

# Kern County Administrative Office



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## ADMINISTRATIVE BULLETIN NO. 35

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### **SUBJECT: CONTINUITY OF OPERATIONS—PANDEMIC INFLUENZA: LABOR RELATIONS GUIDELINES**

Below are the policies governing employee relations for County operations during a pandemic or other disaster, as approved by the Board of Supervisors on April 8, 2008. This bulletin provides information on the programs and flexibilities available to managers and staff to address potential issues that may arise during times of crisis. When circumstances warrant, additional guidance to address specific issues relating to human resources matters will be developed as necessary. These policies may be activated in the event of a disaster which affects employees' worksite availability but will apply only to non-safety employees, except those safety employees represented by the Service Employees International Union Local 521 (SEIU).

### **INTRODUCTION—WORKFORCE IMPLICATIONS OF PANDEMIC INFLUENZA**

Pandemics have occurred intermittently over centuries. The last three pandemics, in 1918, 1957 and 1968, killed approximately 40 million, 2 million and 1 million people worldwide, respectively. Although the timing cannot be predicted, history and science suggest that we will face one or more pandemics in this century.

It is impossible to know whether the currently circulating H5N1 virus will cause a human pandemic. The widespread nature of H5N1 in birds and the likelihood of mutations over time raise concerns that the virus will become transmissible between humans, with potentially catastrophic consequences. If this does not happen with the current H5N1 strain, history suggests that a different influenza virus will emerge and result in the next pandemic.

A potential pandemic influenza outbreak may compromise the ability of departments to accomplish their missions. Therefore, the County must plan to deal with the potential human resource implications. If a pandemic influenza outbreak occurs, County employees may be infected or exposed. Their families may be incapacitated, and their options for getting to work may be limited. There may also be a need to limit potential exposure of otherwise healthy individuals. It is estimated that 40% of the County's workforce may be affected in the event of an outbreak. Employees and their supervisors will have questions about their rights, entitlements, alternative work arrangements, benefits, leave and pay flexibilities, and hiring flexibilities available during the turmoil created by the pandemic.

This bulletin provides guidance and information on the programs and flexibilities available to managers and staff to help deal with the effects of a potential pandemic outbreak. When circumstances warrant, additional guidance will be developed to address specific issues that may arise during a pandemic

influenza outbreak regarding the use of leave, telework arrangements, hiring flexibility, and other human resources matters.

## **PERSONNEL LEAVE POLICIES**

### Purpose

This section specifies the Board of Supervisors' authorized leave flexibility in the event of a pandemic. These policies will only go into effect if the Board of Supervisors or the County Administrative Officer formally declares that the policies are activated.

### Applicability

These policies apply to all non-safety employees and safety employees represented by SEIU.

### Provisions

When employees or close family members get sick, the County's policies regarding use of sick and vacation leave will remain as is, with the exception of the provision of a sick leave borrow program, the waiver of time restrictions for the use of family sick leave, and waiver of the County's limitation on number of accrued compensatory time off hours.

*Sick Leave:* County employees who become ill may use accrued sick leave. Sick leave may also be used if health authorities or a health care provider determines exposure to a pandemic influenza virus jeopardizes the health of others by the employee's presence on the job, even if the employee is not ill.

*Family Sick Leave:* Family sick leave may be used to care for ill family members or to tend to matters surrounding the death of a family member. The policy restricting the use of this leave to 10 days per year (Administrative Policy and Procedures Manual Section 134) will be waived.

*Vacation Donation Program:* Employees who have exhausted their accrued sick leave and vacation may be eligible for the Vacation Donation Program as provided in Section 132 of the Administrative Policy and Procedures Manual.

*Family and Medical Leave Act:* The Family and Medical Leave Act gives the employee the right to take up to 12 weeks of leave without pay for a serious health condition or to care for a spouse, son, daughter, or parent with a serious health condition. The employee may request to substitute any or all of the unpaid leave with available vacation and/or sick leave within the rules for using this leave time.

