other paid time off, such as accrued compensatory time or credit hours. Supervisors may also authorize alternative work schedules (compressed or flexible work schedules) that provide for flexible work days and/or work hours.

If an employee cannot be accommodated through an alternate work schedule, the following leave may be approved when no childcare is available: leave (e.g. annual leave, LWOP), as the mission permits.

Q8. If employees mandated to telework do not have enough work, for example, the office is only partially open, how should they report time and attendance for the actual telework time as well as the time when there is no work available?

A8. Hours spent actually working would be coded as Regular time. When employees are prevented

from performing work at their worksite due to a lack of available work, Weather and Safety Leave would be appropriate for any employee who is not able to telework.

Q9. My employees are teleworking and are able to perform all of their job duties that way. Do I have to recall them to the worksite?

A9. Where employees are able to perform the full range of their duties through telework, or where there is not an urgent mission need for the remaining duties to be performed in the immediate future, supervisors may determine not to recall those employees to the worksite.

Q10. I'm a civilian employee and I've been teleworking successfully during the COVID-19 pandemic, but my supervisor has determined that we must all return to the regular worksite when the pandemic subsides. Can I be approved to continue teleworking full-time post-COVID?

A10. Telework is not an entitlement and supervisors/Commanders are responsible for determining employee/position telework eligibility. There are a variety of factors that must be considered in making such determinations and ultimately, it may be determined that permanent telework is not in the best interests of the DAF.

Q11. I have been teleworking due to my worksite being closed and I am able to perform all of my job duties this way. Now that everyone is getting vaccinated, our office is reopening. Do I have to return to my traditional worksite or can I continue to telework full time?

A11. It remains DAF policy to maximize telework whenever possible. Where employees are able to perform the full range of their duties through telework, or where there is not an urgent mission need for the remaining duties to be performed in the immediate future, supervisors are encouraged to continue telework. However, telework is not an entitlement and Commanders retain authority to approve or disapprove telework arrangements.

HIGH RISK AND SPECIALS POPULATION – RETURN TO WORK

Q12. I believe I am at a higher risk for COVID-19 and want to stay at home to minimize my risk. What can I do?

A12. Healthy employees always have the option to request personal leave (e.g., annual, advanced annual, LWOP, compensatory time off) for safety reasons and supervisors are encouraged to approve such requests as appropriate. Additionally, during the COVID-19 outbreak, supervisors should seek to minimize the number of high risk emergency employees required to work, by deliberately identifying the required skills, assessing mission impact and considering alternative approaches (such as whether those not at high risk possess similar skills). Wing Commanders or equivalent retain ultimate decision authority with respect to mission criticality and safety when there is a disagreement between management and individual employees with respect to their recall.

Effective safeguards and measures must be put in place to ensure that all high risk emergency employees who are required to work, or who are recalled from Weather and Safety Leave, are able to safely travel to and from work and perform their jobs on site in a safe manner. Supervisors should maximize the use of telework, including rendering employees telework eligible and ready on a just-in-time basis wherever possible and mandating telework when deemed appropriate, while maintaining mission critical workforce needs. Finally, employees may request a reasonable accommodation, which requires substantiating medical documentation (at their own expense) from

a licensed medical practitioner confirming their condition meet Rehabilitation Act of 1973. Supervisors and individuals must ensure that required documentation is in accordance with individual Privacy Act and Rehabilitation Act rules.

Q13. If an employee is designated as an 'emergency employee', non-telework eligible, AND is at high risk of COVID-19 as defined by the CDC, can the employee still be ordered to report to the worksite based on their 'emergency employee' designation?

A13. Yes, a civilian employee designated as an "emergency employee" who is non-telework eligible and at higher risk of COVID-19 complications, can be required to report to the worksite or an alternative worksite. Wing Commanders (or Complex Commanders or equivalent) retain ultimate decision authority with respect to mission criticality and safety when there is a disagreement between management and individual employees with respect to their recall. However, effective safeguards and measures *must* be put in place to ensure that all higher risk emergency employees who are required to work, or who are recalled from WSL, are able to safely travel to and from work and perform their jobs on site in a safe manner. Supervisors are encouraged to take a collaborative approach in working with their civilian employees to develop plans for each civilian employee's transition to optimized operations and seek creative, flexible, and tailored solutions. In addition, an employee who is at higher risk of serious complications from COVID-19, as defined by the CDC, may be legally entitled to reasonable accommodation (under the Rehabilitation Act).

