

**U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**OFFICE OF GENERAL COUNSEL  
And  
NOAA ATTORNEYS GUILD**

**Remote Work Pilot Program  
Memorandum of Understanding  
March 12, 2022**

**I. INTRODUCTION**

Starting in March 2020, the entire NOAA Office General Counsel (OGC) workforce began operating on a mandatory 100% telework basis in response to a global pandemic. Under this status, employees worked at their home as a safe haven. Full-time telework has helped to maintain employee health and safety and successfully supported NOAA General Counsel's continuity of operations during the pandemic. Even in this extraordinary time, attorneys successfully delivered quality legal services, fostered close client relationships, and maintained high professional standards.

NOAA General Counsel management (Management) and the NOAA Attorneys Guild (Union) have worked closely together to evaluate how the office operated under 100% telework, and to gauge employee interest on workplace flexibilities once the evacuation order is lifted. Employee surveys have demonstrated a strong desire for increased use of telework and remote work, continuing a long-term trend of increasing interest beginning with the collective bargaining agreement telework pilot program in 2000 and reflected in the NOAA OGC Telework Policy agreed to between the Union and Management in 2018. Notably, productivity, morale, and engagement have been maintained or increased along with the increased use of telework and remote work.

In November 2021, OPM provided guidance for agencies intending to use remote work as a strategic management tool, citing the following potential benefits of remote work:

- Retention of highly talented employees who must move outside of an agency's geographic location for personal reasons (e.g., spouses, those who must care for a relative or loved one who lives elsewhere);
- Recruitment of employees outside an agency's geographic location with specialized skills, who may not want or be able to relocate for personal reasons;

- Agency cost savings related to transit subsidy benefits, locality pay, real estate, and other facility expenses, paired with employee cost savings related to commuting and local cost of living expenses;
- Increased employee productivity and engagement, and greater ability to support continuity of operations, and
- More attractive job opportunities for individuals with mobility-related or other qualifying disabilities.

Due to uncertainties regarding long-term implications of remote work, Management and the Union have agreed to establish a temporary remote work pilot program (“Pilot Program”). The Pilot Program is designed to: (1) facilitate the use of remote work for those attorneys who express a desire to remote work during the term of the Pilot Program or longer; (2) explore whether and how office space can be configured and efficiently used in a work environment that includes office workers, teleworkers, and remote workers; (3) monitor and evaluate the effects of remote work on the ability of all attorneys to meet the needs of the office, including facilitating effective remote communication, maintaining or improving social interaction and relationship building, and minimizing travel costs to the agency; (4) explore, design, and implement measures to facilitate the effective use of remote work as a long-term option with the intent of establishing a permanent remote work program to the extent practicable; and (5) evaluate the effectiveness of remote work as a strategy to reduce office costs, increase workplace flexibility, promote organizational agility, continuity and productivity in response to future crises, improve talent recruitment and retention, and advance diversity, equity, inclusion, and accessibility in NOAA OGC’s workforce. Implementing this Pilot Program will involve developing cultural norms, new practices, and training to promote equity of experience among hybrid team members and to protect work-life balance. To achieve these goals, NOAA OGC and the Union agree to implement a Pilot Program under the following terms.

## **II. SCOPE**

The provisions of this Pilot Program apply to NOAA OGC attorneys. Remote work agreements that were entered into prior to the initiation of this Pilot Program will not be affected. Those prior arrangements will continue under their previous terms. However, prior agreements may be included in the evaluation that takes place at the end of the Pilot Program, and may adopt any beneficial changes that occur as a result of the Pilot Program.

## **III. REFERENCES**

- Telework Enhancement Act of 2010, Public Law 111-292, December 9, 2010
- OPM, Government-wide Dismissal and Closure Procedures, November, 2018
- NOAA Telework Implementation Plan, October 2021

- OPM, OMB, GSA Memorandum M-21-25, June 10, 2021
- OPM 2021 Guide to Telework and Remote Work in the Federal Government, November, 2021

#### IV. DEFINITIONS

**Local commuting area (LCA):** For purposes of Local Remote, an area of 50 miles surrounding an attorney's agency worksite. For purposes of determining travel reimbursement, an area of 50 miles surrounding an attorney's official worksite.

