



## NFFE Update on Coronavirus

April 01, 2020

### Telework, Flexible schedules, Leave, and Critical Functions

I woke up this morning hoping that I would find that life over the past month had just been a big April Fool's joke, but I was not that lucky. Coronavirus is still with us and illness cases are [increasing at alarming rates](#) in a number of areas in the US. Nevertheless, USDA still seems to be pushing forward with the "we are open for business" mentality, so we are hearing worrying stories about employees being required to take leave because they don't have work that can be done via telework.

Please read this update carefully for advice on actions to ensure that you are not unnecessarily taking leave or being hindered in your ability to telework. If you have coworkers who are home without access to their email, please help ensure that they have the information below.

#### How are leave, work, and telework working for you?

To help us negotiate and tell Congress what's happening to Forest Service employees during this pandemic, please provide information about your telework, work, and leave situation. A link to a survey was sent to all Forest Service bargaining unit employees. If you work for the Forest Service and did not receive the link, please send a message to [NFFE.FSC@gmail.com](mailto:NFFE.FSC@gmail.com), giving your name and your work unit.

## Use of Personal Annual or Sick Leave

The Union continues to be concerned about employees who are being required to take sick or annual leave unnecessarily. Employees should only be required to use leave in the following situations:

1. You are unavailable to perform work (either fulltime or partially) due to caring for family members. *We KNOW this is a very difficult and unfair situation, and we are working on getting some relief, but these are the rules:*
  - a. If the family member is ill, you may use sick leave (with some limitations) or other appropriate leave.
  - b. If the family member is simply home because school or care services are not available, you may use annual leave or other time off (credit hours, comp time, LWOP).
2. You are unavailable to perform work because you are sick, in which case you may use sick leave or other appropriate leave.
3. You choose to take time off and it is approved, in which case you may use annual leave or other appropriate leave (credit hours, comp time, LWOP).

You should NOT be required to take leave because you have no work that can be performed because the Agency has not assigned work that you can do in light of the state and local stay-at-home orders and social-distancing protocols. See the instructions below about Telework to help ensure you are not in a situation where you are unfairly required to use your leave.

## Shelter in place/Stay at home orders

Across the country every state, except 5, have some type of [stay at home order in all or part of the state](#). Generally, in locations with stay-at-home orders, the Forest Service stance is that employees should be on maximum telework. Mission critical work may still need to be conducted, but risk assessments are being done to determine whether other work away from peoples' homes should be done. For example, in the Washington Office, all employees are working from home except for a short list of employees (primarily senior leaders) who have access to the headquarters building.

## Telework

The Forest Service has determined that in the current state of national emergency, you can be ordered to telework, even if you do not have a telework agreement, including employees who previously were ineligible or had opted out of telework. Your supervisor is responsible for assigning work for you to do, even if that work is not the work that you normally perform. Here is our guidance to all employees if you are instructed to telework:

Your telework situation	What you should do	Comments
<b>Telework-ready and have plenty of work</b>	Telework	
<b>Do not have the needed equipment (either government equipment or adequate connectivity at home)</b>	ask to be assigned work that can be done without such equipment  OR  ask that the Agency provide the equipment.	USDA has confirmed that use of personal equipment to perform government work is a violation of law.
<b>Most or all of your normal work cannot be done while teleworking</b>	Ask for work that can be done while teleworking (with or without equipment as mentioned in above).  If your supervisor has no work that can be assigned to you while teleworking, ask them what their instructions are for your time coding, and document the conversation. They should be seeking approval to let you use Weather and Safety Leave, if they have no work to assign.	If you are instructed to code your time as annual leave because there is no work for you to perform while teleworking, contact your Local union steward.

## Flexible Schedules

Switching to a flexible schedule may help balance work and family needs or allow you to work when fewer people are in the office. For employees on a Maxiflex schedule, the default tour of duty will fall between 5 a.m. and 10 p.m. on Sunday through Saturday. If you are regularly scheduled to work or are ordered to work on a Sunday, you should get Sunday premium and/or overtime pay. If you normally work other days of the week, but you **choose** to work on Sundays, the time normally must be recorded as credit hours (per our negotiated agreement in Article 18 of the Master Agreement and also FSH 6109.11, 22.14 - Credit Hours).

## Families First Sick Leave

Apparently, our last message created quite a buzz about the opportunity for sick leave to be available for employees who are caring for children at home. This option is still not available, as OPM hasn't issued guidance to Agencies. However, as we learn more about this provision, we must clarify that the Sick Leave for caring for children only provides pay at the rate of 2/3 of the employee's regular pay, not full pay. HRM is hoping that OPM and USDA will have guidance out so it can be applied for this pay period.

DOL (in their role for all employers) has issued guidance on it, and you can find it here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>, with Q&As here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. *NOTE: Any reference to "Expanded Family and Medical Leave" does not apply to Forest Service employees.*

## Critical and "Core Mission" Functions

The word on mission critical and essential functions continues to be a bit muddled. There is no doubt that firefighting and law enforcement are mission critical/essential functions. However, there is also discussion about continuing "core mission" functions, such as timber (see the functions under Food and Agriculture at the DHS guidance on [Essential Critical Infrastructure Workers](#)). The most recent letter from USDA that describes work that is critical enough that people may continue performing them even in states with stay at home orders. That work is: "Forest Service: Law enforcement, wildland firefighting, forest and rangeland management activities that support the manufacture and distribution of forest products, activities associated with maintaining and protecting critical energy, communications and infrastructure, preservation of research property and other functions supporting protection of public safety and natural resource management at National Forests and Grasslands." The Union recognizes that these additional "core mission" functions are important to the Agency, but we believe they should not be conducted if the work cannot be done safely and without adequate social distancing.

### Safety Reminder

If you feel that the work you are assigned cannot be performed safely, you have the right to call a halt to the work to have it evaluated before proceeding.



#### Safety Empowerment Authority

I am responsible for my own safety, as well as that of my fellow employees and the public we serve. I have full authority to call a halt to any activity that looks or feels to be unsafe. I will use this authority with confidence because Forest Service leadership fully supports me taking this action so I can protect myself and others from harm.

## Continuity of Operations Plan (COOP) and Evacuation Orders

Although we are functioning in a national emergency, the national Forest Service COOP has NOT been activated, although the Pandemic Plan that is part of the COOP has been activated. Additionally, the Forest Service and USDA have not issued an evacuation order related to the pandemic. (IRS has done so, and you can read about it here:

<https://federalnewsnetwork.com/workforce/2020/03/nteu-says-irs-preparing-evacuation-notice-to-send-all-employees-home/>). The failure to activate the COOP or Evacuation orders is a semantics that USDA seems to be fighting, but it leaves employees without the guidance and provisions that would be available if they were implemented, especially around teleworking in a situation covered by Evacuation during a Pandemic (5 CFR 550.409).

### Help us understand your concerns

PLEASE help us understand how many of you are struggling with getting work done in the current work climate, and if you are having to take leave for any reason. Your responses will help us tell the story of how Forest Service employees' work and leave are being impacted by the coronavirus situation. If you work for the Forest Service and did not receive the link, please send a message to [NFFE.FSC@gmail.com](mailto:NFFE.FSC@gmail.com), giving your name and your work unit.

## More Information

The NFFE-Forest Service Council's website can be found at [www.nffe-fsc.org](http://www.nffe-fsc.org). Links to various pandemic resources are available on the site, as well as copies of our previous communications on the pandemic.

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