

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OFFICE OF GENERAL COUNSEL &
NOAA ATTORNEYS GUILD**

**Telework Memorandum of Understanding
March 7, 2022**

I. INTRODUCTION

This Memorandum of Understanding (MOU) between the NOAA Office of General Counsel (OGC) and NOAA Attorneys Guild (Union) implements a NOAA Office of General Counsel telework plan, consistent with OPM guidance issued in November 2021 and the NOAA Telework Implementation Plan issued in October 2021. This agreement is applicable to telework, a form of alternative work arrangement in which an attorney is expected to report to the traditional worksite on a regular and recurring basis, which is currently defined as at least twice each biweekly pay period.¹

The NOAA Office of General Counsel promotes the maximum use of telework consistent with the needs of the office. Telework can provide the following benefits while positively impacting NOAA General Counsel's mission: increased attorney performance, efficiency, morale, and job satisfaction; help in attracting and retaining a diverse group of skilled workers from a wider geographic area; support for increasing federal employment of individuals with disabilities, veterans, and affirmatively advancing equity, civil rights, racial justice, and equal opportunity; lower absentee rates and attrition; reduced greenhouse emissions; and improved standards of living by allowing attorneys to: (1) be more productive without the interruptions of an office setting; (2) gain increased flexibility in managing their time and schedule; (3) reduce the cost of daily commuting; (4) stay productive in times of poor weather, mass transit delays, and natural disasters; and (5) enjoy a more rewarding and balanced work-, family-, and personal-life. NOAA's Office of General Counsel also recognizes the value of in-person, in-office work as a means of (1) enhancing professional relationships among colleagues and clients; (2) promoting mentoring and professional development; (3) accomplishing certain in-office work tasks; (4) decreasing the risk of distractions at home and work-life imbalance; and (5) preventing feelings of isolation or disconnection from the workplace, to increase an attorney's job satisfaction and positively impact NOAA General Counsel's mission.

¹ Consistent with November 2021 OPM guidance, the requirement to physically report to the traditional worksite on a regular or recurring basis may be suspended on a temporary basis at the Deputy General Counsel's discretion, including the discretion to determine the duration of the temporary suspension.

II. SCOPE

The provisions of this document apply to NOAA GC attorneys participating in the NOAA GC telework program.

III. REFERENCES

- Telework Enhancement Act of 2010, Public Law 111-292, December 9, 2010
- U.S. Office of Personnel Management (OPM) Guide to Telework in the Federal Government (November, 2021)
- OPM, Governmentwide Dismissal and Closure Procedures (November, 2018)
- NOAA Telework Implementation Plan, October 2021
- M-21-25, Memorandum for the Heads of Executive Depts. and Agencies (June 10, 2021)
- OPM Additional Guidance on Post-Reentry Personnel Policies and Work Environment (July 23, 2021)

IV. EMPLOYEE ELIGIBILITY

- A. In general, any attorney may telework from an approved alternative work site² (including a part-time attorney) if he or she 1) performs work suitable for telework, 2) is satisfactorily fulfilling work responsibilities, as determined by his/her/their supervisor, and 3) has an approved telework agreement.
- B. Attorney positions in NOAA GC are generally suitable for telework. If a new attorney position is created that is not suitable for telework, Management will provide the Union with a written explanation before recruiting for that position.
- C. No attorney is eligible for telework 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)).

² An attorney's residence, or a location other than the traditional agency worksite, which for telework purposes is considered an official government worksite.

V. SCHEDULING FLEXIBILITY AND MAXIMUM AMOUNT OF TELEWORK

- A. Telework agreements can be individualized. The number of days of telework authorized per pay period for each attorney may vary consistent with the needs of the particular office and duties of the attorney up to, but not exceeding, eight days of telework during a pay period using Routine/Regular and Ad Hoc/Episodic telework. The number of days an attorney may telework during a pay period is left to the discretion of the attorney's supervisor subject to the considerations outlined in Paragraph B.
- B. Approval of the number of telework days per pay period should take into consideration the following factors:
1. Accessibility (i.e., ease of contacting and communicating, availability for local 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.);
 2. Client need for in-person meetings;
 3. Litigation/casework associated needs;
 4. Mission-related priorities;
 5. Time in service with NOAA and/or another federal agency;
 6. Employee's history of successful telework³;
 7. OGC's history of successful telework with this position or its functions;
 8. Challenges specific to telework⁴, and
 9. Reasonable consistency across OGC (i.e., similarly situated attorneys treated similarly).
- C. An attorney who teleworks more than five days per pay period (i.e., more than 50% of the time) may be subject to office sharing, hoteling, or other alternative office arrangement, such as placement in a smaller office or an office without a window. These alternative office arrangements may remain in effect even if the attorney later returns to less than 50% telework.

