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HRIL NO: 2020-04

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HUMAN RESOURCES INFORMATION LETTER

DISTRIBUTION: All Delaware National Guard Employees

SUBJECT: DNG Guidance for Coronavirus Disease 2019 (COVID-19)

1. References:

- a. 5 U.S.C. 6504(d)(2)
- b. 5 CFR 550
- c. 5 CFR 630
- d. OPM Memorandum #2020-05

e. TAG Policy Memorandum No. 20 – Telework Policy for Full Time Employees of the National Guard, dated 1 November 2018

2. The Centers for Disease Control and Prevention (CDC) has determined that COVID-19 meets the definition for “severe acute respiratory syndromes” set forth in E.O. 13674. Therefore, this novel coronavirus is a “quarantinable communicable disease,” as defined by E.O. 13295, as amended by E.O.s 13375 and 13674.

3. The Adjutant General (TAG) provides this guidance for all Active Guard Reserve (AGR) Members, federal and state employees in responding to Coronavirus Disease 2019 (COVID-19). This guidance is to identify human resource flexibilities to help the Delaware National Guard (DNG) minimize risk to its full-time personnel, their families, and other civilians as well as to ensure the readiness of our force to execute our dual missions and our ability to support the State of Delaware and our Country. We will continue to update and publish information which is available on the DNG website at: <https://www.de.ng.mil/>



HUMAN RESOURCES
INFORMATION LETTER
<https://www.de.ng.mil/hro>

4. Telework

a. This is an amendment to TAG Policy Memorandum No. 20 – Telework Policy for Full-Time Employees of the National Guard, dated 1 November 2018, and will remain in effect indefinitely.

b. **Applicability.** All full time Federal employees of the DNG, to include Title 32 Dual-Status, Title 5 National Guard Employees, Active Guard Reserve (AGR), and applicable state employees, are henceforth referred to as “employee”.

c. Employees must occupy telework-ready positions and have a current telework agreement. The DNG should immediately review their current telework policies and ensure that written telework agreements are in place for as many employees as possible. All DNG supervisors are strongly encouraged to sign situational (ad-hoc) telework agreements with all telework eligible employees currently without a signed telework agreement. Those employees deemed excepted or critical to daily operations and mission support requirements may be designated as ineligible for telework.

d. IAW Defense Civilian Personnel Advisory Service (DCPAS) Memorandum dated 9 March 2020, which provides guidance for a temporary waiver of policy through December 31, 2020, allowing civilians to telework during an emergency with a child or other persons requiring care or supervision at home. Employees must still account for work and non-work hours during his or her tour of duty and take appropriate leave (paid or unpaid) to account for time spent away from normal work-related duties (e.g., to care for child or dependent).

e. This will also assist the TAG and DNG leadership with applying a proactive measure to meet the local, state, and national level strategy of “social distancing” in order to reduce the continued transmission of COVID-19.

f. All telework must be documented in ATAAPS. For each day that telework is performed, the following steps must be taken:

In the Labor screen, click on the “NtDiff/Haz/Oth” button.
Click on “Add” under the day that telework was performed.
Enter the appropriate code:

TM: Telework Medical
TS: Telework Ad Hoc / Situational
TW: Telework Regular

Questions regarding pay and leave procedures in ATAAPS should be directed to your respective Army and Air Force pay offices.

5. Adjusted Work Schedules

a. TAG has established various full-time personnel daily work schedules 0700 – 1630 hours for the DNG, with alternating Mondays off in order to incorporate a 5/4/9 pay period, and 5/8 and 4/10 pay period construct. TAG retains the unfettered authority to set the work schedule, and as general rule, the basic work week and work day for employees in the bargaining unit will be operated IAW current TAG work week policy.

b. In order to meet emerging personnel requirements resulting from increased COVID-19 reported cases within the State of Delaware, the TAG has approved commanders and supervisors to implement adjusted work schedules in order to support and meet daily mission requirements for the DNG. Commanders and supervisors must avoid adjusted work schedules that would create an unsubstantiated requirement for Compensatory Time (CT), Overtime (OT), holiday/ shift differential pays, etc. All adjusted work schedules must receive HRO concurrence prior to implementation. Please forward requests to Ms. Michelle Reed at michelle.r.reed.civ@mail.mil.

c. When implementing adjusted work schedules, every effort should be made to establish schedules consistent with meeting the daily mission requirements of the DNG. Additionally, adjusted work schedules should not create undue hardship, or expose employees to unnecessary environmental hazards. In addition to adjusting employee's schedules, it is highly recommended to incorporate telework opportunities where appropriate to maximize the effects of each.