*Sick Leave Borrow Program:* In the event an employee has exhausted all vacation and sick leave and compensatory time off either because of the employee's illness or because they are caring for an ill family member, the employee may be advanced up to 40 hours of sick leave. Based on mutual written agreement of the employee and the department director (required agreement form is at Attachment A), the sick leave advanced may be paid back via employee furlough days, as provided for in the Administrative Policy and Procedures Manual Section 115.8, or sick leave non-accrual. If the repayment of the sick leave advance is to be via taking furlough days, the furlough must be in eight hour increments. The sick leave advance must be paid back within 12 months. Probationary employees may use accrued vacation time under this program, if the proper agreement is completed between the department and the employee.

*Vacation Leave:* The option of requesting the use of accrued vacation leave during a pandemic health crisis is also available. This option could be used in the event of an absence longer than accrued sick leave hours. In addition to vacation leave, the employee may request to use available compensatory time

off. Vacation leave may also be used to care for a healthy child in the event the child's school or care center is closed.

*Compensatory Time Off:* An employee may request to use accrued compensatory time off for illness or to care for an ill family member. Additionally, during a pandemic influenza, the County's limitation on the number of hours of compensatory time off that can be accrued (120 hours) will be waived (Administrative Policy and Procedures Manual Section 128) to match the Fair Labor Standards Act limitations (240 hours).

## **EFFECT ON BENEFIT PROGRAMS**

### Retirement

The Retirement Association, like all other entities, will suffer the effects of a reduced work force. Those employees planning retirement during a pandemic health crisis should expect and plan for slower retirement paper processing.

### Employee Assistance Program (EAP)

During a pandemic health crisis deaths and the stress related to extended care giving will significantly increase the demand for EAP services, while at the same time fewer service providers will be available. Departments should encourage employees to be diligent and patient in seeking the services they need. Departments that participate in the Critical Incident Stress Management Program may be available in the absence of regular EAP providers to counsel and stabilize those in crisis.

### Health Benefits Program

Health benefits will continue uninterrupted regardless of the severity of a health crisis. However, providers may experience a delay in processing payments and employees may experience a delay in referral processing and in provider availability.

### Long Term Care Insurance Program

Long term care enrollees should contact the insurer if they have any questions about how a crisis may affect their coverage, eligibility for benefits, or payment of premiums.

### Life Insurance

Like all other entities, insurance companies will suffer the effects of a reduced work force in combination with a significant increase in demand for services. Employees should expect slower claims processing.

## **FACILITY EVACUATION—CONTINUITY OF PAY AND WORK**

### Purpose

This is to specify the labor relations provisions that will be adhered to in the event a facility is evacuated to ensure social distancing during a pandemic influenza health crisis to protect employees from being exposed to additional viruses or mutations of a pandemic virus.

### Authorization

The County Administrative Officer or designee may order an evacuation of a County facility based on the advice of local, State, or federal public health officials. Upon rescission of the evacuation order, employees must return to their normal worksites.

### Provisions

1. Employees who are ordered to evacuate their regular worksites will either work from home, be assigned to another alternate worksite, including a location under quarantine or confinement, or be assigned to an alternative location.
2. The County will continue to pay employees who are ordered to evacuate their regular worksites and perform work at an alternate location. During the evacuation period, the employees will continue to receive their regular rate of pay, along with any allowances, and standard payroll deductions will be taken.
3. Evacuated employees at alternate worksite may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to the job title or usual responsibilities. The provisions of Administrative Policy and Procedures Manual Section 107 apply in this circumstance. A department may not assign work to an employee unless the department knows the employee has the necessary knowledge and skills to perform the assigned work. Failure or refusal to perform assigned work is a basis for disciplinary action. However, an employee's inability to perform assigned work because of a lack of knowledge or skills may not be a basis for taking disciplinary action.
4. For employees assigned to alternate worksites, including their homes, the County's telework policies will apply including those related to child/elder care, use of equipment, etc.
5. In the event there is no meaningful work for an employee to accomplish at an open facility given his/her knowledge, skill, and abilities, the employee will be paid his/her regular pay for a maximum of five days while off work. To receive this pay, the employee must be available for work, and must contact his/her supervisor to determine where and when to report by 8:30 a.m. each day. Failure to do so will result in the employee being placed on leave without pay for that day and will subject the employee to disciplinary action.
6. Employees assigned to perform work at and for other departments will be paid by the employees' regular department.

