

Teleworking Program Policy

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§ 1. Purpose

The State of North Carolina is committed to offering innovative workplace flexibilities. This policy permits agencies to designate employees to work at alternate work locations for all or part of the workweek to promote general work efficiencies, enhance competitive recruitment and retention advantages compared with other employers, improve utilization of state facilities, and meet environmental challenges. G.S. 126-1 requires the best methods of personnel administration as evolved in business and industry. Therefore, the Office of State Human Resources (OSHR) has established the following policy to assist agencies in developing teleworking programs.

Teleworking programs must be designed so that a reasoned determination can be made as to the benefits of teleworking within North Carolina State government. A public employer has a special obligation to ensure that employees and work resources are being used efficiently and productively.

§ 2. Eligible Employees

All full-time and part-time permanent, probationary, temporary and time-limited employees may be eligible to participate in this program if the employee’s work is deemed by the agency or university as suitable for teleworking and the telework arrangement is to the benefit of the agency or university.

Teleworking is not a universal employee benefit or entitlement. The decision whether to allow an employee to participate full-time or part-time in a teleworking program is at the discretion of

management. Agencies and universities may exercise discretion to determine that employees are ineligible to participate in a teleworking agreement under the following conditions:

- The employee’s position requires regular onsite work activities that cannot be completed at an alternative work location;
- The employee’s alternate work location does not meet the requirements of the job or the agency/university;
- The employee violates the terms of the teleworking agreement;
- The employee has an active disciplinary action related to unacceptable personal conduct, unsatisfactory job performance or grossly inefficient job performance;
- The employee has received a performance rating of “Needs Improvement” on any goal or value on their most recent Annual Progress Review;
- The employee is unable to consistently demonstrate the ability to complete tasks and assignments on a timely basis;
- The employee receives disciplinary action or their performance decreases while already participating in a teleworking program; or
- If an agency or university requires a period of onsite work for new appointments or probationary employees prior to approving teleworking.

§ 3. Definitions

For purpose of this policy, the terms below mean the following:

<p><u>Alternate Work Location</u>: a worksite other than an agency or university worksite; may be an employee’s home or satellite office where official State business is performed.</p>
<p><u>Duty Station</u>: the employee’s designated onsite agency or university worksite is considered their duty station. For field-based employees, an employee’s home may be considered the duty station, if approved by the agency or university.</p>
<p><u>Field/home-based Employee</u>: field/home-based employees are required by the agency/university to work outside the agency or university worksite based on the service they provide or the nature of work. The work of field/home-based employees is mostly performed by traveling to various locations, within a region or working from home.</p>
<p><u>Full-time Telework</u>: type of telework in which an employee works from an alternate work location on all workdays, except those occasional days when required to report to a physical location, including the duty station, or other approved sites, for meetings, training or other onsite duties, or as directed by a manager.</p>
<p><u>Part-time/Hybrid Telework</u>: type of telework arrangement in which an employee works from an alternate work location less than a full-time basis but on a recurring schedule.</p>

Telework/Teleworking: a flexible work arrangement in which managers direct or permit employees to perform their job duties away from their duty station, in accordance with their same performance expectations, adherence to workplace policies and professional standards, and other approved or agreed-upon terms. It does not include field/home-based employees, occasional or sporadic teleworking, or work performed at a temporary worksite for a limited duration.

Teleworker: an employee engaged in teleworking.

Teleworking Agreement: a written agreement required for all employees teleworking regularly that details the terms and conditions by which an employee is allowed to engage in teleworking.

Work Schedule: the employee's regular recurring hours of work at the agency or university worksite and/or an alternate work location.

§ 4. Agency and University Responsibilities

Agencies and universities shall:

- Incorporate effective management practices such as clear communication, goal setting, and regular contact with employees engaged in teleworking programs.
- Ensure that the overall functions of the organization are not compromised by telework.
- Provide training to support employees and managers in teleworking.
- As changes occur, identify in the HR-Payroll System whether employees are teleworking full-time in-state, full-time out-of-state, part-time in-state, or part-time out-of-state, and identify the location of any teleworking.
- Report teleworking activities for the previous calendar year to OSHR annually on or before March 1,¹ beginning with the report for calendar year 2023 submitted on March 1, 2024. This report, at a minimum, will include:
 - Data on the number and percentage of employees participating in full-time teleworking, part-time teleworking, and full-time onsite by demographic data (race and ethnicity, gender, age range) and by occupational classification.
 - Out-of-state teleworking arrangements.
 - Teleworking arrangements approved as a part of an ADA accommodation.
 - Assessment of their teleworking program, including goals, benefits, challenges, and best practices.

Advisory Note: To improve recruitment, agencies are encouraged to mark jobs with telework options in the state's applicant tracking system. Agencies can use the following text in the job posting to make clear that telework is not an entitlement: "Any telework will be under the

¹ The initial report, covering July 1, 2021 through June 30, 2022, was due September 30, 2022. The next report, covering the 2023 calendar year, is due March 1, 2024.

conditions of the state Teleworking Program Policy and the employer may end any teleworking arrangement at any time in the employer's sole discretion."

