

U.S. Office of Personnel Management Guidance on the Use of Telework During Metro SafeTrack Project

The Telework Enhancement Act (the Act)¹ required agencies to establish a policy under which eligible employees could be authorized to telework and to determine the eligibility of all employees for telework, in accordance with the provisions of the Act. Thus, Federal agencies that have adopted such policies have the authority to authorize eligible employees to telework, as appropriate. In response to the Metro SafeTrack project, agencies should review their policies and procedures on the use of workplace flexibilities, including telework, to help mitigate commuting disruptions for their workforce.

Things to consider:

- What types of telework arrangements does your agency currently offer employees (e.g., routine and/or situational)?
- Does your agency's telework policy currently impose any restrictions on the maximum number of days that an employee is permitted to telework?
- Does your agency currently impose any restrictions on employees utilizing telework in combination with other flexibilities (e.g., alternative work schedules)?
- Does your agency's existing telework program allow for expanded use of ad hoc or situational telework?
- Should the agency reassess or review how telework eligibility and participation is determined to see if changes to the existing telework program are warranted?
- What impact would increased use of telework during the Metro SafeTrack project have on your organization and employees?
- Would any changes to the agency's telework program be limited to the term of the Metro SafeTrack project?
- Have your employees received training on how to accurately track telework participation on their work reports?
- What type of engagement with unions might be necessary when considering changes to employee eligibility or telework policies, either on a temporary or permanent basis? For example, would providing unions notice and an opportunity to bargain be necessary?

Telework Basics:

Telework “refers to a work flexibility arrangement under which an employee performs the duties of and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.”² In

¹ P.L. 111-292, Dec. 9, 2010, 124 Stat. 3165; 5 U.S.C. §§ 6501 *et seq.*

² 5 U.S.C. § 6501(3)

practice, telework is a work arrangement that allows an employee to perform work, during any part of regular, paid hours, at an approved alternate worksite (e.g., the employee's home or a telework center). During the Metro SafeTrack project, telework can assist agencies in maximizing agency productivity while supporting Federal employees' desire to balance their work and family or personal responsibilities.

Agencies retain the responsibility and the obligation to determine employee eligibility for telework taking into account the limitations of the Act and the anticipated impact on employee performance and agency operations. The agency thus must consider business-related, operational needs of the Agency in making its determinations. Overall, telework is a valuable resource that should be viewed as a benefit for the organization, as well as a valuable flexibility for those employees who are eligible to and choose to participate.

Types of Telework:

- **Routine telework** occurs as part of an ongoing, regular schedule.
- **Situational telework** is approved on a case-by-case basis, where the hours worked were not part of a previously approved, ongoing and regular telework schedule. Examples of situational telework include telework as a result of inclement weather, medical appointment, special events or special work assignments.

TIP: Routine and situational telework have different uses and benefits. Most often, situational telework is approved on a case-by-case basis for a situation covering a single day or a short period of time. Occasionally, situational telework may be approved for a situation or special event that covers a longer period of time (e.g., the Metro SafeTrack project) but is intended to be temporary. Under such circumstances, it is not necessary to change the employee's telework agreement unless there is a need to include the ability to telework on a situational basis.

Scenario: Dinesh is a Federal employee working in the Washington, DC, area. He prefers to work from the office, so he has never established a written telework agreement with his manager, even though he is eligible to do so under the agency's existing policy. Dinesh rides the Metrorail system to and from his worksite each day, and he knows that his commute will be significantly impacted by the SafeTrack project for about a week. He is considering telework as a solution to this temporary disruption. Although Dinesh only plans to telework for a short period of time, the Telework Enhancement Act requires every employee who participates in telework to have a written agreement and complete a telework training, regardless of whether it is for routine or situational telework.

It is important to note that any employee who wishes to telework (regardless of which type) must first successfully complete an interactive telework training program provided by the agency and must enter into a written agreement with his/her supervisor. Many agencies use the interactive online training available on www.hru.gov at: http://hru.gov/course_catalog.aspx?cid=78.

Telework Eligibility and Participation:

When making determinations regarding employee eligibility and participation, OPM strongly encourages agencies and managers to be creative in considering the use of telework and other workplace flexibilities during the Metro SafeTrack project. The pendency of the project might be a good opportunity to revisit assumptions that informed earlier eligibility determinations to consider whether eligibility could be expanded in a manner that would still be consistent with the Act. For example, if a manager earlier concluded that the duties of a specific class of employees by their nature were simply not conducive to telework, but with the benefit of experience and advances in technology has now concluded that some jobs in that class include at least some duties that are considered to be “portable” in that they generally can be performed outside the traditional office, this might be a good time for that manager to revisit earlier eligibility determinations.