Q14. I have employees who have been deemed mission essential, but who also have self-identified as "higher risk" and were placed on Weather and Safety Leave. Now that we are offering everyone the vaccine, can I recall them to the traditional worksite?

A14. Emergency civilian employees on approved WSL may normally remain on WSL until the threat of transmission lowers. Commanders are reminded that at this time vaccinations are strictly voluntary for civilian employees, and it is DAF policy that Commanders will not ask employees if they've been vaccinated (with the occupational exceptions previously noted in this guidance). Therefore, it could be difficult to determine who within a work unit has been vaccinated to assess the risk to personnel. However, in circumstances where critical, urgent, or mission-essential functions (to include essential maintenance and production tasks or services needed to support the warfighting mission, or to protect people and property) cannot be supported without emergency employees returning to work, management may recall those emergency employees from WSL. Special precautions must be enacted to support the health and welfare of emergency employees, and especially those who are higher risk from serious COVID-19 complications, while also ensuring accomplishment of critical mission requirements. Consistent with mission, supervisors and managers should seek to minimize the number of higher risk emergency employees required to work, by deliberately identifying the required skills, assessing mission impact and considering alternative approaches (such as whether those not at higher risk possess similar skills). Supervisors are encouraged to take a collaborative approach in working with their civilian employees to develop plans for each civilian employee's transition to optimized operations and seek creative, flexible, and tailored solutions. Wing Commanders (or Complex Commanders or equivalent) retain ultimate decision authority with respect to mission criticality and safety when there is a disagreement between management and individual employees with respect to their recall. Effective safeguards and measures must be put in place to ensure that all higher risk emergency employees who are required to work, or who are recalled from WSL, are able to safely travel to and from work and perform their jobs on site in a safe manner. Moreover, a civilian employee at higher risk under the CDC classification may have a legal right (under the Rehabilitation Act of 1973, as amended by the Americans with Disabilities Act) to reasonable accommodation; even if other employees have been recalled to the traditional worksite. Commanders must assess these situations in consultation with Medical, Legal and Civilian Personnel advisors.

REASONABLE ACCOMMODATION

Q15. During a pandemic, must an employer continue to provide reasonable accommodations for employees with known disabilities that are unrelated to the pandemic, barring undue hardship?

A15. Yes. An employer's reasonable accommodation obligation to individuals with disabilities continues during a pandemic. If an employee with a disability needs the same reasonable accommodation at a telework site that he/she had at the workplace, the employer should provide that accommodation, absent undue hardship for the employer. In the event that the employer decides that the reasonable accommodation creates an undue hardship, the employer and employee should cooperate to identify an alternative reasonable accommodation.

Q16. During the pandemic, if an employee requests an accommodation for a medical condition either at home or in the workplace, may an employer still request information to determine if the condition is a disability?

A16. Yes, if it is not obvious or already known, an employer may ask questions or request medical documentation to determine whether the employee has a "disability" as defined by the ADA (a physical or mental impairment that substantially limits a major life activity, or a history of a substantially limiting impairment). When the disability or need for the requested accommodation is not obvious, AFI 36-2710, paragraph 13.4 states that supervisors may request from the employee, sufficient medical documentation to support or confirm the disability, identify functional limitations, and determine appropriate accommodations. Sufficient documentation is documentation describing the disability; its nature, severity, and duration; and the extent to which it limits the employee's ability to perform a major life activity or activities. The supervisor may also request from the employee a medical release and medical documentation to support the requested accommodation. Contact Civilian Personnel.

Q17. As installation restrictions and government stay-at-home orders are modified or gradually lifted, how will organizations and supervisors know what steps they can take consistent with the Rehabilitation Act to screen employees for COVID-19 when entering the workplace?

A17. The Rehabilitation Act permits employers to make disability-related inquiries and conduct medical examinations if job-related and consistent with business necessity. Inquiries and reliable medical examinations meet this standard if it is necessary to exclude employees with a medical condition that would pose a direct threat to health or safety (OPM guidance and Policy). Direct threat is to be determined based on the best available objective medical evidence. The guidance from CDC or other public health authorities is such evidence. Therefore, employers will be acting consistent with the Rehabilitation Act as long as any screening implemented is consistent with advice from the CDC and public health authorities for that type of workplace at that time. Specifically, the Equal Employment Opportunity Commission (EEOC) has stated that employers may take employee temperatures and ask questions about symptoms (or require self-reporting) for all those entering the workplace to determine if they have or may have been exposed to someone who has the COVID-19 virus. Employers should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion.

