

## Telework and Dependent Care Policy Guidance

### **Introduction**

The intent of this guidance on telework and dependent care is to provide Federal agencies with the appropriate tools to serve a contemporary workforce in a manner that meets the needs of employees while being responsive to agency mission requirements. The focus is on the use of telework as a workplace flexibility to support employees with caregiving responsibilities, especially minor children and/or adult dependents for whom an employee provides services essential to their health, well-being, and/or activities of daily living. Adult care includes, but is not limited to, elder care.

The official definition of telework can be found in the Telework Enhancement Act of 2010 (“the Act”): “the term ‘telework’ or ‘teleworking’ 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” [5 U.S.C. 6501(3)]. In practice, telework is a work arrangement that allows an employee to perform work, during any part of the employee’s regular, paid duty hours, at an approved alternative worksite.

The Federal Government is a leader in the use of innovative workplace flexibilities, including telework. In order to attract and retain a talented, engaged, and productive workforce, the Federal Government recognizes the importance of family and is committed to assisting Federal employees in balancing their work and family responsibilities. When an agency permits an employee to use leave and other workplace flexibilities to improve work-life balance, the agency is fostering goodwill that can improve its ability to recruit good candidates for vacant positions and strengthen retention of the existing workforce. Although Federal telework programs began more than a decade ago as an effort to address transportation concerns, a current important focus is using telework as an important strategic management tool that helps agencies better meet mission and operational needs. Additionally, telework has become an important flexibility that enhances work-life balance and improves morale for many Federal employees, thereby making the Federal Government a more attractive prospective employer.

Used appropriately, telework, along with other workplace flexibilities, can facilitate the management of work and dependent care. However, it is important to remember that telework is not meant to be a *substitute* for dependent care. Employees may not telework with the intent of or for the sole purpose of meeting their dependent care responsibilities while performing official duties. While performing official duties, teleworkers are expected to arrange for dependent care just as they would if they were working in the office.

### **Telework and Dependent Care**

While telework is not a substitute for dependent care, it can be a very valuable flexibility to employees with caregiving responsibilities, by eliminating time required to commute and expanding employees’

choices as to dependent care. Agencies and managers should recognize that employees use a variety of dependent care options, including agency on-site child care centers to ensure close proximity to young children as well as home-based supervision or child care arrangements (e.g., nanny, in-home babysitting by a family member or friend), which may be more cost effective or convenient. For teleworkers with in-home dependent care arrangements, it is important to remember that telework is official work time and a tool for accomplishing work. Employees are reminded that while teleworking, all workplace policies remain in place, including telework start/end times, rules regarding time and attendance, and employee expectations concerning performance and conduct.

An in-home dependent care arrangement may pose unique challenges for teleworkers that must be appropriately managed to monitor whether employees are able to successfully telework without jeopardizing work performance. While the presence of dependents in the household should not be an absolute bar to teleworking, employees should not be engaging in dependent care activities when performing official duties. While an occasional, brief interruption may occur when a dependent is present in the home, teleworkers must be careful to keep interruptions to a minimum to avoid disruptions in work accomplishment.

In the event the level of care needed for a dependent prevents or significantly disrupts work accomplishment, teleworkers should notify their supervisors as soon as possible about the situation preventing the teleworker from continuing work. Teleworkers should then request approval for appropriate leave while performing dependent care responsibilities. Failure to comply with the terms of the telework agreement, or diminishment in the employee's performance could result in suspension or even termination of an employee's telework agreement.

**Tip:** The Telework agreement provides the framework for work expectations and operational procedures between the supervisor and the employee. Each agency develops its own telework agreement based on the agency's telework policy and any applicable collective bargaining agreement(s).

### **Telework as a Temporary Short-term Workplace Flexibility to Support Employee Efforts to Address Work and Dependent Care Needs**

While performing official duties, teleworkers are expected to have dependent care arrangements in place when teleworking from an approved alternate worksite. However, there may be unplanned or temporary circumstances (e.g., an unscheduled telework day in which schools are closed) when telework may be an appropriate short-term workplace flexibility for employees with caregiving responsibilities. These short-term temporary circumstances should represent the exception and not the rule.

In these short-term temporary telework situations, there can be a dual benefit for both the agency and the employee. Provided the employee has a telework agreement in place and is telework-ready, the agency/manager can exercise discretion in determining whether an employee can accomplish at least

some part of his or her duties from the telework site in such a situation. The focus should remain on the work, while striking a balance with the employee's caregiving responsibilities. In effect, the employee could be allowed to telework during the time he or she is not responsible for dependent care responsibilities and be required to take appropriate leave while performing dependent care responsibilities. There can be clear benefits to the agency when managers support employee efforts to accomplish at least a portion of scheduled work instead of taking leave for the entire work day.