In many positions, employees perform portable duties or tasks on a regular basis. The degree of portability of an employee’s work factors into determining to what extent, if any, it would be feasible for the employee to telework and how that telework is best scheduled. For employees who may be impacted by the Metro SafeTrack project on a temporary basis, agencies and managers are encouraged to revisit the question of whether certain portions of the employees' work are, in fact, consistent with the "portable" types of duties that lend themselves to ad hoc or situational telework.

Scenario: Erich is a Federal employee working in the Washington, DC, area. He rides the Metrorail system to and from his worksite each day. Erich provides administrative support to his office and usually works onsite, but his Metro station is located within a stretch of continuous single tracking during the Metro SafeTrack project. He believes he will benefit from being able to telework when there are persistent delays. Erich’s manager evaluates his request and determines that some of his duties are suitable for telework, but others require him to be present in the office. Erich is granted the ability to telework once a week during the SafeTrack project in accordance with the agency telework policy.

Although one of the limitations on approving telework under the Act pertains to work that is not conducive to telework, remember that the Act explicitly limits telework participation only in cases in which the employee’s official duties fall outside what is conducive to telework "every work day."³ This means managers have flexibility to work out telework arrangements that take

³ 5 U.S.C. § 6502(b)(4).

advantage of those days on which the employee is performing portable duties. Consistent with the Act, this flexible approach may open up the possibility for telework on a routine or situational basis, even for positions previously thought to be ineligible in their entirety. Nevertheless, managers should consider their choices carefully. Once a position is deemed “eligible” the agency will need a sound rationale for changing that designation again when the current contingency ends. When contemplating changes to existing policies and practices that will affect bargaining unit employees, agencies should assess whether they will have collective bargaining obligations and consult with agency labor relations and legal advisors.

Tracking Telework During the Metro SafeTrack Project:

There continues to be keen attention focused on the Federal Government’s response to the Metro SafeTrack project. For that reason, OPM urges agencies to take steps, to the extent possible, to accurately monitor and track the use of telework and other workplace flexibilities. Agencies are reminded that tracking efforts should align with current OPM requirements for telework reporting. Please refer to the Guide to Human Resources Reporting, Chapter 4, pages 4-81 to 4-84. Additional guidance will be made available to agencies in the coming weeks regarding OPM’s continued efforts to ensure consistent collection of telework data across the Government. NOTE: Agencies should report the two specific types of telework outlined in the Data Standards – Routine and Situational.

Ensuring that employees are trained on how to correctly report telework on their work reports will allow agencies to accurately monitor the use of telework during the Metro SafeTrack project. Accurately and distinctly reporting situational and routine telework is critical for evaluating and improving Federal telework programs.

TIP: Situational telework may also include telework arrangements that are intended to be temporary or of short duration. For example, if an agency expands its use of situational telework to provide additional flexibilities to employees impacted by the Metro SafeTrack Project, such arrangements should be tracked as situational telework even if the schedule is previously approved and ongoing. The reason is the telework agreement is based on a special event – the Metro SafeTrack project – and is intended to be temporary.

Telework Flexibility During the Metro SafeTrack Project

While Federal telework programs are established primarily to meet agency mission and operational needs, telework has become an important flexibility that enhances work-life balance and improves morale for many Federal employees. During the Metro SafeTrack project, additional flexibilities may enable some employees to better manage their work and family or personal responsibilities. Used appropriately, telework along with other workplace flexibilities can help to minimize the impact of the Metro SafeTrack project on Federal employees. Agencies will play an important role in developing and communicating the various workplace flexibilities

that are available to employees. In turn, these agency policies and communications will allow employees to better understand which workplace flexibilities are available to them to best meet their needs during the Metro SafeTrack project (e.g., leave, ad hoc or situational telework, alternative work schedules, etc.).

Scenario: Laurie is a Federal employee working in the Washington, DC, area. She rides the Metrorail system to and from her worksite each day. On Tuesday and Thursday evenings, Laurie is responsible for picking up her daughter from soccer practice. In preparation for potential commuting disruptions caused by the Metro SafeTrack project, Laurie requests to establish a telework agreement so she will be able to telework on Tuesdays and Thursdays for the duration of the Metro SafeTrack project. This will permit her to maintain the same work schedule while ensuring that commuting disruptions do not interfere with these responsibilities. Since she only intends to maintain this schedule temporarily while her metro line is impacted, her telework agreement specifies that she is permitted to telework on a situational basis and her supervisor approves her specific telework days. This is consistent with her agency's existing telework policy.

Scenario: Monica is a Federal employee working in the Washington, DC, area. Currently, she teleworks two days per week under a routine telework agreement. On the days she commutes to the office, Monica uses the Metrorail system. After learning that her Metro station will be closed for nine days during the Metro SafeTrack project, Monica requests to telework for the remainder of the station closure. Her manager first consults with human resources staff to ensure that such an arrangement complies with agency policy and then approves the request and reminds Monica that any additional telework days that are not a part of her long-term routine telework schedule should be reported as situational telework on her work report.

