

July 13, 2020

MEMORANDUM FOR THE SECRETARY

THROUGH: CHRIS FALL
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DOE COVID-19 RESPONSE COORDINATOR

FROM: STEVE ERHART
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SUBJECT: ACTION: Department of Energy Headquarters COVID-19 Return to the
Workplace Plan - Phase 3 with Additional Flexibility

ISSUE: Whether to provide additional flexibility for federal employees when entering Phase 3 of the *Department of Energy (DOE) Headquarters COVID-19 Return to the Workplace Plan (HQ Plan)* to align with availability of National Capital Region (NCR) essential services and ongoing health concerns for vulnerable populations.

BACKGROUND: The *Department's COVID-19 Return to the Federal Workplace Framework* and the *HQ Plan* state that DOE's Phase 3 is intended to be back to normal operations. In Phase 3, as originally envisioned, all employees are expected to return to the workplace, except for those who individually request a formal reasonable accommodation due to their own health condition.

It now appears increasingly likely that social distancing protocols will continue to be implemented for Phase 3. Since the CDC lists underlying medical conditions that make individuals more susceptible to severe illness from COVID-19, it may be advisable for vulnerable employees, or those with vulnerable cohabitants, to remain on telework in an abundance of caution. Additionally, anticipated scarcity of availability of public transportation options and critical services such as schools, daycares, summer camps, and elder care may point to the need for additional telework flexibility for employees who may have no practical options once HQ enters Phase 3.

DISCUSSION: As NCR state and local governments are proceeding with reopening, it is expected that DOE would transition to the next phase, Phase 3, in the DOE phased reopening plan. As published, the NCR state and local governments' Phase 3 stages vary greatly and none include returning to a fully-reopened pre-COVID posture. As such, it is unlikely that local conditions in the NCR will support a fully "back to normal" Phase 3 return to the workplace as originally envisioned in the *HQ Plan*.

Logistical challenges in the NCR will likely mean that a substantial number of employees may need to continue to telework on a full or part-time basis until local conditions change. These challenges include:

- *Dependent Care.* At this point, it is difficult to determine when schools, daycares, summer camps, or facilities for elderly or disabled family members will fully reopen in the NCR.
 - For example, Fairfax County and Arlington County schools announced their 2020-2021 school year plan that provide at most two days of regular onsite school per week. Students will therefore be learning from home at least 3 days per week in these counties.

- Other localities, such as the District of Columbia, Montgomery County, and Loudoun County are considering similar options for the upcoming school year.
- Summer camps and similar in-person activities have already been cancelled for the remainder of the summer.
- *Public Transportation.* Employees in the NCR rely heavily on public transportation to commute to the workplace. At the Forrestal building, 80% of employees take public transportation.
 - Currently, the Washington Metropolitan Area Transit Authority (WMATA) is still ramping back up to full operations; 15 Metro stations having reopened on June 28 and previously curtailed bus routes being reintroduced with extended intervals between bus departures (estimated adding an additional 20-30 minutes between buses from their pre-COVID schedule). On weekdays, Metro trains will operate every 20 minutes vice every eight minutes from their pre-COVID schedule.
 - As regional businesses and governments scale back teleworking, Metro is asking customers to use alternate forms of transportation whenever possible and stated that they cannot guarantee social distancing will be possible at all times.
 - In addition to COVID-19 service reductions, WMATA has closed stations on the Orange and Silver lines through September as part of a platform improvement project. In June, OPM advised agencies that they need to consider WMATA operations in their phased reopening plan by offering flexible work schedules and maximizing telework.
 - Many of the commuter rails (e.g., Virginia Railway Express (VRE)) and commuter buses have not returned to a normal schedule. VRE continues operating with minimal services (Schedule S) at this time. As ridership grows, they will consider adding more trains in order to maintain social distancing.
- *CDC Guidance:* The CDC has identified several subcategories of employees who are at increased risk for severe illness from COVID-19. On June 25, CDC issued updated guidance for those who are at increased risk that is broader than previously issued including people of any age with certain underlying medical conditions who are at increased risk for severe illness from COVID-19, and those who might be an increased risk from severe illness from COVID-19.
 - Of DOE's approximately 4,000 federal HQ employees, 9% of employees are age 65 or over and 37% of employees are age 55 or over. In the personnel system, prior to the pandemic, 16% had self-identified as having a disability or serious health condition.
 - With the expanded guidance to all ages, some of the increased risk categories include: chronic kidney disease, obesity, serious heart conditions, sickle cell disease and Type 2 diabetes. Some of the categories of conditions that might be at an increased risk include: asthma, pregnancy, smoking, Thalassemia, and Type 1 diabetes.
 - These numbers do not account for federal employees who live with or care for people who are in the vulnerable population.
- *Reasonable Accommodations Process.* Under pre-COVID conditions, and in a return to normal Phase 3, the reasonable accommodation process can be a lengthy, interactive process requiring medical documentation and is governed by Equal Employment Opportunity Commission rules.
 - In anticipation of requests from the workforce of reasonable accommodation, expected to include general feelings of depression or anxiety upon Phase 3 reentry (e.g., do not feel safe in the office or commuting to the office), which is a disability covered under the Americans with Disabilities Act, additional flexibilities to the telework agreement are needed.

