



General Contract Guidance on Leave & More

PASS has received scores of messages from its members around the country as the coronavirus emergency has continued. This guidance seeks to address some of the questions that have been posed to the union.

One of the concerns that has been raised relates to situations where an employee is concerned about reporting to work or engaging in normal work activities. While the spread of a virus is not the typical situation involving occupational safety and health, our collective bargaining agreement (CBA) language is broad enough to address those concerns. Each individual employee must evaluate their own personal circumstances and determine whether the language in the ATO or AVS CBAs should be invoked in relation to their unique situation.

Article 54 of the [ATO CBA](#) and Article 86 of the [AVS CBA](#) contain provisions that will help employees protect themselves. First, Section 1 of Articles 54 and 86, makes clear that:

The Agency shall make every reasonable effort to provide and maintain safe and healthful working conditions. Factors to be considered include, but are not limited to, proper heating, air conditioning, ventilation, air quality, work-area lighting, drinking water quality, appropriate/alternative hand-washing practices and safe access.

This language is very broad and inclusive and can easily be applied to the situation we are now facing. To be sure, ventilation, air quality, hand washing practices are all related to communicable diseases. The Agency should be evaluating every reasonable effort to protect employees.

In addition, Section 1 contains language to ensure that employees can protect themselves from life threatening situations:

The Agency will not penalize, antagonize, coerce, harass or discipline an employee for exercising his/her right under 29 CFR 1960.10, or the right to decline an assigned task because of a reasonable belief that under the circumstances the assigned task poses an immediate risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures in accordance with 29 CFR 1960.46(a). Employees are encouraged to report any unsafe or unhealthful condition first to their immediate supervisor prior to taking further action.

There is a two step-process in this language. First, the employee has to have a reasonable belief that a task poses an immediate risk of death or serious bodily harm. Depending on the individual circumstances, this standard may be met, particularly for those who are higher-risk individuals, such as those with underlying health conditions, or of a certain age as defined by the Centers for Disease Control and Prevention (CDC) in its guidelines. The second step is that there is insufficient time to mitigate the threat through normal reporting procedures. Depending on the circumstances,



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if an employee reasonably believes they are subject to catching a life threatening virus while performing work activities and there is not enough time to eliminate the threat, this standard could likely be met. Employees have every right to raise their specific concerns with management and should discuss the implications of this CBA article.

It is important to remember that under Section 1, this rule applies to both facilities controlled by the FAA as well as facilities the agency does not own or control. Section 1 states:

The Agency acknowledges that the responsibility to provide safe and healthful working conditions for its employees extends to non-FAA owned or controlled locations . . . This may include training or administrative controls to reduce hazards that may be encountered at a host employer's workplace (e.g. airline, repair station, etc.).

Other relevant articles in the CBA include Article 58 of the ATO CBA and Article 53 of the AVS CBA. Both state:

At his/her request, an employee who is temporarily medically or physically unable to perform some or all of their duties, shall continue to perform the remaining duties of their position, and may be assigned other duties, to the extent such duties are available.

These articles provide some protection for those who are in higher risk categories as defined by the CDC. In utilizing this article, an employee would be required to reveal their medical or physical issues to the FAA and engage in a dialogue about what job duties they are able and not able to perform. Open communication is the key to proper implementation as an employee would have the opportunity to describe how certain job duties exposes them to the coronavirus and how their individual circumstances places them in a heightened category of concern.

Further, our CBAs provide the guidance as to the use of leave. For example, Articles 56 in the AVS CBA and 41 of the ATO CBA cover sick leave, and if you are sick, this leave is available to use. It is also worth noting that employees are allowed up to 30 days of advanced sick leave.

Employees are always encouraged to reach out to their [PASS representatives](#) to discuss their options under the PASS CBAs.