**Agency worksite:** The traditional Federal agency location where work activities are based, generally considered a centralized location of an attorney's assigned organization.

**Duty station:** The official worksite where the attorney regularly performs their duties as determined under 5 CFR §531.605. For a remote worker, the approved remote work location (*i.e.*, non-agency worksite or "alternative worksite") is the attorney's official duty station for location-based pay entitlements (*e.g.*, locality payments and cost of living allowances).

**Alternative worksite:** An approved worksite other than an agency worksite, and for a remote worker may be their home.

**Remote Work:** An arrangement in which the attorney is authorized to work within or outside the local commuting area of an agency worksite and is not expected to report to the agency worksite on a regular and recurring basis as under a telework agreement.

**Local Remote:** Remote work performed within the local commuting area (*i.e.*, within 50 miles) of an agency worksite.

**Regional Remote:** Remote work performed beyond the local commuting area of an agency worksite, but still within the applicable region of the agency worksite. (A "region" is one of the defined domestic National Marine Fisheries Service Regions: Alaska; Mid-Atlantic/New England; Pacific Islands; Southeast; West Coast).

**Max Remote:** Remote work performed outside of the applicable region of the agency worksite.

#### V. PILOT PROGRAM APPLICATION, OPERATION, AND EVALUATION

##### DURATION:

Unless modified as a result of ongoing evaluations, this Pilot Program will remain in effect for two years from the date this agreement is effective or a superseding remote work MOU is agreed to, whichever is later. The Pilot Program may be modified, ended or extended at any time by mutual agreement of the parties.



## ELIGIBILITY:

- a. As part of this Pilot Program, any attorney may apply to work remotely from an approved alternative work site (including a part-time attorney) if he or she 1) performs work suitable for remote work, and 2) is satisfactorily fulfilling work responsibilities, as determined by his/her/their supervisor. Eligibility to apply for remote work is not a guarantee that remote work will be granted, and remote work cannot commence until an attorney receives an approved remote work agreement under this Pilot Program.
- b. No attorney is eligible for remote work who has been officially disciplined for being absent without permission for more than five days in any calendar year or officially disciplined for violations of subpart G of the Standards of Ethical Conduct of Employees of the Executive Branch for reviewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties” (5 U.S.C. 6502(a)(2)(A)(B)).

## APPLICATION AND APPROVAL:

- a. Requests for Local, Regional, or Max Remote must be made to an attorney’s supervisor and approved by a Deputy General Counsel.
- b. Decisions regarding requests for remote work arrangements are solely within the discretion of management and must be evaluated on a case-by-case basis. When evaluating a request for remote work, management considers the following factors:
  - Potential agency costs involved with the requested remote work arrangement compared with the usual costs incurred at the agency worksite. Remote work arrangements should generally be cost neutral or result in lower costs.
  - Accessibility (*i.e.*, ease of contacting and communicating, availability for office purposes such as mentoring, ability to resolve acute issues in a timely manner, and required in-person all-hands meetings, staff meetings, meetings that must occur in a secure room (*e.g.*, a Sensitive Compartmented Information Facility), etc.);
  - Team dynamics (*e.g.*, time zone, connection to client community being served, proximity to region generating the attorney’s work portfolio)
  - Attorney’s ability to meet client need for in-person meetings;
  - Litigation/casework associated needs;

- Mission-related priorities, including recruitment and retention of talented attorneys;
- Time in service with NOAA and/or another Federal agency;
- Attorney's history of successful telework or remote work;
- OGC's history of successful remote work with this position or its functions;
- Challenges specific to remote work, and
- Reasonable consistency across OGC (*i.e.*, similarly situated attorneys treated similarly).

## WRITTEN AGREEMENT

- a. If an attorney is approved to work remotely, the arrangement must be documented in writing. Supervisors must develop a remote work agreement that outlines the expectations between Management and the attorney. The agreement should be signed by the attorney, the immediate supervisor, and the Deputy General Counsel. A sample remote work agreement may be found in the Appendix. Attorneys may request written reasons for any denial, which should be provided to the attorney within 30 days of the denial.
- b. All remote work agreements must be reviewed on an annual basis by the attorney and supervisor to determine whether the arrangement is still in the best interest of the agency. If any changes are needed, a new agreement should be prepared and executed as soon as possible.
- c. An attorney may request to change the terms of a current remote work agreement. Any change must be approved in advance by the supervisor and the Deputy General Counsel and a new remote work agreement must be approved before the attorney implements the requested change.

