

## Part A. Accomplishing Work During a Pandemic Health Crisis

### a. Telework

#### *Introduction*

Telework is an important and attractive work option for the Federal Government and its employees. Telework refers to any arrangement in which an employee regularly performs officially assigned duties at home or another worksite geographically convenient to the residence of the employee. It has the benefit of providing employees with the flexibility to better manage their work and personal responsibilities. It provides agencies another flexibility that facilitates the accomplishment of the agency's mission, makes Federal employment attractive to prospective employees, and encourages employees to remain in Federal service. Telework allows the Federal Government to remain responsive to the Nation's needs at all times and should be an integral part of any agency's plans for continuity of operations (COOP).

It is the responsibility of each Federal agency to ensure its telework program complies with Public Law 106-346, which states that "[e]ach executive agency shall establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible." Management has the right to decline or terminate an employee's use of the telework option. Use of telework must meet the organization's needs. Agencies have complete oversight of their telework program, including changes in employee arrangements. Telework is an option, not an entitlement. Supervisors must make decisions based on their agency's telework policy and their own assessment of an employee's ability to telework. Formal written agreements are a recommended component of agency telework procedures; however, they are not mandatory. It is important to note that if approved written telework agreements are in place, an agency may require employees covered by such agreements to telework from home during a pandemic healthy crisis. Any such requirement must be included in the telework agreements. An agency may not use appropriated funds to pay for items of personal expense, such as home utility costs, home maintenance, or insurance, unless there is specific statutory authority. Authorized expenses incurred while an employee is conducting business for the Government at a telework site may include a DSL line and an additional phone line.

#### *Questions and Answers*

##### *1. What is telework?*

Telework refers to any voluntary arrangement in which an employee regularly performs officially assigned duties at home or other worksites geographically convenient to the residence of the employee.

##### *2. Do all Federal agencies have a telework policy?*

Most Federal agencies have a telework policy. It is the responsibility of Federal agencies to ensure their telework program complies with Public Law 106-346, which states that

“[e]ach executive agency shall establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible.”

3. *How does an employee request a telework arrangement?*

An employee may request a telework arrangement in writing or verbally, depending on the policy of the agency. Supervisors must make decisions based on their agency's telework policy and their own assessment of an employee's ability to telework. An eligible employee is any satisfactorily performing employee of the agency whose job may typically be performed at least 1 day per week at an alternative workplace. Agencies may impose additional requirements.

Management has the right to decline or terminate an employee's use of the telework option. Formal written agreements are a recommended component of agency telework procedures, but are not mandatory.

4. *Can management be forced to implement telework arrangements?*

No. There currently is no authority for agency heads or OPM to order management to implement telework arrangements. Under Public Law 106-346, telework arrangements are voluntary. OPM is committed to providing agencies, managers, supervisors, and employees with current guidance and support to facilitate the use of telework in the Federal sector, including guidance on teleworking during an emergency as part of agency contingency planning.

5. *Can an agency mandate telework?*

No. There currently is no authority for agency heads to order employees to telework. Under Public Law 106-346, telework is voluntary. However, OPM encourages agencies to expand their telework policies and agreements in preparation for a possible pandemic health crisis. In a pandemic health crisis, it may be most appropriate for agencies to direct employees to evacuate their regular worksites and work from home for a limited period. See *Section III-A-c, Evacuation Payments and the new Telework Guide*.

6. *Can my supervisor prevent me from teleworking?*

Management has the right to decline or terminate an employee's use of the telework option. Use of telework must meet the organization's needs. Subject to any applicable union agreement, management decides whether the employee can work off-site, depending on the nature of the position and the level of the employee's performance.

7. *May Federal agencies cover additional costs incurred by employees as a result of telework (DSL line, additional phone line, increased use of electricity, etc.)?*

An agency may not use appropriated funds to pay for items of personal expense, such as home utility costs, home maintenance, or insurance, unless there is specific statutory authority.

Authorized expenses incurred while an employee is conducting business for the Government at a telework site may include, at an agency's discretion, installation of phone lines, payment for telecommunications services (e.g. broadband DSL or Virtual Private

Network), and payment for monthly telephone and internet service provider charges.