- The reasonable accommodation process does not provide for dependent care or cohabitant concerns. While not required under existing federal law, the Department could set up a separate processing system for requests by employees who, although they do not have health concerns for themselves, live with people who are vulnerable or have ongoing dependent care issues or commuting issues. Additionally, the expanded CDC-identified vulnerable categories listed above, necessitate the need for DOE to issue additional flexibilities to alleviate the number of reasonable accommodation requests.
- Additional flexibilities could be added to Phase 3 in the *HQ Plan*. As Headquarters progresses to Phase 3, it is anticipated that a significant number of employees with health concerns will request 100% telework as a reasonable accommodation when directed to return to the office. In accordance with OMB and OPM guidance, during Phases 1 and 2, DOE accepts self-identification; certification by a medical professional is not required.

URGENCY: Dissemination of any additional flexibilities provided to the original Phase 3 plan should occur as soon as possible.

- Fairfax County Schools are requiring parents to choose full-time or part-time virtual instruction by July 15, 2020 and Arlington County by July 20, 2020. Other school districts are likely to require similar elections soon in order to facilitate planning.
- *Bargaining Unit Requirements.* In order to prepare for Phase 3, DOE will need to initiate Impact and Implementation (I&I) bargaining with NTEU, which must be carried out before directing the remaining 1,300 HQ bargaining unit employees to return to the workplace. I&I bargaining provides NTEU with the opportunity to review the enhanced safety protocols and give their recommendations for changes for DOE consideration, and provides DOE management with time to implement any agreed upon changes. It is anticipated that I&I bargaining will be challenging, contentious, and lengthy if Phase 3 is entered while the logistical challenges in the NCR exist and COVID-19 concerns persist if additional flexibilities are not provided to federal employees.

RECOMMENDATION for PHASE 3: In order to address the above issues, minimize litigation risks (concerning reasonable accommodation requests, caregivers and cohabitants asserting Equal Employment Opportunity complaints, and union grievances), prevent inconsistent application from various supervisors and between Departmental Elements, and avoid the anticipated significant increase in the volume of submissions and in the time to process the reasonable accommodations for employees with health or other concerns, it is recommended to:

1. Presume that all federal employees will return to the workplace full-time in Phase 3 unless they had previously existing telework agreements prior to COVID-19 or they affirmatively request additional telework flexibilities as outlined below due to the COVID-19 crisis;
2. Rescind blanket use of Weather and Safety Leave (WSL) for non-telework eligible positions and transition to exception-based approval;
3. Expand telework flexibility (up to full-time, if warranted) under new COVID-19 telework agreements. Rescind blanket full-time situational telework agreements provided at the start of the COVID-19 crisis and instead direct Heads of Departmental Elements through their normal management chains to work with all remaining federal employees to return to a set schedule in the workplace that allows for additional flexibility.

These agreements are revocable based on the status of the COVID-19 crisis and will take into account the necessary COVID-19-related flexibilities discussed above as well as permitting:

- a. Employees to self-identify using the same criteria as permitted for Phases 1 and 2 (i.e., those who are in the vulnerable category, living with or caring for those in the vulnerable category, or have dependent care constraints);
 - b. Employees to request substantial schedule flexibility for commuting issues to accommodate limitations in public transit services;
 - c. In order to continue to provide excused absence for caregiving during the national emergency, employees who are on telework agreements are considered to be evacuated (i.e., to their home) from the building while in telework status;
4. Continue the suspension of core hours (9 AM – 3 PM) for the duration of the COVID-19 pandemic;
 5. Reassess new COVID-19 telework agreements and other increased flexibilities every month to account for changes in essential services in the NCR or COVID-19 based on the recommendations of HC-1 and MA-1;
 6. Remind supervisors and employees they are held accountable for meeting established performance requirements whether physically in the workplace or on telework and to direct any performance or conduct issues to Employee and Labor Relations; and
 7. Allow support contractor companies the flexibility to implement similar, revocable accommodations at the discretion of contracting officers.

DECISION: Approve: _____ Disapprove _____ Date: _____

COPY:

Under Secretary of Energy