

March 16, 2021 Department of Administration Memorandum

Included in the State Ethics Commission June 24, 2021 letter to the House Legislative Oversight Committee (LOC). This information was provided in response to the following question in LOC's June 7, 2021, letter to the State Ethics Commission: "16. Did the agency survey staff to gauge their interest or support for a continuation of remote work options?"

In addition to providing the information in this document, State Ethics Commission provided the following response:

- A formal survey was not conducted; however, many staff members expressed an interest in remote work. While this option would not be appropriate for all departments, telecommuting would be a viable option for some employees. Efforts at maintaining telecommuting were abandoned due to Executive Order 2021-12 and a memorandum from the Department of Administration dated March 16, 2021. Both are attached.

MEMORANDUM

To: Agency Directors of all state agencies and institutions of higher education
From: Marcia Adams
Date: March 16, 2021
Subject: State Government Staffing – Return to Normal Operations

Important note: The content of this memorandum, originally sent to agency directors March 11, 2021, has been updated to include new frequently asked questions. Those questions are numbers 10-18 and are labeled as “NEW”.

Disclaimer: The guidance in this memorandum is based on the information available at this time and will be updated as more information becomes available.

Pursuant to Executive Order No. 2021-12, state agencies must immediately expedite the transition back to normal operations.

All human resources directors shall submit to the South Carolina Department of Administration’s (Admin) State Human Resources Director Karen Wingo a plan to expeditiously return all employees and staff, including non-essential employees and staff, to the workplace fulltime. The plan, which must be submitted by noon, Wednesday, March 10, 2021, is subject to review and approval by Admin. **All agencies will receive a response from Admin regarding their submitted plans.**

If an agency or institution does not submit a plan or have a plan approved by Admin by the close of business Friday, March 12, 2021, the agency or institution is expected to return all staff to the workplace no later than Monday, March 15, 2021.

To assist agencies and institutions with returning their employees to the workplace, Admin has drafted guidance in the form of the following Frequently Asked Questions, which will be updated should additional guidance be needed.

(Continued)



Frequently Asked Questions

FAQ 1: What information should be contained in the return to work plan for our agency and how should it be submitted?

All agencies and institutions are expected to return employees back to the workplace by Monday, March 15, 2021.

If agencies are unable to meet this deadline and need a limited amount of time to modify the workplace to further mitigate the risk of exposure to COVID-19, the agency's human resources director must submit a written request for additional time to Division of State Human Resources Director Karen Wingo (karen.wingo@admin.sc.gov) no later than noon, Wednesday, March 10, 2021. The request must:

- Identify the steps being taken to immediately increase the number of staff in office; and
- Indicate why additional time is needed to return the remainder of the workforce to the office fulltime.

Here is an example of a request that would likely be approved:

- Agency X has a high number of non-essential staff working in a cubicle environment. The agency's plan calls for a rapid, phased approach to allow time for the agency or institution to modify the work environment as needed. On March 15, 2021, the agency would increase the number of employees in the workplace to 60% of the workforce. By March 22, 2021, 75% of the workforce will be physically reporting to the office, and the remainder of the employees will return to the workplace fulltime in early April.

FAQ 2: Does the expectation to return all employees to the workplace include those who work in close environments such as cubicles or shared offices?

Yes. It is expected that only those employees who were working from home before the COVID-19 health emergency for unrelated Covid-19 reasons are to remain teleworking. Agencies and institutions should still employ measures to reduce the likelihood of transmission in the workplace including, but not limited to, requiring employees to wear masks in state government buildings, reminding employees to wash hands frequently, maintaining directional signs to manage the flow of people in the buildings, disinfecting high touch services and directing employees to stay home when they are not feeling well.

FAQ 3: Does this expectation include those employees with medical conditions?