## ADDITIONAL TERMS

- a. Locality Pay. A remote work agreement must identify the attorney's official worksite that will determine the attorney's locality rate of pay. Attorneys authorized for remote work receive the locality rate associated with the location of the attorney's official worksite. The attorney will be apprised of all locality pay, travel expense, and Reduction in Force implications. Any subsequent change in the location of the official worksite must be pre-approved by a supervisor and a Deputy General Counsel.
- b. Relocation Expenses. An attorney-requested relocation to a remote work location is for the attorney's own convenience and benefit. The agency will not pay relocation expenses to a new remote work location. Additionally, if approved to work remotely, the attorney agrees to waive any rights to moving expenses if directed to return to the regular worksite based on a decline in

performance or for misconduct. Accordingly, the attorney is responsible for incurring such expenses when directed to return to the agency worksite due to a decline in performance or for misconduct.

- c. Travel Expenses. Payment of temporary duty (TDY) travel expenses is determined by the attorney's official worksite. The agency is responsible for travel expenses incurred by the remote worker for TDY travel away from the attorney's official worksite.
- d. Remote Location Utility Costs. Remote work may increase certain costs to the attorney. The attorney assumes responsibility for any costs associated with the attorney's home residence, including home maintenance, insurance, utilities, internet access, and telecommunication costs.
- e. Facilities and equipment. NOAA OGC will provide the equipment and supplies an attorney's supervisor determines necessary for a remote work attorney to perform their duties from the approved remote location. The equipment and supplies should be deemed necessary for the performance of the attorney's assigned duties, reasonably available, cost effective, and subject to availability of funding. NOAA OGC agrees to service and maintain any Government furnished equipment issued to the remote worker. The attorney's supervisor should identify what equipment/supplies will be provided to the attorney in the remote work agreement. All government furnished equipment provided to an attorney remains the property of the U.S. Government and must be managed and handled in accordance with Government-wide and agency-specific policies and guidance.
- f. Designated Workspace. Remote workers must have a designated workspace that is safe and conducive for the performance of their duties at the approved remote worksite. At a minimum, an attorney must have access to high-speed internet be able to send, receive and respond to electronic mail and instant messaging chats and participate in video conferencing, as applicable; and communicate via telephone.
- g. Dependent Care. Attorneys may not use remote work to care for dependents while on duty, though dependents may be at the alternative worksite while an attorney is on duty, and a flexible work schedule may be used to facilitate addressing dependent care needs while not on duty.
- h. Office Visits. Reporting to an agency worksite may be required periodically. Reimbursement consistent with the agency's travel reimbursement policy will apply each time the attorney is required to travel back to the agency worksite. Requirements to return to the agency worksite should be discussed in advance and gauged to balance the office's needs and providing time for extended collaboration, training, networking events and the time burden and cost of travel.



- i. Office Space. No remote worker should have an expectation of an exclusive private office being maintained at the agency worksite on their behalf, though office space may be provided when a remote worker returns to the agency worksite, if available.

## TERMINATION

- a. Remote work agreements entered into under this Pilot Program will expire at the end of the Pilot Program, unless extended at the discretion of Management or authorized consistent with an extension of the Pilot Program or a permanent remote work program agreed to by Management and the Union.
- b. The supervisor may terminate the remote work arrangement for a decline in performance or productivity, for misconduct, or for non-compliance with the terms of the remote work agreement. For management-initiated terminations, the attorney must receive advanced written notification of the decision to terminate the remote work arrangement at least 90 days before the effective date of the termination.
- c. The attorney may request to terminate a remote work arrangement. For attorney-initiated terminations, such requests must be made in writing with advance notice of at least 90 days, generally.