Q18. I have an employee who has requested/has received a reasonable accommodation of being placed/continued on Weather/Safety Leave related to their higher risk of severe illness from COVID-19. With more and more people getting vaccinated, when can I require them to come back to work?

A18. There is no “one-size-fits-all” answer to this question. Each case and situation must be addressed according to the specific circumstances of that case, including the specific pandemic conditions at the workplace and in the community/region. Employees at higher risk of severe complications from COVID-19 may be entitled to a reasonable accommodation. If an employee requests a reasonable accommodation, the interactive accommodation process must be engaged. While an employee may be determined to be entitled to an accommodation, they are not necessarily entitled to the accommodation of their choosing. An employee who is receiving an accommodation of WSL may have their need for that accommodation re-evaluated, and/or the accommodation adjusted, through the interactive process as conditions change.

Q19. An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests?

A19. An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols). However, where an employee with a disability needs a related reasonable accommodation under the Rehabilitation Act (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading), the employer must discuss the request and engage in the interactive process. Provision of the requested modification or an effective alternative is to be provided in the absence of undue hardship to the employer.

Q20. How should an employee request reasonable accommodation if he/she has a medical condition that may put him/her at a higher risk for severe illness from COVID-19?

A20. An employee who wishes to receive reasonable accommodation may make an oral or written request to their immediate supervisor. Keep in mind that the employee (or his/her representative) does not need to use the term “reasonable accommodation” or reference the Rehabilitation Act. The request should be processed in accordance with AFI 36-2710, Chapter 13.12.1. The employee or his/her representative should communicate that he/she has a medical condition that necessitates a change to meet a medical need. After receiving a request, the supervisor/manager must acknowledge receipt of the request and enter into an interactive dialogue process with 10 business days of the request. AFI 36-2710, Chapter 13, paragraph 12 explains the requirements of the interactive process in detail.

Q21. Does an employee at higher risk under the CDC classification have a right to extended telework, even if other employees have been recalled to work?

A21. Maybe. It depends on the ability of the employee to safely perform their job at the worksite. By law, the request for accommodation requires an individualized assessment of the facts and circumstances (both medical and job) of the particular requesting employee. The statute broadly defines the term “disability” and includes virtually all of the conditions (other than age) identified by the CDC as qualifying an employee as being at higher risk for serious complications from COVID-19 (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>). An employee with a disability that puts them at higher risk from COVID-19 may well be entitled to continued telework as an accommodation.

The EEOC has specifically deemed telework, including full-time telework, to be a potential reasonable accommodation, even in situations where employees without a disability are not permitted to telework. Denials of requests for reasonable accommodation should only be made after consultation with the Civilian Personnel Office.

Q22. The CDC identifies a number of medical conditions that might place individuals at higher risk for severe illness if they get COVID-19. If the supervisor/manager knows that, an employee has one of these conditions and is concerned that his/her health will be jeopardized upon returning to the workplace, should the manager/supervisor ask the employee if he/she will require an accommodation?

A22. Not necessarily. If the employee has not requested an accommodation, the Rehabilitation Act does not mandate the supervisor/manager initiate the interactive process nor take any action. More importantly, if the supervisor/manager is concerned that the employee's health will be jeopardized by returning to the workplace, the regulation does not allow the supervisor/manager to exclude the employee *solely* because the employee has a disability that the CDC identifies as placing the employee at higher risk for serious complications from COVID-19. The exception would be if the employee's disability poses a "direct threat" to his/her or other employees' health or safety that cannot be eliminated or reduced by reasonable accommodation.

Q23. My supervisor has notified me that I will be required to return to the traditional worksite and has offered me an opportunity to get vaccinated through the DoD. I believe I am at a higher risk for COVID-19 and I want to continue to telework to minimize my risk. What can I do?

A23. Whether you receive the vaccine is entirely your decision and you cannot be ordered or coerced into receiving it. Additionally, it remains DAF policy to maximize telework whenever possible. Moreover, a civilian employee at higher risk under the CDC classification may have a legal right (under the Rehabilitation Act of 1973, as amended by the Americans with Disabilities Act) to the reasonable accommodation of extended telework, even if other employees have been recalled to the traditional worksite. It will depend on the ability for the employee to safely perform his or her job at the worksite. By law, a request for accommodation requires an individualized assessment of the facts and circumstances (both medical and job) of the particular requesting employee. An employee with a disability that puts them at higher risk from COVID-19 may well be entitled to continued telework as an accommodation. Note that denials of requests for reasonable accommodation should only be made after consultation with the local servicing CPS and legal offices.

