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M E M O R A N D U M

TO: Appointing Authorities

FROM: Deborah E. Story 

DATE: August 21, 2009

SUBJECT: Guidance for Pandemic Influenza Related HR Issues

The following guidance is provided to assist you in answering questions from employees and continuing day-to-day operations in your agencies during a large influenza outbreak (i.e. pandemic influenza H1N1). The Department of Human Resources has set up a website for frequently asked HR questions and other related information. This site will be updated as new information becomes available. An email address, HR.FluQuestions@tn.gov has been set up for employees to ask questions related to HR policies.

Prevention of Illness: Employees should be encouraged to practice infection control in the workplace, most importantly, wash their hands, cover a cough, and stay home when they are ill with flu-like symptoms. Clean surfaces and items that are more likely to have frequent hand contact with cleaning agents usually used in these areas. Additional disinfection beyond routine cleaning is not recommended. Studies indicate that influenza virus can survive on environmental surfaces for 2-8 hours. An employee who has family members with the illness, or who otherwise may have been exposed, may continue to come to work. These employees should monitor their health every day, and stay home if they become ill. Employees who are exhibiting flu-like symptoms may be sent home and should not return to work until 24 hours after their fever is gone.

Employee use of leave: Generally, employees who are absent due to pandemic influenza related events may use annual or sick leave or accrued compensatory time. If an employee does not have any accrued leave, the employee will be allowed to take leave without pay for a reasonable time for pandemic influenza related events. Agencies may require employees to provide documentation of their need for leave. However, to avoid placing an unnecessary strain on healthcare resources, agencies may accept other forms of documentation for the need for leave such as news reports of school closures, local government directives concerning office closures, etc.

Discretionary leave with pay: Generally, the Commissioner of Human Resources will not approve discretionary leave with pay for absences caused by a pandemic influenza related event.

Office closings: Where possible, agencies should make reasonable efforts to re-assign employees to offices where there is a shortage of staff due to a pandemic influenza related event. For example, an agency may need to re-assign employees to an office in a neighboring county if the county has closed schools and employees who live in that county are unable to come to work due to a lack of childcare. In the event county officials mandate office closures or other social distancing measures in a localized area, the appointing authority should notify the Commissioner of Human Resources immediately.

Telecommuting: An appointing authority may institute appropriate telecommuting policies during a pandemic influenza related event. Because each agency's needs vary, the Department of Human Resources will not be issuing a general telecommuting policy. An appointing authority is responsible for ensuring that there are sufficient checks built into the agency's telecommuting policy to avoid abuse and to measure productivity of telecommuting employees.

Agencies with specific health, safety and welfare responsibilities: If an agency believes that, due to the nature of its responsibilities, it needs a variance from these guidelines, the agency's appointing authority may submit a written request to the Commissioner of Human Resources. (For example, an agency that has a residential facility could determine that all employees must have a return to work certification for the residents' safety.) The written request should include an explanation of the responsibility that requires a variance and a description of the different policy that the agency would like to adopt. Any such variance from general policies will be in effect only for the time that there is a pandemic-related event, as determined by the Commissioner of Health.

FMLA and ADA issues: An employee who is sick or whose family members are sick may be entitled to leave under the Family and Medical Leave Act (FMLA) under certain circumstances. The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons which may include the flu where complications arise that create a "serious health condition" as defined by the FMLA. Employees on FMLA leave are entitled to the continuation of group health insurance coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period.

It is possible that an employee who contracts the influenza virus may have rights under the Americans with Disabilities Act. Generally, agencies should keep employees' medical information (e.g., information about the nature of an employee's illness) confidential. Business information regarding the status of an employee may be circulated to sustain operations so long as that information does not disclose confidential medical information about the employee. For example, an agency or division could communicate, for the purpose of business continuity, that an employee is not currently at work and that the employee may be out office for several weeks.

Appointing authorities and/or HR Officers who have questions regarding these policies should contact Lisa Spencer at 532-3224 or lisa.spencer@tn.gov.

cc: Human Resource Officers