

Human Resource Considerations

This is intended to serve as a planning document and has been drafted such that it can be used immediately as guidance for agencies as they develop individual continuity of operations plans. The information provided does not limit agency authority to make operational decisions as to essential or needed functions. It offers human resources advice and directives that agencies should follow in the event that the Governor declares an emergency for the state of Minnesota. In the event of such an emergency, many human resources processes may be simplified and the administration of collective bargaining agreements and plans narrowed in order to meet urgent staffing needs.

The provisions of this chapter confer no new privilege, right of appeal, right of position, transfer, demotion, promotion, right of reinstatement for any state employee, contract worker, or volunteer. This manual does not constitute an express or implied contract. It provides general guidance that cannot form the basis of a private right of action.

It should be noted that the information contained in this chapter was drafted prior to any evidence of a pandemic influenza on the North American continent and relatively early in statewide planning for the possibility of a pandemic. This document is intended to preserve the greatest flexibility for the state and its agencies to respond to a pandemic. As new knowledge is acquired and/or events take place, the information/advice contained in this chapter may be revised or action taken that is different from what is contained in this document.

All of the information contained in this chapter is applicable to the period or periods of a declared emergency and is based upon the following assumptions:

1. The Governor has exercised the statutory authority provided by M.S. 12.21, subd. 3 to amend certain working conditions of state employees.
2. Agencies of the Executive Branch of state government, including the Minnesota State Colleges and Universities, have limited or discontinued all but the critical services as identified in their agency plans as priorities 1 through 4.
3. The Minnesota Department of Health or the Governor has either advised against or prohibited public gatherings, including classroom instruction at schools, colleges and universities.
4. Neither the federal government nor the Minnesota state government have adopted legislation or taken administrative action, other than the use of statutory authority mentioned in the first assumption, modifying employment related laws or regulations or collective bargaining agreements or plans in effect in June 2006.
5. Restricted or declining revenues as well as payroll system issues may require that priorities be established for the processing of payroll.
6. The State will make every effort to see that state employees who are reporting to work to perform critical functions will be given priority status to receive antiviral vaccines and/or prophylactic medication.

Section 1

General Expectations

Policy: The basic operating principle in an emergency will be to continue providing critical services to the citizens of Minnesota to the extent possible. Employees will be expected to report to work as assigned. Managers will be expected to take the necessary steps to accomplish the agency's critical services.

Recommended changes: When the Governor declares an emergency, standard operating procedures may be suspended and measures taken to ensure that critical services continue.

Significant issue: Employees will be expected to follow the agency and state mandates.

Preplanning: Agencies are identifying critical services and resources needed to carry them out.

1. The basic assumption is that management can assign employees to any type of work, in any location as necessary to keep critical state functions operational.
2. Managers are empowered to take the necessary steps to get the work done.
3. Agencies will use social distancing principles when making decisions about how and where to conduct meetings and other necessary business gatherings.

Section 2

Labor Relations – Emergency Administration

Policy: Certain collective bargaining agreement and plan provisions will be suspended in order to maintain the necessary flexibility to best manage the state's critical services.

Recommended changes: The primary contract provisions subject to consideration for suspension are those that concern scheduling, notification procedures and assignment of work, limited interruption, layoff, vacancy filling, seniority, and severance payout.

Preplanning: Agencies should identify barriers caused by provisions of state collective bargaining agreements and plans that interfere with the ability of agencies to carry out their critical services and should contact their labor relations representative.

