



HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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Affected IRMs: 6.610.1 and 6.630.4

MEMORANDUM FOR ALL BUSINESS UNITS

FROM: Robin D. Bailey Jr.
IRS Human Capital Officer

SUBJECT: Interim Guidance (IG) for Granting Excused Absence to
Evacuated, Telework-Eligible Employees with Caregiving
Responsibilities due to COVID-19

The IRS recognizes the unique challenges faced by evacuated employees who are expected to conduct work at home while at the same time charged with caregiving responsibilities. Please ensure this information is distributed to all affected employees within your business unit.

Purpose: This IG issues Servicewide policy that is effective immediately for requesting and granting limited amounts of excused absence (up to 20 hours per pay period) to employees who are evacuated (directed to work at home) due to COVID-19, telework-eligible, and who have caregiving responsibilities that prevent the accomplishment of work. This guidance establishes eligibility requirements, biweekly limits, documentation requirements, and the approval authority for granting this excused absence.

Background/Source(s) of Authority: The COVID-19 pandemic is unprecedented with numerous guidance documents and fact sheets issued to federal agencies by the Office of Personnel Management (OPM), Office of Management and Budget, Department of the Treasury (Treasury), Centers for Disease Control and Prevention, Department of Labor, etc.

The sources of authority for evacuation payments during a pandemic health crisis are [Title 5, United States Code \(USC\), Part III, Subpart D, Chapter 55, Sections 5522-5524](#), [Title 5, Code of Federal Regulations \(CFR\), Part 550, Subpart D, Payments During Evacuation](#), [OPM Fact Sheet, Evacuation Payments During a Pandemic Health Crisis](#), and [Treasury Human Capital Issuance System Transmittal Number 09-008, Evacuation Payments During a Pandemic Health Crisis](#).

The sources of authority for the discretionary granting of excused absence to evacuated, telework-eligible employees with caregiving responsibilities are [OPM Fact Sheet, Coronavirus Disease 2019 \(COVID-19\) Options for Telework-eligible Employees with Caregiving Responsibilities](#), and the attached Treasury document, Guidance on Excused Absence for Telework-Eligible Employees with Caregiving Responsibilities.

Procedural Change: To mitigate evacuated, telework-eligible employees' dual responsibilities for caregiving and accomplishment of work, the IRS is providing managers the discretionary authority to grant limited amounts of excused absence. This policy terminates upon lifting of the IRS COVID-19 evacuation order applicable to the employee, or by December 31, 2020, whichever occurs first. Employees may then request appropriate leave (paid or unpaid) for any time throughout the workday that they are providing care for a child or family member.

Program Scope: This guidance applies to employees under an IRS evacuation order due to the COVID-19 pandemic who are telework-eligible, working at home, and have caregiving responsibilities, as defined in Part II, Section B, below.

Policy Owner: The IRS Human Capital Officer.

Program Owner: The Office of HR Strategy, Policy and Compliance.

I. Policy:

- A. Effective immediately, managers are provided discretionary authority to grant up to 20 hours of excused absence per pay period to employees who are evacuated (directed to work at home), telework-eligible, and have caregiving responsibilities (defined in Part II, Section B, below) preventing the accomplishment of work.

“**Excused absence,**” also referred to as “administrative leave,” is an authorized absence from duty without loss of pay or charge to leave to which an employee is otherwise entitled under law.

- B. This authority is available only if, after all reasonable scheduling flexibilities (outlined in Part III below) have been exhausted, an employee is unable to complete 80 hours of work per pay period (or the full scheduled biweekly tour for a part-time employee) because of home caregiving responsibilities, as defined in Part II, Section B, below.

Use of this authority must cease at the commencement of the employee's next scheduled workday immediately following the termination of the employee's qualifying circumstance. For example, the child's elementary school reopens,

and, therefore, the employee no longer meets the eligibility requirements for excused absence.

II. Eligibility:

A. Employees must meet **all** the following criteria to be eligible for this excused absence:

1. Must be under an evacuation order (work-at-home directive);
2. Must be telework-eligible (i.e., have portable work);
3. Must have caregiving responsibilities (defined in Section B below);
4. Must exhaust all reasonable work scheduling flexibilities (see Part III below) and still be unable to complete 80 hours of work per pay period (or the full scheduled biweekly tour for a part-time employee) because of caregiving responsibilities;
5. Must not be an intermittent employee; and
6. Must not be substituting this excused absence for regular sick leave in cases where an employee would otherwise appropriately use sick leave (or other personal leave not related to caregiving responsibilities, such as annual leave for vacation).

