

## ARTICLE 26 – TELEWORK

### SECTION 1

Telework is a privilege granted to the employee and approved by the Employer on a voluntary basis to allow the employee to work at an alternate duty station.

### SECTION 2

A. Participation in telework is not an entitlement. Rather, it is a privilege earned and maintained by employees. A telework agreement is between an employee and his/her supervisor and provides the employee's responsibilities and obligations. The employee is held to have knowledge of and agreement to those obligations once the telework agreement is signed. Telework requests and approvals must be in writing on the appropriate HHS form, provided by management, regardless of whether telework is routine (i.e., regularly scheduled and recurring) or episodic. While teleworking, employees are in duty status and are expected to be fully engaged (including timely responding to phone calls and emails, unless otherwise excused) in the performance of their duties. Telework is not appropriate for dependent/family care or other personal situations, which might impact an employee's ability to effectively perform his/her job duties.

B. Establishment and approval of a new telework agreement necessarily extinguishes the prior telework agreement. This is true regardless of the reason for the establishment of the new telework agreement.

C. The Division head, or designee, can revoke or change any telework agreement.

### SECTION 3

A. Telework arrangements may be used when there is recurring need to perform work at an alternate site. This type of arrangement is regular and recurring.

B. Telework arrangements may also be used on an occasional or episodic basis, for individual days or hours within a pay period, or for a special assignment or project on a short term basis (as determined by the Employer). Appropriate assignments include, but are not limited to, activities that require uninterrupted concentration and result in measurable work outputs or products, for example: data analysis; reviewing grants/cases; writing decisions or reports; telephone intensive tasks, such as obtaining or collecting information, following up on participants in a study, or setting up a conference; and some computer oriented tasks such as programming, data entry, and word processing.

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- C. Telework arrangements must not interfere with the effective, efficient and timely accomplishment of the mission. For example, telework arrangements must be consistent with maintaining adequate office coverage and efficiency of operations.
  
- D. A new employee to the OPDIV/STAFFDIV or an employee in a new position, including promotions or lateral reassignments within the same OPDIV/STAFFDIV, must have held her/his current position for at least one rating period before the employee may be granted telework. An Employee's second level supervisor has the right to allow the Employee, at the Supervisor's discretion, to apply for telework prior to the end of the Employee's first rating period.
  
- E. Teleworking employees must use HHS approved technologies and methods to access all HHS networks and systems. When employees have been provided with government furnished equipment for use at the alternate duty station, they will be required to use that equipment while teleworking. Employees participating in the telework program and using their personal residence (or any other approved site not fully-equipped with these items) may be required to provide at their own cost all services necessary for working at the alternate duty station.
  
- F. Telework arrangements (agreements) are between the employee and their current supervisor. When an employee is detailed or permanently assigned to another organizational unit of the Employer or otherwise reports to a new supervisor, the employee's prior telework agreement is void, and the employee must submit a new request to their new supervisor for their review/approval, or no longer telework. Additionally, employees must submit a new telework request whenever their telework situation changes (e.g., they move to a new home).
  
- G. Employees shall submit a new telework requests every six (6) months to their supervisor. Employees that do not submit renewed agreements within thirty (30) days of the expiration of their current agreement shall report to their official duty station the next work day, and their telework agreement will be deemed terminated. Telework agreements expire six (6) months from the date of supervisor approval.

#### SECTION 4

- A. To apply for telework an employee must demonstrate that he/she meets the following eligibility requirements and continues to meet them throughout the telework period.
  - 1. The employee's latest rating of record is "fully successful" (currently Achieved Expected Results) or better, and there has been no indication that the performance level has declined;

2. The employee is not on a leave restriction and has not been counseled about leave abuse;
3. Within the last twelve (12) months or at any time while occupying their current position, the employee has not:
  - a. been on a performance improvement plan (PIP) or opportunity to demonstrate acceptable performance (ODAP), or
  - b. Received any disciplinary or adverse action.
4. The employee has not been officially disciplined for being absent without permission (AWOL) for more than 5 days in any calendar year; or the employee has not been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography on a Federal Government computer or while performing official Federal Government duties;
5. At a minimum, the employee has demonstrated the ability to initiate his/her own work, timely complete assignments, works without direct supervisory oversight, and recognizes when supervisory or other assistance/guidance is needed on a project and engages others appropriately; or
6. The employee has completed the Employer's required telework training within the last twelve (12) months and has submitted a certificate of completion to their supervisor.