1. Collective bargaining agreements and plans will be honored to the extent possible, but not at the risk of failing to provide critical services to the citizens of the state of Minnesota
2. Provisions of collective bargaining agreements and plans that pertain to compensation practices are not expected to be suspended.
3. Provisions of collective bargaining agreements and plans likely to be subject to review and temporary suspension include but are not limited to:
 - a. scheduling
 - b. notification procedures
 - c. assignment of work
 - d. limited interruption
 - e. layoff
 - f. vacancy filling
 - g. seniority
 - h. vacation and comp time liquidations
 - i. severance payout
4. During the period of the emergency, the state may temporarily suspend collective bargaining negotiations, grievance processing and labor-management committee meetings. Where such meetings are found to be necessary, employers will use social distancing principles.
5. Labor Relations will notify the Exclusive Representatives when the Governor declares and signs an emergency order suspending, amending, or superseding provisions of the collective bargaining agreements.

Section 3

Leaves

Policy: Leaves will not be granted to employees who are assigned to critical services, except as required by law or indicated below.

Recommended changes: Pre-approved leaves may be canceled to ensure that sufficient resources are available to carry out the critical services of the state.

Preplanning: Communication with employees that previously approved leaves may be canceled in the event of an emergency. Managers and supervisors should be trained on how to handle situations with ill employees.

1. Employees assigned to work in critical service areas will be required to report for work as assigned (unless the employee is ill or qualifies for FMLA.)
2. Previously approved vacation leave and compensatory time off may be rescinded in order to provide staffing coverage for critical services.
3. Rescission of an employee's leave, which is already in progress, will be based upon the critical services needs of the agency and the employee's ability to report to work.
4. Statutorily provided leaves, such as FMLA, will continue to be administered in accordance with federal requirements, unless suspended by an appropriate authority, e.g., federal agencies, Governor, etc.
5. Agency HR offices should continue to communicate to employees about the qualifications for FMLA.
6. Agency HR offices will make a determination on whether an absence qualifies for FMLA leave based on the information available to them in the event that medical certification is not reasonably obtainable.
7. Vacation leave accrual maximums may be suspended for the duration of the emergency.
8. Leave approval to attend medical appointments will be handled on a case-by-case basis.
9. Considering the operational needs of the agency, employees will be permitted to use accrued leave to care for those within their household who are ill or other family members as defined by collective bargaining agreements or plans.
10. At the discretion of the appointing authority, employees will be permitted to use a reasonable amount of accrued leave to attend the funerals of family members and members of their household.
11. If an employee presents symptoms consistent with pandemic influenza in the workplace, agencies have the authority to require the employee to immediately leave the workplace.

12. The decision to remove an employee from the workplace should be based on the safety of all employees and whether the health of employees is endangered by the health of an ill employee.
13. Employees who are sent home because they are believed to be ill may use accumulated sick leave. Employees sent home ill who have no sick leave available, or once they have exhausted their sick leave, may elect to use vacation, comp time or leave without pay.
14. The agency may determine the need to require a medical authorization when an ill employee returns to work.
15. The provisions of the state's leave donation policy will be suspended during a declared emergency. Current recipients may use accumulated leave until it is exhausted. Employees may continue to donate hours to current recipients, but no new recipients will be added during the emergency. Processing may be delayed.
16. Employees who are sent home because of lack of work may elect to use accrued vacation, compensatory time, or leave without pay. Agencies will try to find critical services for them to perform either within the agency or in another agency.
17. The employee may use sick leave only if it meets the conditions in the collective bargaining agreements or plans.

Section 4

Assignments, Schedules and Position Filling

Policy: Appropriate measures will be taken to adequately staff the state's critical services.

Recommended changes: Suspension of collective bargaining and plan provisions and policies/practices such as, but not limited to, posting requirements, Affirmative Action requirements, use of Resumix, (the State's job application system), discretionary background and reference checks, and ability to use temporary services providers.

Significant Issue: An alternative position filling/qualification process needs to be developed by the Department of Employee Relations so that legal appointments can be made. Layoff provisions of collective bargaining agreements or plans may be suspended in order to permit appointing authorities to send state employees home without pay.

Preplanning: Agencies should identify the gap between their ability to maintain adequate staffing and their need to share resources deployed from other agencies. DOER will establish an alternative position filling process.