A. “Caregiving responsibilities” means:

1. Employee has a child or children living in their home who attends an elementary or secondary school that is either closed or operating virtually due to the COVID-19 pandemic;
2. Employee has a younger child or children living in their home who are not of school age, and normal childcare arrangements are not in effect due to the COVID-19 pandemic; or
3. Employee has other family members (e.g., adult child with special needs or elderly parent with special needs) in the home who require care and supervision because of mental or physical disability and other caregivers are not available due to the COVID-19 pandemic.

“**Child or children**” for the purpose of this policy means a biological, adopted or foster child, stepchild, legal ward, or child of a person standing in loco parentis (i.e., an individual with day-to-day responsibility for the care and financial support of a child), under 18 years of age.

“**School that is either closed or operating virtually**” for the purpose of this policy means the school is closed for in-person instruction. This includes schools operating on an alternate day basis where the school is open each day, but students alternate days between attending school in person and participating in

remote learning. Excused absence may be provided on remote learning days when students are not permitted to attend school in person. Excused absence may not be provided for periods of time when the school is open, and parents/caregivers are given a choice between in-person or remote learning and choose for their child or children to remain home.

III. Scheduling Flexibilities:

- A. Prior to requesting excused absence under this policy, eligible evacuated employees with caregiving responsibilities are to exhaust all reasonable scheduling flexibilities to help alleviate the dual challenges of managing caregiving responsibilities with conducting their work. Scheduling flexibilities that should be considered include, but are not limited to:
1. Expanded maxiflex, a flexible work schedule (FWS) for employees with caregiving responsibilities due to COVID-19 provided by [Interim Guidance Memorandum HCO-06-0620-0012](#);
 2. Emergency paid sick leave (EPSL) under the Families First Coronavirus Response Act provided by [IG Memorandum HCO-06-0420-0007](#); and
 3. Alternative or staggered work schedules provided by [IRM 6.610.1.5, Work Schedules](#), and [National Agreement, Article 23, Hours of Work](#):
 - a) Flexitour with credit hours FWS;
 - b) Gliding FWS;
 - c) Maxiflex FWS;
 - d) 5/4-9 compressed work schedule (CWS);
 - e) 4/10 CWS; or
 - f) Staggered work schedule.

Opting to work an FWS allows the earning and use of credit hours to vary the length of the workday and/or workweek. Working a CWS allows employees to complete their biweekly work requirement in fewer than 10 workdays. Staggered is a standard, fixed schedule that permits different start and stop times each day.

- B. Managers must make case-by-case determinations, based on individual circumstances and available scheduling flexibilities, to ascertain if all reasonable scheduling flexibilities have been exhausted prior to granting excused absence.

IV. Employee Requests

- A. Employees must request excused absence **in advance in writing** (via email or other form of written documentation). In cases of unanticipated events where it is not possible to provide a written request in advance, managers may give

presumptive approval based on a verbal request, but employees must follow-up in writing. Written requests must contain the following information:

1. The day(s), number of hours, and timeframe requested, not-to-exceed 20 hours per pay period.
 2. Information regarding the child, children, or other family member(s) for which they have caregiving responsibilities (as defined in Part II, Section B, above) and the excused absence is needed. The information must include:
 - a) name and age of the child, children, or other family member being cared for;
 - b) nature of the relationship (e.g., son, daughter, parent); and
 - c) name of the school, childcare provider, or place of care that is closed or not available.
 3. Confirm that:
 - a) all reasonable scheduling flexibilities (see Part III above) were considered and exhausted, and the employee cannot fulfill their tour of duty (TOD) due to caregiving responsibilities; and
 - b) no other suitable person will be caring for the child, children, or other family member(s) during the time period during which the excused absence is requested.
- B. Employees must understand that managers cannot approve excused absence if the above information is not provided.
- C. Attached is a sample, optional request and approval format to facilitate making and approving these requests.

V. Approval Authority

- A. Unless the employee's business unit has designated a higher level of approval, immediate managers have the discretion and authority to grant up to 20 hours of excused absence per pay period to employees under their supervision under this policy. This excused absence must be approved in advance of its use, and managers must verify the following criteria before approving it:
1. The employee meets the eligibility requirements (as defined in Part II, Section A, above);
 2. The employee exhausted all reasonable scheduling flexibilities (see Part III above) and is still unable to complete their TOD; and
 3. The total amount approved does not exceed 20 hours per pay period.
- B. Managers should consider the following factors when determining whether to approve or deny requests:
1. Age and care needs of the employee's child or children;
 2. Needs of any adults in the home requiring care by the employee;
 3. Number of children or other persons in the home requiring care/supervision;
 4. Presence in the home of other healthy adult caregivers;

5. Employee's ability to perform work at times when direct care/supervision of a child or other person is not needed (e.g., while a child is sleeping), after making appropriate work scheduling flexibilities available; and
 6. Whether the employee is also receiving a childcare subsidy payment for the same timeframe.
- C. If denying the request for excused absence, managers should explain the denial and discuss other work options that may be available to the employee to balance, as much as possible, the dual demands of work and caregiving.