³ For employees who have worked less than three years in a full-time professional legal position (such as new attorneys starting at NOAA immediately after law school or following a clerkship or fellowship), or employees who have not previously held a position that permitted telework, managers should give careful consideration to the appropriate balance of in-office work and telework, ensuring a sufficient period (typically a year) for the employee to demonstrate successful telework performance and ability prior to permitting telework in excess of 50% of the employee's time.

⁴ Telework challenges are addressed in Section I, *supra*.

VI. TELEWORK OPTIONS AND CONDITIONS

Telework is a flexible arrangement entered into on a voluntary basis. Employees who desire the option of telework may choose one or any combination of the following available types of telework as approved by their supervisor and included in a telework agreement that allows work at an alternative site to the traditional worksite,⁵ under the conditions identified in this Section:

- A. Routine/Regular Telework occurs as part of a preapproved ongoing, regular schedule while reporting to the traditional worksite on a regular and recurring basis. Once the schedule is established, the attorney may not change the assigned telework day(s) without approval.⁶
- B. Ad Hoc/Episodic Telework occurs on an irregular basis, chosen by the attorney, to address a specific need of the attorney.
- C. Unscheduled Telework occurs under an announcement by the Office of Personnel Management (OPM) or other appropriate authority. When OPM makes an announcement of “Unscheduled Telework” and it is not the attorney’s scheduled telework day, the attorney may choose to perform unscheduled telework or take unscheduled leave. The attorney’s decision is not subject to approval by his/her/their supervisor. However, the attorney must notify his/her/their supervisor at the start of the workday via email.
- D. Conditions of Routine/Regular and Ad Hoc/Episodic Telework
 - 1. An attorney may combine teleworking with an alternative work schedule.
 - 2. An attorney is required to report to the agency worksite at least two times per pay period at their own expense.⁷ An agency worksite reporting day is intended to be a traditional, eight-hour working day, though flexibility is permissible. An attorney’s supervisor may upon request approve less than eight hours of in-office work during an agency worksite reporting day, but any request for less than four

⁵ The traditional worksite is the location an attorney is assigned to work absent a telework agreement.

⁶ The manner and timing of approval may vary at the discretion of Management and based on the specific needs of the Section.

⁷ This is not intended to affect reimbursements or subsidies from any federal or state transit or commuting subsidy or grant program.

hours of in-office work on an agency worksite reporting day requires approval of the Deputy General Counsel. Repeated requests for reduced in-office hours on agency worksite reporting days are discouraged, and more than five such requests in a six-month period will require the approval of the Deputy General Counsel. If the agency worksite is closed due to severe weather or otherwise on an attorney's scheduled agency worksite reporting day, ad hoc telework is permissible on that day, and the agency worksite reporting day does not need to be rescheduled.

3. The supervisor is responsible for assigning work in a manner that ensures the attorney has sufficient work. If an attorney does not have sufficient work for scheduled telework or time in the office, he/she/they shall consult with his/her/their supervisor to receive additional assignments.
4. In rare circumstances, management may find it necessary to require a nonemergency, telework-ready attorney to report to the traditional worksite for an assignment that requires an attorney's presence (e.g., providing a presentation or performing administrative duties at a pre-scheduled conference, to attend a meeting, or to work with materials that are too extensive to transport to the alternative work site). This should not be a last-minute surprise, but a special work circumstance that both the supervisor and attorney know about, discuss, and plan in advance as the instance requires.
5. When an attorney must be on official travel or a holiday falls on a regularly scheduled telework day, the attorney may request approval from his/her/their supervisor to reschedule the telework day during that pay period subject to the needs of the office. Generally, the interests of the office should be accommodated over the interests of working off-site on a regularly scheduled reporting day if a conflict arises, unless the attorney's supervisor agrees there are extenuating circumstances.
6. The attorney will be required to telework, adjust their schedule within their alternative work schedule arrangement, or take unscheduled leave when his/her/their office is closed (e.g. OPM Federal office closures and/or other authorized office closure) for reasons other than Federal law (i.e., Federal Holiday) or Executive Order, unless otherwise excused by his/her/their supervisor for good cause.

