

**ARTICLE 23 - TELEWORK PROGRAM**

**23.1 GENERAL**

- A. The CBA applies to bargaining-unit employees (“Employees”) of the Office of Hearings and Appeals (“OHA” or “Agency”), which includes the National Appeals Division (“NAD”), the Office of Administrative Law Judges (“OALJ”), and the Office of the Judicial Officer (“OJO”).
- B. The Agency fully supports and promotes the use of telework by Employees as appropriate based on the duties of an Employee’s position and the efficiency and efficacy of accomplishing the mission. Telework may produce tangible savings and other benefits to the Employees and the Agency, but an Employee’s use of telework must be balanced to ensure it does not impede the Agency’s mission or its duty to provide quality customer service. The Agency’s policy is to provide Management with the option to allow Employees in eligible positions to work at alternate worksites, as described in this Article.
- C. For the purposes of this Article, the term “telework” refers to the performance of the duties of a position at an approved, alternate worksite. Telework does not include work performed while on official travel status, performed while commuting, or remote work. The term “remote work” refers to an arrangement where an Employee is scheduled to perform work at an approved alternate worksite, typically the Employee’s residence, on a regular and recurring basis.
- D. This Article does not apply to NAD Administrative Judges who establish residence-based offices per CBA Article 26.

**23.2 ELIGIBILITY FOR TELEWORK**

- A. All Employees, regardless of tenure, grade, job series, or job title are presumed eligible for telework unless prohibited by the provisions of this CBA. Management will notify all bargaining unit Employees of their eligibility to telework or opt out of telework.
- B. Newly hired Employees are eligible for telework after ninety (90) days of fully successful performance, subject to the eligibility criteria discussed herein.
- C. Telework is voluntary. Each Employee must either opt to telework or affirmatively opt out of telework by completing a Telework Agreement (form AD-3018 (Nov. 2021) (new Appendix F)) and submitting it to their immediate supervisor(s). Employees who participate in telework must complete all required telework training and evaluations.
- D. Management will consider providing telework as a reasonable accommodation for disabilities, medical conditions, religious beliefs, and other circumstances

as appropriate. An Employee who seeks telework as a reasonable accommodation will follow the policies and procedures outlined in DR 4300-008 (entitled *Reasonable Accommodations and Personal Assistance Services for Employees and Applicants with Disabilities*), as amended or replaced.

- E. To remain eligible for telework, Employees must perform the duties of their position, as specified by their annual performance plans, at a fully successful level. While teleworking, Employees will (1) provide the same level of support, availability, and accessibility to customers, coworkers, and their supervisors as at the official worksite and (2) meet established organizational and individual work requirements, including deadlines for submitting work product; timeframes for returning phone calls, voicemail messages, and emails; attendance at staff meetings; and adherence to approved work schedules.
- F. Employees who telework must not adversely affect the performance or add to the workload of other Employees. While teleworking, Employees must adhere to the most recent *Standards of Ethical Conduct for Employees of the Executive Branch*.
- G. Management will ensure an equitable distribution of the workload between Employees who telework and Employees who work at the official worksite.
- H. Employees who participate in telework should ensure their alternate worksites protect the confidentiality of data and the safety and security of Government equipment. Each Employee should ensure the alternate worksite has adequate internet access.
- I. Budget permitting, Management will provide the necessary computer equipment and supplies to enable Employees who participate in telework to accomplish the requirements of their performance plans.
- J. Management will ensure consistent and fair administration of telework policies and procedures. Upon approval of a Telework Agreement, direct supervisors will establish and communicate clear expectations regarding Employee responsibilities while teleworking, including guidelines for submitting work assignments; responding to phone calls, voicemail messages, and emails; attending staff meetings; complying with approved work schedules; and recording time and attendance.

### **23.3 INELIGIBILITY FOR TELEWORK**

- A. Positions may be identified as ineligible for telework based only on the following criteria:
  - (1) Position duties require daily physical presence at the official worksite and do not include any portable or administrative work that can be

accomplished from an approved, alternate worksite; or

- (2) Position duties require daily access to specialized equipment located at the official worksite and do not include any portable or administrative work that can be accomplished from an approved, alternate worksite; or
- (3) Position duties require daily access to classified materials and do not include any portable or administrative work that can be accomplished from an approved, alternate worksite.