6. Stop Movement for all Domestic Travel

a. Travel restrictions will apply to all full time Federal employees of the DNG, to include Title 32 Dual-Status, Title 5 National Guard Employees, AGR personnel, and state employees in an official travel status. All DNG military personnel will stop movement while this memorandum is in effect. In addition, DNG civilian personnel and DNG family members, whose transportation is government-funded, will also stop movement. This policy applies to Permanent Change of Station (PCS) and Temporary Duty. Lastly, until the domestic travel restrictions are lifted, DNG supervisors may only onboard civilian employees within the local commuting area (defined as 50 miles).

Military members (AGR, ADOS, T-10 orders) are only authorized local leave in accordance with TAG guidance, not to exceed 200 miles or 4 hour driving distance. This includes airline travel. These requests can ONLY be approved by the following Officers: 166th Airlift Wing Commander, Chief of Staff (Army), and Vice-Chief of the Joint Staff.

7. The DNG HRO has prepared this question and answer guide to help employees and supervisors determine the correct course of action with regard to personnel flexibilities so as to maximize employee safety and maintain operational readiness.

8. Contents:

- a. Telework
- b. Sick Leave and Other Time Off
- c. Weather & Safety Leave
- d. Evacuation Payments During a Pandemic Health Crisis
- e. Employee Relations
- f. Hazardous Duty Pay Related to Exposure to COVID-19
- g. Workplace Precautions to Prevent Exposure to COVID-19
- h. Office of Workers Compensation Programs (OWCP)

9. Questions and Answers:

A. Telework

1. In the event that local schools are closed due to COVID-19, but Federal agencies remain OPEN, is it permissible for a telework program participant to perform telework with a child in the home?

Yes. Civilians are authorized telework during an emergency with a child or other persons requiring care or supervision at home. Employees must still account for work and non-work hours during their tour of duty and take appropriate leave (paid or unpaid) to account for time spent away from normal work-related duties (e.g., to care for child or dependent). The supervisor is responsible for ensuring that the employee's reported hours are reasonably consistent with production.

2. In the event that local schools are closed due to COVID-19 and Federal agencies are CLOSED, is it permissible for a telework program participant to perform telework with a child in the home?

Yes. Civilians are authorized telework during an emergency with a child or other persons requiring care or supervision at home. Employees must still account for work and non-work hours during their tour of duty and take appropriate leave (paid or unpaid) to account for time spent away from normal work-related duties (e.g., to care for child or dependent). The supervisor is responsible for ensuring that the employee's reported hours are reasonably consistent with production.

3. What happens if an employee does not have a sufficient amount of work to perform to cover the entire telework day during instances of COVID-19?

An employee must always have a sufficient amount of work to perform throughout the workday when they telework. An employee performing telework who does not have enough work must notify their supervisor and receive additional work or discuss leave options such as annual leave, advanced annual leave, other paid time off, or leave without pay.

4. Does the DNG possess the authority to have telework program participants work from home during an agency closure due to COVID-19?

Yes. During an agency closure due to COVID-19, when an agency Continuity of Operation Plan (COOP) has not been initiated and the World Health Organization has NOT declared a pandemic, telework program participants will generally be expected to continue working from home. They must work the entire workday, take other leave (paid or unpaid) or other time off, or use a combination of telework and leave or other paid time off.

5. Can the DNG order an employee to telework during a COOP event?

Yes. The Telework Enhancement Act of 2010 states that “each executive agency shall incorporate telework into the continuity of operations plan of that agency.” Employees participating in a telework program can be leveraged during a COOP activation. If an agency COOP plan is in operation, that plan “shall supersede any telework policy, (see 5 U.S.C. 6504(d)(2)) and allow greater flexibility to expand telework to a larger segment of the workforce in support of agency operations) so that as many employees are working during a COOP activation.

6. How will the DNG manage telework during incidences of quarantinable communicable disease, such as COVID-19?

For an employee covered by a telework agreement, ad hoc telework arrangements can be used as flexibility to promote social distancing and can be an alternative to the use of sick leave for exposure to a quarantinable communicable disease for an employee who is asymptomatic or caring for a family member who is asymptomatic. An employee’s request to telework from home while responsible for such a family member may be approved for the length of time the employee is free from care duties and has work to perform to effectively contribute to the DNG’s mission. Supervisors should have written telework agreements in place with as many employees who are willing to participate and communicate expectations for telework in emergency situations.