VI. Time and Attendance Posting:

- A. Excused absence granted under this policy is posted to **990-85580**, Administrative Leave for Caregiving Responsibilities due to COVID-19.
- B. The amount of time granted may not exceed 20 hours per pay period.
- C. Use of this authority must cease at the commencement of the employee's next scheduled workday immediately following the termination of the employee's qualifying circumstance. For example, the child's elementary school reopens, and, therefore, the employee no longer meets the eligibility requirements for excused absence.
- D. Excused absence granted under this policy is not to be used in lieu of sick leave or other personal leave. For example, if a child is not able to attend school or virtual school due to illness, and the employee must provide care for the sick child during that time, excused absence is not appropriate. Instead, the employee should use other leave, as appropriate.

Effective Date: This policy is effective immediately and terminates upon lifting of the IRS COVID-19 evacuation order applicable to the employee, or by December 31, 2020, whichever occurs first.

Contacts: Carrolyn J. Bostick, Director, Policy and Compliance, at 202-317-3914 or Carrolyn.J.Bostick@irs.gov.

Attachments (2)

Distribution:

Commissioner of Internal Revenue
Deputy Commissioner for Operations Support
Deputy Commissioner for Services and Enforcement
Commissioner, Large Business and International Division
Commissioner, Small Business/Self-Employed Division
Commissioner, Tax Exempt and Government Entities Division
Commissioner, Wage and Investment Division

Chief, IRS Independent Office of Appeals
Chief, Communications and Liaison
Chief, Criminal Investigation
Chief, Facilities Management and Security Services
Chief Financial Officer
Chief Diversity Officer
Chief Information Officer
Chief Privacy Officer
Chief Procurement Officer
Chief Research and Analytics Officer
Chief Risk Officer
Director, Office of Online Services
Director, Office of Professional Responsibility
Director, Return Preparer Office
Director, Whistleblower Office
National Taxpayer Advocate
Chief Counsel

cc: IG Coordinator for Office of Servicewide Policy, Directives and Electronic Research

Attachment

Guidance on Excused Absence for Telework-Eligible Employees with Caregiving Responsibilities

Evacuation Pay Authority

Treasury bureaus and policy offices may apply evacuation pay regulations during the COVID-19 pandemic on a case-by-case basis. (Note: This does not apply to overseas employees). Issuance of evacuation orders is a distinct action, and the order must be issued to all impacted employees, even those who are already teleworking, in order to invoke the evacuation pay regulations.

Under the evacuation pay authority, supervisors may direct employees who have not been participating in an agency's telework program to be designated as telework program participants. The evacuated employee may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to his or her grade, level, or title, as long as they have the necessary knowledge and skills to perform the assigned work. If an agency does not have work to assign to an evacuated employee, the agency may provide weather and safety leave to that employee for affected hours. However, if there is work available to be performed by an evacuated employee at their alternative location, they generally would not be eligible for weather and safety leave.

Granting Excused Absence under the Evacuation Pay Authority

Pursuant to OPM's evacuation pay regulations, an agency that has issued an evacuation order has the authority to determine what and how much work evacuated employees are expected to perform—"Evacuated employees at safe havens may be assigned to perform work considered necessary or required to be performed during the period of the evacuation" (5 CFR 550.406(a)). This work assignment authority allows an agency to grant an excused absence for non-work periods. This requires issuance of an evacuation order that an employee or employees, or specific categories of employees, not report to their regular worksite – with their home or other alternative work location as a designated "safe haven" (5 CFR 550.409). The evacuation order may be made either verbally or in writing, including by e-mail and without regard to whether the agency and the employee have a telework agreement in place. An individual evacuation order may cover a period of up to 180 calendar days when employees continue to be prevented from performing their duties except at the designated safe haven.

As of September 8, 2020, Treasury bureaus and policy offices now have the flexibility to grant up to 20 hours of excused absence per pay period to employees who are under an evacuation order. This authority is available only if, after all reasonable scheduling flexibilities have been exhausted, an employee is unable to complete 80 hours of work per pay period (or the full scheduled bi-weekly tour for a part-time employee) because:

- The employee has a child or children who attend an elementary or secondary school that is either closed or operating virtually due to the COVID-19 pandemic;
- The employee has a younger child or children who are not of school age, and normal childcare arrangements are not in effect due to the pandemic; or

- The employee has other family members (e.g., adult child or elderly parent with special needs) in the home who require care and supervision, and other caregivers are not available due to the pandemic.

