IRS Planning Evacuation Order: Here is What That Means

Yesterday, the IRS briefed NTEU on its plan to issue an evacuation notice to all employees to “evacuate” from their worksite and perform work from their home during this pandemic. The order may be issued as soon as today.

In doing so, the IRS is invoking a provision in federal regulations that allows it to require telework-eligible employees to perform work from their home, regardless of whether they have a telework agreement in place at the time the evacuation notice is issued. According to the regulation, once that authority is invoked, employees may be assigned any work considered necessary or required to be performed during the period of evacuation, without regard to their grade, level or title. Failure or refusal to perform assigned work may be subject to disciplinary action and could result in the termination of pay.

One notice will be sent to all bargaining unit employees, but the IRS understands that not every employee is able to work from home. Agency officials indicated that the notice will say that management reserves the right to direct employees to come into the office to perform mission critical work.

As you might imagine, NTEU has a number of questions. Some were answered, while we are awaiting answers to others. Here is what we know right now:

**What constitutes mission-critical work, as opposed to “non-essential” work? For example, does that include traveling to the office to pick up work, open mail or deposit tax payments?** The IRS said it will be up to the individual Business Divisions to decide. NTEU is seeking guidance from the business units.

**Who is telework-able?** The same criteria apply here as in the NTEU–IRS contract: the work is portable, the employee has high-speed Internet, and the alternate worksite is conducive to working. Other eligibility criteria will be waived including the following:
the employee must be working at IRS for not less than 12 months and have a Fully Successful or above rating; and must not have been disciplined in the last 12 months for actions that would impact the integrity of the telework program.

For employees subject to telework–disqualifying discipline under the Telework Enhancement Act and employees on a performance improvement plan, the IRS will let individual managers decide on a case–by–case basis how to proceed. With respect to employees who cannot perform work remotely, the IRS states it will follow OMB guidance and grant them weather and safety leave. The IRS acknowledged that it has no authority to order employees to purchase high–speed Internet so they can become telework–able.

We know that this evacuation order will cause employees concern, particularly those who have reasonable accommodations or whose homes are not suitable for telework, including the lack of Internet access. OPM’s guidance on issuing an evacuation order is clear that the order does not relieve agencies of their reasonable accommodation obligations, and the IRS said that it will continue the reasonable accommodation measures at their homes.

**What if an employee runs out of work?** During the briefing, NTEU specifically questioned information contained in the IRS FAQ stating that if a teleworker runs out of work, she/he must take annual or some other type of leave to account for the down time. The NTEU–IRS contract makes clear that telework–ready employees who run out of work are not directed to go to the office to get more work are entitled to weather and safety leave. The IRS said it would correct that and even take steps to ensure that any employees who were and forced to take annual leave have that changed in SETR. Under OPM guidance, once an evacuation order is issued, if employees run out of work they are entitled to weather and safety leave.

NTEU has additional questions and points that need clarification. We will ask those of the IRS during our daily briefing and share more information with you as we receive it.

Stay safe during this difficult time.