[Link to GSA Bulletin](#)

8. *[hypothetical] Due to the pandemic, an employee must telework from home and may not be able to report to the official worksite. Will locality pay be affected?*

An employee's official worksite is the location of his or her position of record where the employee regularly performs his or her duties. For an employee covered by a telework agreement, scheduled (while in duty status) to report at least once a week on a regular and recurring basis to the regular worksite for his or her position of record, the regular worksite is the official worksite, and the employee is entitled to the locality rate designated for the regular worksite. However, OPM's regulations at 5 CFR 531.605(d)(3) permit an agency to make a temporary exception to the requirement that a telework employee report at least once a week to the regular worksite and allow the telework employee's official worksite to remain the regular worksite.

9. *[hypothetical] While teleworking, an employee is injured at home. Is this a line-of-duty injury?*

Government employees suffering work-related injuries and/or damages at the alternative worksite are covered by the Military Personnel and Civilian Employees Claims Act, the Federal Tort Claims Act, or the Federal Employees' Compensation Act (workers' compensation).

## **b. Alternative Work Schedules**

### *Introduction*

An agency may implement alternative work schedules (AWS) instead of traditional fixed work schedules (e.g., 8 hours per day, 40 hours per week). AWS enable full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays. AWS can enable employees to have work schedules that help them balance work and family or personal responsibilities within rules established by the agency. AWS policies and programs are summarized in Section I-G of this Guide.

### *Questions and Answers*

1. *[hypothetical] I am on a flexible work schedule. I am teleworking from home during the pandemic. May I choose to work extra hours each day so I can earn credit hours?*

An employee must comply with his or her agency's policies for earning credit hours. Credit hours are any hours within a flexible work schedule in excess of an employee's basic work requirement and which the employee elects to work to vary the length of a workweek or a workday. Agency plans should address any policies on limiting or restricting the earning and use of credit hours. The law prohibits carrying over more than 24 credit hours from one pay period to the next (5 U.S.C. 6126). [Link to guidance](#)

2. *Will I be able to continue working a flexible work schedule if a pandemic influenza reaches my area?*

If an employee is currently on a flexible work schedule, an agency may continue to allow the employee to remain on a flexible work schedule during a pandemic health crisis. However, employees do not have a statutory or regulatory entitlement to work a particular work schedule. Changes in an employee's work schedule are within the discretion of the employing agency, as long as the changes are consistent with law, regulations, and any applicable negotiated agreement. [Link to guidance](#)

3. *Can management mandate an alternative work schedule?*

Different rules apply depending on whether an employee is in a bargaining or non-bargaining unit and whether the agency has a flexible or compressed work schedule.

- If an employee is in a **bargaining** unit, the agency must successfully negotiate an alternative work schedule program (**compressed** work schedule or **flexible** work schedule) with the union prior to implementation. (See 5 U.S.C. 6130.) Bargaining unit employees may participate in an alternative work schedule program only under the terms provided in a negotiated agreement. Therefore, an agency that wishes to establish such a program for these employees must negotiate the establishment and terms of the program with the exclusive representative of the bargaining unit.
- Agencies may unilaterally install **flexible** work schedule (FWS) programs in units staffed by **non-bargaining** employees. [Link to guidance](#)
- A majority of affected employees in a **non-bargaining** unit must vote to be included in a **compressed** work schedule program when participation in the program would be mandatory. (See 5 U.S.C. 6127(b).) For the purpose of this vote, a majority is obtained when the number of affirmative votes exceeds 50 percent of the number of employees and supervisors in the organization proposed for inclusion in a compressed work schedule. (If participation in a compressed work schedule program is voluntary for each employee, a vote is unnecessary because employees who elect not to participate are not included and are unaffected.) [Link to guidance](#)

If the head of an agency determines that a flexible or compressed work schedule has an "adverse agency impact" (e.g., a reduction in productivity, a diminished level of service to the public, or an increase in operational costs) the agency may discontinue the alternative work schedule. (See 5 U.S.C. 6131(a).)

