

AFGE COUNCIL 238
REMOTE WORK ARTICLE
EPA COUNTER 9-30-21

Section 1. Purpose

In looking toward the Future of Work at EPA, the Parties recognize that Remote Work has been and can continue to be beneficial for Agency operations, the workforce, and the environment. A successful Remote Work program can yield many benefits, including protection of environmental quality by reducing commutes and in turn reducing traffic congestion and vehicle emissions, reduction in the agency's carbon footprint, increased productivity and performance, enhanced recruitment and retention of a diverse workforce from areas of the country for which Federal employment has traditionally required relocation, retain talent and institutional knowledge, heightened employee morale, increased work/life balance, enhanced health and safety (reduced viral transmission), cost savings, appropriate workspace for focused work, and improved emergency preparedness.

Use of Remote Work by the EPA throughout the COVID-19 pandemic has enabled the Agency to continue most of its operations without interruption. Continuing to incorporate Remote Work as a routine mode of work at EPA can enhance workforce retention and talent recruitment, and advance diversity, equity, inclusion, and accessibility at the Agency.

Remote Work may be approved for an employee on a temporary or permanent basis as part of a strategic analysis of EPA's mission needs or to meet the personal needs of an employee. Remote Work eligibility must be based on job functions and not managerial preference.

Section 2. Scope

This Article establishes the procedures for Remote Work applicable to AFGE-represented bargaining unit employees. Where this Article and any EPA remote work policy conflict, this Article shall govern unless the parties mutually agree otherwise.

Section 3. Definitions

- A. *Domestic Employee Teleworking Overseas*. A Domestic Employee Teleworking Overseas is an overseas remote work arrangement wherein an EPA employee temporarily performs the work requirements and duties their domestic position from an approved overseas location via a DETO Agreement. Please refer to the Agency's Policy [will add # once it is published – check if it is in Remote Work Policy and a current policy] for further information.
- B. *Directed Remote Work (Management-initiated Remote Work)*. Remote Work in this situation is voluntary. However, a program or region may have a mission need for a position or employee to remote work from a specific location (e.g., to be closer to inspection sites). In this Article, such arrangements will be referred to as "Directed Remote Work" or "Management-initiated Remote Work." Such Directed Remote Work arrangements are not solely for the convenience or at the request of the employee. Management needs to consider the voluntary nature of Remote Work before implementing a directed Remote Work

arrangement. Directed Remote Work obligates the Agency to suitably equip the employee to perform the work associated with the Remote Work location. A Remote Work agreement must be completed for a Directed Remote Work arrangement. Please refer to the Agency's Policy [will add # once it is published – check if it is in Remote Work Policy and a current policy] for further information.

- C. *Remote Work Location (RWL)*. The Remote Work Location (RWL) is an approved work location other than the Official Agency Worksite. An RWL will generally be a single location (e.g., a residence), a group of locations (e.g., a campus, industrial park), or other approved worksite, and may or may not be within the LCA (as that area is defined in 5 CFR 351.203) of the Official Agency Worksite. An employee may maintain other approved alternative work locations (AWLs) in addition to the RWL. For the purpose of this Article, the RWL is the employee's Official Worksite.
- D. *Official Worksite*: When conducting Remote Work, the Official Worksite for location-based pay purposes is where the employee is performing their position of record as determined under 5 CFR 531.605. *Official worksite* is the "official duty station" as that term is used in 5 USC 5305(i). *Position of Record*. An employee's official position defined by grade, occupational series, employing agency, law enforcement officer status and any other condition that determines coverage under a pay schedule (other than official worksite), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description, excluding any position to which the employee is temporarily detailed.
- E. *Remote Work-Ready Employee*. Any employee who is Telework-Ready, has entirely portable work that does not routinely require in-person activities at their Official Agency Worksite, is generally not expected to report to the Official Agency Worksite, and has a Remote Work Agreement currently in effect.

