



TELECOMMUTING POLICY	
Policy #: To be announced.	Authority:
Effective Date: May 19, 2021	Supersedes: June 22, 2020 and any Agency policy on the same or related matter.
Application: Executive Branch Agencies	Signature: 

1. **POLICY PURPOSE STATEMENT**

This policy sets forth the State of Delaware’s (State) policy regarding telecommuting and establishes the requirements for Agencies to designate alternate work locations in order to promote general work efficiencies and to provide continuity of operations in the event employees must use an alternate work location.

2. **SCOPE**

This policy applies to Executive Branch Agency employees. This Statewide Executive Branch policy supersedes any Executive Branch Agency policy, procedure or guideline pertaining or otherwise related to telecommuting.

3. **DEFINITIONS AND ACRONYMS**

- **Alternate Work Location** - Approved work locations other than employees’ on-site work location where official State business is performed. Such locations may include, but are not limited to, employees’ residence and/or satellite offices.
- **On-site Work Location** - An employer’s primary location where employees are assigned to work.
- **Reasonable Accommodation** - Title I of the ADA provides for reasonable accommodations to qualified employees with disabilities, unless to do so would cause undue hardship. In general, an accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities.
- **Telecommuting** - A work arrangement in which employees perform essential and non-essential functions of their job at an alternate work location, in accordance with this telecommuting policy and their telecommuting agreement. Telecommuting is also referred to as telework or remote work and has the same meaning in this document.
- **Telecommuting Agreement** - The written agreement between an employer and employees that details the terms and conditions of employees’ work away from their on-site work location.
- **Work Schedule** – Employees’ hours of work in their on-site work location or alternate work location.

4. POLICY

General Provisions

- a. Employees participating in telecommuting must meet the Telecommuting Eligibility Criteria listed in the Procedures section of this policy and must obtain supervisor and division director approvals.
- b. Employees may be required to telecommute or work from alternate work locations based on non-discriminatory, operational needs of the Agency and/or an emergency event. Employees must follow all policies and procedures at an alternate work location as if working on site.
- c. Unless there is an event that requires immediate telecommuting, employees shall be eligible to request a teleworking arrangement once a successful probationary period is completed. The privilege of working remotely is for the convenience of the employee and the employee will continue to be subject to tax and withholding based on their on-site worksite location.
- d. Any telecommuting arrangement may be discontinued at any time at the request of the Agency supervisor. Employees may request the telecommuting arrangement be discontinued, and the Agency supervisor must review and provide a response in five (5) business days.
- e. Telecommuting is not intended to serve as a substitute for child or adult care. If children or adults in need of primary care are in the alternate work location during employees' work hours, employees must take leave time for hours not worked on their regular work schedule. Agencies may allow flexing of regular work hours.
- f. The alternate work location is not intended to permanently replace employees' on-site work location.
- g. Employees must be available during telecommuting hours via phone and email as the employees would if working at their on-site work location. This includes utilizing alternative tools of communication available such as, Skype or Microsoft Teams, for example. Employees must be available to work at their on-site work location for mandatory meetings or at the supervisor's request, therefore, employees must be teleworking within commuting distance. Employees will not hold in-person business visits or meetings with professional colleagues, customers, or the public at their residence alternate work location.
- h. Work schedules for non-exempt employees must comply with the Fair Labor Standards Act, 29 Del. C. § 5955 and all applicable State Merit Rules. Employees must have their supervisor's pre-approval for any special arrangements to their work schedule, including additional hours worked. Regular work schedules are not to include overtime. The number of days in a week that employees may telecommute is at their supervisor's discretion.
- i. Employees' compensation, benefits, work status and work responsibilities will not change due to participation in teleworking. The amount of time that employees are expected to work per day or pay period will not change because of participation in teleworking. If employees are unable to work the complete teleworking day, annual leave, compensatory time, sick leave, or other eligible leave for the hours not worked must be requested for approval.