Deployment of state employees

1. Management reserves the right to deploy state employees to alternative worksites in varied state operations in order to carry out critical services.
2. Employees deployed to perform critical services, whether or not the assignment is within their home agency, are expected to report to work.
3. If an employee refuses to come to work as assigned, the employer may deny the use of vacation and the employee may be subject to discipline.

Work-out-of-class/Shift differential

1. An agency may temporarily assign an employee to a classification that is higher or lower than the employee's permanent classification. If the assignment constitutes work out of class or a shift differential, in which additional pay is appropriate, payment may be delayed until the conclusion of the emergency. Assignments should be made in writing as soon as practicable.
2. Shift differential and work out of class pay shall continue to be paid in accordance with collective bargaining agreements or plans based on the assignment during the emergency.

Employees not performing critical services

1. If employees already at work are sent home because of the closure of specific offices, they will be paid through the end of their regular shift.

2. If an employee is not assigned to perform critical services within their home agency, or another agency, the employee may be told to not report to work and it does not constitute a layoff under the collective bargaining agreement.
3. During a pandemic, if an agency meets its priority 1 and 2 services, that agency's priority 3 and 4 services may be discontinued and DOER may reassign those employees to another agency that cannot meet its priority 1 and 2 services. If there is no need for a reassignment, the agency may continue its priority 3 and 4 services based on the following considerations:
 - The Department of Health or Governor has not issued a recommendation that all employees stay home, except those performing priority 1 and 2 services.
 - There is sufficient revenue to meet the payroll requirements for priority 3 and 4 services.
4. Employees who are told not to report to work because of lack of work may elect to use accrued vacation, compensatory time, or leave without pay. Agencies will try to find critical services for them to perform either within the agency or in another agency.
5. The employee may use sick leave only if it meets the conditions in the collective bargaining agreements or plans.

Alternative work schedules and training

1. Agencies should review their normal business hours and work schedules to determine if they can be modified in a manner that best promotes social distancing, business continuity or other emergency response goals during an emergency.
2. Training will be canceled for the duration of the emergency, unless the training is mandatory for the continuation of critical services.
3. Agencies may determine the necessity and practicality of providing telecommuting alternatives for employees assigned to perform critical services.

Position Filling

1. Only hires necessary to provide critical services shall occur.
2. Agencies will still be required to conduct legally required background and reference checks unless that regulation is suspended in accordance to law.
3. The use of Resumix will not be available during an emergency.
4. Agencies can continue to hire individuals for permanent or temporary work. They are permitted to use temporary hiring agencies.

Section 5 Compensation and Payroll

Policy: The state will continue to pay employees who work as assigned or on approved paid leave.

Recommended Changes: In order to process payroll it may be necessary to process a standard payroll cycle and make necessary adjustments at a later date or it may be necessary to prioritize payroll payments.

Significant issue: Some payments may occur at the conclusion of the emergency and a post audit clean up of payroll is expected.

Preplanning: Agencies should plan for payroll input and supervisory processing of timesheets with staff assigned as back ups.

1. Compensation provisions of collective bargaining agreements and plans will not be suspended but may be streamlined in order to administer payroll in a timely manner.
2. Agencies should continue to process payroll under the guidelines determined by the Department of Finance. Due to staffing shortfalls or reassignment of employees, payroll may continue on an emergency basis with priority processing for those performing critical services.
3. Payment for work-out-of-class assignments or shift differentials may be delayed until the conclusion of the emergency.
4. If an agency function or program closes after the start of an employee's shift, employees who are sent home will be paid through the end of their shift.
5. Workers Compensation claims should be processed through normal procedures. Benefits claimed during the emergency may be delayed to the conclusion of the emergency.
6. In the event that an employee separates for any reason e.g., resignation, retirement, death, etc., it is important to ensure that the transaction is entered into SEMA4 in a timely fashion so that overpayments do not occur. Reconciliation and recovery for overpayments may occur following the conclusion of the declared emergency.