Section 4. Guidelines and Operating Principles

- A. Remote Work arrangements may be initiated by an employee requesting to work remotely or by the agency posting the position as one that will be performed remotely. An employee may request arrangements to conduct work as Remote Work at any time. Remote Work is when an employee is scheduled to perform telework work within or outside the local commuting area of the Official Agency Worksite and is not expected to report to the agency worksite on a regular and recurring basis (also known as full-time telework).
- B. The governing rules, regulations and policies regarding time and attendance, overtime, leave, flexible and compressed work schedules, including all requirements for supervisory approvals, are unchanged by participation in Remote Work.
- C. Injuries that arise in the performance of duty at the RWL are subject to the Federal Employees' Compensation Act.
- D. All employees with Remote Work agreements may be required to continue work from their RWL or from an approved AWL when EPA offices are closed subject to Section 6, except as provided for in 5 CFR 630.1605(a)(2).
- E. Employees must ensure that, when working from the RWL, the employee is available to colleagues, supervisors, and the public to the same extent as if they were at an Official Agency Worksite.

- F. Employees working from an RWL must be reasonably available during scheduled work hours by telephone, email, and other applicable agency-approved technology and communication methods (e.g., Teams) to communicate with their supervisor and complete their work and to be as accessible as they would be in an Official Agency Worksite.
- G. Employees working from an RWL must work with their supervisor to overcome problems or obstacles as they occur - including interruptions in communications caused by the failure of Agency equipment/technology and internet or telephone outages - so that the work of the Agency can be accomplished in an effective and timely manner.
- H. If the employee is unable to work at the RWL due to circumstances beyond their control, the employee should contact their supervisor to request the appropriate leave, including weather and safety leave or administrative leave, where applicable. Contact shall be made in a timely manner, where possible, within thirty (30) minutes of such an inability, absent extenuating circumstances.
- I. Remote Workers will receive the same treatment and opportunities as non-Remote Workers (e.g., work assignments, awards and recognition, development opportunities, promotions). Where assignments, development opportunities, etc. can more effectively be performed at the official Agency worksite, it is the employees' and supervisors' shared responsibility to discuss whether the employee wants to be considered for such opportunities even when it may mean ceasing remote work status, as described below. Employees are expected to perform and accomplish all assignments and tasks associated with their position of record, whether in the office or at an approved remote or alternative work location.
- J. Remote Work employees should be available to be recalled to the Official Agency Worksite with reasonable notice. Remote Work Within Commuting Area employees may be recalled to the Official Agency Worksite generally with no less than 24 hours advance notice. The Agency may recall Remote Work Within Commuting Area employees with less than 24 hours notice when recall is essential for the Agency to meet its mission. Where logistical issues or matters of the employee's health and safety mean the employee is unable to come to their Official Agency Worksite, the employee may be asked to request leave or conduct assigned portable work. Remote Work Outside Commuting Area employees may be recalled to the Official Agency Worksite with ample time to make travel arrangements and obtain approvals. The Agency may recall Remote Work Outside Commuting Area employees with shorter notice when recall is essential for the Agency to meet its mission and the employee has ample time to make travel arrangements and obtain approvals.
- K. Employees approved for Remote Work may request temporary change in work status (e.g., reporting to the office on a regular basis) to support a temporary shift in work or a special project to be approved at the direct supervisor level. Upon completion of this temporary shift or project, the employee will return to their Remote Work status.

Section 5. Changes in Operating Status

- A. Early dismissals at the Official Agency Worksite when the Agency announces early release for holidays and special events, shall be granted to those working at a RWL to the same extent as granted to those employees reporting to the Official Agency Worksite in person.

Section 6. General Provisions

It is recommended that supervisors and employees coordinate in advance if there is an anticipated severe weather event that is anticipated to impact the RWL. If an employee working from an RWL also has an AWL that is accessible, that employee and their supervisor should coordinate to ensure that the employee can perform portable work and has the necessary equipment to work from the AWL to the extent possible. When severe weather or other circumstances prevent work from the RWL and the AWL a Remote Workers may be granted administrative leave by their supervisor or manager pursuant to 5 CFR 630.1605(a)(2).

Section 7. Responsibilities

A. **Supervisors** are responsible for the overall management of Remote Work within their work units, including:

1. Receiving Remote Work requests from employees, identifying any missing items in the request, reviewing the request, and determining whether to forward it for consideration by the deciding official within a reasonable timeframe (i.e., normally within 7 calendar days);
2. Coordinating with the employee so the local HR office and the SSC have relevant information to timely implement appropriate locality adjustments (if any) for the RWL; and Monitoring Performance. Appropriate management controls and reporting procedures must be in place before employees begin remote work assignments. Remote workers, teleworkers, and non-teleworkers must be treated the same for the purposes of monitoring and assessing job performance; however, supervisors may need to utilize different mechanisms for communicating with remote working employees.
3. Ensuring Remote Work employees are provided the equipment necessary to successfully telework, including laptop computers and communications technology (such as Microsoft Teams or a successor program) needed to communicate with supervisors and colleagues.