Yes. However, agencies and institutions are still expected to follow the Americans with Disabilities Act, as amended, the Family and Medical Leave Act (FMLA), and other federal and state laws. Therefore, if an employee has a disability (e.g., congestive heart failure) that the Centers for Disease Control and Prevention (CDC) identifies as placing the individual at higher risk for severe illness resulting from the COVID-19 virus, the agency should go through the interactive process to evaluate a request for a **temporary** reasonable accommodation to work remotely until the individual has had an **opportunity** to be vaccinated. The CDC provides a list of conditions that place an individual at a higher risk of severe illness from the COVID-19 virus. [View the CDC's list.](#)

(Continued)

Agencies may receive requests for accommodation based on other types of disabilities, such as anxiety. Each request for an accommodation should be handled on a case-by-case basis and in a manner consistent with the ADA, FMLA and other laws relevant to individuals with a disability and/or in need of medical leave. Except for those employees working from home before the Covid-19 pandemic, it should be considered an essential job function for employees to be in the workplace. Therefore, agencies should go through an interactive dialogue with the employee to identify accommodations that would enable the employee to report to the workplace. Examples include access to additional personal protective equipment, a staggered reporting time, and reasonable work area modifications such as sneeze guards or the movement of a desk within the cubicle. If an agency has questions about a request for reasonable accommodation, the agency can contact Karen Wingo (803-422-8645) or their Division of State Human Resources HR Consultant (803-896-5300).

FAQ 4: Is an employee expected to report to the workplace if a family member or household resident is at higher risk for severe illness from the COVID-19 virus?

Yes. The Americans with Disabilities Act does not apply when the individual with a disability is a family member or household resident of the employee. Qualifying employees may be eligible for leave pursuant to the Family and Medical Leave Act (FMLA) if they need to care for a family member with a serious health condition. Requests for FMLA leave will need to be made by the employee and processed in accordance with federal law and agency policy.

FAQ 5: If an employee has had close contact with a COVID-19 case and/or is symptomatic, should the agency still require the employee to quarantine?

Yes. All guidelines regarding isolation and quarantine are still applicable. Agencies and institutions should continue to rely on DHEC's Interim Guidance for COVID-19 Scenarios for Businesses. If an employee is required to quarantine based on DHEC's guidance, an agency has discretion to allow the employee to telework during the period of quarantine if the employee can perform his or her job functions remotely. Agency Heads and their designees have the sole discretion to determine whether to permit telework while an employee is quarantining. If an employee is permitted to telework while quarantining, the agency must return the employee back to the workplace immediately upon completion of the quarantine period.

FAQ 6: If the child care center or school for the child of an employee is not open to in-person learning fulltime, is the employee expected to report to the workplace?

Yes. All employees are expected to return to the workplace fulltime. However, if an agency wants to allow a short time for employees impacted by limitations on in-person learning to identify child care support or evaluate other options, that information should be included as part of the request for additional time referenced in FAQ 2. For example, if an agency submits a request indicating that it can return all employees to the workplace March 22, 2021, but is going to allow employees impacted by in-person learning limitations two additional weeks of time before returning fulltime to the workplace, such a request is likely to be approved.

FAQ 7: Does the agency still need to submit its daily staffing numbers to the Division of State Human Resources?

Yes. Once state government has fully returned to normal operations, Admin will likely be able to decrease the daily reporting requirement. However, as agencies transition employees back to the workplace fulltime and implement their return the workplace plans, it is critical that the agencies continue to accurately report their daily staffing numbers. Admin anticipates that agencies and institutions will continue to report staffing numbers weekly or monthly even after all entities have fully returned to normal operations.

(Continued)

FAQ 8: What can I do to mitigate occupational risk of exposure to COVID-19 for my agency's employees?

Agencies should continue to identify ways to modify the workplace to the extent possible to promote the safety of employees. Examples of modifications include:

- Offering staggered start times to mitigate the congregation of employees at points of ingress/egress.
- Spreading out workstations to increase the distance between work areas.
- Utilizing common space (e.g., conference rooms) as temporary worksites for some employees to promote social distancing.
- Installing sneeze guards or plexiglass barriers.

Agencies should also continue to employ safety measures to reduce the likelihood of transmission of COVID-19 in the workplace including, but not limited to, requiring employees to wear masks in state government buildings, reminding employees to wash hands frequently, maintaining directional signs to manage the flow of people in the buildings, disinfecting high touch services and directing employees to stay home when they are not feeling well.

Karen Wingo (803-422-8645) and the Division of State Human Resources HR Consultants (803-896-5300) are available to help agencies brainstorm ways to promote social distancing and mitigate workplace exposures to the maximum extent possible.

