

# COVID-19 Phased Return to Facilities

## MEMORANDUM of UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (MOU) is between the United States Department of Agriculture, Forest Service (Management), and the National Federation of Federal Employees, Forest Service Council (Union), hereafter referred to collectively as “the Parties.” This MOU is a Supplemental Agreement under Article 11 of the 2019 Master Agreement between the Parties, and it documents the Parties’ full and final agreement on the negotiable arrangements and procedures which apply to the phased-in approach to resume regular facility operations and service in response to the COVID-19 pandemic.

### 1. Gating Criteria

In accordance with the President’s “Opening Up America Again” guidelines, found in Appendix 1 of the Forest Service Reopening Playbook, decisions to resume or increase facility operations at Forest Service offices will be informed by the Gating Criteria for communities or states in the below chart when moving into Phase 1 of increased operations and between each subsequent phase.

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|-----------|--|
| CRITERIA  |  |
| SYMPTOMS  | <ul style="list-style-type: none"><li>• Downward trajectory of influenza-like illnesses (ILI) reported within a 14-day period, AND</li><li>• Downward trajectory of COVID-like syndromic cases reported within a 14-day period</li></ul>                     |
| CASES     | <ul style="list-style-type: none"><li>• Downward trajectory of documented cases within a 14-day period, OR</li><li>• Downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests)</li></ul> |
| HOSPITALS | <ul style="list-style-type: none"><li>• Treat all patients without crisis care, AND</li><li>• Robust testing program in place for at-risk healthcare workers, including emerging antibody testing</li></ul>  |

### 2. Union Notification of Change in Phase

When Management on a unit submits a request to move to a different opening phase, a copy of the request will be provided to the Local President or Primary Point of Contact (PPOC) for the unit. The Local union official will also be provided the current status of the available gating criteria for the community where the unit(s) are located. If gating criteria wasn’t met for increasing the phase, Management will provide an explanation of the other factors considered in making the determination for the change in phase.

### **3. Safeguarding Protected Health Information**

Outside of incident camps, if Management has employees monitor their health, answer screening questions, or perform temperature checks in relation to COVID-19, the Agency will not keep records of employee's temperatures or answers to screening questions other than to note that an employee's temperature was above/below the threshold and whether the employee answered yes to any of the screening questions. At incident camps where records may be kept, Personal Identifiable Information (PII) or Personal Health Information (PHI) will be properly protected and secured as required by applicable law.

### **4. Return to Work After a COVID-19 Illness**

Employees will be permitted to return to work after a COVID illness provided they meet the [most current criteria](#) set by the CDC, or as recommended by their medical provider.

### **5. Employee Notification of Potential Exposure**

Normally within two business days after Management has been informed that an individual who has been in a Forest Service office, on an incident, or otherwise has interacted with Forest Service employees had exposure to COVID-19 or a confirmed / presumptive case of COVID-19, the Agency will notify the employees who were directly impacted by the movements of the infected individual. Method of employee notification may be negotiated at the appropriate level.

While the confidentiality of the infected/potentially infected individual must be kept as prescribed by applicable law, Management will inform directly impacted employees to the extent that confidentially allows:

- a. That they may have been potentially exposed to the coronavirus;
- b. If known, whether the individual causing the potential exposure in question had an exposure or was confirmed or presumed to have COVID-19;
- c. The date(s) and approximate time(s) of the exposure; and
- d. The general location(s) where the individual was in FS facilities or in contact with FS employees.

### **6. Union Notification of Potential Employee Exposure**

The appropriate NFFE Forest Service Council Vice President will be notified with information in 5 b-d above at or around the same time as represented employees. However, due to privacy laws and the need for confidentiality, the Union will not be provided any identifying information including, but not limited to the name of the infected/potentially infected individual(s), or the impacted employees who were notified of potential exposure.

### **7. Employee Access to Job Hazard Analyses and Risk Assessments**

Job Hazard Analyses (JHAs) and Risk Assessments (RAs) will be made available to employees as required by Article 27.10 of the 2019 Master Agreement.