4. *Must agencies request approval from OPM prior to establishing a compressed work schedule or flexible work schedule to deal with a pandemic influenza?*

No. Agencies do not need OPM approval to establish flexible or compressed work schedules authorized by 5 U.S.C. 6122 and/or 6127. We encourage agencies to prepare for all emergency situations and address the use of compressed or flexible work schedules in their contingency plans. [Link to guidance](#)

### **c. Evacuation Payments**

An agency may provide evacuation payments to its employees who are ordered to evacuate their regular worksites and work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. The head of an agency may delegate authority to one or more designated officials to order the evacuation of agency employees. Consistent with 5 U.S.C. 5522 and 5523 and the Department of State Standardized Regulations, responsibility for ordering an evacuation in overseas locations rests with the Department of State.

In this unique situation, the agency may designate an employee's home (or an alternative location mutually agreeable to the agency and the employee), including a location under quarantine or confinement, as a safe haven during the period of evacuation. A policy to evacuate to a safe haven promotes the "social distancing" of employees and protects them from being exposed to additional viruses or mutations of a pandemic virus.

An evacuated employee at a safe haven may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to the employee's grade or title. An agency may not assign work to an employee unless the agency knows the employee has the necessary knowledge and skills to perform the assigned work. Failure or refusal to perform assigned work may be a basis for terminating evacuation payments, as well as disciplinary action under 5 CFR part 752 (Adverse Actions). However, an employee's inability to perform assigned work because of a lack of knowledge or skills may not be a basis for terminating evacuation payments or taking disciplinary action.

Evacuation payments may not continue for more than 180 calendar days after the effective date of the order to evacuate. Evacuation payments should be paid on the employee's regular pay days, since these payments reflect the employee's regular pay. An agency must compute evacuation payments based on the employee's rate of pay (including any applicable allowances, differentials, or other authorized payments) to which the employee was regularly entitled immediately before the issuance of the order to evacuate. The agency must make all deductions from evacuation payments that are required by law, including retirement or Social Security (FICA) deductions, authorized allotments, and income tax withholdings.

The head of the agency or designated official, in his or her sole and exclusive discretion, may grant additional special allowance payments, based on a case-by-case analysis, to offset the direct added expenses incidental to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. However, an agency must provide reasonable accommodation to its qualified employees with disabilities consistent with its obligations under the Rehabilitation Act.

Additional information on evacuation payments during a pandemic health crisis is available at <http://www.opm.gov/oca/pay/html/PandEvac.asp>.

*Questions and Answers*

1. *If an agency orders its employees not to report to their offices during a pandemic influenza, will employees continue to be paid? Will employees be required to use their annual leave?*

Agencies may offer alternative work arrangements to ensure work continues to be accomplished during a pandemic health crisis and employees continue to be paid. For example, agencies may direct employees who are under an approved telework agreement to telework from home or order employees to evacuate their worksites and direct them to work from home during a pandemic influenza.

An agency may authorize evacuation payments for employees who have been ordered to evacuate their worksites. Evacuation payments reflect the regular pay an employee would have received for the time period he or she would have been expected to work (but for the evacuation). An agency may require an employee to perform any work considered necessary or required to be performed during the period of the evacuation without regard to the employee's grade or title. If an employee refuses to work from home, he or she may be required to use accrued annual leave (i.e., "enforced leave"), may be furloughed, or may be disciplined, as appropriate. In addition, agencies may direct employees who are under an approved telework agreement to telework from home.

2. *Will agencies release employees from work to lessen the probability of significant numbers of employees catching the flu?*

During a pandemic health crisis, heads of agencies will strive to protect the health of employees while ensuring the Federal Government's work is accomplished. Agencies may use a number of alternative work arrangements to promote the "social distancing" of employees. An agency may authorize evacuation payments and require employees to work from home during a pandemic health crisis. In addition, an agency may require employees with approved telework agreements to telework from home. (See question #1, above.)

3. *[hypothetical] My office is open, but the schools are closed and I cannot find child care. May I receive evacuation payments so I may work at home while caring for my children?*

When there is imminent danger to the lives of an employee's dependents or immediate family, an agency may authorize evacuation payments and require employees to work from home during a pandemic health crisis. An employee who is ordered to work from home during a pandemic health crisis may not care for his or her children while performing work. However, the employee may request changes in his or her work schedule to allow the employee to work during the periods he or she is not responsible for caring for the child (e.g., when the child is sleeping or when a spouse or other family member is available to care for the child).

An employee may request annual leave or other paid time off, such as earned compensatory time off or earned credit hours to care for a healthy child.