7. Will the DNG authorize “Weather & Safety Leave” to a telework program participant who was exposed to a confirmed case of a quarantinable communicable disease, such as COVID-19?

Use of weather and safety leave would be subject to the normal conditions – for example, it would only be granted if an employee is not able to safely travel or perform work at an approved location. An employee who is NOT a telework program participant would be granted weather and safety leave for quarantine periods *under the direction of local or public health authorities*. If the employee is a telework program participant, the employee’s home is generally considered to be an approved location. Thus, the employee would be expected to perform telework as long as the employee is asymptomatic.

For proper implementation and use of Weather and Safety leave, see HRIL 2019-07.

B. Sick Leave and Other Time Off

1. If an employee is healthy but chooses to stay home because they have been in direct contact with an individual exposed to a quarantinable communicable disease, such as COVID-19, in what pay/leave status should the employee be placed?

An employee, covered by a telework agreement, may request to telework with the permission of the supervisor. The DNG has also expanded telework to any eligible employees in order to provide additional flexibility. Employees who are not currently covered by a telework agreement who have portable duties (tasks that do not require the employee to be physically present), may be permitted to telework on a situational basis. An ad-hoc telework agreement should be signed to cover the period the employee is permitted to work from an approved alternate location.

An employee may also request to take annual leave, advanced annual leave, other paid time off, or leave without pay. The DNG will not authorize weather and safety leave to an employee in this scenario. The use of sick leave would be limited to circumstances where the employee has become symptomatic due to COVID-19.

2. If an employee is healthy but stays home because their asymptomatic family member has been quarantined due to exposure to COVID-19, in what pay/leave status should the employee be placed?

Currently, an employee may use annual leave, advanced annual leave, other paid time off, or leave without pay to care for a family member who is healthy but has been quarantined due to COVID-19. An employee who is covered by a telework agreement

may be able to telework pursuant to an ad hoc arrangement with the permission of their supervisor during the quarantine period. The employee must request annual leave, advanced annual leave, other paid time off, or leave without pay while caring for the family member.

3. If an employee runs out of sick leave, can DNG supervisors grant advanced sick leave to an employee who is ill (symptomatic) due to a quarantinable communicable disease, such as COVID-19, or must care for a family member who is ill?

Yes. Sick leave may be advanced *at the agency's discretion*. Advanced sick leave regulations found on OPM.gov and on the DNG GKO remain in effect.

4. If an employee, who has been receiving weather and safety leave due to exposure to COVID-19, becomes symptomatic (ill), should they continue to receive weather and safety leave?

No. If an employee is under quarantine *at the direction of local or public health authorities*, and becomes symptomatic, sick leave would be used to cover such a period of sickness, as provided in 5 CFR 630.401(a)(2).

5. Must an employee have a doctor's note if requesting to use sick leave for 3 days or more due to an illness from a quarantinable communicable disease, such as COVID-19?

Not necessarily. Under OPM's regulations (5 CFR 630.405(a)), an agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. The agency may consider an employee's self-certification as to the reason for their absence as administratively acceptable evidence, regardless of the duration of the absence. Supervisors should use their best judgement and follow established practices for granting sick leave.

C. Weather and Safety Leave

1. Can the DNG approve weather and safety leave for an employee who has been exposed to COVID-19?

The DNG may authorize weather and safety leave for an *asymptomatic* employee who is *subject to movement restrictions (i.e. quarantine or isolation) under the direction of public health authorities* due to a significant risk of exposure to a quarantinable communicable disease, such as COVID-19.

2. If an employee is healthy but stays at home because they have been in direct contact with an individual infected COVID-19, should the agency authorize weather and safety leave?

The DNG may authorize weather and safety leave to an employee who has been exposed to COVID-19, even if asymptomatic, *if a local health authority* determines the employee would jeopardize the health of other if allowed to return to work.

3. If an employee must stay home to care for an asymptomatic family member who was exposed to COVID-19, should the agency authorize weather and safety leave?

No. The agency will not authorize weather and safety leave in this instance. The employee may request annual leave, advanced annual leave, other paid time off, or leave without pay for the period of absence from their job. The employee may also request to telework if they are covered by a telework agreement pursuant to an ad hoc arrangement to the extent possible. If the employee's family member becomes ill with COVID-19, sick leave to care for the family member's serious health condition would be appropriate.

