



United States Department of the Interior

BUREAU OF INDIAN EDUCATION

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To: BIE Employees
From: Jackie Shamblin **JACKIE SHAMBLIN**
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Subject: Weather and Safety Leave Usage

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On June 07, 2021, the Department of the Interior (DOI) provided updated guidance regarding the usage of Weather and Safety (061) leave. Because the COVID-19 vaccination rates are increasing for our employees and protective measures each worksite has taken since the onset of COVID-19, employees who previously identified as “high risk” are no longer eligible for Weather and Safety Leave. As a reminder, Weather and Safety leave must only be used for the following reasons:

1. When an employee cannot safely travel to an approved work location (e.g. severe inclement weather), or
2. When an employee cannot safely perform work at an approved work location (e.g. unexpected gas line leak or some other hazard), or
3. For the interim coding of Emergency Paid Leave under the American Rescue Plan Act of 2021, for eligible Title 5 employees.

Employees who have a disability that could increase their risk of complications from COVID-19 should contact their supervisor to determine if a reasonable accommodation is necessary to perform the essential functions of their position. Supervisors will work with their servicing HR Employee and Labor Relations Specialist for guidance throughout the reasonable accommodation process.

For more in-depth information related to the DOI’s updated guidance on Weather and Safety leave, refer to the attached Frequently Asked Questions (FAQ).

Weather and Safety Leave

Updated June 7, 2021

Background

During the early stages of the COVID-19 pandemic in March 2020, federal agencies responded to a novel emergency situation with limited knowledge and resources. At that time, less was known about the efficacy of wearing face masks or the circumstances under which COVID-19 could spread. COVID-19 vaccines were not yet authorized, much less widely-available and free to all Americans. Hospitals were overwhelmed as COVID-19 infections skyrocketed.

CDC guidance published last year warned that certain populations were at higher risk of suffering serious complications from contracting COVID-19. That guidance discouraged requesting medical certification that an employee was at high-risk as a practical matter because hospitals, at that time, were overwhelmed by the volume of COVID-19 patients and needed to prioritize the treatment of COVID-19 patients over providing medical documentation. Guided by the factual circumstances at that time, the Department followed CDC and OMB guidance with regard to granting weather and safety leave for employees at higher risk of serious complications from contracting COVID-19.

The CDC has rescinded that prior guidance and replaced it with new guidance. Since hospitalization rates have stabilized and continue to trend downwards, the CDC no longer advises that employers rely on employees to self-identify that they are in a higher-risk population. Moreover, CDC data has made clear that vaccines are effective at protecting against both 1) the risk of COVID-19 illness and 2) potentially severe complications from contracting COVID-19. Furthermore, public health preventative measures, which are part of Department's Workplace Safety Plan, have also proven effective in combatting COVID-19.

In light of the most current science-based guidance from the CDC and the availability of public health preventive measures that have proven effective at protecting health and safety in DOI workplaces, the Department has updated and clarified its guidance regarding weather and safety leave.

Bureaus/Offices should immediately develop a communication and transition plan to ensure consistency with these FAQs, give employees advance notice of the clarified guidance provided by these FAQs, and ensure labor-management obligations are met, as appropriate. Refer to Question 5 below for information on making a request for reasonable accommodation.

Question 1: Can I self-identify as a person at high-risk of serious complications without providing any information or medical evidence to establish eligibility for weather and safety leave?

No. CDC guidance no longer recommends accepting self-identification by an employee that the employee is at higher risk of serious complications from contracting COVID-19. Because weather and safety leave is only available in very limited circumstances, including when an employee is prevented from safely traveling to and performing work at an approved work location, employees who request weather and safety leave must prove 1) that they cannot safely travel to an approved work location (e.g., severe inclement weather); or 2) that they cannot safely perform work at an approved work location.

Added 06.07.2021

Question 2: I am fully vaccinated, and I have medical documentation certifying that I belong to a CDC-identified population at higher risk of complications from COVID-19 if unvaccinated. Am I eligible for weather and safety leave?

No. CDC guidance explains that FDA-authorized COVID-19 vaccines are effective at providing protection 1) against illness from COVID-19 and 2) against potentially severe complications associated with contracting COVID-19. Accordingly, the CDC's May 28, 2021 Interim Public Health Recommendations for Fully Vaccinated People indicates that the risk of COVID-19 infection is minimal for fully vaccinated people such that asymptomatic fully vaccinated individuals need not be restricted from work. Weather and safety leave is only available in very limited circumstances, including when an employee is prevented from safely traveling to and performing work at an approved work location. CDC guidance and scientific evidence demonstrate the efficacy of FDA-authorized COVID-19 vaccines and establish that fully-vaccinated individuals may safely perform work at an approved work location. Therefore, weather and safety leave is not available under these circumstances.