B. Employees may be identified as ineligible for telework based only on the following criteria:

- (1) Performance. An Employee may be found ineligible for telework if the Employee is placed on a Demonstration Opportunity in accordance with DR 4040-430 (entitled *Employee Performance and Awards*) or receives a less than fully successful performance rating. The Employee's eligibility for telework must be reassessed at least every twelve (12) months from the date of the documented performance rating or start of the Demonstration Opportunity, as elected by the Employee's supervisor.

Except in rare circumstances, an Employee will not be removed from telework for a single infraction of the Telework Agreement, and supervisors and Employees will make a bona-fide effort to work out specific problems before any decision is made to remove the Employee from telework. Decisions to remove the Employee from the telework program shall be memorialized in writing and shall contain the reasons for such action. Employees shall be provided the notice at least forty-five (45) days before such action is taken.

- (2) Conduct. An Employee may be found ineligible for telework if the Employee was subject to formal disciplinary action, adverse action, or was placed on a leave restriction within the previous twelve (12) months.

C. An Employee is permanently ineligible for telework if they have been formally disciplined for the following:

- (1) Violation of 5 CFR § 2635, Subpart G, for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing their official duties; or
- (2) Being absent without leave for more than five (5) days in any calendar year. Absent without leave is a non-pay status that covers an absence from duty that is not approved.

## **23.4 TELEWORK AGREEMENTS**

**A.** Telework Agreements remain in effect until a change is initiated although supervisors should annually review telework agreements with Employees.

(1) As an alternative to initiating corrective action under DR 4040-430 (*Employee Performance and Awards*), a supervisor may, once during a twelve (12)-month period, temporarily modify an Employee's Telework Agreement for up to sixty (60) days in an effort to address performance or conduct problems. The Employee's supervisor shall provide the Employee written notice at least seven (7) calendar days prior to the modification.

(2) To initiate a more permanent change to a Telework Agreement, Management or an Employee must provide written notice at least forty-five (45) days before the change, except in certain situations as discussed in subsection 23.5(D) of this Article. Before Management modifies, suspends, or terminates a Telework Agreement, Management will provide the Employee written notice, usually at least forty-five (45) days in advance. The notice must specify the reason and effective date of the change, any appeals or grievance procedures available to the Employee, and the corrective action(s) the Employee must take to regain eligibility for telework. The modification, suspension, or termination will take effect even if an Employee does not consent to or acknowledge the change via signature. A permanent change in an Employee's position or a modification requested by Management or an Employee will require the Employee to complete a new Telework Agreement.

**B.** Management may require Employees to report to the official worksite on scheduled telework days, and absent exigent circumstances, Management will provide written notice at least one workday prior to the time the Employee is required to report.

## **23.5 TELEWORK SCHEDULES**

**A.** An Employee who teleworks may participate in flexible and compressed work schedules or other flexible work arrangements.

**B.** An Employee occupying a telework-eligible position may telework up to eight (8) days per pay period based on the duties of the position and the amount of on-site activities that must be performed.

**C.** If the day an Employee is scheduled to report to the official worksite is a holiday or other non-workday, or if the Employee is on leave, the Employee is not required to report to the official worksite on an alternate day or otherwise

make up for the day the Employee did not report to the official worksite.

- D. In certain circumstances, the Agency may temporarily excuse an Employee from reporting to the official worksite and allow the Employee to telework full time. The Employee must be expected to return to the official worksite at some point in the future on a regular and recurring basis. It is the responsibility of the Employee's immediate supervisor to decide when the temporary exception should no longer apply. Supervisors must regularly review an Employee's temporary, full-time telework agreement to ensure any approved temporary exception continues to apply. A supervisor may grant a temporary exception to allow an Employee to telework full-time in situations that prevent the Employee from commuting to the official worksite, including but not limited to severe weather or a public-health crisis, or where the Employee is recovering from an injury or medical condition; on an extended period of approved absence from work; on temporary duty travel status; or temporarily detailed to work at a location other than a location covered by a Telework Agreement. During the time an Employee is on temporary, full-time telework, the Employee's duty station will remain the official worksite.