B. Employees are responsible for:

1. Application Process:
 - Submitting a completed Remote Work Agreement (Appendix __) to their supervisor clearly explaining:
 - How the employee can perform all their duties as effectively from the RWL as from the Official Agency Worksite; and
 - An explanation of how approval of the request will not diminish the agency's ability to accomplish its mission and meet its operational goals.
 - Performing an assessment of the RWL and answering the required questions on the Safety Checklist (Appendix __);
 - Coordinating with their supervisor, local HR office, and HR SSC to determine the appropriate locality for the Remote Work Location;
2. While working remotely:
 - Informing their supervisor in advance of any anticipated change in their remote work location and submitting request for change to Remote Work Agreement
 - Recertifying employee telework agreements, if directed.

- When there is a change in RWL;
- Every 12 months (or less frequently, at the discretion of management);
- To synchronize annual recertifications if a particular organization's annual recertification time period is sooner than 12 months, so all employees can be recertified at the same time;
- Communicating as needed with their supervisor to receive assignments and complete work in accordance with supervisors' instructions;
- Adhering to the terms and conditions of the applicable, approved Remote Work Agreement;
- Maintaining communication with the supervisor while working remotely;
- Working with the supervisor to overcome problems or obstacles as they occur so the work of the organization is accomplished in an effective and timely manner;
- Complying with EPA/Regional/Office policies for information technology security and use of government equipment/materials;
- Working to the extent feasible in the event the Agency announces changes to its operating status, including changes to dismissal and closure procedures; and
- Being available to report to the Official Agency Worksite on a non-routine basis following adequate notice as defined above.

C. **Deciding Officials (or their designees)** are responsible for:

1. approving Remote Work Agreements in a timely manner (generally not to exceed 7 days).

If disapproved, the Deciding Official (or their designee) must respond to the employee in writing with the reasons the request was denied..

Section 8. Eligibility

A. Employees and their supervisors should work together to determine if and when a Remote Work arrangement is appropriate based on eligibility, based on equitable, function-based criteria, including job functions and not managerial preference. Employees may be authorized to use Remote Work if:

1. All of the employee's work is portable;
2. Tasks or work assignments can be performed at least equally effectively at the remote work location (RWL);
3. Approving the RWL would not require reassignment of current work or tasks to other staff;
4. Employee's work rarely requires access to in-office resources;
5. There will be no foreseen disruption to communication with internal or external clients/customers (e.g. public, state and local entities, stakeholders) customer service with any agency customers or stakeholders (e.g., public, states, industry);
6. The employee's position does not require in-person interface with management officials

or other colleagues on any routine basis;

7. The employee has a demonstrated track record of meeting performance plan objectives and working without close in-person supervision (including conduct of work during the COVID-19 pandemic);
8. Technology needed to perform duties is available and fully functional; and
9. The employee continues to comply with the terms of his or her written and approved Remote Work Agreement.

Remote Work for Newly Hired Employees: The approval of remote work for new employees is based on job functions as well as at management's discretion. The basic telework and remote work eligibility criteria must be met, required training and forms completed and appropriate senior management approvals obtained prior to the commencement of remote work. At a minimum, management should consider the employee's:

1. Previous federal service, if any;
2. Length and nature of previous work experience; and
3. Any previous experience teleworking.

Portable work for the purpose of Remote Work is the same as defined in the Telework Article.

Section 9. Certification

- A. **Certification.** By signing the Remote Work application, the employee is certifying all eligibility criteria set forth above is met.

Section 10. Management Considerations

- B. **Requests for Remote Work.** Requests for Remote Work must be submitted through the employee's supervisor to the deciding official (or their designee) as explained above. Requests for remote work will not be unreasonably denied.
- C. The supervisor and approving official must evaluate and document the following when assessing requests for Remote Work. The Parties agree certain costs to the Agency may be *de minimis* for those Remote Workers Within the Local Commuting Area.
 1. Employee eligibility;
 2. The employee's current and likely future duties;
 3. Whether or not the employee is likely to retain remote work eligibility in the future;
 4. Relocation costs, if applicable;
 5. Net change to employee's locality pay due to change in official worksite;
 6. The costs associated with any anticipated recall to the Official Agency Worksite;

7. How accessible a RWL is to an Official EPA facility for government furnished equipment servicing and repair;
8. Cost Analysis: Working with the Federal Employee Relocation Center Office of the Chief Financial Officer, a cost analysis of anticipated recalls and potential Agency travel costs and savings from the remote work arrangement.
9. The employee's work assignments are independent and require minimal in-person collaboration or review.