In addition, the employee's duties must be portable, and the assignments must be appropriate for telework. This determination is made by the Employer and within the Employer's sole discretion, in accordance with applicable laws, regulations, policies, etc.

#### SECTION 5

- A. The official worksite and duty station for an employee covered by a telework agreement is the location of the regular worksite for the employee's position (e.g., the place where the employee would normally work absent a telework agreement), as long as the employee is scheduled to report for duty physically at least twice each bi-weekly pay period on a regular and recurring basis to the regular worksite.
- B. The official worksite and duty station for an employee with a telework agreement who is not scheduled to report at least twice each bi-weekly pay period on a regular and recurring basis to the regular worksite is the location of the alternate duty station (e.g., home or other alternate worksite).

#### SECTION 6

- A. Employees with approved telework agreements are required to work their normal tour of duty when the official worksite and duty station is closed (e.g., due to weather or safety concerns) and they are able to travel to and work at their approved alternate duty station. For example, telework-ready employees (i.e. employees with a signed telework agreement) are required to work at their approved alternate duty station during emergencies or changes in operating status (e.g., Federal offices are closed, Federal offices are on delayed arrival, the Agency is operating under a Continuity of Operations Plan, etc.) or must take leave for the day.
- B. Employees participating in the telework program will not be excused from work because workers at the official worksite and duty station are dismissed or not required to work due to an emergency if the emergency does not impact the work being performed at the alternate worksite and duty station. If an emergency occurs that does impact the work being performed at the alternate worksite and duty station, the employee will immediately notify the Employer. The Employer may direct the employee to another worksite, grant excused absence, or allow the employee to request appropriate leave, e.g., annual leave or LWOP.
- C. Subject to management discretion, participants in the telework program may be allowed as part of a telework arrangement to work an AWS. Management has the right to make adjustments to an Employee's AWS and/or telework schedule to meet business reasons, operational demands, or mission related needs without the need for notification. Employees who work approved flexible work schedules and vary their start times are required to inform their supervisors and receive approval from their supervisor, prior to commencement of their tours of duty, of their start and end times for those days they work at an alternate site.
- D. Employees on a regular and recurring telework arrangement are required to report to the official worksite and duty station as needed, as determined by the Employer. Employees should expect to report to the official worksite and duty station a minimum of four (4) days per week (for employees on a compressed work schedule, the employee's regular day(s) off will count as a day away from the official worksite for the purpose of this requirement). The Employer may approve deviations from this minimum weekly requirement for days at the official worksite and duty station, but any such deviations shall be at the sole discretion of the Employer. In addition, the Employer reserves the right to require more frequent days at the official worksite and duty station and to recall employees without prior notification from scheduled telework days for situations deemed appropriate by the Employer, either planned or unplanned, including, but not limited to, office assignments, meetings, absence of other employees, emergency situations, training classes, business reasons, operational demands, or mission related needs. When situations occur that require the employee to return to the official worksite and duty station, travel to and from the office is normal commuting time and as such is not considered hours of duty. Furthermore, in such instances the telework day is forfeited and the employee is not entitled to substitute another telework day.
- E. If an employee has any type of Absence during the week, the employee cannot Telework that week. Absences include, but are not limited to, Holidays, Scheduled/Unscheduled Days Off, Leave, and Unauthorized Absences.[per NTEU request]

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F.E. The employees in the telework program are expected to be as available to managers, co-workers and customers by telephone, E-mail, voice mail, Microsoft Lync or Skype, if available, or other communications media, during their scheduled daily tours of duty, as when working at the official duty station. Teleworking employees must make their telework contact information readily available and have calls to their office phone forwarded to their telework number.