Added 06.07.2021

Question 3: I am not fully vaccinated, and I have medical documentation certifying that I belong to a CDC-identified population at higher risk of complications from COVID-19. Am I eligible for weather and safety leave?

No. With the benefit of CDC guidance for public health measures, such as vaccinations, face masks, physical distancing, and other precautions in DOI's Workplace Safety Plan, employers can protect health and safety in the workplace, and individuals can protect themselves and others. Science-based safety practices, including vaccinations, face masks, physical distancing, good ventilation, proper hygiene, and personal protective equipment, allow employees to safely perform work at an approved work location. Weather and safety leave is only available in very limited circumstances, including when an employee is prevented from safely traveling to and performing work at an approved work location. Because protective measures allow employees who are not fully vaccinated to perform work safely at an approved work location, belonging to a CDC-identified population at higher risk of complications from COVID-19 does not make an employee eligible for weather and safety leave.

Added 06.07.2021

Question 4: I decline to receive a COVID-19 vaccination (for religious, medical, or other reasons), and I have medical documentation certifying that I belong to a CDC-identified population at higher risk of complications from COVID-19. Am I eligible for weather and safety leave?

No. With the benefit of CDC guidance for public health measures, such as face masks, physical distancing, and other precautions in DOI's Workplace Safety Plan, employers can protect health and safety in the workplace, and individuals can protect themselves and others. Science-based safety practices, including face masks, physical distancing, good ventilation, proper hygiene, and personal protective equipment, allow employees to safely perform work at an approved work location. Weather and safety leave is only available in very limited circumstances, including when an employee is prevented from safely traveling to and performing work at an approved work location. Because protective measures allow employees who are not fully vaccinated to perform work safely at an approved work location, declining to receive a vaccination and belonging to a CDC-identified population at higher risk of complications from COVID-19 do not make an employee eligible for weather and safety leave.

Added 06.07.2021

Question 5: Due to a disability that increases my risk of complications from COVID-19, I need a reasonable accommodation to perform the essential functions of my position. How do I go about requesting a reasonable accommodation?

The purpose of a reasonable accommodation for a disability is to enable qualified individuals with a disability to perform the essential functions of a particular job. Employees should talk with their supervisor and reach out to their Bureau or Office Reasonable Accommodation Coordinator to explain what they need in order to be able to perform the essential functions of the position. Examples of reasonable accommodations include modifications to the work environment, additional safety precautions, or alternative work schedules, as applicable and appropriate depending on the unique circumstances of each employee.

Added 06.07.2021

Question 6: I am sick with fever, chills, cough, shortness of breath, fatigue, muscle aches, vomiting, and a runny nose. Can I get weather and safety leave?

No. Employees experiencing these symptoms should not physically report to the workplace. Employees who become ill (especially in the case of a contagious disease) should notify their supervisor and not physically report to the workplace. When an employee is sick, a variety of HR flexibilities may be considered, including sick leave, annual leave, and/or telework if the employee is not prevented from performing work. Employees may also qualify for Emergency Paid Leave (EPL) under Section 4001 of the American Rescue Plan Act of 2021 (Public Law

117-2), enacted on March 11, 2021. Eligibility for the leave is based on certain COVID-19-related qualifying circumstances and is processed on a first-come/first-served basis until September 30, 2021 or the fund is depleted, whichever comes sooner. Refer to the section **Emergency Paid Leave (EPL) Under the American Rescue Plan** for additional information.

Added 06.07.2021

Add under newly created section titled 'General Information'

Question 1: What flexibilities or resources remain available for employees with respect to COVID-19?

In addition to reasonable accommodations that may be available, a variety of flexibilities remain available to employees to include:

- Up to four hours of administrative leave (pay code 060) for each dose of the vaccination (see FAQ 3 under Vaccinations)
- Up to two full workdays of administrative leave (pay code 060) for recovery from an adverse reaction to a COVID-19 vaccine (see FAQ 4 under Vaccinations)
- Up to 20 hours of administrative leave (pay code 060) for caregiving for employees unable to complete their 80-hour bi-weekly work requirement due to unusual dependent-care responsibilities (see FAQ 3 under Excused Absence for Caregiving Due to COVID-19)
- Employees may request annual leave, sick leave, or Leave Without Pay, or a combination thereof.

The Employee Assistance Program (EAP) offers confidential counseling and referral services from a network of licensed clinicians, trainers, counselors and professionals. They are available to assist you with any work/life issues and can be contacted at 1-800-869-0276 or on-line at <https://espyr.com/sign-in/>, Member Access page using the password: interioreap. EAP services are free of cost, voluntary and available 24 hours per day, 7 days per week.

Added 06.07.2021