- a. Good cause for excusing an attorney from telework includes: (1) a lack of sufficient notice⁸ prior to the closure to allow the attorney to have the materials available at their alternative worksite to successfully telework; (2) factors outside of the attorney's control that impede successful telework; and (3) other similar circumstances.
 - b. Liberal leave and/or alteration of the attorney's work schedule shall be honored to the maximum extent possible to provide flexibility to an attorney due to an unplanned closure.
 7. Employees may not use telework to care for dependents while on duty, though dependents may be present 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.
 8. There is no restriction on the location of an attorney's approved alternative worksite except that any alternative worksite location must comply with all security clearance and Department of Commerce and NOAA Telework Policy approval requirements.
- E. Temporary exceptions to the requirement to report to the traditional worksite on a regular and recurring basis may be granted at management's sole discretion. Such exceptions, if they exceed two pay periods, must be approved by the Deputy General Counsel. Exceptions may be granted to address situations where the attorney is temporarily unable to report to the traditional worksite for reasons beyond the attorney's control (*e.g.*, to accommodate an acute personal health or familial circumstance), a period during which the attorney is in temporary travel status away from the official worksite, or similar circumstance. A key consideration is the need to preserve equity between attorneys who are similarly situated.

VII. TELEWORK AGREEMENT

To participate in telework, an attorney must complete the "Telework Application/Agreement and Modification of Telework Agreement" (Appendix A), and if applicable, the Telework/Remote Telework Assessment Tool (Appendix B), and the "Telework Safety Checklist" (Appendix C). The attorney must submit the form or forms to his/her/their supervisor along with the certificate

⁸ For the purposes of this agreement, absent extraordinary circumstances, one-day notice (i.e., notice prior to close of business the day before the closure) of an office closure or a weather event that may cause an office closure is sufficient notice to allow an attorney to prepare for telework. Telework days due to office closures do not limit an attorney's ability to telework in their normal course of work.

showing successful completion of Telework 101 for Employees via the Commerce Learning Center (CLC).

The attorney and his/her/their supervisor shall discuss the expectations in the proposed telework agreement, including the performance levels required of the attorney. The attorney's immediate supervisor is the approving official for Telework Agreements entered under this agreement (any departures from this agreement require approval of a Deputy General Counsel and Union Chair).

VIII. INFORMATION TECHNOLOGY (IT) SECURITY REQUIREMENTS FOR TELEWORK READY EMPLOYEES

Telework-ready employees must abide by the IT security requirements conveyed in the DOC IT Security Program Policy (ITSPP), Commerce IT Requirements (CITRs), Frequently Asked Questions (FAQs) and IT Security Policy memos.

In addition to the requirements above, telework-ready employees must abide by the IT security requirements conveyed in the NOAA IT Security Policy (ITSP), NOAA's Computer Incident Response Team Requirements (N-CITR), and IT Security Policies. The Telework Agreement signed by the telework-ready employee and their supervisor may describe additional security requirements.

Supervisors are responsible for ensuring that telework-ready employees agree to comply with all existing IT security requirements and to ensure employees are held accountable to them.

IX. MODIFICATION AND TERMINATION OF TELEWORK AGREEMENT

If management is proposing to modify or terminate an attorney's existing telework agreement (i.e. assumes duties not suitable for telework, or the arrangement is not working to the satisfaction of the supervisor, or the attorney otherwise is alleged to have violated telework eligibility requirements), the supervisor shall provide the attorney with an advance notice of thirty (30) calendar days prior to the effective date of the change (except for violations of Paragraph IV(C) eligibility requirements), with a written explanation to the attorney. An attorney may terminate this agreement at any time by submitting a completed Appendix D.

X. APPEAL AND GRIEVANCE PROCEDURES

Bargaining unit attorneys may use the procedures in the Collective Bargaining Agreement, Article 9, to grieve workplace matters related to telework eligibility, telework status, and/or telework schedule and agreement. Before filing a grievance using CBA Article 9, attorneys may

seek reconsideration by his/her/their supervisor, and, if the matter is still unresolved, may appeal the matter to the relevant Deputy General Counsel. Any reconsideration or appeal to a Deputy General Counsel will extend the date by which a grievance must be filed.

XI. IMPLEMENTATION

- A. All attorneys participating in telework will complete the forms provided in Appendix A (mandatory) and Appendices B and C (as applicable) as soon as practicable after the effective date of this agreement before beginning to telework under this agreement. Introductory training sessions for all attorneys who request it will be made available within 90 days of the effective date of this agreement.

- B. To promote transparency and support informed conversations related to telework between the Union and Management, Management will provide the Union Chair or Vice-Chair a copy of the telework data provided to NOAA or the Department of Commerce through regular reporting consistent with DOC or NOAA policy. Upon request, Management will provide to the Union Chair or Vice-Chair copies of telework agreements that are not provided to the Union by bargaining unit members.

This agreement is effective until a superseding MOU is mutually agreed to.

SIGNATURE LINES



Mitch MacDonald, Chair
NWSEO's NOAA Attorneys Guild

3/8/22
Date

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

Date

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Date: 2022.03.07 15:12:39 -05'00'

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

Date