As with other leave categories, these limited hours of excused absence must be approved in advance, and organizations may delegate approval authority to individual supervisors. In determining the need for a limited amount of excused absence for employees in the above-described circumstances, supervisors should consider the following factors:

- the age and care needs of the employee's child or children;
- the needs of any adults in the home requiring care by the employee;
- the number of children or other persons in the home requiring care/supervision;
- the presence in the home of other healthy adult caregivers;
- the employee's ability to perform work at times when direct care/supervision of a child or other person is not needed (e.g., while a child is sleeping), after making appropriate work scheduling flexibilities available; and
- whether the employee is also receiving a child care subsidy payment for the same timeframe.

Employees who are subject to evacuation orders during the pandemic will be paid their normal rate of pay for the hours of work performed (including any applicable premium pay, allowances, differentials, or other authorized payments).

There may be collective bargaining obligations associated with exercising this flexibility. Leaders should consult with their servicing human resources office and/or general counsel to determine appropriate labor relations obligations as it relates to deciding what actions are needed.

Attachment - Sample, Optional Request and Approval Format

Request for Excused Absence (Administrative Leave) for Caregiving Responsibilities

Employee's Name _____

1. I am under an IRS COVID-19 evacuation order (work at home directive):
Yes _____ No _____

IF YES, continue.
IF NO, STOP HERE. You are not eligible for excused absence.

2. I am telework-eligible (i.e., have portable work):
Yes _____ No _____

IF YES, continue.
IF NO, STOP HERE. You are not eligible for excused absence.

3. I have considered and exhausted all reasonable scheduling flexibilities and am still unable to complete 80 hours of work per pay period (or my full scheduled biweekly tour as a part-time employee) because of my caregiving responsibilities:
Yes _____ No _____

IF YES, continue.
IF NO, STOP HERE. You are not eligible for excused absence.

4. I have a child (or children) or other family member (e.g., adult child or elderly parent with special needs) living in my home for which this excused absence is requested:
Yes _____ No _____

IF YES, provide the name, relationship, and age(s) of the child (or children) or other family member (e.g., adult child or elderly parent with special needs) who require care and supervision, and other caregivers are not available due to the COVID-19. If school age, provide the name of the school that is closed or operating virtually due to the COVID-19 pandemic. If under school age, provide the name of normal childcare arrangement not in effect due to the COVID-19.

Name and Relationship: _____ Age _____

Name of School/Childcare Arrangement: _____

IF NO, STOP HERE. You are not eligible for excused absence.

5. Excused absence (administrative leave) hours requested, including clock time:

Pay Period:							
	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Week 1							
Number of Hours							
Clock Time							
Week 2							
Number of Hours							
Clock Time							

Employee: I certify (if unable to certify, you are not eligible for excused absence):

1. I am not an intermittent employee;
2. No other suitable person will be caring for the child, children, or other family member during the time period during which this excused absence is requested;
3. This request will not cause me to exceed a total of 20 hours per pay period of excused absence for this purpose;
4. I am not substituting this excused absence for regular sick leave in cases where I would otherwise appropriately use sick leave (or other personal leave not related to caregiving responsibilities, such as annual leave for vacation); and
5. If the qualifying circumstance(s) for approval of this excused absence ceases to exist, I will promptly advise my manager.

Employee's signature

Date

Manager: I confirm (if unable to confirm, you cannot approve excused absence):

1. The employee is under evacuation order and telework eligible;
2. The employee provided satisfactory information regarding their qualifying child, children, or family member with special needs living in the home;
3. The employee provided satisfactory information that, during the time period requested, their child's school is closed or operating virtually due to COVID-19, or if an underage child, that normal childcare arrangements are not in effect due to COVID-19, or if a special-needs adult, other caregivers are not available due to COVID-19;
4. The employee has exhausted all reasonable scheduling flexibilities available and is still unable to complete their full TOD;

- 5. I considered the factors in Part V, Section B, when reviewing this request;
- 6. The request will not cause the employee to exceed a total of 20 hours of excused absence per pay period; and
- 7. The employee is not an intermittent employee and is not substituting excused absence for regular sick leave or other personal leave not related to caregiving responsibilities.

_____ Approved (Post time to **990-85580**, Administrative Leave for Caregiving Responsibilities due to COVID-19)

_____ Disapproved due to _____

Manager's signature

Date