

U.S. Office of Personnel Management Guidance on the Use of Telework During Metro’s Platform Improvement Project

The Telework Enhancement Act (the Act) required agencies to establish a policy under which eligible employees could be authorized to telework and to determine the eligibility of all employees for telework, in accordance with the provisions of the Act. Thus, Federal agencies that have adopted such policies have the authority to authorize eligible employees to telework, as appropriate. In response to the Platform Improvement Project, agencies should review their policies and procedures on the use of workplace flexibilities, including telework, to help mitigate commuting disruptions for their workforce.

Telework Basics

Telework “refers to a work flexibility arrangement under which an employee performs the duties of and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.” (See 5 U.S.C. 6501(3).)

In practice, telework is a work arrangement that allows an employee to perform work, during any part of regular, paid hours, at an approved alternate worksite (e.g., the employee’s home or a telework center). During the Platform Improvement Project, telework can assist agencies in maximizing agency productivity while accommodating the disruptions that will accompany the project in terms of work and personal responsibilities.

Agencies retain the responsibility and the obligation to determine employee eligibility for telework taking into account the limitations of the Act and the anticipated impact on employee performance and agency operations. The agency thus must consider business-related, operational needs of the Agency in making its determinations. Overall, telework can be viewed as a potentially valuable resource that may produce a benefit to both the organization and those employees who are eligible and choose to participate.

Types of Telework

- **Routine telework** occurs as part of an ongoing, regular schedule.
- **Situational telework** is approved on a case-by-case basis, where the hours worked are not part of a previously approved, ongoing and regular telework schedule. Examples of situational telework include telework as a result of inclement weather, special events, or special work assignments.

It is important to note that any employee who wishes to telework (regardless of which type) must first successfully complete an interactive telework training program provided by the agency and must enter into a written agreement with his/her supervisor. Many agencies use the interactive online training available on www.telework.gov.

TIP: Routine and situational telework have different uses and benefits. Most often, situational telework is approved on a case-by-case basis for a situation covering a single day or a short period of time. Occasionally, situational telework may be approved for a situation or special event that covers a longer period of time (e.g., the Platform Improvement project) but is intended to be temporary. Under such circumstances, it is not necessary to change the employee's telework agreement unless there is a need to include the ability to telework on a situational basis.

Scenario: Dinesh is a Federal employee working in the Washington, DC, area. He prefers to work from the office, so he has never established a written telework agreement with his manager, even though he is eligible to do so under the agency's existing policy. Dinesh rides the Metrorail system to and from his worksite each day, and he knows that his commute will be significantly impacted by the Platform Improvement project. He is considering telework as a solution to this temporary disruption. Although Dinesh only plans to telework during the Platform Improvement project, the Telework Enhancement Act requires every employee who participates in telework to have a written agreement and complete a telework training, regardless of whether it is for routine or situational telework. After completing the agency required training, Dinesh enters into a written telework agreement that contains exact beginning and ending dates of the agreement. Once the ending date of the agreement is reached, Dinesh will no longer be a telework participant. He and his agency may revisit the telework arrangement if it is necessary.

Telework Eligibility and Participation

When making determinations during the Platform Improvement Project regarding the use of telework and other workplace flexibilities, OPM encourages agencies and managers to be thoughtful and creative. Agencies may want to reassess earlier eligibility determinations to consider whether any circumstances have changed (e.g. nature of work, technology) that would impact eligibility, thereby, perhaps, permitting telework at least on a limited basis.

In many positions, employees perform portable duties or tasks on a regular basis. The degree of portability of an employee's work factors into determining to what extent, if any, it would be feasible for the employee to telework and how that telework is best scheduled. For employees who may be impacted by the Platform Improvement project, agencies and managers are encouraged to revisit the question of whether certain portions of the employees' work are, in fact, consistent with the "portable" types of duties that lend themselves to ad hoc or situational telework.