## **8. Face Coverings**

When Forest Service Employees are required or directed to wear face coverings as part of their official duties, Management will provide appropriate face masks or coverings for such use. This may include reusable face coverings that employees will be expected to maintain and reuse in accordance with manufacturer's instructions and/or [CDC Guidelines](#). Additional procedures around providing face coverings may be negotiated at the appropriate level.

## **9. Accommodations for Face Coverings**

If face coverings are required, employees who have a medical condition or disability that prevents or prohibits them from wearing a face covering should seek an accommodation by utilizing and entering the reasonable accommodation process as prescribed by USDA and Forest Service Policy. Effective accommodations could include change in work location, change in type of face covering, change in work schedule, or other options. Employees and supervisors are encouraged to engage in an interactive dialog to identify an effective accommodation.

Telework will generally be authorized as an interim accommodation, if the requested accommodation cannot be provided immediately or if medical documentation is required. Time limits to respond and provide documentation are described in the FSM 1765 Reasonable Accommodation policy.

## **10. OWCP Claim Assistance**

As prescribed by Article 27.16, when an employee tests positive for COVID-19 and believes they contracted COVID-19 in the performance of their official duties, Management will assist the employee, if requested, with processing and forwarding their OWCP claim. Further, if DOL contacts an employee requesting additional information relative to their claim and the employee requests assistance, Management will assist them in understanding their responsibilities in responding to DOL.

## **11. eSafety and Precautionary Claim**

When an employee has a potential exposure in the workplace, Management will assist the affected employee(s), if requested, with reporting the incident in eSafety, and in filing a precautionary claim so that it is on record for reference if they later test positive for COVID-19. Management agrees to send out an informative message reminding all employees about the option to file a precautionary claim when potentially exposed to COVID-19 in the performance of their duties at their worksite.

## **12. Breakroom and Common Area Use During Different Phases of COVID-19 Reopening**

- a. During phases 1-3 breakrooms and other common areas are to remain closed for gatherings.
- b. During phase 1 & 2 breakrooms may only be used to store, cook, or prepare food utilizing common/shared appliances and utilities where they exist.
- c. In phase 3 and beyond, taking into account the safety, security, and applicable CDC and/or OSHA guidelines (to include social distancing guidelines), breakrooms and other common areas may be reopened; the parties at the appropriate level may negotiate local procedures for such use.

### 13. Union Access to COVID-19 Information

The Union at the National Level will be provided with the following sanitized information bi-weekly:

- a. Total number of Forest Service employees who teleworked more than 20 hours per week;
- b. Total number of Forest Service employees who received weather and safety leave per week;
- c. Number of quarantined employees separated by: Region, Station, Job Corps, WO Yates, and combined WO Staff Areas;
- d. Number of presumptive COVID-19 cases separated by Region, Station, Job Corps, WO Yates, and combined WO Staff Areas;
- e. Number of confirmed COVID-19 cases separated by Region, Station, Job Corps, WO Yates, and combined WO Staff Areas; and
- f. Number of recovered COVID-19 cases separated by Region, Station, Job Corps, WO Yates, and combined WO Staff Areas.

This information will be provided to the Union only so long as the Agency is tracking and maintaining such information relative to the COVID-19 pandemic, and only so long as the Union can maintain the particularized need for the information. It is important to note that the data captured and reported is heavily dependent on self-reporting, and Management can only track and report the information that it has been made aware of.

### 14. Quarantined/Isolated Employees

Employees who have been directed to quarantine/isolate but who feel well enough to work and want to work, will normally be allowed to telework or work at an alternate location during their quarantine period. To facilitate this the Parties agree:

- a. Management will make every effort to provide the necessary equipment, materials, and work assignments for employees to perform assigned work from a telework or alternate work location during their quarantine/isolation period.
- b. Employees must contact their supervisor before they run out of work with enough time to allow their supervisor to find additional work, tasks, trainings, etc. that the employee can perform from their telework or alternate site. It is the expectation that employees and their supervisor regularly communicate about what work activities are planned.
- c. In the rare instances where Management has exhausted all efforts and has determined that a quarantined/isolated employee cannot work, symptomatic employees may then choose from utilizing: emergency paid sick leave,<sup>1</sup> sick leave, annual leave, credit hours or compensatory time, or request LWOP.
- d. Employees who have been directed to quarantine/isolate but are asymptomatic, and where Management has determined the employee to be ineligible or unable to work, will be granted Weather and Safety leave for the purpose of quarantine in accordance with applicable law and governmentwide rules and regulations, unless the employee elects to take leave or other paid time off.