Child care or elder care arrangements that require increased levels of care may require more manager-employee communication about possible flexible work options (e.g., a change in work schedule or the use of leave during periods in which the employee is actively engaged in dependent care responsibilities). Open communication and good performance management are critical to implementing an effective telework policy. The benefits of such telework flexibility enhance employee work-life balance and can support agency continuity of operations and agency mission accomplishment. In addition, supporting work-life balance through telework can indirectly result in significant benefits for agencies in the areas of recruitment, retention and employee engagement.

**Tip:** Telework can provide employees with the flexibility they need to better manage their work and family or personal responsibilities. Telework can also be leveraged as a strategic management tool that enables agencies to maximize operational efficiency and to further mission accomplishment.

### **Telework for Elder Care**

As indicated above, telework provides employees the flexibility to better manage their work, family, and personal responsibilities. Under an agency's telework policy, an employee may be permitted to work at home or at another worksite. Telework may also be used in conjunction with leave or other workplace flexibilities and can provide employees with valuable additional time for elder care responsibilities by reducing commuting time or by allowing employees to temporarily care for a family member who resides in a different geographic location.

#### ***Temporary Agreement for Working in a Different Geographic Location***

In an appropriate situation, an authorized agency official has the discretion to grant an exception to the physical reporting requirement on a temporary basis. An example of an appropriate situation might be an employee's need to spend time away from his or her worksite to help attend to a health crisis involving an elderly family member in a different geographic location. As is the case for any arrangement involving work at an alternative work site, work from a temporary location away from an employee's official worksite should be accompanied by a written agreement that spells out expectations. The authority to make the exception is intended for temporary arrangements, and a short-term need that becomes extended should trigger a reassessment by the agency, focused upon whether the agency is willing to have the employee continue to perform work in a different location as a remote worker. Serving as a remote worker has implications for the employee's official worksite.

**Tip:** It is important to remember that an employee may not care for a family member while engaged in the performance of official duties. However, when making a determination about telework eligibility when an employee will be caring for an elderly family member, the focus should remain on the work and the ability of the employee to perform official duties without interruption for specified periods of time, not on the proximity of the elderly family member in the home. Decisions should be made on a case-by-case basis.

For additional guidance on the use of telework for Elder Care, please refer to OPM’s “Handbook on Workplace Flexibilities and Work-Life Programs for Elder Care” available at: <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-workplace-flexibilities-and-work-life-programs-for-elder-care.pdf>

### **Telework Following Childbirth, Adoption, or Foster Care**

A variety of workplace flexibilities, including telework, can be useful to employees during the period following childbirth, adoption or foster care. Telework is a valuable tool that can be used when an employee transitions back to work after the birth of a child. Telework is often used in conjunction with leave during the transition period between childbirth and the return to full-time official duties. Telework must be approved by the employee’s supervisor based on the agency telework policy and the ability of the employee to accomplish his or her work.

#### ***Expectations to Consider in a Telework Agreement Related to Childbirth Recovery***

Requests for telework related to an employee’s recovery from childbirth or care for a family member recovering from childbirth and transitioning back to work should be accompanied by a formal written telework agreement that summarizes expectations. Such telework agreements should, for example, outline a work schedule that indicates the days and hours of the week the employee will be working, outline any additional requirements (e.g., technology needs) beyond those specified by law, clarify any assumptions regarding frequency and modes of communication (e.g., email vs. telephone, core hours of contact, speed or expected timeframe for returning calls and emails) and establish terms under which the agreement can be modified or terminated.

**Tip:** It is important to remember that an employee may not care for a newborn while engaged in the performance of official duties. However, when making a determination about telework eligibility following childbirth, the focus should remain on the work and the ability of the employee to perform official duties, not on the proximity of the newborn in the home. Decisions should be made on a case-by-case basis.

It is important for the manager and the employee to establish a dialogue to determine whether the employee can accomplish at least some part of his or her duties in a telework situation while caring for a newborn. The focus should be on striking a balance between the employee's work and caregiving responsibilities, and using telework and appropriate leave options. This open dialogue should occur throughout the transition period.

Scenario: Mason's son Mahlon was born several months ago. He and his wife have a nanny caring for Mahlon at home each day. Mason discussed with his supervisor the fact that he has a home office on the third floor, and that the nanny cares for the baby on the first and second floors. So his supervisor has approved Mason to telework on Tuesdays. As a sleep deprived young parent, Mason appreciates the extra sleep he can get on Tuesdays when he is not commuting, and also enjoys the extra time he has to decompress after work and prepare a nice dinner for the family on Tuesday evenings.