## PILOT PROGRAM EVALUATION

- a. The parties will meet at least semi-annually to evaluate how well the Pilot Program is meeting its goals and objectives.
- b. An evaluation will be completed before the expiration of the Pilot Program to determine whether the Pilot Program may be extended, or a permanent or long-term program may be put in place.
- c. Evaluations of this program may require modifications to this agreement and the parties will work as expeditiously as possible to put in place such changes.
- d. In order to promote transparency and foster reasonable consistency across the organization, Management will provide the Union Chair or Vice-Chair upon request with a copy of bargaining unit members remote work agreements, and a copy of any metrics prepared with respect to the Pilot Program's implementation.

## VI. APPEAL AND GRIEVANCE PROCEDURES

Bargaining unit attorneys may use the procedures in the Collective Bargaining Agreement, Article 9, to grieve workplace matters related to remote work eligibility,

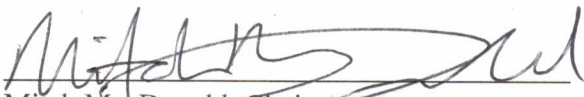
remote work status, and/or remote work agreements. Attorneys may also seek reconsideration by his/her/their supervisor, prior to a grievance and, if the matter is still unresolved, may appeal the matter to the relevant Deputy General Counsel. Seeking reconsideration or appeal to a Deputy General Counsel will extend the time by the longer of 60 days from the date the reconsideration is sought or until a Deputy General Counsel decides an appeal.

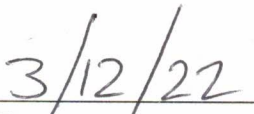
**VII. AGENCY HEAD APPROVAL**

Should any portion of this Agreement be disapproved as contrary to any applicable law, rule or regulation, the agreed-upon and approved portions will take effect irrespective of any disapproved provision. The Union retains all rights under the law subsequent to agency head disapproval.

This agreement is effective until **two** years from the date of agency head approval.

SIGNATURE LINES

  
\_\_\_\_\_  
Mitch MacDonald, Chair  
NWSEO's NOAA Attorneys Guild

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Kristen L. Gustafson, Deputy General Counsel  
NOAA Office of General Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeffrey S. Dillen, Deputy General Counsel  
NOAA Office of General Counsel

\_\_\_\_\_  
Date



APPENDIX

Sample Remote Work Agreement

This agreement is voluntarily made between \_\_\_\_\_ (attorney's name) and the NOAA Office of General Counsel (Management).

On \_\_\_\_\_ (month, day, year) \_\_\_\_\_ (attorney's name) will change their official duty station from \_\_\_\_\_ (city, state) to their new official remote worksite, \_\_\_\_\_ (city, state).

By signing this Agreement, I certify that I have read the Remote Work Pilot Program Memorandum of Understanding and will comply with the requirements.

I understand all costs associated with a move to the new official worksite are the responsibility of the attorney.

I understand the decision to allow an employee to work remotely is not an employee entitlement, and the decision is at the discretion of Management.

I understand all pay entitlements (including locality-based pay) are based on the official worksite identified above. I understand certain benefits and state taxes may be affected by this locality. I understand that the annual salary (including locality) for my official remote worksite currently is \_\_\_\_\_.

I understand this action is to fulfill specific business needs of the NOAA Office of General Counsel. If the work conducted under this agreement does not meet Management's expectations, I may be required, within a notice period of 90 days, to return to the official office location of \_\_\_\_\_, or I agree to voluntarily separate at the time freely, and without coercion. I understand that I will be responsible for moving expenses if directed to return to the regular worksite based on decline in performance or for misconduct.

I also understand that this agreement will be assessed annually, though it can be reevaluated at any time.

With this approved remote work arrangement, I understand my benefits, retirement, etc. could be impacted. I understand I am responsible for reviewing my Leave and Earnings Statement and ensure accuracy of information.

I understand the costs for which the agency will be responsible for paying are: [insert the office equipment/services the office will furnish]; telephone service through the government-issued phone (if applicable); and any required temporary duty travel away from the official remote worksite.

I understand all Government Furnished Equipment will be returned to (insert) in the event of my separation.

Additional Comments:

[Signature blocks for attorney, supervisor, and Deputy General Counsel]