Scenario: Erich is a Federal employee working in the Washington, DC, area. He rides the Metrorail system to and from his worksite each day. Erich provides administrative support to his office and usually works onsite, but his Metro station will be closed during the Platform Improvement Project. He believes he will benefit from being able to telework during this closure. Erich requests to telework four days a week during the project. Erich's manager evaluates his request and determines that some of his duties are suitable for telework, but others require him to be present in the office. Based on discussions between Erich and his supervisor, a portion of Erich's work hours, allocated to "portable" duties suitable for telework, is consolidated to two days of the week to allow him to telework twice a week during the Platform Improvement project in accordance with the agency telework policy.

Scenario: Luis is designated as an emergency employee by his Federal agency due to the critical nature of his position and is deemed 'ineligible to telework' under the agency's telework policy. He is normally required to report to the agency worksite even during agency closures. Luis commutes daily from a Metro station that will be closed for the entire period of the Platform Improvement Project and he ~~is~~ does not own a car. He asks his manager if he can be exempted from reporting to the office and allowed to telework during the project. Due to the critical nature of his position and the need to have him physically present at the worksite, his request is denied.

Although one of the limitations on approving telework under the Act pertains to work that is not conducive to telework, remember that the Act explicitly limits telework participation only in cases in which the employee's official duties fall outside what is conducive to telework "every work day." (See 5 U.S.C. 6502(b)(4).) This means managers have flexibility to work out telework arrangements that take advantage of those days on which the employee is performing portable duties. Consistent with the Act, this flexible approach may open up the possibility for telework on a routine or situational basis, even for positions previously thought to be ineligible in their entirety.

Nevertheless, managers should consider their choices carefully. When expanded telework is granted only on a temporary basis, managers should clearly communicate the temporary nature of the exception in order to manage expectations once the current contingency ends. Current collective bargaining agreements coupled with managerial discretion may be sufficient to permit short-term modification or expansion of telework opportunities. When contemplating changes to existing policies and practices that will affect bargaining unit employees, however, agencies should assess whether they will have collective bargaining obligations and consult with agency labor relations and legal advisors.

NOTE: While teleworking is a useful flexibility to accommodate work-life balance and continued continuity of operations, there will be situations when an agency will not be able to approve an employee's request to telework through situational telework, especially on a temporary full-time basis, due to the agency's mission requirements. The employee's duties may require work to be performed onsite, thereby making the employee's position ineligible for telework. Likewise, while an employee's duties may be conducive to telework, it may not be conducive to full-time work away from the employee's usual worksite (i.e., remote work). It is important for the employee and his/her manager or supervisor to discuss the workplace requirements and the need for the employee's presence at the worksite, for at least a portion of the workweek. Supervisors and managers should consult with their internal human resources offices to discuss requests from their employees. Agencies will want to have a consistent approach to requests made by their employees.

Scenario: Lisa is a Federal employee working in the Washington, DC, area. She rides the Metrorail to and from her worksite each day. Lisa requests to work from her home full-time, during the Platform Improvement Project. She discusses with her manager that she would like to work from home for the entire span of the project, approximately 4 months. Most of Lisa's work is portable and conducive to telework. Her work, however, requires periodic meetings with colleagues outside of the DC area who travel to DC for these meetings. Lisa's manager explains that, for a variety of reasons, these meetings have required in-person attendance and on those days Lisa would have to be physically present. Lisa agrees that she will attend those meetings in person. Her manager also discusses that there may be other instances for which Lisa will be required to be in the office and her manager reserves the right to require her to report to the office. Lisa agrees to these conditions and is permitted to telework on other days.

Things to consider when receiving requests to telework:

- What types of telework arrangements does your agency currently offer employees (e.g., routine and/or situational)?
- Does your agency's telework policy currently impose any restrictions on the maximum number of days that an employee is permitted to telework?
- Does your agency currently impose any restrictions on employees utilizing telework in combination with other flexibilities (e.g., alternative work schedules)?
- Does your agency's existing telework program allow for expanded use of ad hoc or situational telework?
- Should the agency reassess or review how telework eligibility and participation is determined to see if changes to the existing telework program are warranted?
- Would any changes to the agency's telework program be limited to the term of the Platform Improvement project?
- Have your employees received training on how to accurately track telework participation on their work reports?
- What type of engagement with unions might be necessary when considering changes to employee eligibility or telework policies, either on a temporary or permanent basis? For example, would providing unions notice and an opportunity to bargain be necessary?