For additional guidance on the use of telework and other paid leave following childbirth, adoption or foster care, please refer to OPM's "Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care" available at: <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-leave-and-workplace-flexibilities-for-childbirth-adoption-and-foster-care.pdf>.

#### **Break Time for Nursing Mothers at Telework Site**

Telework can be a useful flexible work arrangement that complements and augments an agency's existing workplace accommodation program for employees who are nursing mothers. Consistent with the requirements of section 4207 of the Patient Protection and Affordable Care Act [Pub. L. 111-148], Federal agencies should provide a reasonable amount of break time for an employee to express breast milk for her nursing child for up to 1 year after the child's birth. This rule would apply whether the employee is working from the traditional office worksite or an approved alternate worksite.

While the law does not require agencies to compensate nursing mothers for breaks taken for the purpose of expressing milk, many agencies already provide compensated breaks (e.g., 15 minutes in morning and 15 minutes in the afternoon) that employees can use for any purpose. Where agencies already provide such compensated breaks, a teleworking employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for such break time.

For additional guidance on the use of telework as one flexible workplace accommodation for nursing mothers, please see: <http://www.opm.gov/policy-data-oversight/worklife/reference-materials/nursing-mother-guide.pdf>.

## **Telework and Performance Management**

As with other workplace flexibilities, good performance management practices and transparency can provide a solid foundation for an effective telework program. Good performance management practices are important for building employee-supervisor relationships based on mutual trust. Agencies should determine whether supervisors have the performance management skills necessary to manage the workforce and to treat employees fairly regardless of where they are working. In addition, agency leaders, supervisors, and other telework decision-makers should ensure that they and their employees understand their agency's specific telework policy, training requirements, and agreements, as well as any applicable collective bargaining agreement(s).

Good performance management and communication between supervisors and employees can help provide transparency about telework challenges and determine whether employees are meeting performance expectations. Overall, such information can help supervisors use telework in a manner that is equitable to employees and is conducive to individual and work unit performance.

Managers must hold teleworkers to the same performance standards as non-teleworking employees. It is important to maintain open lines of communication, and to provide all employees with objective feedback regarding performance expectations (including work outputs completed in the office or at an alternate worksite). Any management decisions regarding telework eligibility and participation should focus on effective performance management and accountability measurement principles that are clearly addressed in the employee's performance plan.

### ***Failure to Meet Appropriate Performance Standards***

The Act specifies that an agency's telework policy shall, "provide that an employee may not be authorized to telework if the performance of that employee does not comply with the terms of the written agreement between the agency manager and that employee" [5 U.S.C. § 6502(b)(3)]. Employees should remember that failure to comply with the terms of the telework agreement, or diminishment in performance could result in suspension or even termination of the telework agreement.

### **Telework and Conduct**

Managers and employees should be aware of the difference between performance and conduct. Employees, whether teleworking or not, are held accountable for their conduct as well as their accomplishments against performance standards. Employees should remember that workplace policies, including time and attendance requirements and employee expectations while performing official duties at the approved alternate worksite remain in effect while the employee is teleworking. Employees should keep in mind that failure to comply with the terms of the telework agreement, failure to comply with workplace policies or rules, or diminishment in performance while teleworking, may result in suspension or termination of the telework agreement.

## Additional Guidance and Legal Authorities

Telework, in conjunction with other workplace flexibilities, allows the Federal Government to maximize operational efficiency while maintaining productivity. In appropriate cases, telework may also allow employees to strike the right balance between work accomplishment and family or personal responsibilities. To enhance program success, agencies may want to review the full spectrum of available workplace flexibilities in conjunction with their telework program to enable them to develop policies that make the best use of all human resource tools to support their workforce. It is paramount that agencies communicate expectations to their employees in written policies and procedures, subject to any applicable collective bargaining agreement(s). Additional guidance and fact sheets on available pay and leave work flexibilities are provided below:

- **Various OPM fact sheets on leave options:** <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/#url=Fact-Sheets>
- **Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care:** <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-leave-and-workplace-flexibilities-for-childbirth-adoption-and-foster-care.pdf>
- **Handbook on Workplace Flexibilities and Work-Life Programs for Elder Care:** <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-workplace-flexibilities-and-work-life-programs-for-elder-care.pdf>**Work Schedules:** <http://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/>
- **Alternative Work Schedules Handbook:** <http://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/>
- **Official Worksite Determinations for Location-Based Pay Purposes:** <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/official-worksite-for-location-based-pay-purposes/>

Tip: Agencies play an important role in developing and communicating the various workplace flexibilities available to employees. In turn, employees will be better able to understand which human resources flexibilities are available to them to best meet their needs during specific events (e.g., paid leave, unscheduled leave, unscheduled telework, leave without pay, flexible work schedules, etc.).

