Commanders/Directors –

**The following U-A/A1K guidance is for your “high risk” Local National workforce. Guidance for your “high risk” US workforce was sent under separate cover 8 Apr 20 including OUSD flexibilities matrix.**

BLUF: USAFE-AFRICA provides guidance as well as further implementing instructions by USAFE-AFRICA/A1KC (Local National Policy) to define and administer ‘high risk’ groups among our Local National (LN) workforce.

DISCUSSION: The often-quoted terms ‘weather leave’, ‘safety leave’, and ‘admin leave’ used in the U.S. system can be misunderstood when it comes to LN employment. The U-A guidance below provides clarification on when administrative leave (paid absence) for LNs is appropriate during the current COVID-19 situation.

**U-A/A1K initial guidance:**

AF/A1 guidance (dated 3 April 2020) identifies the CDC to define ‘high risk’ groups for US civilian employees; however, this definition may only be used as a guide for the Local National (LN) program. Due to host nation agreements and how LN programs are managed, it is appropriate to apply the Host Nation (HN) CDC equivalent for the LN employees. Below are some principles to follow and ensure consistency in application for the LN employment program:

- High Risk groups as defined by the HN health authority.

- Employees self-certify (report) whether they belong to a high-risk group.

- Self-certification will have to be supported by medical certificate/documentation. This will have to be provided either immediately, or within timeframes as established by respective employment conditions.

- Supervisors are required to extensively use all appropriate HR flexibility tools to the maximum extent possible to minimize the employee's health risks.

- As a last resort, high risk group employees may be placed on paid absence.

**Further implementing instructions from U-A/A1KC:**

Guidance on how to deal with LN employees that are considered to belong to a (high) risk group for severe courses:
1. In Germany, risk groups for severe courses are determined by the “Robert-Koch-Institut”, the primary advisory health center for disease control, an equivalent to the CDC in the U.S. Besides the fact that – statistically – the risk of severe courses also increases by age, the Robert-Koch-Institute primarily focuses its attention on people with certain previous illnesses, such as:

   a. illness of the cardiovascular system (e.g. coronary heart disease and high blood pressure)
   b. chronic diseases of the lungs (e.g. COPD)
   c. patients with chronic liver diseases
   d. patients with diabetes mellitus (diabetes)
   e. patients with cancer
   f. patients with a weakened immune system (e.g. due to a disease that is associated with an immunodeficiency or by taking medication that can influence and reduce the immune system, such as cortisone)

Please note that the Robert-Koch-Institut does not provide any recommendation/advice on how to deal with people fulfilling one or more above risk factors in regards to labor/employment conditions.

2. Administrative leave (paid release) for LNs in Germany is primarily governed under Art. 28 as well as Art. 26 of CTA II. Those provisions do not mandate a paid release for an LN employee only because of the fact that the LN employee is considered as someone with a (high) risk for severe courses (= high risk group- employee), unless the local health authority (“Gesundheitsamt”) directs quarantine/isolation. Such order is usually based on symptoms or contact with infected people/stay in a risk area like Northern Italy).

Paid sick absence is governed under Art. 29 CTA II. An employee is not considered as being sick/unfit for work only because of the fact, he/she is a high risk group employee; but when suffering from COVID 19, at least when showing symptoms, the employee would be unfit for work in most cases (and/or being officially quarantined), independently of being a high risk group employee or not.

3. As an employer, we do not only have primary obligations such as monthly compensation but also ancillary obligations. An essential employer’s obligation is the protection of employees from severe harm to their health and life. This is the legal basis for taking measures/actions in regards to high risk group- LN employees. Such measures must be appropriate to minimize the risk during work and may include but are not limited to

   a) Providing protective tools/equipment as sanitizers, masks etc.
   b) Avoiding direct contact to others (colleagues, customers etc.) but supporting social distancing of at least 6 feet (1.5 - 2m) by, e.g. assigning alternative work places/office spaces, rearranging offices/furniture etc.
   c) Using all media technique possible to conduct meetings virtually
   d) Providing as much flexibility in regards to work time as possible such as rescheduling, shift changes etc.
   e) Assign other duties by employer’s right to direct if possible and in agreement with employment contract
   f) Generous approval of annual leave and even LWOP
   g) Offering telework if specific job/duty allows. Though telework cannot be assigned unilaterally in general, it is still a tool for risk minimization. It should be common sense that the concerned LN cannot deny performing telework (including home office) simply because it is voluntary in order to enforce paid absence instead.
   h) **Paid absence is the very last and absolutely exceptional option** if above options cannot be realized and will always be based on a case by case- decision (please note that USAREUR does not grant admin leave in the meaning of paid absence at all).

4. **Medical Documentation** - If the LN employee states he/she is considered to be someone with a (high) risk for severe courses when being diagnosed with COVID 19, he/she will also have to provide some kind of supporting medical
documentation, clearly certifying this statement, sometimes combined with an advise/recommendation. Such medical documentation/certificate in above sense does not state that the employee is unfit for work! If it does, then it would be considered as a sick leave slip ("Arbeitsunfähigkeitsbescheinigung") and would consequently result in paid sick absence for up to six (6) weeks IAW Art. 29 par. 2 and 4 of CTA II.

5. **Documentation Timeframe** - Timeframe for providing/submitting the required supporting medical documentation: In general, the concerned employee is supposed to provide the supporting documentation together with his/her statement but not later than at the next working day following three calendar days from the date of the statement, analogously Art. 29 par. 4b) CTA II. In the current situation, given many doctor’s offices are extremely busy, overloaded or even closed for regular services, it might be difficult for the respective employee to provide supporting medical documentation right away or within this timeframe. If so and explicitly confirmed/stated by the employee, it is justified to grant a reasonable extension on a case-by-case decision.

We remain postured to assist and advise you on available HR tools and flexibilities to meet your mission requirement and protect your employees.

Please address questions to the Local Nation EMR Section, DSN 480-5365, 86FSS.CPF.LN-EMR@us.af.mil.

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