

*Congress of the United States
Washington, DC 20515*

April 20, 2020

The Honorable Dr. Mark T. Esper
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

The Honorable James E. McPherson
Acting Secretary of the Navy
Department of Defense
1000 Navy Pentagon
Washington, DC 20350

Dear Secretary Esper and Secretary McPherson:

We write to you to express our concerns with the civilian personnel guidance for non-telework eligible workers provided by the Department of Defense (DoD) in responding to the COVID-19 pandemic. As the Navy's four public shipyards are either located in or adjacent to our congressional districts, we represent thousands of Navy civilian workers. Many of these workers have hands-on roles as welders, pipefitters, electricians, engineers, or other specialized technicians that require their physical presence at the worksite – they do not have the option of teleworking during the current public health emergency. While we appreciate the early actions taken by the DoD and Navy to quickly disseminate updated leave policy instructions, which reflected Office of Personnel and Management (OPM) and Office of Management and Budget (OMB) memorandums, we believe that – in the interests of public health and mission readiness – the DoD should update its guidance to grant weather and safety leave to non-telework eligible workers who live with sick or high-risk family members.

As this unprecedented crisis developed throughout March, OMB issued increasingly aggressive direction on how to align government resources and personnel to slow the transmission of COVID-19 across the country¹². This direction balanced the needs of mission-critical work and the health and safety of the American people through policies that facilitated greater social distancing. In practice, this direction meant then when an employee could do his or her work from home, the employing agency should allow that worker to telework. For non-telework eligible workers, such as many of those employed at the public shipyards, this meant identifying how many and which workers were required to report for duty to maintain mission-critical activities. The OMB and OPM guidance make clear that agencies should use their wide discretion in authorizing weather and safety leave due to a "condition that prevents the employee or group of employees from safely traveling to or performing work at an approved location" (5 U.S.C. § 6329c(b)). OPM has determined that agencies may authorize weather and safety leave for a non-telework eligible asymptomatic worker when there is a significant safety risk for other employees and the general public should such an employee travel to and from and performing their work at his or her worksite³.

The DoD interpretation of this OMB and OPM weather and safety leave guidance excludes two scenarios which could impact public health and the ability of the DoD component to fulfill its

¹ OMB Memorandum M-20-13 at <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-13.pdf> (PDF file)

² OMB Memorandum M-20-16 at <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>

³ OPM Memorandum CPM 2020-02 at <https://chcoc.gov/content/human-resources-flexibilities-available-federal-employees-impacted-2019-novel-coronavirus>

mission-critical functions⁴. Both scenarios involve a worker who is asymptomatic of COVID-19. In the first scenario, the worker resides with either a symptomatic family member or a family member who is confirmed to have COVID-19. In either case, it is not in the interest of public health, the DoD component, or the surrounding community to have such a worker travelling to and from home and reporting to a federal installation at which the worker could spread the disease amongst the workforce performing mission-critical activities at the worksite, such as a Navy shipyard. In the second scenario, the worker resides with a family member who is designated as high-risk according to the Centers for Disease Control and Prevention. In this situation, it is not in the interest of public health and not in alignment with the OMB direction to allow this worker to jeopardize the health of that family member by travelling to and from home on a daily basis. The 5 U.S.C. § 6329c(b) statutory language on weather and safety leave and both OMB and OPM interpretations of this provision in U.S. Code make clear that agencies and departments can and should authorize weather and safety leave to employees in these two circumstances.

Accordingly, we ask the DoD and Navy to revise its civilian personnel guidance to fully reflect the wide discretion of the OMB and OPM directives to federal departments and agencies on weather and safety leave authorization for non-telework eligible employees in these two scenarios. Such a revision is needed to align DoD policy with the emphasis and intention of the OMB guidance to mitigate the spread of COVID-19 and protect the public health while balancing the ability of the federal government to fulfill mission-critical functions. As the number of COVID-19 cases continue to increase across our nation, we must continue to make resource and personnel decisions, within the full scope of the law and executive branch guidelines, that minimize risks to public health and maintain the readiness of our military, and particularly our public shipyards, to meet their mission requirements.

Thank you for your attention to this important issue, and we look forward to your prompt response.



Derek Kilmer
Member of Congress

Signatories:

Elaine Luria
Member of Congress

Chellie Pingree
Member of Congress

Robert C. "Bobby" Scott
Member of Congress

Chris Pappas
Member of Congress

⁴ Office of the Under Secretary of Defense for Personnel and Readiness Memorandum, "Civilian Personnel Guidance for DoD Components in Responding to Coronavirus Disease 2019," March 8, 2020