## **HIRING FLEXIBILITY POLICIES**

### Purpose

In the event of a pandemic, departments will require hiring flexibility in order to quickly back-fill positions vacant due to employee absenteeism. The ability to quickly hire employees will ensure that critical services continue to be provided.

### Authority

With few exceptions, the Civil Service Commission has authority over the County's hiring policies and practices.

### Provisions

*Retiree Hiring:* During a pandemic, a department may hire a retired employee absent prior Board of Supervisors' approval. However, retroactive approval must be sought as soon as administratively possible. All other policies related to retired employee hiring remain in effect.

## **WORK OPTION POLICIES**

### Purpose

This section is to specify the County's policies regarding the authorization to order employees to alternate work locations and to perform work outside of their normal duties.

### Provisions

*Alternate Work Location:* Included in departmental emergency plans should be a well-developed plan to accommodate employees whose job duties can contribute to County continuity of operations during a pandemic influenza event. Management must be committed to implementing remote work arrangements as broadly as possible to take full advantage of the potential of telework for this purpose and ensure that:

- Equipment, technology, and technical support are available and have been tested;
- Employees are knowledgeable about technology and communications methods; and
- Supervisors are prepared to manage a distributed workgroup.

In addition, departments should consider investing in and using teleconferencing, videoconferencing, and other technologies that enable multi-channel communication.

Alternate Work Schedules and Duties: In the event of a pandemic, the County reserves the right to order all employees to alternate worksites, to work alternate schedules, and to perform work outside of the employees' classifications (if they have the necessary knowledge, skills and abilities to do so).

During a pandemic, employees' request to work alternate schedules should be granted whenever possible in situations where time available to work is limited to periods when an alternative care provider is able to care for family members.

Alternative work arrangements (AWS) include flexible and compressed work schedules and telework arrangements. The County may implement an AWS for its employees instead of traditional fixed work schedules (e.g., 8 hours per day, 40 hours per week). AWS can enable employees to have work schedules that help them balance work and family or personal responsibilities, and can provide for necessary social distancing. There are two categories of AWS: flexible work schedules (FWS) and compressed work schedules (CWS).

*Flexible Work Schedules:* Under normal circumstances, FWSs allow employees, with their supervisors' approval, to choose work arrival and departure times and days off within limits set by the department head. During a pandemic, FWSs may provide employees with greater flexibility in meeting biweekly work requirements while recovering from the flu or caring for a sick family member. Overtime will only be paid to the extent required by the Fair Labor Standards Act.

*Compressed Work Schedules:* CWSs are fixed work schedules that allow employees, with their supervisors' approval, to complete the basic 80-hour biweekly work requirement in less than 10 workdays. Under a compressed work schedule, arrival and departure times and scheduled days off do not vary from one pay period to the next. Like an FWS, a CWS allows maximum flexibility to manage work and family responsibilities in the event of a pandemic. Overtime will only be paid to the extent required by the Fair Labor Standards Act.

## **EMPLOYEE AND LABOR RELATIONS Q & As**

During a pandemic health crisis, as at any other time, employees and supervisors are critical to the County's ability to accomplish its missions. This section provides guidance on unique employee and labor relations issues that may arise in a pandemic health crisis. The questions and answers that follow discuss the roles and responsibilities of County personnel.