- Does the employee have enough of the type of work that can be performed away from the normal worksite to be able to telework for the number of days requested?
- Would the employee be able to perform their duties with equal effectiveness at the telework site?
- Would expanded telework opportunities disrupt or diminish the accomplishment of agency mission work?
- Is the employee eligible to telework based on law, agency policy, conduct, and performance issues?

Tracking Telework During the Platform Improvement Project

There continues to be keen attention focused on the Federal Government’s response to the Metro Platform Improvement project. For that reason, OPM urges agencies to take steps, to the extent possible, to accurately monitor and track the use of telework and other workplace flexibilities. Agencies are reminded that tracking efforts should align with current OPM requirements for telework reporting. Please refer to the Guide to Human Resources Reporting, Chapter 4, pages 4-81 to 4-84. Additional guidance will be made available to agencies in the coming weeks regarding OPM’s continued efforts to collect telework data consistently across the Government. NOTE: Agencies should report the two specific types of telework outlined in the Data Standards—Routine and Situational- see <https://dw.opm.gov/datastandards/list?index=A>.

Ensuring that employees are trained on how to correctly report telework on their work reports should allow agencies to accurately monitor the use of telework during the Platform Improvement Project. Accurately and distinctly reporting situational and routine telework is critical for evaluating and improving Federal telework programs.

TIP: Situational telework may also include telework arrangements that are intended to be temporary or of short duration. For example, if an agency expands its use of situational telework to provide additional flexibilities to employees impacted by the Platform Improvement Project, such arrangements should be tracked as situational telework even if the schedule is previously approved and ongoing. The reason is the telework agreement is based on a special event – the Platform Improvement project – and is intended to be temporary.

Telework Flexibility During the Platform Improvement Project

Although Federal telework programs are established primarily to meet agency mission and operational needs, telework has become an important tool for continuity of agency operations while also providing flexibility that enhances work-life balance and improves morale for many Federal employees. During the Platform Improvement Project, additional flexibilities may enable some employees to better manage their work and family or personal responsibilities. Used appropriately, telework along with other workplace flexibilities, can help to minimize the impact of the Platform Improvement Project on Federal employees. Agencies will play an important role in developing and communicating the various workplace flexibilities that are available to employees. In turn, these agency policies and communications will allow employees to better understand which workplace flexibilities are available to them to best meet their needs during the Platform Improvement Project (e.g., leave, ad hoc or situational telework, alternative work schedules, etc.).

Scenario: Laurie is a Federal employee working in the Washington, DC, area. She rides the Metrorail system to and from her worksite each day. On Tuesday and Thursday evenings, Laurie is responsible for picking up her daughter from soccer practice. Laurie anticipates that the disruptions caused by the Platform Improvement Project will require her to miss a significant amount of work and require significant expenditure of leave in order for her to continue to meet this family responsibility. She anticipates that, by teleworking on those days and avoiding this disruption, she will be able to continue to pick up her daughter, without the need to take leave, and perhaps perform more work. In preparation for potential commuting disruptions caused by the Platform Improvement Project, Laurie requests to establish a telework agreement so she will be able to telework on Tuesdays and Thursdays for the duration of the project. This will permit her to maintain the same work schedule while avoiding commuting disruptions that could interfere with these responsibilities. Since she intends to maintain this schedule only temporarily, while her metro station is impacted, her telework agreement specifies that she is permitted to telework on a situational basis and her supervisor approves her specific telework days. This is consistent with her agency's existing telework policy.

Scenario: Monica is a Federal employee working in the Washington, DC, area. Currently, she teleworks two days per week under a routine telework agreement. On the days she commutes to the office, Monica uses the Metrorail system. After learning that her Metro station will be closed for almost four months during the Platform Improvement project, Monica requests to telework an additional day for the remainder of the station closure. Her manager first consults with human resources staff to ensure that such an arrangement complies with agency policy and then approves the request and reminds Monica that any additional telework days that are not a part of her long-term routine telework schedule should be reported as situational telework on her work report.