§ 5. OSHR Responsibilities

OSHR shall:

- Provide guidance to State agencies in developing teleworking programs.
- Prepare training on teleworking expectations for agency and university HR offices, managers and employees.
- Provide instructions for annual teleworking reporting requirements to agencies and universities by December 31 each year.
- Consult with agencies regarding the State goal established in statute (N.C.G.S § 143-215.107C(f)) to reduce State employe vehicle miles traveled in commuting by 20% without reducing total work hours or productivity.

§ 6. Designation of Position/Employee

Agencies and universities may allow employees to engage in teleworking in compliance with this policy. Each agency and university that permits teleworking must establish internal policies and procedures that:

- Identify the criteria for positions that are designated as appropriate for full-time or part-time telework;
- Identify the criteria for selecting employees who are eligible to engage in teleworking; and
- Ensure that employees who remain at the agency/university worksite do not incur additional duties routinely performed by another employee due to revisions to the Teleworker's duties or schedule specifically for the purpose of enabling them to telework.

Based on business necessity, an agency or university may require an employee to telework or not to telework.

§ 7. Conditions of Employment

The policies and procedures that apply to the agency or university worksite shall remain the same for Teleworkers. These include, but are not limited to, workplace policies, professional standards of conduct, and performance management. Teleworking assignments do not change the conditions of employment or required compliance with policies and rules.

§ 8. Teleworking Agreements

All teleworking agreements shall:

- Include the responsibilities of both the agency or university and the employee;
- Be reviewed by the manager and employee at least annually, to coincide with, where possible, the beginning of the annual employee work cycle; and
- Be signed by the employee and manager, and other members of management designated by the agency or university.

If an employee transfers to another position or changes reporting relationships, any telework agreement between the previous manager and employee does not carry forward. The employee is not guaranteed eligibility for telework in the new position or when a reporting relationship changes. Each participant must sign a teleworking agreement that contains the terms of the teleworking arrangement. The signed teleworking agreement will be maintained in the agency or university's human resources office as part of the employee's personnel file. At a minimum, the teleworking agreement shall define the parameters of the teleworking arrangement and shall comply with the policy provisions below:

1. Compensation and Benefits: An employee's compensation and benefits will not change when they telework.
2. Safety of Alternate Work Location: An agency or university shall establish safety procedures. The agency or university shall, at a minimum, obtain an annually signed safety attestation from each Teleworker. The employee shall verify:
 - a. The alternate work location utilizes furniture, equipment, and other materials supplied by the employee, agency or university that is in compliance with established safety requirements, is free from hazards, and is ergonomically appropriate.
 - b. The employee shall provide written notice to their agency or university prior to any change in location or condition of the alternate work location.
 - c. The employee utilizes the same safety rules and practices applicable to agency or university worksite whenever at the alternate work location.
 - d. The employee shall follow usual agency or university procedures for immediate reporting of work-related illness or injury occurring at the alternate work location.
3. General Liability: The agency or university assumes no responsibility for damages to an employee's personal or real property during the performance of official duties while teleworking or while using the State's equipment in the employee's alternate work location. Any costs and/or losses incurred in teleworking are the responsibility of the employee.

Advisory Note: North Carolina workers' compensation laws make the State responsible for work-related illnesses or injuries that occur within the course and scope of employment that occur at an employee's alternate work location during the employee's approved work hours. It is important to have a fully executed teleworking agreement on file, which specifically details the work hours, alternate work location and employee's obligations while teleworking.

4. Restricted-Access Materials: The security, confidentiality and integrity of agency/university records and information must be protected at all times in teleworking arrangements and must comply with all information security requirements that would apply at the duty station.

Teleworkers must receive written authorization from managers before working on restricted-access information or materials at alternate work locations. It is the responsibility of the Teleworker to protect and manage original documents, records and other sensitive and confidential information that an agency or university has authorized the Teleworker to carry to the alternate work location. Teleworkers shall agree to follow agency/university-approved security procedures to ensure confidentiality and security of data.

5. **Schedule and Work Hours:** The total number of hours that employees are expected to work will not change, regardless of work location. This does not, however, restrict the use of alternative work schedules. Agencies have the flexibility to allow employees to work a regular work schedule that is different from the department's normal operating hours. All hours worked by employees subject to the Fair Labor Standards Act are compensable. The working of overtime and/or accrual of compensatory time is subject to the same policies and approvals as are in place at the agency/university worksite. Agencies must ensure procedures are in place to track and document the work hours of Teleworkers.

Employees shall apply themselves to their work during designated work hours and not engage in other activities that are not work-related.

Teleworkers must make advance arrangements for dependent care (e.g., childcare or eldercare) to ensure a productive work environment. Telework is not intended to be a substitute for day care or other personal obligations. It is expected that the Teleworker shall continue to make arrangements for dependent care to the same extent as if the Teleworker was working onsite. Adherence to all leave policies and procedures for the use and approval is expected.

Refer to the state Hours of Work and Overtime Compensation Policy for guidance on when to count travel time as hours worked if a Teleworker reports to the worksite.

Any requirement for a Teleworker to report to the onsite duty station is not reimbursable for mileage (unless the employee is designated as a field-based employee).

