

Article 26
FLEXIBLE WORKPLACE PROGRAM

SECTION 1

The Flexible Work Place Arrangements Program (FWAP) is a program that permits employees to work at home or at other approved locations remote to the conventional office site. For purposes of this Agreement, the terms "FWAP", "flexiplace" and "telecommuting" are synonymous and include working at home or in satellite office sites or other approved flexiplace work sites.

SECTION 2

The Parties anticipate that this program will result in increased productivity, improvements in employee morale, job satisfaction, and reduced absenteeism. Participation in flexiplace is not an entitlement nor is it an accommodation for dependent/family care.

The Employer will identify barriers to implementing flexiplace and take action to increase the opportunities for employees in suitable positions to participate in the program.

SECTION 3

Situations appropriate for flexiplace depend on the specific nature and content of the job, rather than just the job series and title.

- A. A flexible work place arrangement may be used when there is recurring opportunity to perform work at an alternate site. This type of arrangement is regular and recurring. For example, the work does not require face-to-face interaction and collaboration with customers or peers on a daily basis, it does not require specialized equipment, systems, or reference materials unavailable except at the conventional office, and the employee's work habits are such that once an assignment is given, it can be accomplished without further oversight or supervisory consultation.
- B. A flexible work place arrangement 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). For example, such work tasks may include: 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. Typically, such tasks require uninterrupted concentration and result in measurable work outputs or products.

Per JR 8/27/08
MAH 8/27/08

- C. A flexible work place arrangement may be appropriate to accommodate an employee with a temporary or permanent illness or disability, if the job can be accomplished at an alternate site, and the employee is capable of performing the job at home or at a telecommuting center but can not commute to and/or from work on a daily basis. Such requests should be handled in accordance with this Article and Article 38.

SECTION 4

- A. Flexible work arrangements must be consistent with maintaining adequate office coverage. Adequate office coverage varies from location to location and is not necessarily a specific percentage of employees. It is determined by the specific needs of a location.
- B. The Parties agree that specific individual participation in flexiplace must be considered on a case by case basis. The decision will not be made in an arbitrary and capricious manner. The Employer will administer the Flexiplace program in a fair and equitable manner.
- C. Each employee must meet the following criteria to be considered eligible to participate in the flexiplace program.
1. The employee's latest rating of record is "fully successful" or better, and there is no reasonable cause to believe this level of performance will drop;
 2. The employee is not on leave restriction;
 3. The employee is not on a performance improvement plan (PIP);
 4. The employee has not received any disciplinary or adverse action which has a nexus to the integrity of the flexiplace program within the last six (6) months;
 5. The employee has demonstrated the ability to initiate his/her own work, to work without direct supervisory oversight, to recognize when supervisory or other assistance is needed on a project, and
 6. The employee's fully successful performance of the work does not require:
 - a) Daily and frequent use of specialized equipment or technology that is available only at the official duty station;
 - b) Daily and frequent face to face contacts with co-workers, managers and/or customers (except where such contact can be otherwise accommodated);

- c) Daily and frequent access to confidential or sensitive data and/or information (not attainable from home) such as personnel and/or payroll records or proprietary information protected from unauthorized disclosure by the Privacy Act of 1974 and its implementing regulations;
- d) In addition to the above eligibility criteria, in order for employees to participate in Flexiplace, there must be sufficient funds available for necessary equipment, i.e., personal computer, telephones, etc., if needed to perform work at the ADS. Supervisors will seriously consider moving the computer in an employee's office to his/her home only if the employee works the majority of time on flexiplace and there are available computers for use on the days the employee is required to be at the official work site. If there are insufficient funds, employees participating in the Flexiplace program and using their primary personal residence (or any other approved site not fully-equipped with these items) may be required to provide at their own cost all equipment, supplies, and/or services necessary for working at the alternate duty station. The Employer may provide underutilized computers, furniture, or equipment for use by employees.
- e) For employees applying for Flexiplace for the first time in an OPDIV/STAFFDIV, the employee has held her/his current position and had the same supervisor for at least three (3) months, unless otherwise agreed to by the supervisor; Employees working a Flexiplace schedule at the time this Agreement is executed will be permitted to continue such an arrangement until they submit a new written request pursuant to the terms of this Agreement and that request is acted upon. The Employer shall act on requests for a flexible work arrangement within ten (10) workdays of receiving the request. If the request is disapproved or modified, the employee will be notified in writing stating the reasons for the disapproval.

SECTION 5

In some circumstances, the need to maintain adequate staffing levels in the traditional office worksite for such purposes as telephone coverage that cannot be accommodated on flexiplace or immediate face-to-face customer service may result in conflicts among flexiplace participants regarding scheduling of days to be worked on a flexiplace arrangement. If such conflicts occur, the supervisor(s) and the affected employees will attempt to resolve the conflict in a manner which is satisfactory to the supervisor(s) and affected employees. If such discussions do not result in a satisfactory resolution, the following tiebreaker formula will apply.

1. The flexiplace arrangements and preferences of employee(s) that are already participating in the program shall take precedence over the preferences of new applicants. If the conflict is between employees who are already participating, or

between two or more new applicants, the tiebreaker shall be by seniority (high seniority). Seniority shall be determined by employees' federal Service Computation Dates (SCDs).