REFERENCES:

- 10 U.S.C. § 1580
- 5 U.S.C. § 6329c(b)
- 5 CFR Part 630, Weather and Safety Leave
- Public Law 111-292, Telework Enhancement Act of 2010
- United States Office of Personnel Management's *Guide to Telework in the Federal Government*, April 2011
- Department of Defense Instruction (DoDI) Number 1035.01, 4 April 2012, Telework Policy
- DoDI1035.01_AFI36-816, Civilian Telework Program, 29 October 2018
- DoDI1400.25V610_AFI36-807, *Hours of Work and Holiday Observances*, 19 April 2019
- DoDI1400.25V630_AFI36-815, *Leave*, 14 November 2019
- Office Of Management and Budget Memorandum, M-20-13, Updated Guidance on Telework Flexibilities in Response to Coronavirus, dated March 12, 2020
- Office of Management and Budget Memorandum, M-20-15, Updated Guidance for the National Capital Region on Telework Flexibilities in Response to Coronavirus, dated March 15, 2020
- Office of Management and Budget Memorandum, M-20-16, *Federal Agency Operational Alignment to Slow the Spread of Coronavirus, COVID-19*, March 17, 2020
- USD P&R memorandum, "*Civilian Duty Status and Use of Weather and Safety Leave during COVID-19 Pandemic*", March 30, 2020
- Department of Defense Memorandum, Updated Civilian Personnel Guidance in Response to Coronavirus Disease 2019, DCPAS Message 2020024

- Department of the Air Force Memorandum (A1), *Telework Flexibilities in Response to COVID-19*, 20 March 2020
- Department of the Air Force Memorandum (A1), *Weather and Safety Leave during COVID-19 (Self-Certification guidelines)*, 3 April 2020
- Headquarters Air Force, Civilian Force Policy Division, March 2020, *Telework Fact Sheet*
- Headquarters Air Force, Civilian Force Policy Division, April 2020, *Weather and Safety Leave Fact Sheet*
- Air Force Instruction 36-2710, Equal Opportunity Programs, 18 June 2020

DEFINITIONS

- Weather and Safety Leave – Paid leave provided under the authority of 5 U.S.C. 6329c, which an agency may grant to employees only if they are prevented from safely traveling to or safely performing work at a location approved by the agency, due to:
 - An act of God;
 - A terrorist attack; or
 - Another condition that prevents an employee or group of employees from safely traveling to or safely performing work at an approved location.
- Act of God – an act of nature, including hurricanes, tornadoes, floods, wildfires, earthquakes, landslides, snowstorms, and avalanches.
- Employee – for the purpose of applicability to Weather and Safety Leave provisions, an employee is as described in §630.1601(b) and (c). This does not include intermittent employees, who by definition, do not have an established regular tour of duty during the administrative work week.
- Participating in a Telework Program – an employee who is eligible to telework and has a telework agreement under which the employee is approved to participate in the agency telework program, including on a routine or situational/ad hoc and/or emergency basis. Such an employee who teleworks on a situational basis is considered to be continuously participating in a telework program even if there are extended periods during which the employee does not perform telework.
- Telework Site – an approved location where an employee is authorized to perform telework, such as an employee's home.
- Mandated Telework- Mandated telework provides for the ability to implement telework for all assigned personnel independent of their telework status or whether or not individuals have a signed telework agreement. This is an “authority,” and commanders and supervisors have significant latitude to implement consistent with published guidance.
- “High Risk” and “Special Populations” – groups as defined by the CDC, including pregnant women, older adults, and individuals who have chronic health conditions, such as high blood pressure, heart disease, diabetes, lung disease, or compromised immune systems. Current information on this can be found at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/index.html>.
- Emergency employees – designated employees who are critical to agency operations and for

whom weather and safety leave may not be applicable. Such employees may also be referred to as “mission essential,” “key,” “mission critical,” or “emergency essential” for the purposes of weather and safety leave.

- Reasonable Accommodation – Required by the Rehabilitation Act of 1973 (29 USC §791 et seq.) as amended by the Americans with Disabilities Act (ADA) of 1990, as amended (42 USC §12101 et seq.) requires all federal agencies to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship.
- Accommodation - any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities (29 C.F.R. pt. 1630 app. § 1630.2(o)). Disability Accommodation is a case-specific and fact-specific process.