Section 11. Records Management

When working at an RWL, employees must continue to comply with EPA's Records Management Policy and any other applicable policies on using, creating, maintaining and disposing of records. Employees must also comply with the Federal Records Act, the Freedom of Information Act (FOIA), the terms of litigation holds, discovery in litigation, and any requests for records by the Office of Inspector General. Any record removed from an official agency worksite for Remote Work assignments remains the property of EPA and any information generated from Remote Work assignments is the property of EPA. Employees are responsible for maintaining the integrity of their records and for producing records on demand.

Agency work maintained on an employee's personal computer or on any portable media (e.g., disks, flash drives) may be subject to litigation discovery or FOIA even if it is not considered a record under the Federal Records Act.

Section 12. Equipment, Facilities, and Travel from RWL

Equipment

- A. All employees with an approved Remote Work agreement will be provided GFE as provided in Section ____, Telework Article. Supervisors may authorize additional GFE for the individual remote worker as necessary to meet mission needs if budget permits.
- B. Any equipment or other items provided by the government remain the property of the government and must be managed and handled in accordance with Government-wide and agency-specific policies and guidance. Employees who have an Agency-issued laptop or mobile phone assigned to them may use such equipment at a RWL and shall take reasonable safeguards against theft and damage when they do so. All Agency-issued equipment and supplies remain the property of the Agency, and EPA remains responsible for service and maintenance of that equipment.
- C. If the position being conducted remotely was posted or determined to be one for which work would be performed remotely, the Agency shall provide the employee with equipment needed to effectively perform the duties of the position, including an agency-supplied laptop computer. The Agency will provide necessary office supplies that are regularly available at the Agency (such as paper, pens, drives, envelopes, tape, staples, etc.) that can be obtained at the employee's Official EPA Worksite. Employees may be supplied with additional equipment through the established Reasonable Accommodations process.

- D. If an employee furnishes their own equipment/workstation at the AWL, the government will not reimburse the employee for the purchasing costs of the equipment/workstation. The EPA is under no obligation to service or maintain equipment belonging to the employee, even if the employee uses it for Agency work. The employee is responsible for the maintenance, repair and replacement of privately-owned equipment.
- E. **Reimbursement for RWL expenses.** EPA will not reimburse employees for any operating costs, home maintenance, utility costs or other residential costs, or for any telephone or internet service.
- F. The Agency remains responsible for service and maintenance of Agency equipment. For employee's outside of the Local Commuting Area where Agency equipment is in need of repair and upgrade, the Agency will make all reasonable efforts to initiate repairs and upgrades remotely. However, should in-person assistance be required, managers and employees will work together to make arrangements to ensure that repairs and upgrades can be made expeditiously; this may include providing temporary equipment and enabling shipping of inoperable and repaired equipment. In consultation with the employee, supervisors will make determinations over questions such as the employee's duty status, appropriate work assignments and potential temporary equipment during the interim period between when repairs and upgrades are required and when they are completed. Employees within the Local Commuting Area may be required to report to the Official Agency Worksite for service and maintenance of Agency equipment.
- G. **Travel.** Official travel to the Official Agency Worksite will not be reimbursed unless recalled, directed, or approved by the supervisor. The Agency will reimburse the employee for travel costs when the employee is recalled, directed, or approved to report to the Official Agency Worksite or other work locations (such as inspection sites) when the travel is for the benefit of the Agency.