Engaging with Employees, Union Representatives, and Management Organizations

When considering changes to employee eligibility or telework policies, either on a temporary or permanent basis, agencies should assess their obligations to consult with management organizations, consistent with 5 CFR Part 251, and engage with labor organizations consistent with 5 U.S.C. Chapter 71. (See also OPM Memorandum regarding Relationships with Management Organizations. <https://www.chcoc.gov/content/relationships-management-organizations-0>.) It is always advisable to seek the advice of agency labor relations staff and agency counsel before embarking on these efforts.

Scenario: Tom is a Federal employee working in the Washington, DC, area. Currently, Tom teleworks one day per week under a routine telework agreement. On the days he commutes to the office, Tom uses the Metrorail system that is being impacted during the Platform Improvement Project. Tom requests to increase his telework during the period of the station closure which is approximately 4 months. His manager first consults with human resources staff to ensure that such an arrangement complies with agency policy and any applicable collective bargaining agreement, then, after considering agency mission requirements, approves the request. Tom’s manager reminds him that any additional telework days that are not a part of his long-term routine telework schedule should be reported as situational telework on his work report.

Official Worksite Determinations for Location-Based Pay Purposes

For locality-based pay determinations, there is a general rule that an employee covered by a telework agreement must report at least twice each biweekly pay period on a regular and recurring basis to the regular worksite (i.e., the place the employee would work absent an agreement) in order to receive the locality-based payment designated for the employee’s regular worksite. In limited circumstances, an agency may approve an exception under the locality pay regulations during the Platform Improvement Project so an employee is not required to report physically to the regular worksite (i.e., the place the employee would work absent a telework agreement) at least twice each biweekly pay period. When assessing such requests, agency management should consider all factors relating to telework eligibility. Before deciding to grant such a request, the agency must verify that the employee’s work is 100 percent (or nearly 100 percent) portable and whether his/her physical presence in the office during this time will not be necessary. The short-term basis of this exception should be clearly communicated in order to manage expectations.

Short-term, temporary approvals of an exception under 5 CFR 531.605(d)(2) will not change an employee’s official worksite and location-based pay. This outcome could change, however, depending on considerations such as the eventual duration of the arrangement. Agencies should consult with their Offices of Human Resources with regard to making these determinations. For more information, see OPM’s fact sheet on Official Worksite for Location-Based Pay Purposes at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/official-worksite-for-location-based-pay-purposes/>.

It is required that agencies establish a formal written agreement when allowing work from a temporary location away from an employee’s official worksite. Any temporary work agreements made during the Platform Improvement Project should specify the duration of the arrangement and the exclusive right of the manager to require an employee to report to the official duty station (i.e., the physical office) when the employee’s manager finds that the employee’s presence is needed to accomplish mission requirements.

Scenario: Shelia is a Federal employee working in the Washington, DC, area. Currently, Shelia commutes from Richmond, VA and teleworks one day per week under a routine telework agreement. On the days she commutes to the office, Shelia uses the Metrorail system that is being impacted during the Platform Improvement Project. Shelia requests to temporarily increase the

number of days she works outside the office during the period of the station closure which is approximately 4 months. Her manager consults with human resources staff to determine whether such an arrangement would comply with agency policy and any applicable collective bargaining agreements. As part of this process, the manager carefully assesses whether Shelia's work is 100% portable, confirms that Sheila has the technical capacity to complete her work remotely, and further determines that Shelia's physical presence in the office will generally not be required during this period. She then approves the request based on the determination that Shelia meets these requirements. Shelia's manager explains that there may be periods during the 4 months that Shelia will be needed to work at her official worksite. Shelia and her manager establish and sign an agreement that outlines the arrangement timeframe. Shelia's manager reminds her that any additional telework days outside the office that are not a part of her long-term routine telework schedule should be reported as situational telework on her work report.