FAQ 9: Can an agency require its employees to wear face masks?

While face masks or coverings are not required in state government offices, buildings, and facilities pursuant to Executive Order 2021-12, agency heads have the discretion to require state employees to wear face masks in the workplace. Admin will be issuing additional guidance concerning face masks.

FAQ 10: What are the options for those employees who made the decision in the fall to place their children in virtual school for the entire school year? NEW

Many school districts will allow parents to change their original choice. For those situations that employees are unable to alter the learning plan for their children, included in the agency's plan can be a limited amount of time to allow the employee to develop a child care plan for the remainder of the school year, similar as discussed in FAQ 6. Employees may use any form of accrued leave, including sick leave, if additional time is needed to identify child or dependent care alternatives.

FAQ 11: Many school districts are designating mandatory virtual school days, when the schools will not be open for in-person learning, to allow faculty and staff to be vaccinated. Should employees be allowed to telework on those days or must employees take leave if they cannot arrange for other child care options? NEW

Agencies should handle mandatory virtual days in a manner consistent with how the agency has previously handled teacher in-service days or other school closures.

FAQ 12: Can we delay the return of staff to the workplace until employees have had time to get vaccinated? NEW

No. Unless an employee has a disability which places him or her at high risk of severe COVID-19 implications as identified by the CDC, an agency may not delay returning an employee to the workplace until the employee has had an opportunity to be vaccinated.

(Continued)

However, agencies should still continue to implement measures designed to mitigate the transmission of COVID-19 in the workplace through means like holding meetings virtually to promote social distancing, adhering to directional signs in the workplace, encouraging employees to disinfect high touch surfaces regularly, and modifying the work area to promote social distancing wherever possible.

FAQ 13: Is this transition back to the workplace Phase 3 under the Re-Entry Plan? NEW

No. When Admin developed the Re-Entry Plan for State Employees, the expectation was that Phase 3 would represent a return to pre-COVID-19 operations. While Executive Order 2021-12 returns all state employees back to the workplace fulltime, agencies should still implement measures designed to mitigate the transmission of the virus in the workplace and keep state employees and the citizens served by the agency safe.

FAQ 14: Is the expectation to return employees fulltime or can we continue to use staggered schedules? NEW

Unless it is an accommodation for an individual with a disability or a temporary arrangement made pursuant to an approved plan submitted to DSHR, employees must return to the workplace fulltime and must return to their pre-COVID staffing arrangements. For example, if prior to COVID an employee that visits clients or consumers returned to an office after doing so, the employee is expected to resume that staffing practice after March 15.

FAQ 15: The CDC indicates that pregnant individuals are at increased risk due to COVID. How should we handle expecting employees? NEW

A pregnant employee should be treated the same as any other employee with a disability that places him/her at increased risk for severe illness due to COVID. If the employee is not going to be vaccinated while pregnant, the agency or institution should work with the pregnant employee on a case-by-case basis to identify an accommodation, if needed.

FAQ 16: Can we allow more time beyond April 19 for employees with a disability to be fully vaccinated? NEW

Yes. An agency has discretion to allow employees with a disability that places them at increased risk of severe illness from COVID-19 time additional time to be fully vaccinated before returning to the workplace if the employee can complete his/her job duties remotely and if no other safety measures can be implemented. It may take into late April/early May for employees to get vaccinated due to variations in appointment availability and/or the type of vaccine. Allowing employees with such a disability to remain teleworking until fully vaccinated should only be a temporary accommodation.

FAQ 17: Are there any restrictions on employee travel? NEW

All decisions regarding employee travel are at the discretion of Agency Head or his/her designee.

FAQ 18: Does this guidance impact pre-existing ADA reasonable accommodations? NEW

No, nothing in the guidance supersedes an agency's obligation to abide by the ADA and other federal and state laws. Therefore, if an agency has an existing reasonable accommodation in place for an employee, this guidance does not supplant that accommodation. Similarly, if an employee has a disability which impacts his/her ability to perform one or more essential functions of his/her position other than returning to the workplace, the agency should work with the employee on a one-on-one basis through the interactive process to identify possible reasonable accommodations.