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<sup>1</sup> Under current law, Emergency Paid Sick Leave was authorized by the CARES Act and is limited to 80 hours, has daily and aggregate pay limits, and it expires at the end of 2020 Calendar Year. For some purposes, the pay is less than the employee's rate of full pay.

## 15. Alternative Housing for Employees Exposed in the Course of Their Official Duties

If an employee is directly exposed to the coronavirus (as defined by [CDC Guidelines](#)) as a result of working for the Agency, and is required to self-isolate, the employee should make every effort to first isolate at home. However, if an employee is unable to self-isolate at their residence (as described by [CDC Guidance](#)) or due to exposure to a high risk family member, the Forest Service will offer and pay for alternative housing for up to 14 days, as appropriate and if available, in accordance with federal, state, and local health official guidance. The type of alternative housing provided will be at the sole discretion of Management, and M&IE will not be authorized unless the employee is in a travel status. Alternative housing or work locations will be provided when:

- a. An employee is directly exposed to COVID-19 as a direct result of working for the Agency and the employee is awaiting Agency directed test results; or
- b. An employee becomes ill with COVID-19 or tests positive as a direct result of working for the Agency and must remain in isolation until well again; or
- c. An employee is in travel status and is either waiting Agency directed test results or becomes ill with COVID-19 as a direct result of working for the Agency.

The Parties recognize that the CDC and other official guidance around isolation, testing, and social distancing in relation to COVID-19 is constantly changing and evolving. Accordingly, if appropriated funding for such housing is exhausted or if Management determines at some point in the future to change when and in what instance it will pay for or provide alternative housing, it may do so. However, if such a change has a more than *de minimis* impact on represented employees, Management will notify the Union at the appropriate level, in accordance with Article 11.

## 16. Return to Facilities

- a. In accordance with the Forest Service Reopening Playbook dated May 26, 2020, the following describes the general stance towards telework in each phase:
  - (i) Phase I – Maximum telework should be widely practiced. Only the most critical work force needed onsite to ensure customer service is required to work onsite.
  - (ii) Phase II - Telework is permitted for employees who are telework capable and can perform their duties and meet mission needs from home. Employee who are required to work onsite should have a practical and operational need to be onsite to deliver customer service.
  - (iii) Phase III - Telework is permitted for employees who are telework capable and can perform their duties and meet mission needs from home. Facility operations may resume with *up to 100%* of their employees returning to the facility and resuming onsite mission delivery.
- b. Employees at higher risk:
  - (i) For phases one and two, telework should be maintained for employees who are at higher risk (per CDC guidelines) for COVID-19, who have self-certified to their higher-risk status and have requested telework as an accommodation.
  - (ii) For phase three, telework may be maintained for employees who are at higher risk (per CDC guidelines) for COVID-19, who have self-certified to their higher-risk status, and have requested telework as an accommodation; however in phase three employees may be required to provide a medical statement to substantiate their COVID-19 high-risk status.

The medical statement need only indicate that the employee meets the CDC high risk criteria. It does not need to include the specific medical condition.

- (iii) Employees at higher risk (per CDC guidelines) for COVID-19 who seek an accommodation when normal operations resume must follow the reasonable accommodation process as prescribed by USDA and Forest Service Policy.