## **23.6 ADMINISTRATIVE POLICIES**

- A. **Dependent Care.** Telework is not a substitute for day care. Employees who telework will make appropriate arrangement(s) for the care of any dependent(s) during the time the Employee is scheduled to telework. The Employee may allow a caregiver in the home to care for the dependent(s) during the time the Employee is scheduled to telework, provided that this arrangement does not prevent an employee from performing the duties of the Employee's position. Dependent(s) who do not require intensive supervision may be unsupervised while the Employee is teleworking, provided that the presence of the dependent(s) does not disrupt the Employee's ability to effectively perform the duties of the Employee's position.
- B. **Unscheduled & Emergency Telework.** Telework is incorporated into the Agency's continuity of operations plan ("COOP") to ensure mission essential functions continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies. OPM, USDA, or Agency officials may announce an emergency operating status that allows for unscheduled or required telework beyond that outlined in the OPM early dismissal guidance for weather events. When this occurs:
- (1) Management may require Employees to evacuate the official worksite and telework during inclement weather, a public health crisis, or other emergency without regard to whether the Employee has a Telework Agreement in place. Management and Employees must follow departmental, agency, or official worksite COOPs.

- (2) Employees who are approved to telework and have signed a Telework Agreement are expected to telework to perform and maintain Agency functions during emergency situations or take authorized leave (paid or unpaid), paid time off, or a combination of both, as approved by Management.
- (3) Employees who telework generally are ineligible for weather and safety leave except in unusual circumstances. Weather and safety leave may be granted to a telework-ready Employee who did not take home the necessary equipment or work materials because, in Management's judgment, the Employee could not have reasonably anticipated the severe weather or other emergency condition. Weather and safety leave also may be granted to a telework-ready Employee who is prevented from safely working at the alternate site due to a severe weather or other emergency event (e.g., electrical power or broadband outage, fire, flooding, or heating and cooling failures). When any such work disruption occurs, the Employee must communicate with a supervisor as soon as possible. Telework-ready Employees who are working at the official worksite when an early departure is announced generally may receive weather and safety leave for time required to safely commute to their approved, alternate worksite. Once the Employee arrives at the approved, alternate worksite, the Employee must telework the remaining hours remaining of their workday (if any) or take leave (paid or unpaid) or other paid time off.

**C. Official Duty Station.** The official duty station of an Employee who teleworks will remain unchanged if the Employee reports in person to the official worksite on at least two (2) workdays, or a combination of work hours and paid or unpaid leave, each biweekly pay period on a regular and recurring basis. Entitlement to locality-based comparability payments, special salary rates, travel allowances, and relocation expenses is based on the official duty station.

**D. Evaluations, Opportunities, and Awards.** Management will ensure supervisors are held accountable for evaluating all teleworking and non-teleworking Employees equitably under the same performance management system and without regard to the number of days an Employee teleworks. Management will provide all Employees the same professional opportunities, developmental opportunities, training, assignments, and treatment about work projects assigned. Management will ensure all Employees receive equitable consideration for performance awards, cash awards, promotions, retention incentives, and other recognition.

**E. Time & Attendance.** Employees must follow specific Agency procedures for accurately coding the time they perform official duties while teleworking.

**F. Safety & Workers' Compensation.** The Agency encourages Employees who telework to adopt a proactive approach to ensuring safe alternate worksites and safe work habits. It is the Employee's responsibility to maintain a safe home office or alternate worksite.

While teleworking at an approved, alternate worksite, Employees are covered, as specified, by the Federal Tort Claims Act, 28 U.S.C. § 171, and Federal Employees' Compensation Act, 5 U.S.C. § 81. If an Employee is injured during the performance of official duties, the Employee must notify a supervisor immediately, provide details of the incident or injury, and complete Department of Labor Form CA-1, Federal Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.

**G. Work Schedule, Overtime Pay, Leave, & Other Personnel Issues.** Employees who telework are covered by the same rules on pay, work schedules, overtime, leave, core hours, and other personnel issues as all other Employees.

**23.7 GRIEVANCES.**

Appeals of a denial of an Employee's request for telework are governed by Article 19 (Negotiated Grievance Procedure) or Article 27 (Equal Employment Opportunity) of this Agreement.

For the Union:  Ryan Eagleson, President, Local 3020 AFSCME	For the Agency:  Frank M. Wood, Director Office of Hearings and Appeals