SECTION 6

- A. Participation in the FWAP is voluntary. However, the Employer may require employees to work at an alternate site in case of emergency situations.
- B. Participants in the flexible work place program shall be permitted as part of a flexiplace arrangement to continue to work any AWS schedule they may already be working. Employees who work approved flexible work schedules and vary their start times are required to inform their supervisors, prior to commencement of their tours of duty, of their start and end times for those days they work at an alternate site pursuant to this article.
- C. The official duty station of an employee participating in the flexible work program is the conventional work site for purposes of travel reimbursement, etc.
- D. Employees on a regular and recurring flexible workplace arrangement are required to report to the official duty station according to the schedule determined by the Employer. In addition, the Employer reserves the right to require more frequent days at the conventional work site for situations deemed appropriate by the supervisor either planned or unplanned, due to special circumstances, including, but not limited to, office assignments, meetings, absence of other employees, emergency situations, or training classes. Any regular AWS off days shall not be counted against flexiplace days. Employees may attend these unplanned meetings via telephone unless physical presence is required.
- E. The Employer will make reasonable efforts to provide alternative methods, such as teleconferencing, use of fax and e-mail, and/or other methods to avoid unplanned situations requiring the employee to report to the conventional work site. However, when situations occur that require the employee to return to the conventional office, travel to and from the office is normal commuting time and as such is not considered hours of duty.
- F. As a minimum level of accessibility, the employees in the flexible work place program are expected to be as available to managers, co-workers and customers by telephone, E-mail, voice mail or other communications media during their scheduled daily tours of duty as when working at the official duty station.
- G. Overtime and credit hours worked must be approved in advance by an authorized official. For employees on flexible schedules, work that is ordered and approved in advance which is in excess of eight (8) hours per day, forty (40) hours per week, or eighty (80) hours per pay period, is considered overtime work. For

employees on compressed schedules, work that is ordered and approved in advance which is in excess of the number of hours worked daily on the compressed schedule is considered overtime work. Compensatory time may be substituted for overtime pay in accordance with law, regulation, and Article 22, Overtime, Compensatory Time, and Holidays, of this Agreement. Nothing in this Article diminishes an employee's FLSA rights as provided for by law and regulation.

- H. Policies and practices for requesting and using leave remain unchanged, except as provided in the applicable articles of this Agreement.
- I. For purposes of timekeeping, participants will sign a certification each pay period indicating hours worked or any exceptions to the scheduled tours of duty specified in their flexible work place program agreements. Falsifying time reports is cause to terminate participation in the flexible workplace program and could be grounds for other adverse or disciplinary action.

By March 31 of each year, the Employer will provide NTEU with a list of bargaining unit employees participating in flexiplace as of the end of the previous calendar year. The list will include, at a minimum, name, location, position, grade, and the type of flexiplace arrangement (regular and recurring or episodic).

- J. The Employer has the right to be provided with reasonable assurance that employees are working at alternate sites when scheduled.

SECTION 7

- A. A flexible work place arrangement may not be feasible where there is a prohibitive cost to duplicate the same level of confidentiality or security as exists in the employee's official duty station.
- B. Flexiplace home sites must have adequate workspace, lighting, residential telephone service, power, smoke alarms and adequate security.
- C. The Employer has the right to inspect the home work site at any time to ensure its suitability. The Employer will provide not less than one (1) workday's notice in advance of the inspection and the Union shall have a right to be present.
- D. Employees must comply with all security measures and disclosure provisions, including password protection and data encryption so that the Privacy Act or other security standards are not compromised.
- E. Employees must protect all government records and data against unauthorized disclosure, access, mutilation, obliteration and destruction.

- F. Employees must ensure that government provided equipment and property is used only for authorized purposes. 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, temporarily terminate or modify an employee's participation in the program for cause, such as:
1. Failure to continue to meet the criteria listed in Section 4 above;
 2. Failure to adhere to the provisions of the Agreement;
 3. Failure to accurately and truthfully report time worked;
 4. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;
 5. For misconduct in connection with the employee's obligations under the flexible work place program; and

Upon temporarily suspending or modifying an employee's flexiplace agreement/plan, the supervisor will notify the employee at least seven (7) days in advance of the change.

- B. If a flexible work place agreement is cancelled or terminated, within the first sixty (60) days of the employee's return to the traditional workplace the Employer will make reasonable efforts to return the employee to the same or a comparable work situation that he/she had prior to beginning the flexible work arrangement. After sixty (60) days, the Employer will restore the employee to the same or comparable work situation of other similarly situated employees.

SECTION 9

- A. Employees participating in the flexible work place program will not be excused from work because workers at the official 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 alternative work site. If an emergency occurs at the flexiplace work site that impacts on the employee's ability to perform official duties, the employee will immediately notify the Employer. The Employer will direct the employee to another work site, grant excused absence, or allow the employee to request appropriate leave, e.g., annual leave or LWOP.

- B. 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 flexiplace 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.
- C. The employee is covered under the Federal Employees Compensation Act if injured in the course of performing official duties at the alternative work site.
- D. 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 alternative work site, except to the extent the Employer is held liable under the Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claim Act.
- E. Flexiplace arrangements (agreements) are between the employee and their current supervisor. When employees are detailed or permanently assigned to another organizational unit of the Employer and under another supervisor, the employee and supervisor will need to discuss the continuation and/or necessary modifications to the existing flexiplace agreement.