6. **Use of Leave:** Requests to use sick, vacation and other leave during a designated telework day is subject to the same practice, approvals and policies of employees at the agency or university worksite. The accrual of leave is also subject to the same policies as are in place for employees who do not telework.
7. **Equipment and Software:** An agency or university shall set forth in their policies and procedures conditions for who is responsible to pay for telephone and services required by Teleworkers to perform their duties, including other media, laptops, internet access, and cell phones. Teleworking agreements must include an inventory of State property authorized for use at the employee's alternate work location.
8. **Performance Management:** Performance standards for Teleworkers must be the same as performance standards for non-teleworking employees. All management expectations for performance must be clearly addressed in the employee's work plan, must follow the statewide Managing Employee Work Policy, and expectations related to accountability must be consistent between both Teleworkers and non-teleworking employees. Teleworkers may be required to complete activity sheets, tracking logs, etc. as an expectation in the teleworking agreement.

9. Long-distance and Out-of-state Teleworking: To the greatest extent practicable, agencies/universities shall principally employ individuals who reside within or in close proximity to the State of North Carolina. Agencies/universities should avoid long-term flexible work arrangements for employees who reside outside a reasonable commuting distance. Agencies/universities may limit teleworking to within the State and should define a reasonable commuting distance. Agency or university teleworking programs may provide limited exceptions to the reasonable commuting distance based on operational needs, including but not limited to, recruitment of candidates with unique or scarce skills, or arrival or departure of employees for a transitional period of relocation.

Agencies/universities may consider out-of-state teleworking arrangements. An agency or university head or designee must assess and approve the impact on the agency or university before approving a current employee's request to telework out-of-state or extending a job offer to an out-of-state resident that includes teleworking. The agency or university human resources director shall consult with the chief financial officer and general counsel to establish the assessment process.

For all appointments, agencies shall include expectations in teleworking agreements for reporting to the duty station for required onsite training and meetings, as determined by the agency or university. Teleworkers may not charge mileage for travel between their place of residence and their duty station. If an employee is approved to telework out-of-state, the Teleworker is responsible for any tax implications.

The employee must notify the agency/university of any changes in the work location.

10. Reasonable Accommodation under the ADA: Any employee's request to telework as a reasonable accommodation under the Americans with Disability Act (ADA) will be administered consistent with the statewide Reasonable Accommodation Policy. Allowing an employee to work at an alternate work location may be a viable outcome of the interactive accommodations process under the ADA if the employee's qualifying disability prevents them from performing the essential functions of their job at their designated duty station, unless the request creates an undue hardship on the employer.
11. Temporary Teleworking Agreements: Temporary teleworking agreements or modifications to teleworking agreements established under an agency/university's teleworking program or designee may become necessary as an agency or university responds to hazardous weather, pandemics, physical attacks, or other events that may require the temporary closure of a state agency or university facility.
 - a. Agency and University Responsibilities
 - i. Consistent with emergency planning and COOP requirements, all state agencies must develop a procedure which authorizes all eligible employees to telework during a continuity event.
 - ii. This procedure must contain information on:
 1. Which employees may be expected to telework in case of any emergency; and
 2. What is expected of those employees.
12. Recruitment and Retention: Agencies/universities may use telework as a tool to help attract, recruit, and retain the best workforce possible, including as an incentive for eligible hard-to-fill positions. Teleworking may attract applicants interested in reduced commuting time and cost, and increased work-life balance.

13. Adverse Weather/Emergency Closing: Teleworkers who are designated as non-emergency are expected to continue teleworking, if possible, when on-site workers at their agency or university are directed to leave or not report to their duty station due to an adverse weather event or emergency closing. Non-Emergency employees who have the capability to telework and who are scheduled to go to their onsite duty station but are unable due to adverse weather or office closure will be expected to telework to the extent possible. Non-Emergency employees who have the capability to telework but do not during an adverse weather event or emergency closing shall account for lost time in accordance with the Adverse Weather or Emergency Closing Policy.
14. Mail Management: Agencies/universities shall develop procedures for Teleworkers receiving mail and sending outgoing mail at an alternate work location.

§ 9. Termination or Modification of Teleworking Agreement

The agency or university may terminate or modify the teleworking agreement at its discretion. Any modification or termination of teleworking agreements shall be in writing. When a teleworking agreement is terminated, employees are responsible for returning all State property and all work products to the agency worksite and resume onsite work within the timeframe provided by the agency or university. An employee who refuses to comply with the termination or modification of a teleworking agreement will be subject to disciplinary action. Termination or modification of a teleworking agreement by management is not grievable issue identified in the Employee Grievance Policy.

§ 10. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5) authorizes the State Human Resources Commission to create policies governing “[h]ours and days of work ... and other matters pertaining to the conditions of employment.”
- This policy is consistent with N.C. Session Law 1999-328 § 4.8, which required the Office of State Personnel (now OSHR) to “implement a policy that promotes telework/telecommuting for State employees,” and the Administrative Code rules on teleworking programs, 25 NCAC 01C .0801 to .0813.

Note: Policy History moved to a separate document.