Telework Managing Officers/Telework Coordinators and Managers should be aware of their legal obligations under Executive Order 11478 (amended by Executive Order 13152), which prohibit discrimination in personnel policies, practices, and treatment of Federal employees based on their status as parents. Useful legal authorities and guidance include:

- **Executive Order 11478 (as amended by Executive order 13152):** <http://www.gpo.gov/fdsys/pkg/WCPD-2000-05-08/pdf/WCPD-2000-05-08-Pg977.pdf>

- **Facts about Discrimination in Federal Government Employment Based on Marital Status, Political Affiliation, Status as a Parent, Sexual Orientation, or Transgender (Gender Identity) Status:** <http://www.eeoc.gov/federal/otherprotections.cfm>
- **Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities:** <http://www.eeoc.gov/policy/docs/caregiving.html>
- **Employer Best Practices for Workers with Caregiving Responsibilities:** <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>
- **Questions and Answers about EEOC's Enforcement Guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities:** [http://www.eeoc.gov/policy/docs/qanda\\_caregiving.html](http://www.eeoc.gov/policy/docs/qanda_caregiving.html)
- **Managing Teleworkers Requires Top Notch Performance Management Skills:** <http://www.opm.gov/policy-data-oversight/performance-management/performance-management-cycle/planning/managing-teleworkers-requires-topnotch-performance-management-skills/>



## **Telework and Dependent Care FAQs**

### **Q. Does having a dependent in the home automatically disqualify an employee from being eligible for telework?**

A. No. While telework is not a substitute for dependent care, it can be a very valuable flexibility to employees with caregiving responsibilities. While the presence of dependents in the home should not be an absolute bar to teleworking, employees should not be engaging in dependent care activities while performing official work duties.

Also, teleworkers with in-home dependent care arrangements should remember that all workplace policies remain in place, including telework start/end times, rules regarding time and attendance, and employee expectations concerning performance and conduct.

### **Q. Are there circumstances in which it could be appropriate for an employee to telework when dependents are present and there is no back-up dependent care arrangement?**

A. Yes. A supervisor has the discretion to permit such an arrangement, where, in his or her opinion, it has the potential to benefit the agency. There may be instances in which a permanent dependent care provider is unavailable on short notice, or a child/adult dependent is ill and unable to attend school or dependent care. Provided the employee has a telework agreement in place and is telework ready, the agency/manager may permit the employee to work some portion of the day, when the employee can accomplish at least some part of his or her official duties from home while there is a dependent in the home.

### **Q. Can a teleworker with an in-home dependent care arrangement interact with a child or adult dependent during official work hours?**

A. Yes. Although an occasional or brief interruption may occur when a dependent is present in the home, teleworkers should be careful to keep such interruptions to a minimum in order to avoid disruptions in work accomplishment. Also, employees should not engage in dependent care activities while performing official duties. Employees should work with their supervisors to determine whether scheduled breaks may be appropriate for such activities (e.g., using a lunch break). In instances in which the employee is unable to perform official duties because of dependent care responsibilities, he or she should advise his or her supervisor of the situation and request appropriate leave for that time.

### **Q. What should a manager do if an in-home dependent care arrangement or telework arrangement involving caregiving responsibilities negatively impacts an employee's performance or the performance of the workgroup?**

A. In cases where the teleworker's in-home dependent care arrangement is having a negative impact on the employee's performance and/or the performance of the group, the manager may review the telework agreement with the employee and give the employee a chance to improve. The telework

agreement should include a clause stating that either the manager or the employee may cancel the telework agreement because it negatively impacts the employee's performance or the performance of the group.

Telework is not an employee right or entitlement. Teleworkers must arrange for dependent care just as they would if they were working in the office, whether it is for in-home dependent care or outside-of-the-home dependent care. For dependents in need of increased levels of supervision or care, teleworkers with in-home dependent care arrangements should have designated caretakers in the home during telework hours.

**Q. When should a manager terminate a telework agreement?**

A. A manager should terminate a telework agreement when there is a performance or conduct issue. The manager or supervisor should demonstrate that:

- The employee's teleworking directly and negatively impacts the employee's individual performance and/or the performance of the work group or organization; and that
- Continuation of telework will interfere with remediation of the standards such as the employee's ability to attain or return to "fully successful" performance or to reverse a diminishment in performance. In some agencies, telework agreements indicate employees must be at the "fully successful" level or higher in order to telework.

Additionally, the denial or termination of the telework agreement should include information about when the employee might be eligible for telework again, and if applicable, what actions the employee should take to improve his or her chance of approval. Denial of a request to telework should be provided in a timely manner. Managers should also review the agency's collective bargaining agreement(s) and telework policy to determine whether the telework agreements meet any applicable requirements.