

Interim Telework Agreement and Guidelines

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Issue

This report summarizes the main provisions of the Interim Telework Guidelines agreed to by the state and the State Employees Bargaining Agent Coalition (SEBAC) in May 2019.

Summary

In May 2019, the state and SEBAC agreed to Interim Telework Guidelines which provide an interim policy under which certain state employees may receive approval to perform their jobs by teleworking from somewhere other than their official duty stations for up to 50% of the work week. Negotiations over the guidelines stem from the 2017 SEBAC Agreement which, among other things, established a Statewide Telework Committee to begin creating a telework policy for state employees. The interim guidelines are meant to serve as the state's telework policy until a new policy is finalized, either by arbitration or an agreement of the Statewide Telework Committee.

The interim guidelines and their associated appendices and other documents (1) specify which state employee job classifications may or may not apply for telework, (2) lay out a process for eligible employees to apply to telework, (3) establish the rules state agencies must follow when analyzing an employee's telework application for approval, and (4) establish the terms and conditions of written telework agreements that employees who are approved for telework must sign. The interim guidelines and their associated documents are available from the Department of Administrative Services (DAS) [here](#).

Background

2017 SEBAC Agreement

The 2017 agreement between the state and SEBAC, among other things, (1) requires each state agency to form a committee with each of its unions to discuss certain issues, including telecommuting, and (2) establishes a Statewide Telework Committee to create telework policy and policy guidance for state agencies. The guidance areas include ensuring consistent standards, disability accommodations, performance measurements, agency closures, and management training.

Under the agreement, the statewide committee must be comprised of an equal and mutually agreed upon number of members appointed by SEBAC and management. It must include the director of statewide human resources, other designees of the DAS commissioner, and members of the Office of Labor Relations. The committee must be co-chaired by the Office of Labor Relations undersecretary, or his or her designee, and a SEBAC representative.

The 2017 agreement required each agency-level committee to begin working within 30 days after it was ratified and the statewide committee to begin meeting within 60 days after it was ratified. It also created a “flexible scheduling facilitator” position to work with the committees to establish telecommuting (and other) policies acceptable to both parties. If the parties are unable to agree on such policies within 90 days after the statewide committee begins meeting, the agreement allows either party to invoke interest arbitration on the issue.

Interim Telework Guidelines

Purpose & Scope

On May 15, 2019, the state and SEBAC agreed to [Interim Telework Guidelines](#) intended to serve as an interim state policy on telework until a new policy is finalized, either by arbitration or an agreement of the Statewide Telework Committee. The interim guidelines specify that they (1) do not affect any pre-existing telework arrangements or dictate the terms of the finalized policy and (2) must not be used in favor of or against any proposal made by the state or SEBAC in any subsequent bargaining or arbitration. They will be inadmissible in such arbitration unless the parties mutually agree otherwise. However, the experiences of participating agencies, employees, and unions may be used in subsequent bargaining or arbitration. By November 15, 2019, each agency must submit a written report to the statewide committee summarizing its experiences with the interim program.

Under the guidelines, “telework” is a voluntary arrangement that allows an employee to work from home or another approved location on a pre-approved basis for part of his or her workweek. It does not change the (1) nature of the work the employee is expected to perform; (2) hours the employee

is expected to work; (3) employee's official duty station; or (4) employee's obligation to comply with laws, regulations, and state and agency policies.

Telework can be (1) routine telework that occurs as part of an ongoing, regular schedule or (2) situational telework approved on a case-by-case basis where hours worked were not part of a previously approved telework schedule (e.g., during inclement weather).

Eligible Employees

Under the guidelines, only employees in certain job classifications (listed [here](#)) may apply to telework. Employees in other job classifications (listed [here](#)) are, by agreement, explicitly prohibited from teleworking. Eligibility for a third category of job classifications (listed [here](#)) is disputed by the parties, but they will be ineligible during the interim.

In addition, individual employees may not participate in the interim program if they:

1. are either (a) individually eligible for hazardous duty retirement or (b) in a job classification that is eligible for hazardous duty retirement;
2. are in a working test period or trainee class; or
3. have (a) less than a satisfactory rating on their most recent performance rating or (b) a disciplinary action or written warning in the last 18 months.

Application Process

The guidelines state that telework applications must be analyzed based on specific job duties and approval is not guaranteed. An employee must submit a fully completed and detailed [application](#) and [security addendum](#) form to his or her manager. Agency management must designate specific positions in the chain of command, either a supervisor or manager, that are authorized to approve telework requests. In addition, a mutually agreed upon, specific work plan, which may include daily productivity reports, will be required while an employee is teleworking.

The supervisor or manager must then provide the documents to the agency's human resources representative who will coordinate a review of the proposal. The agency may approve or deny telework requests based on (1) its assessment of the application and security addendum under the interim guidelines and (2) the agency's business needs. The guidelines specify that the approval of one teleworking request does not create any rights or expectations that the agency will approve a subsequent request from the same employee or a request from a different employee in the same job classification.