D. Evacuation Payments During a Pandemic Health Crisis

1. If a local or state health office make a determination that COVID-19 has become a public health emergency, will Federal agencies use the evacuation payment authority found at 5 CFR 550.409?

OPM regulations permit this authority to be utilized in connection with communicable diseases only in the context of a declared pandemic health crisis. The World Health Organization (WHO) makes the determination of when a pandemic is occurring. Any action taken by the DNG in accordance with 5 CFR 550.409 will be announced by TAG in the event that it is deemed appropriate.

2. If the WHO declares COVID-19 to be a pandemic, can the DNG order employees to evacuate their worksite and work from home?

Yes. 5 CFR 550.409(a) allows an agency to order its employees to evacuate their regular worksites and work from home (or an alternative location mutually agreeable to the agency and employee) during a pandemic health crisis.

3. During a pandemic health crisis, can the DNG order an employee to work from home if the employee does not have a telework agreement?

Yes. Agencies may order an employee to work from home (or an alternative location mutually agreeable to the agency and employee) without regard to whether the agency and the employee have a telework agreement in place at the time the order to evacuate is issued.

4. What type of work may the DNG assign to an evacuated employee?

Under OPM regulations, an agency may assign any work considered necessary without regard to the employee's grade or title so long as the employee has the necessary knowledge and skills to perform the assigned work.

5. If an employee is forced to incur additional costs due to working from home (e.g., purchasing a computer or internet service), may the agency provide payments to offset those expenses?

IAW TAG Policy memorandum No. 20 – Telework Policy for Full-Time Employees of the National Guard, Para. 9, “The Delaware National Guard is not responsible for operating costs associated with the employee using his or her home as an alternate worksite.” The Adjutant General, at their sole and exclusive discretion, may grant special allowance payments, based on a case-by-case analysis, to offset the direct added expenses incidental to performing work from home during a pandemic health crisis (see 5 CFR 550.409(b)).

E. Employee Relations

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

When a supervisor observes an employee at the workplace exhibiting medical symptoms, they can express general concern regarding the employee's health and reminding the employee of their leave options for seeking medical attention, such as requesting sick or annual leave.

If the employee has no leave available, supervisors are authorized to approve requests for advanced leave or leave without pay in certain circumstances. When these leave options are not practical, a viable alternative, when the employee is covered by a telework agreement, is for the employee to work from home for social distancing

purposes pursuant to an ad hoc arrangement approved by the employee's supervisor.

If none of the above options are possible, supervisors have the authority to place the employee on excused absence (administrative leave) or order them to stay at home or away from the workplace. The duration of any such excused absence (administrative leave) is dependent on the specific circumstances. Placing the employee on excused absence (administrative leave) is fully within the agency's discretion and does not require the consent or request of the employee. Supervisors will not place an employee on administrative leave without first consulting the Human Resources Office.

Before an employee returns to work, the employee's supervisor should consult with HRO regarding procedures for requesting administratively acceptable medical documentation.

2. If no medical official is present at the facility, who assesses employees and orders them home if they appear ill?

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

Objective evidence will depend of the facts of each case, and should consist of a statement from a healthcare provider that the employee is physically unable to work or poses a danger to other employees, or knowledge that the employee resides in an area that has been quarantined. Evidence may also include the employee making specific comments about being exposed to COVID-19 (e.g., taking care of a sick relative or friend). If such comments are made, supervisors should consult with HRO to assess whether a determination from a public health official is appropriate and necessary.

3. Can the DNG mandate an employee who has been exposed to, or who is infected with COVID-19 to remain away from the workplace for a specified period?

The DNG will not prohibit an employee from reporting to work unless there is evidence, or a reasonable concern exists that an employee is physically unable to perform their job, or their presence in the workplace poses a risk of infection to others. Sick employees are encouraged to take leave, such as sick leave, annual leave, advanced leave, other paid time off, or leave without pay. Excused absence (administrative leave) may be used if other options are not feasible and it is necessary to prevent an employee from being at the worksite and possibly putting other employees at risk.

4. Does the DNG have the right to solicit medical documentation when the employee is requesting sick leave? May the agency require all staff to be tested and treated for COVID-19?

The agency may consider an employee's self-certification as to the reason for their absence as administratively acceptable evidence, regardless of the duration of the absence. Supervisors may require medical documentation or other administratively acceptable evidence for any absence in excess of 3 days. Supervisors should use their best judgement and follow established practices for granting sick leave.

