

Questions and Answers:

Following are responses to employment related questions that have been forwarded to the Office of Human Resources to date, May 28, 2009:

a. What is the guidance regarding mandatory leave for personnel that are sick and in the contagious period?

Obtaining an employee's agreement to take sick leave, annual leave, or leave without pay is preferable. However, under some circumstances, a supervisor may require that an employee use his or her sick or annual leave or place an employee in a leave without pay status pending inquiry into the employee's medical condition.

Note that directives from public health officials regarding dangers to public health could result in actions to place employees on leave in order to prevent the spread of a disease during pandemic situations. However, supervisors should consult OHR prior to effecting mandatory leave.

b. Does the employee have the right to refuse to work or travel when they believe that the environment is unsafe?

The employee has the right to refuse an order if the employee has a reasonable belief that under the circumstances, the task poses an imminent risk of death or serious bodily harm, and there is insufficient time to address the safety concerns. SI management officials work to protect the health and safety of employees and the public. Thus, it is highly unlikely that an employee will be directed to report for work or travel when it is unsafe to do so.

Note that if an employee refuses to report for work, including travel, on his or her personal belief that it is unsafe to do so, and the employee is not in an approved leave status, the employee may be considered absent without leave (AWOL). The Smithsonian can take disciplinary action for AWOL. Supervisors should always consult with OHR prior to effecting disciplinary actions under any circumstances

c. Are there reporting requirements to the Office of Personnel Management (OPM) during Pandemic situations?

The Office of Personnel Management identified reporting requirements under Collecting Workforce Data at www.opm.gov/pandemic/agency/tracking.asp.

SI is currently working with the Unit and HR Business Partners to design data reports that include the numbers of employees on Paid Leave; Unpaid Leave; Working at Alternate Worksites; and any Influenza related deaths. This information is required to be reported during pandemic situations and as requested by OPM.

d. If work areas are evacuated, how will Evacuation payments be handled?

Evacuation pay is not an employee entitlement. Evacuation pay must be deemed appropriate and authorized by the Secretary. If Evacuation pay is approved, the pay centers for SI would generate all pay for employees. Pay would include all previous pay entitlements, and evacuation pay would extend throughout the evacuation period, but no longer than 180 days.

e. Can Telework be made mandatory for employees?

Telework is a voluntary program that is agreed upon by an employee and a SI management official. However, Telework is a viable option to accomplish the work of the organization while retaining employees in a paid status but at an alternate work location.

f. Is there a preferred form for Telework agreements?

The official SI Telework Agreement form can be found at the SI OHR web site under Employee Benefits or Employee Assistance, Worklife Programs, Telework - <http://ohr.si.edu/benefits/telework.html>.

g. What should supervisors do if an employee appears to be ill, and can supervisors request that the employee leave the worksite?

Supervisors are critical to ensuring that SI maintains a healthy work environment. If an employee appears to be ill, supervisors may request that the employee take leave and recommend that the employee consult a medical advisor. As noted in the response to question a. above, obtaining an employee's agreement to take sick leave, annual leave, or leave without pay is preferable. However, there may be instances where an employee does not have leave or wish to use leave.

If the employee does not wish to use leave, the supervisor may make leave usage mandatory for the employee. If the employee does not have leave, the supervisors may authorize advanced leave for the short period needed to ensure that the employee is healthy. Note that any authorized leave – compensatory time; compensatory time for travel; or credit hours may be used to seek the medical attention needed.

h. If a supervisor orders an employee to leave work, will the employee be placed on administrative leave, or be required to use his/her annual or sick leave?

Excused absence (administrative leave) is not an entitlement, and supervisors are not required to grant it. However, SI's policy regarding excused absences (administrative leave) will be consistent with the OPM policy during an emergency, pandemic influenza.

If a medical condition warrants extended absence from the work area, an employee may be required to use sick or annual leave, or to be placed in a leave without pay status.

- i. **Can a supervisor require an employee to have a medical exam or physical, or prevent an employee from returning to work until the results of an exam or physical show the employee is not contagious?**

Management may require a medical examination only when the position occupied by the employee contains properly documented physical or medical requirements. Most positions do not have established physical or medical requirements. If the criteria are met for requiring a medical examination and the employee refuses the exam, he or she may be disciplined, up to and including removal from service.

Requiring medical examination based on a perception of an employee's flu-like symptoms must be avoided. However, if an employee exhibits signs of illness, the supervisor may express concern and remind the employee of his or her leave options for seeking medical attention. If the employee does not have leave available, the supervisor may grant advanced leave.

- j. **What authority does the Contracting Officer Technical Representative (COTR) have in removing someone who appears to be sick?**

The COTR should consult the Office of Contracting and/or the Contracting Officer for guidance. However, SI management and SI COTR's first obligation is to protect the health of all workers to include contractors. Thus, action may be taken to ensure that a contractor does not threaten the health of the work environment. Similar to a supervisor, the COTR should request that a contractor take leave and recommend that he/she seek medical care.

- k. **If the person is low or out of sick or annual leave, is leave donation, advance leave or administrative leave an option?**

The leave donation program is an option if the employee is out of sick and annual leave. Employees may also apply for the leave donation program when their sick and annual leave balances are low but not yet depleted. However, employees may not use donated leave until their leave balances are depleted. Employees may request and be granted advance leave, or a supervisor can place an employee on advance leave. Administrative leave may be an option for very limited periods of time if and/or when administrative leave is authorized for all employees under the same circumstances.

- l. **What guidance do you (or the International Relations Office) have regarding visitors from foreign countries who request meetings or visits to the collections?**

The SI obligation is to protect employees, visitors and the SI work environments. All visitors should be treated with the same respect and concern as SI employees. Therefore, if a visitor displays symptoms of illness, the supervisors/managers should request that the visitor leave the work site and recommend that the visitor seek medical care. SI officials should immediately contact the International Relations Office and seek assistance.

m. What responsibility does SI have for visiting researchers/fellows from foreign countries if they are stuck in this country and how should we assist in getting medical care?

Researchers and Fellows should be treated with the same respect and concern as SI employees. However, if foreign researchers and fellows display symptoms of illness, SI officials should request that the visitors leave the work site, and recommend that medical care be sought. Officials may contact the International Relations Office for assistance.

n. What is the proper reporting procedure if you have an employee that has been infected?

SI offices should immediately advise the Office of Safety, Health and Environmental Management (OSHEM) at (202) 633-7990.

o. Does the unit have responsibility for disseminating information regarding infected employees or will SI disseminate information centrally?

Unit management officials should not disseminate information regarding employees who may be infected with H1N1. As noted above, SI offices are responsible for notifying OSHEM.

p. Can critical staff be forced to Telework?

As indicated, Telework is normally an agreed upon arrangement. However, if the Smithsonian activates an emergency preparedness plan and designates employees to work at alternate work sites (including an employee's home), the critical staff members who are designated employees are expected to report for work at an alternate work site wherever they are deployed. Management officials may excuse a designated employee from duty and allow the employee to use accrued leave when there are individual hardship circumstances that justify excusing a designated employee. However, critical staff members can be directed to work at an alternate work site during emergency situations.

q. Can management take disciplinary action against staff members who refuse to follow emergency related orders?

Employees who refuse to follow emergency related orders may be subject to appropriate disciplinary action.

Please address any additional questions to your Business Partner. Your Business Partner can be identified by going to the OHR website - <http://ohr.si.edu/bp/bp.cfm#2>. Answers to all human resources related questions will be posted to this site.