Section 6

Insurance Benefits

Policy: Insurance benefits currently in place at the start of a pandemic are expected to be maintained for the duration of the declared emergency for a period of up to 18 months. Insurance eligible employees will continue to receive health insurance coverage and will continue to receive the employer contribution during this time. Employees are expected to continue to pay the employee contribution. Agencies will be required to continue to make the employer contribution for health insurance coverage.

Significant issue: Medical services are expected to be overwhelmed during a pandemic and limited to only those services for life threatening conditions. Access to primary care clinics may be limited. The timing of a pandemic may limit the state's ability to provide open enrollment opportunities.

Preplanning: Agencies should cross train staff in insurance benefit management.

1. The processing of benefit applications and claims is expected to be delayed during a pandemic.
2. The employee will be responsible for their share of the insurance premiums. Deductions from payroll may be delayed until they return to work.
3. Life insurance claims will continue to be processed through the carrier, Minnesota Life. Payments may be delayed.
4. Short term and long term benefits will continue to be processed through the carrier, The Hartford. Payments may be delayed.

Section 7

Health and Safety

Policy: State agencies will implement occupational health and safety recommendations put forth by the Departments of Health and Labor & Industry during pandemic influenza.

Recommended Changes: Refer to chapter 4 of the State Agency Pandemic Influenza Service Continuation Guide for specific recommendations on organizational and environmental changes that can reduce the spread of influenza.

Significant Issue: Shortages of certain personal protection equipment (PPE) are expected to occur during a pandemic. Agencies should consider whether they can modify work procedures to avoid the need for PPE during a pandemic.

Preplanning: Agencies should assess their expected service delivery needs during a pandemic and consider the current recommended personal protection guidelines. If personal protection is expected to be necessary during a pandemic, agencies should make arrangements in advance to evaluate, train, and equip employees with the appropriate PPE.

1. State agencies will be responsible for providing employees with properly selected and fitted PPE when needed during a pandemic. Agencies must provide training on the proper use of PPE. Agencies must follow any applicable OSHA regulations. Employees that are issued PPE are required to wear the equipment.
2. Agencies that have a clear need for PPE during a pandemic (direct care of individuals ill with influenza or other critical services where PPE is required) should consider the gradual stock piling of nonperishable PPE. Agencies considering the stock piling of PPE should work with the Departments of Administration and Health.
3. Guidelines regarding the operation and maintenance of building systems during a pandemic will be distributed to agencies. Agencies that are responsible for their own building maintenance should expect to modify system operation to increase dilution ventilation. Agencies occupying leased space should discuss building operation expectations with landlord.
4. Basic guidelines regarding building cleaning are outlined in chapter 4 of the State Agency Pandemic Influenza Service Continuation Guide. Additional information will be distributed to agencies as specific recommendations are developed in response to a pandemic. Agencies that are responsible for their own custodial activities should expect to modify their processes and make arrangements for acquiring appropriate products. Agencies occupying leased space should discuss custodial activity expectations with landlord.
5. Product specifications will be distributed as they become available. Agencies considering the purchase of products for response to a pandemic should work with the Department of Administration.

Section 8

Performance Management

Policy: Employees are expected to report to work and perform duties, unless directed otherwise. Managers should continue to hold employees accountable for meeting performance expectations.

Recommended changes: Formal performance reviews will be suspended.

Preplanning: Employees should be informed of the expectation that they report to work and that the consequence for not doing so is potential disciplinary action.

1. Employee misconduct, including unexcused absences, may arise and need to be addressed through normal disciplinary measures.
2. Agencies should take the necessary and appropriate action to hold employees accountable for their behavior and performance.
3. Grievance hearings and timelines may be suspended or delayed.
4. If an employee refuses to come to work as assigned, the employer may deny the use of vacation and the employee may be subject to discipline.