Application denials must be submitted to the statewide committee and, if it provides reasonable notice, a union may also ask the committee to review applications that have been unreasonably

delayed. If labor and management still disagree, the issue must be submitted to the telework facilitator for a recommended disposition that will be binding on both parties. The statewide committee must meet monthly and facilitations must be scheduled monthly, unless the meeting or facilitation is cancelled by mutual agreement.

Factors for Evaluating Telework Eligibility

Position Factors. The guidelines require an agency to analyze the duties of an applicant's position, how the position's work is performed, and what communications exchanges will be necessary. It provides that a position's duties will not be eliminated or reassigned solely to make the position or a specific employee more conducive to teleworking.

Under the guidelines, positions that have the following attributes may be appropriate for teleworking:

1. require independent work with minimal supervision;
2. require little face-to-face interaction with co-workers, clients, customers, or patients, etc.;
3. result in specific, measurable work products; and
4. require materials (documents, data, etc.) that are accessible from the remote location and can be adequately safeguarded and protected.

Employee Requirements. In addition, the guidelines require an agency to find that all of the following conditions will be met before it approves an employee's telework application:

1. the employee can perform his or her full range of duties at the teleworking location, as outlined in the proposed work plan;
2. the employee's efficiency and productivity will remain constant or improve;
3. the employee's telework will not impair the efficiency and productivity of his or her work group, which will remain constant or improve;
4. confidential information managed or processed by the employee will be adequately safeguarded and protected in a manner required by state and federal law;
5. the employee's unit can validate the employee's work performance at the teleworking location;
6. the employee (a) has the necessary computer equipment and state-installed software to perform his or her job duties from the telework location or (b) does not need a computer to perform his or her work (if the lack of equipment or software cannot be remedied within existing appropriations, the matter must be referred to the statewide committee and, if necessary, the facilitator, who may not issue a remedy that exceeds existing appropriations);
7. the employee has a suitable place in the teleworking location to ensure that a safe, confidential, and appropriate work environment is maintained;

8. the employee has reliable telephone and internet access at the telework location to be available to his or her unit and perform necessary work functions; and
9. a combination of reduced work schedules, alternate work schedules, and telework schedules is not impairing the level of service that the work group can provide.

Telework Agreements

The interim guidelines establish the terms and conditions of telework agreements to be signed by an approved employee and his or her employing state agency (the agreement form can be found [here](#)). Among other things, these terms and conditions:

1. bind teleworking employees to all state and agency policies and practices as if they were working at their official duty station;
2. specify that a teleworking agreement (a) is not a basis for changing the employee's salary or benefits, (b) does not affect the employee's collective bargaining agreement, and (c) does not change the employee's official duty station;
3. require the (a) teleworker to maintain availability, appropriate production levels, and work quality and (b) manager to establish methods and standards for measuring work performance;
4. allow a supervisor to immediately terminate a telework agreement if performance issues arise or the telework agreement causes the work group's productivity or efficiency to decrease (terminations are subject to the same grievance and arbitration procedure as initial denials);
5. require teleworking employees to have defined and preapproved telework timeframes and hours of teleworking that generally match the hours they would work at their official duty stations, unless specifically approved otherwise;
6. prohibit agencies from approving any telework schedule that schedules an employee to be out of the official work site for more than 50% of the work week;
7. allow an agency to terminate an agreement upon a change in operational needs or if a performance, safety, or information security issue arises (disputes must follow the interim policy's appeal process);
8. subject a telework agreement to review and re-approval at least once every 12 months;
9. (a) prohibit an employee from teleworking at any site other than the approved teleworking location and (b) allow the agency, with notice, to make visits to the designated workspace to verify that the employee is teleworking as required;
10. require teleworkers to report to their official duty stations when directed based on management priorities (e.g., meetings and trainings);

11. prohibit employees from using telework to provide family care (teleworkers must note their care arrangements for dependent children or elders on their applications and promptly notify the agency if these change);
12. require teleworkers to meet certain state and federal laws and policies on computer security and encryption, data confidentiality, software licensing, and other technical requirements;
13. extend state employee workers' compensation coverage to teleworking employees, but specify that (a) a covered injury must arise strictly out of and within the course of employment and (b) accidents to people at the employee's home who are not on-duty agency employees are not covered;
14. require teleworking employees to immediately notify their supervisor of any situations that interfere with their ability to perform their job (e.g., equipment malfunction or power outage);
and
15. provide that (a) the guidelines do not preclude an agency from taking appropriate disciplinary actions against an employee who fails to comply with a telework agreement's provisions, (b) such non-compliance may also result in immediate termination of the agreement, and (c) an agreement's cancellation is subject to the grievance process.

Memorializing Telework Agreements. The interim guidelines require all telework agreements to be memorialized in writing using the Telework Agreement [form](#). It must be signed by the employee and his or her supervisor and manager. The original signed form must be kept in the employee's personnel file. In addition, agencies must provide DAS with a copy of any Telework Agreement that they authorize for their employees. Each agency must send a copy of an agreement to its DAS human resources consultant within one week of approval.

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