NOTE: Since this is a temporary arrangement, Shelia's agency may approve an exception under 5 CFR 531.605(d)(2) so that her locality pay rate will remain the same even though she will be temporarily working from the Richmond, VA, locality pay area versus Washington, DC, locality pay area. As noted above, however, this outcome could change, depending on subsequent events, such as the eventual duration of the arrangement, and agencies should consult with their Offices of Human Resources concerning these determinations.

Additional Tips for Evaluating and Approving Situational Telework Requests during Platform Improvement Project

1. Establish clear telework norms and rules for your team.
2. Determine what your organization's policy will be regarding requests for telework on a non-telework day. For example, what, if any, advance notice is required, and if it is required, what is the necessary timeframe? How should employees communicate such requests (e.g., are employee's required to call, email)? Generally, agencies delegate the responsibility to approve/disapprove telework requests to the individual manager.
3. Develop a policy that allows for situational telework that can be planned and approved in advance (e.g., a medical appointment), and situational telework that cannot be anticipated and planned (e.g., the employee's car won't start).
4. Consult with agency labor relations and legal advisors in order to plan for satisfying any collective bargaining obligations with employee representatives on any changes to agency telework policies.
5. Exercise appropriate managerial control over your organization and staff. Telework is not an employee right or entitlement and employees should not feel a sense of entitlement to be able to dictate changes in a telework schedule without management consent.
6. Ensure that employees requesting telework meet all eligibility requirement pursuant to law and agency policy including that they have sufficient portable work to support the telework request and that they have the ability to perform their duties with the same efficiency and effectiveness as when they are in the office.
7. Communication is key — Managers should engage their employees in a dialogue to achieve a complete and accurate mutual understanding of the need and appropriateness of the request for telework.
8. Avoid one-size-fits all solutions. Try to develop policies that are flexible enough to encompass the reasonable needs of individual employees during the Platform Improvement Project, the agency's mission and operational needs, and compliance requirements pursuant to the Telework Enhancement Act and other applicable law.
9. Apply the rules fairly and consistently.
10. Brief your staff collectively and individually when necessary regarding updates on the Platform Improvement project.
11. Monitor and document situational telework requests to ensure situational telework is consistent with applicable requirements.
12. As with regular telework, employees should understand that failure to comply with the terms of the telework agreement, failure to comply with workplace policies or rules, or failure to maintain appropriate performance levels while teleworking, may result in

suspension or termination of the telework agreement.

13. Set clear performance goals, expectations, and accountabilities. Focus performance on results. Document performance or conduct concerns and share with the employee involved as you would with a non-telework employee.
14. Remember that expanding telework opportunities, on a temporary or more permanent basis, does not require supervisors to loosen existing eligibility restrictions based on considerations such as employee conduct or performance concerns.
15. Consult your telework coordinator, HR staff, counsel and others as appropriate.
16. Act promptly, properly and decisively to solve problems. Make sure communication is free flowing between managers and employees regarding commuting issues during the Platform Improvement project.
17. Make sure your employees are trained on how to correctly report situational telework on their work reports. Accurate and distinct reporting of situational and routine telework is critical for evaluating and improving telework programs.

Telework FAQs: Metro Platform Improvement Project

What is telework?

Telework “refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. In practice, telework is a work arrangement that allows an employee to perform work, during any part of regular, paid hours, at an approved alternate worksite (e.g., the employee’s home or a telework center).

What is not Telework?

Telework does not include mobile work, which is characterized by routine and regular travel to conduct work or remote work, which is characterized by an assigned full time worksite away from agency brick and mortar worksites.

What are the types of telework?

Routine telework: Telework that occurs as part of a previously approved, ongoing, and regular schedule that is described in a telework agreement.

Situational telework: Telework that is approved on a case-by-case basis, where hours worked are not part of a previously approved, ongoing, and regular telework schedule. Situational telework includes what is sometimes referred to as unscheduled, ad hoc, episodic, intermittent, or emergency telework.

How should agencies track telework?

Accurately tracking telework participation is critical for improving and evaluating the impacts of telework programs. OPM requires agencies to regularly report:

- Telework Eligibility
- Hours and Instances of Routine Telework
- Hours and Instances of Situational Telework