Engaging with Employees, Union Representatives, and Management Organizations

When considering changes to employee eligibility or telework policies, either on a temporary or permanent basis, agencies are encouraged to engage in pre-decisional involvement as described in Executive Order 13522 to the extent feasible.⁴ Agencies should also assess their obligations to consult with management organizations, consistent with 5 CFR Part 251,⁵ and engage with labor organizations consistent with 5 U.S.C. Chapter 71. It is always advisable to seek the advice of agency labor relations staff and agency counsel before embarking on these efforts.

⁴ Executive Order 13255, Creating Labor-Management Forums to Improve Delivery of Government Services.”
<https://www.gpo.gov/fdsys/pkg/FR-2009-12-14/pdf/E9-29781.pdf>

⁵ See also OPM Memorandum regarding Relationships with Management Organizations.
<https://www.chcoc.gov/content/relationships-management-organizations-0>

Tips for Evaluating and Approving Situational Telework Requests During Metro SafeTrack Project

1. Establish clear boundaries and rules for your team. Determine what your organization's policy will be regarding requests for telework on a non-telework day. For example, what, if any, advance notice is required, and if it is required, what is the necessary timeframe? How should employees communicate such requests (e.g., are employees required to call, email)? Generally, agencies delegate the responsibility to approve/disapprove telework requests to the individual manager.
2. Develop a policy that allows for situational telework that can be planned and approved in advance (e.g., a medical appointment), and situational telework that cannot be anticipated and planned (e.g., the employee's car won't start).
3. Consult with agency labor relations and legal advisors in order to plan for satisfying any collective bargaining obligations with employee representatives on any changes to agency telework policies and allowing pre-decisional involvement to the fullest extent practicable when engaging unions on telework policies.
4. Exercise appropriate managerial control over your organization and staff. Telework is not an employee right or entitlement and employees should not feel a sense of entitlement to be able to dictate changes in a telework schedule without management consent.
5. Ensure that employees requesting telework have sufficient portable work to support the telework request and that they have the ability to perform their duties with the same efficiency and effectiveness as when they are in the office.
6. Communication is key — Managers should engage their employees in a dialogue to achieve a complete and accurate mutual understanding of the need and appropriateness of the request for telework.
7. Avoid one-size-fits all solutions. Develop policies that are flexible enough to consider individual employee needs during the Metro SafeTrack Project, while complying with the Telework Enhancement Act.
8. Apply the rules fairly and consistently.
9. Brief your staff collectively and individually when necessary regarding updates on the Metro SafeTrack project.
10. Monitor and document situational telework requests to ensure situational telework is consistent with applicable requirements.

11. Employees should understand that failure to comply with the terms of the telework agreement, failure to comply with workplace policies or rules, or failure to maintain appropriate performance levels while teleworking, may result in suspension or termination of the telework agreement.
12. Document performance or conduct concerns and share with the employee involved as you would with a non-telework employee.
13. Remember that expanding telework opportunities, on a temporary or more permanent basis, does not require supervisors to loosen existing eligibility restrictions based on considerations such as employee conduct or performance concerns.
14. Consult your telework coordinator, HR staff, counsel and others as appropriate.
15. Act promptly, properly and decisively to solve problems. Make sure communication is free flowing between managers and employees regarding commuting issues during the Metro SafeTrack project.
16. Make sure your employees are trained on how to correctly report situational telework on their work reports. Accurate and distinct reporting of situational and routine telework is critical for evaluating and improving telework programs.

Telework FAQs: Metro SafeTrack Project

What is telework?

Telework “refers to a work flexibility arrangement under which an employee performs the duties of and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. In practice, telework is a work arrangement that allows an employee to perform work, during any part of regular, paid hours, at an approved alternate worksite (e.g., the employee’s home or a telework center).

What is not Telework?

Telework does not include mobile work, which is characterized by routine and regular travel to conduct work or remote work, which is characterized by a full time worksite away from agency brick and mortar worksites.

What are the types of telework?

Routine telework: Telework that occurs as part of a previously approved, ongoing, and regular schedule that is described in a telework agreement.

Situational telework: Telework that is approved on a case-by-case basis, where hours worked are not part of a previously approved, ongoing, and regular telework schedule. Situational telework includes what is sometimes referred to as unscheduled, ad hoc, episodic, intermittent, or emergency telework.

How should agencies track telework?

Accurately tracking telework participation is critical for improving and evaluating the impacts of telework programs. OPM requires agencies to regularly report:

- Telework Eligibility
- Hours and Instances of Routine Telework
- Hours and Instances of Situational Telework