### **17. Telework, Leave, and Work Schedule Flexibility**

- a. With respect to DR 4080-811-002 and the NFFE Telework MOU, the COVID-19 global pandemic is an exigent circumstance.
- b. If, because of COVID-19, employees are faced with the unavailability of dependent care, the need to care for a quarantined family member, the lack of public transportation, or have household members at high risk for COVID-19, they may make a request to their supervisor for unscheduled telework as provided by DR 4080-811-002 and the NFFE Telework MOU and supervisors may grant such requests. Other options include supervisors and employees discussing other workplace flexibilities such as deviations from core hours, varying the number of hours worked in a given day or week, or adjusting the time of day when employees work by utilizing the flexibility found in available flexible work schedules. Alternately, available leave options include:
  - (i) Employees faced with the unavailability of dependent care may request annual leave, credit hours, compensatory time, or LWOP. Employees caring for their child because their child's school or daycare was closed because of COVID-19 may also request emergency paid sick leave.
  - (ii) Employees faced with needing to care for a quarantined family member may request emergency paid sick leave, annual leave, credit hours, compensatory time, or LWOP. Employees may also request sick leave if their family member was quarantined because they were exposed to COVID-19 or if the family member is symptomatic.
  - (iii) Employees faced with lack of public transportation or have household members at high risk for COVID-19 may request annual leave, credit hours, compensatory time, or LWOP.

### **18. Locally Negotiable Procedures and Arrangements**

Additional procedures and arrangements relative to COVID-19 resumption of operations, not addressed in or covered by this Agreement, may be negotiated by the parties at the appropriate level. Negotiable topics may include, but are not limited to, vehicle use and cleaning, office rearrangements, signage, etc. Any resulting subordinate agreement, pertaining to specific local conditions, must be consistent with applicable law, governmentwide rule or regulation, the 2019 Master Agreement, and all NFFE supplemental MOUs.

### **19. Mandatory Employee Testing**

In order to fulfill the critical mission of the Agency for the American public, Management may choose to direct employees to be tested for COVID-19. The mission of the Agency requires that there are enough personnel available to carry out Agency functions. In regard to testing the Parties agree:

- a. Management-directed testing may be required for employees who are in a travel status, required to be at a Forest Service duty station, or on a Forest Service work assignment such as a fire incident or other remote assignment. Such directed testing will normally be limited to

situations in which an employee is experiencing or displaying COVID-19 symptoms while performing their duties or when Management believes that an employee had exposure to an individual who tests positive for COVID-19.

- b. When an employee is directed to be tested they will first leverage local testing capacity as available. If free testing is not available, through health insurance or other local testing resources, Management will direct the employee on how testing will be acquired and/or paid for or reimbursed. Employees will not bear the cost(s) associated with a Management-directed COVID-19 test.
- c. An employee who does not want to be tested may make a request to Management to quarantine or self-isolate instead. Granting such request is at the sole and exclusive discretion of Management, and generally will only be approved in instances where quarantining would not adversely impact the mission of the Agency or if required by law, rule, governmentwide regulations, or Agency policy. Furthermore, if such a request is approved:
  - (i) Generally the employee would be responsible for any additional costs incurred from such a decision except where prohibited by law, rule, or governmentwide regulation.
  - (ii) If the employee is telework ineligible, Management is not obligated to find the employee portable work. Accordingly the employee may be required to use appropriate earned leave, credit hours, comp time off, or request LWOP during the quarantine period.

The Parties recognize that the CDC and other official guidance around testing, and the availability and efficacy of COVID-19 testing is constantly changing and evolving. Accordingly, if Management determines at some point in the future to change when and in what instance it will direct employees to be tested it may do so. However, if such a change has a more than de minimis impact on represented employees, Management will notify the Union at the appropriate level, in accordance with Article 11.

## **20. Effective Date, Termination, or Modification**

This MOU becomes effective on the date of final approval by the Agency Head, or that date on which the thirty (30) day time limit for Agency Head review expires, whichever is earlier.

This MOU will terminate upon the Agency returning to normal nationwide operations, or upon a declaration by the Executive Branch that the COVID-19 health emergency is over, unless the Parties mutually agree to keep the MOU in force. Either Party may request, consistent with Article 11 of the Master Agreement, to reopen or renegotiate this Agreement.

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