Under the current rules, management may require medical evaluation or screening ONLY when the need for such evaluation is supported by the nature of the work performed (5 CFR 339.301). Attempts by the supervisor to assume a particular medical diagnosis based on observable symptoms is very problematic and should be avoided. However, a supervisor may voice concern regarding an employee's health and remind the employee of their leave options for seeking medical attention (to include annual, sick, advanced leave, and leave without pay).

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

The infected employee's privacy will be protected to the greatest extent possible; therefore, their identity will not be disclosed. Only information that is deemed to be necessary to protect the health of the employees in the workplace while maintaining confidentiality as required by the Americans with Disabilities Act (ADA) will be disclosed. Supervisors must consult with HRO to determine what information is releasable. Employees exposed to a co-worker with confirmed COVID-19 should refer to CDC guidance for how to conduct a self-risk assessment of their potential exposure at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/assess-manage-risk.html>

If social distancing, information sharing, or other precautions to assist employees in recognizing symptoms or reducing the spread of the illness can be taken without disclosing information related to a specific employee, this is the preferred approach.

The DNG will continue to disseminate the most up to date official information regarding transmission of the illness and precautions that should be taken to reduce the spread of contagious diseases in the workplace. Supervisors should treat this as they would any other illness in the workplace and continue to protect employee privacy interests while providing sufficient information to all employees related to protecting themselves against the spread of illness.

F. Hazardous Duty Pay Related to Exposure to COVID-19

1. May an employee receive hazard pay differentials or environmental differential pay if exposed to COVID-19 through performance of assigned duties?

General Schedule (GS) employees may receive additional pay for the performance of hazardous duty or duty involving physical hardship (5 USC 5545(d) and 5 CFR part 550, subpart I). Appendix A to subpart I of 550 of title 5, Code of Federal Regulations, contains a list of approved hazard pay differentials. For example, a 25 percent hazard pay differential is authorized for employee exposure to “virulent biologicals,” which is defined as ‘work with or in close proximity to... materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection.’

Prevailing rate (wage) employees may receive an environmental differential when exposed to a working condition, physical hardship, or hazard of an unusually severe nature. (See 5 USC 5343(c)(4) and 5 CFR 532.511.) A list of approved differentials is contained in Appendix A to subpart E of part 532, of title 5, Code of Federal Regulations.

To be eligible for the hazard pay differential, it must be determined that the employee is exposed to a qualifying hazard through the performance of their assigned duties and that the hazardous duty has NOT been taken into account in the classification of the employee’s position. The differential is not payable if the safety precautions have reduced the element of hazard to a less than significant level of risk. The agency, in consultation with occupational safety and health personnel will determine whether an employee is entitled to hazard pay on a case-by-case basis.

2. May an employee who has been exposed incidentally to COVID-19 (i.e., in a manner not directly associated with the performance of assigned duties) receive a hazard pay differential for exposure to “virulent biologicals”?

No. OPM’s regulations define exposure to “virulent biologicals” as “work with or in close proximity to... materials of micro-organic nature which when introduced into the body are likely to cause serious disease of fatality and for which protective devices do not afford complete protection.” Employees may not receive a hazard pay differential under the “virulent biologicals” category if exposure to a qualifying virus was not triggered by the performance of assigned duties. The hazard pay differential cannot be paid to an employee who may come in contact with the virus or another similar virus through incidental exposure to the public or other employees who are ill rather than being exposed to the virus during the performance of their assigned duties.

3. Can employees receive hazardous duty pay or environmental differential pay for potential exposure to COVID-19?

No. There is no authority within the hazardous duty pay or environmental differential statutes to pay for *potential* exposure.

G. Workplace Precautions to Prevent Exposure to COVID-19

1. If an employee works in an occupation at risk for exposure to COVID-19, what can they do to stay safe and prevent the spread of the disease to others?

The Occupational Safety and Health Administration (OSHA) has published guidance and recommended measures to help prevent occupational exposure to COVID-19 in Federal workplaces. See OSHA's COVID-19 guidance at <https://www.osha.gov/SLTC/covid-19/index.html>

See also CDC guidance at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>

H. Office of Workers Compensation Programs (OWCP)

1. Where can DNG employees find information on workers compensation benefits related to COVID-19?

Information on worker's compensation benefits for Federal employees related to COVID-19 can be found at <https://www.dol.gov/owcp/dfec/InfoFECACoverageCoronavirus.html> or by contacting the Human Resources Office.

NGDE HRIL NO: 2020-04

SUBJECT: DNG Guidance for Coronavirus Disease 2019 (COVID-19)

10. POCs for this HRIL are:

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