### **Keeping Employees Away From the Workplace**

*1. If an employee exhibits symptoms of the flu, may a supervisor order him/her to leave work or work from home? If so, will the employee be paid during the absence?*

In the event of a pandemic health crisis, the County may be forced to take certain actions in order to protect the health and welfare of both its employees and the general public. The County will adhere to all applicable recommendations and guidelines mandated by either the County Health Officer, or an equivalent state or federal office or organization (Center for Disease Control, National Institute of Health, etc). These guidelines are likely to advise or require restricted contact with potentially contagious individuals.

Medical diagnosis by a supervisor is problematic and should be avoided. However, supervisors must act according to any applicable emergency public health guidelines. If a working employee exhibits obvious signs of illness, he/she will most likely be required to take some form of leave.

Employees on approved sick or vacation leave will continue to be paid during their absence. If an employee has no leave available, supervisors may approve requests for advanced leave or leave without pay, or, if applicable, may implement approved alternative policies depending on the situation. Supervisors must approve requests for sick leave when the employee would, as determined by appropriate health authorities, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.

*2. If a supervisor suspects an employee is ill or contagious, may the supervisor prohibit the employee from reporting for work or returning to work?*

A supervisor may prohibit the employee from reporting for work or returning to work should applicable public health guidelines recommend or require such action.

*3. May a supervisor require an employee to have a medical or physical exam, or prevent an employee from returning to work until the exam results show that the employee is not contagious?*

Management may require a medical examination should any applicable public health guidelines recommend or require such action.

### **Requiring Employees To Work**

*1. If a department activates emergency preparedness plans and sends designated employees to alternative worksites, may a designated employee refuse to go?*

Any such designated employees are expected to report for work where they are assigned. Employees may not go home instead of deploying to designated worksites, and employees who refuse to follow emergency related orders may be subject to appropriate discipline, up to and including termination.

**ATTACHMENT A**

**AGREEMENT FOR REPAYMENT OF ADVANCED SICK LEAVE TIME**

Administrative Bulletin No. 35 provides for a sick leave advance program that may be implemented as the result of an influenza pandemic. The provisions are as follows:

In the event an employee has exhausted all vacation and sick leave and compensatory time off either because of the employee's illness or because they are caring for an ill family member, as defined in Administrative Policy and Procedures Manual Section 119.1, the employee may be advanced up to 40 hours of sick leave. Based on mutual written agreement of the employee and the department director, the sick leave advanced may be paid back via employee unpaid furlough days, as provided for in the Administrative Policy and Procedures Manual Section 115.8, or sick leave non-accrual. The sick leave advance must be paid back within 12 months.

Number of hours to be advanced: \_\_\_\_\_

Reason:  Employee illness                       Family Member Illness: Relationship \_\_\_\_\_

Repayment option selection (complete the appropriate option).

Option 1—Forego Sick Leave Accrual

Commencing on \_\_\_\_\_, 20\_\_ (payroll period \_\_-\_\_), I agree to forego my biweekly sick leave accrual until the sick leave advance is repaid.

Option 2—Unpaid furlough days

I understand that the furlough days used to repay my sick leave advance must be done in eight hour increments. In order to repay the sick leave advance, I agree to take the following days off as unpaid furlough days: \_\_\_\_\_

I understand and fully acknowledge that the number of hours of sick leave advanced is required to be repaid within 12 months of the date of the advance being granted. If, for any reason, I leave County employment prior to the full repayment of the sick leave advance, I consent to the withholding of the amount necessary to repay the County for the sick leave advance from my last payroll warrant.

Date: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

**Employee ID #:** \_\_\_\_\_

**Dept. Head Signature:** \_\_\_\_\_  
(or designee)

Dept: \_\_\_\_\_

*Upon completion, retain one copy for department files and forward a copy to the Personnel Department and the Auditor-Controller.*