G.F. Policies and practices for requesting and using leave or other compensation categories, such as compensatory time or credit hours or overtime, remain unchanged, while in telework status. For purposes of timekeeping, participants will verify each pay period indicating hours worked while teleworking. Falsifying time reports will result in termination in the telework program and will be grounds for other adverse or disciplinary action including termination.

H.G. The Employer has the right to be provided with reasonable assurance that employees are working at alternate sites when teleworking through a method chosen by the Employer. For example, supervisors may require employees to display their availability via Microsoft Lync, Skype, if available, or other electronic methods. Additionally, supervisors may require employees to provide information, including periodic reports, concerning work accomplished at alternate sites.

H.H. Employees who participate in the Telework Program may be required to share office space with their co-workers at the official duty station via hoteling, hot desking, desk sharing, or other means.

H.I. Decisions made by the Employer regarding telework are at the sole discretion of the Employer and shall not be subject to the grievance procedure of this Agreement.

#### SECTION 7

- A. Employees are only authorized to telework from their approved location as identified in the Telework Agreement, and only one authorized location will be designated as an employee's alternate duty station. Any temporary change to an employee's alternate duty station must be infrequent, and requested and approved in writing.
- B. Telework home sites must have adequate workspace, lighting, telephone/internet service, power, smoke alarms, and adequate security. The Employee's failure to provide these requirements may result in discipline, including termination of employment. The Employer is not required to pay for any of the required improvements.
- C. The Employer has the right to inspect the home work site at any time during business hours to ensure its suitability.
- D. Employees must comply with all security measures and disclosure provisions, including password protection and data encryption so that personally identifiable information (PII), the Privacy Act, or other security standards are not compromised. If a security breach occurs, the Employee must notify the Employer. The Employee's failure to comply with all security

measures and disclosure provisions or to notify of the Employer of a breach may result in discipline, including termination. The Employer is not required to pay for any of the required improvements.

- E. Employees are responsible for protecting and managing sensitive information stored on telework devices and transmitted across external networks. Employees who telework from home shall keep Government property and information safe, secure, and separated from their personal property and information. Employees must protect all government records and data against unauthorized disclosure, access, mutilation, obliteration, and destruction. The Employee's failure to do so may result in discipline, including termination. The Employer is not required to pay for any of the required improvements.
- F. Employees must ensure that government provided equipment and property is used only for authorized purposes and may be subject to discipline, including termination, for failing to do so. Reasonable care should be used in operating all equipment. The servicing and maintenance of government owned equipment is the responsibility of the Employer.

#### SECTION 8

- A. The Employer may terminate, suspend, or modify an employee's participation in the telework program for any reason, without notification to the union, subject to applicable laws, rules and regulations, including but not limited to:
  - 1. Failure to continue to meet the criteria listed in Section 4 above;
  - 2. Failure to adhere to the provisions of the Agreement and/or of this Article;
  - 3. Failure to accurately and truthfully report time worked;
  - 4. Failure to timely respond to work needs;
  - 5. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;
  - 6. Misconduct;
  - 7. Business reasons,
  - 8. Operational demands, or
  - 9. Other mission related needs.

#### SECTION 9

- A. The Employer will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g., utilities) associated with the use of the telework work site. The employee does not relinquish any entitlement to reimbursement for appropriately authorized expenses incurred while conducting business for the Employer as provided for by law and regulations.
- B. Employees are not eligible for Federal Transit Subsidies for the days that they Telework and are responsible for promptly updating their transit benefits allocation as their situation changes.
- C. The Employer will not be held liable for damages to the employee's personal or real property during the performance of official duties or while using Employer equipment in the alternate worksite and duty station, except to the extent the Employer is held liable under the Federal Tort Claims Act or for claims arising under the Military Personnel and Civilian Employees Claim Act.

HHS 12-13 Proposal

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