

ARTICLE 26

TELEWORK

SECTION 1

Telework 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 telework, teleworking, “Flexible Workplace Arrangements Program” or “FWAP”, “flexiplace” and “telecommuting” are synonymous and include working at home or in satellite office sites or other approved alternative 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 telework is not an entitlement nor is it an accommodation for dependent/family care. The Employer will identify barriers to implementing telework and take action to increase the opportunities for employees in suitable positions to participate in the program.

SECTION 3

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

- A. Telework arrangements 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. 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). 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.
- C. Telework arrangements 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 cannot 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. Telework 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 telework 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 telework program in a fair and equitable manner.
- C. Pursuant to the Telework Enhancement Act (Appendix 3.1) employees that have been officially disciplined for being absent without permission for more than 5 days in any calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties may not participate in the telework program.
- D. Each employee must meet the following criteria to be considered eligible to participate in the telework 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 telework 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;
 - 6. The employee has received telework training or has been teleworking since December 10, 2010;
 - 7. For employee applying for telework for the first time in an OPDIV/STAFFDIV, the employee has held her/his current position for at least three (3) months, unless otherwise agreed to by the supervisor; and
 - 8. 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;
- 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. If there are insufficient funds, employees participating in the telework 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.
- F. The Employer intends to implement an electronic system to maintain telework data. The union will be provided notice and an opportunity to bargain changes to conditions of employment resulting from the new system to the extent required by law and Article 3 of this Agreement. Upon implementation of the electronic system, employees' requests to telework shall be submitted to their supervisor electronically. Employees shall continue to request telework according to the established procedures of their offices until the electronic system is implemented. The Employer shall act on requests telework 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. Approval of an employee's request to telework must come in the form of a written telework agreement (Appendix 3.2) between the employee and supervisor, regardless of whether telework is routine (i.e., regularly scheduled and recurring), or episodic. Employees currently teleworking at that the time of this agreement must enter into a new written telework agreement that updates the terms of their agreement within thirty (30) calendar days.

SECTION 5

- A. 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 telework or immediate face-to-face customer service may result in conflicts among telework participants regarding scheduling of days to be worked on a telework 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.

- B. The telework 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 telework program is voluntary. However, the Employer may require employees to work at an alternate site in case of emergency situations. 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 (e.g., Federal offices are closed, Federal offices are on delayed arrival, the Agency is operating under a Continuity of Operations Plan, etc.). On a case-by-case basis, a telework-ready employee may request and the Employer may provide excused absence for a part or all of the day during an emergency and/or inclement weather situations if the employees telework site is negatively impacted by the emergency (e.g., disruption of electricity or internet access, loss of heat, etc.) or if the employee's duties are such that he or she cannot continue to work without contact with the regular worksite, or under other extenuating circumstances related to the emergency that impede the employees ability to perform telework. If excused absence is not granted, telework-ready employees must be prepared to telework for the entire workday, or take unscheduled leave, or a combination of both for the entire workday. Employees may also request LWOP if an employee does not have available paid leave or other paid time off (e.g., earned compensatory time off) to his or her credit and is impacted by the emergency.
- B. Participants in the telework program shall be permitted as part of a telework 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 telework program is the conventional work site for purposes of travel reimbursement, etc.
- D. Employees on a regular and recurring telework 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 telework 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 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 telework agreements. Falsifying time reports is cause to terminate participation in the telework program and could be grounds for other adverse or disciplinary action.
- J. The Employer has the right to be provided with reasonable assurance that employees are working at alternate sites when scheduled.
- K. An employee may switch his/her scheduled telework day(s) with prior supervisory approval. If an employee's request is denied, the reason(s) for the denial shall be provided to the employee in writing if requested. Managers shall not unreasonably or arbitrarily deny an employee's request.

SECTION 7

- A. A telework 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. Telework 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 and/or of this Article;
 - 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 telework agreement/plan, the supervisor will notify the employee at least seven (7) days in advance of the change.

- C. If a telework 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 telework 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 telework 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 telework 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 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.
- 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. Telework 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 telework agreement.

SECTION 10

The Employer will provide the Union with copies of any reports on telework usage provided to OPM. If not provided in the report to OPM, the Employer will also provide the Union with the following information, broken down by OpDiv; (1) the number of employees eligible to participate in the telework program; and (2) the number of employees participating in the telework program (including name, location, series, grade, and the type of telework arrangement).