Section 13. Process and Procedures for Remote Work Agreement

- A. Employees who wish to remote work, must complete training prior to submitting their request. The Parties agree to utilize documentation of Telework Training until the Agency develops specific Remote Work training.
- B. Employees must complete and sign the EPA Remote Work Agreement (Appendix __) (which is considered the request unless and until approved or disapproved) and the Telework Safety Checklist (Appendix __) and submit them, along with a record of telework training, to their immediate supervisor.
- C. The Remote Work Agreement shall cover the terms and conditions of the remote work arrangement, including but not limited to schedule, adherence to all applicable guidelines, policies for timekeeping and leave, and responsibilities for government equipment and records.
- D. The supervisor must review the proposed Remote Work Agreement on an individual basis and determine whether to forward the agreement to the deciding official (or their designee). This review should generally be completed within 7 calendar days. If the supervisor determines not to forward, the supervisor shall inform the employee of the reason(s) in writing. If forwarded to the authorizing official, the supervisor shall inform the employee. All approvals and disapprovals of requests for

Remote Work must be in writing by the deciding official (or their designee). All approvals will include a statement that an employee meets all required criteria described in this Article. All disapprovals will include a statement regarding the basis for disapproval, including cost considerations if applicable. The supervisor shall provide the employee with a signed copy of the Remote Work Agreement.

Section 14. Work Schedules and Time Accounting

- A. **Work Schedules:** Employees will maintain reasonable hours for the timezone of their Official Agency Worksite. Eligible work schedules for employees working remotely are the same as those for employees working at the official worksite.

Work schedules may also include fixed times during the day for supervisor/employee conversations via telephone or video conference to ensure ongoing communication.

- B. Time worked at a RWL should be accounted for as: **TWFUL:** Telework – Full-time or any successive coding in the Agency’s Time Reporting System (People Plus).

Section 15. Reasonable Accommodations Through Remote Work.

- A. Remote Work can be used as a way to accommodate qualified employees with disabilities under the Agency’s reasonable accommodation process. Employees seeking to Remote Work as a reasonable accommodation should contact their immediate supervisor or the national or local reasonable accommodation coordinator. Employees Remote Working as a reasonable accommodation will follow the general requirements contained in this Article to the extent such requirements are consistent with the reasonable accommodation. Employees must, at a minimum, submit a Remote Work application, record of completion of training, and safety checklist. Employees approved to Remote Work as a reasonable accommodation are required to have a valid, signed Remote Work agreement.

Section 16. Changes, Review and Termination of Remote Work Agreements.

A. By the Employee

1. Employees may request to modify or adjust Remote Work arrangements.
2. Employees may withdraw an application for Remote Work or terminate an approved Remote Work Agreement without prejudice at any time and return to the Official Agency Worksite. To ensure clarity, the employee must notify the supervisor in writing and identify the expected date of change and the supervisor should confirm receipt of the notice in writing.
3. If an employee terminates a Remote Work agreement, the employee is responsible for all costs associated with returning to the commuting area of the Official Agency Worksite.

B. By the Agency

1. Remote Work arrangements may be modified, adjusted, or terminated by management in the following circumstances:
 - i. The employee no longer meets the eligibility criteria;
 - ii. The employee engages in misconduct related to working from an RWL (including statutory telework restrictions);
 - iii. the employee fails to comply with this Article or with the terms of the employee’s

- Remote Work agreement;
- iv. If the employee's work changes in a more than *de minimis* manner (e.g., position, position description, work assigned, RWL), the supervisor and employee may revisit the Remote Work Agreement.
2. Process for terminating a Remote Work Agreement:
- i. The reason for Remote Work termination will be
 - a. documented,
 - b. signed by the deciding official (often the employee's supervisor), and
 - c. furnished to the affected employee
 - ii. Remote Work Termination Notice:
 - a. If related to a directed change in position or work assignments, management will generally provide a minimum of 45 calendar day notice, depending on work exigencies.
 - b. If related to the following, management will generally provide a minimum of one pay period notice:
 - i. Significant documented failures to comply with the terms of the Remote Work Agreement or this Article; or
 - ii. Repeated documented failures to comply with the terms of the Remote Work Agreement or this Article.
 - c. Immediate Termination of a Remote Work Agreement may result from any of the conduct described below:
 1. The employee has any documented performance or conduct deficiencies within the preceding 12 months that was related to the employee's Remote Work status including, but not limited to, letters of reprimand, written warnings, or leave restrictions;
 2. The employee has been officially disciplined for being absent without leave for more than five days in any calendar year;
 3. The employee has been officially disciplined for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties; or
 4. The employee has been disciplined for misuse of a government computer that the supervisor determined was related to the employee's Remote Work status, within the prior five years. The suspension from Remote Work will be based on the severity of the offense and may not exceed five years.
 - iii. Employees will be permitted liberal leave to attend to any arrangements if their remote work agreements are terminated.

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