- j. Employees are eligible to participate in flexible or compressed work schedules while telecommuting if the employees and their supervisor agree upon a work schedule that is operationally feasible and complies with this policy.
- k. Employees are required to use applicable annual or sick leave (per the Merit Rules and other applicable leaves), Floating Holidays, if applicable (in whole-day increments), accumulated compensatory time, if applicable, or other eligible leave, if the employees are unable to work any portion of the telecommuting day.
- l. Generally, employees are responsible for obtaining equipment and services necessary to perform the essential functions of their position and maintain communication from the alternate work location ; however, agencies may provide equipment if available and operationally feasible. In addition, exceptions to this provision may apply such as when a public health threat requires all employees that are able to telecommute immediately.
- m. It is a requirement that the alternate work location have access to minimum download and minimum upload speed for broadband internet to telecommute, as determined by DTI.
- n. Agencies may assume responsibility for alternate work locations such as hardware/software, printer cartridges and telephone equipment. Agencies are encouraged to provide employees state-owned devices to ensure the safety and security of data and information. Supervisors should consult DTI's Remote Workforce Information page for more information: <https://dti.delaware.gov/state-agencies-portal/Remote%20Workforce%20Information/>.
- o. Employees who were already receiving a reasonable accommodation prior to moving from their on-site work location to an alternate work location may be entitled to additional or modified accommodation if it does not cause the agency undue hardship. Since each reasonable accommodation request is to be considered on a case by case basis, the Agency is to engage in an interactive dialogue with employees whether the same or a different disability is the basis for this new request and why an additional or modified accommodation is needed. The equipment that may be needed to enable employees to telework will depend on the specific facts of the situation associated with the accommodation request.
- p. If the alternate work location is the employees' residence, the employees are responsible for ensuring their alternate work location is a safe environment. Any injuries that occur while telecommuting should be reported to the employees' supervisor and Human Resources representative so that a workers' compensation claim can be filed on the employees' behalf. The third-party administrator will handle the investigation of the claim and make the determination as to whether the claim is compensable under the workers' compensation statute.
- q. The supervisor must ensure that employees' performance and productivity are measured equally for employees working at an alternate work location and those employees working at their on-site work location. Specific performance objectives must be set and documented in a current Performance Plan.

- r. The supervisor must complete an annual Performance Review on employees prior to approving a request for telecommuting or for continuation of the privilege. If employees' performance is determined to be "Needs Improvement" or "Unsatisfactory" in any area, the Telecommuting Agreement may not move forward or must be terminated. Exceptions may be approved by the Cabinet Secretary or Agency head or his/her designee. If the telecommuting agreement is based on a reasonable accommodation, an interactive dialogue must follow between the employee and the agency.
- s. The supervisor must terminate the Telecommuting Agreement if, at any time, employees cease to meet the Telecommuting Eligibility Criteria, or the telecommuting does not meet the Agency's operational needs.
- t. If employees terminate employment at the Agency, the Agency and employees must immediately disable and remove any software or hardware that the Agency has provided and complete a checklist to ensure all State equipment is returned. Employees are responsible for returning all equipment including computers/laptops, monitors, phones, etc.
- u. If an employee leaves one State position for another, the telecommuting privilege does not transfer.
- v. A Telecommuting Agreement is to be acknowledged by both employees and supervisors and is required for telecommuting to proceed.
- w. Employees must abide by the Telecommuting Policy. Failure to do so will result in immediate modification of the Telecommuting Agreement and/or discipline up to and including termination.
- x. Approval for telecommuting is at the sole discretion of management and is not subject to appeal or grievance.

5. PROCEDURES

a. Determining Suitability for Remote Work

To assist managers in determining which positions and/or employees may be best suited for remote work, the following questions should be considered:

1. Position Eligibility

- Is the position customer/citizen facing?
- If yes, does the position require in-person, face-to-face interaction at a state facility or other work sites where state employees must interact face-to-face (daycare providers; family homes; parks; etc.)?
- Are the required tools and technology only available onsite?
- Can security requirements be met offsite?
- Will meeting security requirements or providing tools and technology create a significant cost?
- Will working off-site decrease service to customers/citizens or production?

2. Employee Eligibility

- Is the employee on a Performance Improvement Plan?
- Has the employee had documented performance concerns in the last year?
- Can the employee consistently self-direct their work?
- If the employee supervises other employees, can those employees be managed remotely?

b. Employees' Responsibilities:

Telecommuting candidates must meet Telecommuting Eligibility Criteria outlined below:

- 1) Demonstrate the ability to work independently with minimal supervision and provide adequate feedback.
- 2) Demonstrate good time-management skills.
- 3) Be self-motivated and be self-starters.
- 4) Demonstrate high performance and productivity.
- 5) Have the appropriate and necessary equipment and services determined by the employees and supervisor which allow employees to meet the work and communication requirements as defined in the Telecommuting Policy as well as access to the Internet and the State Information Technology (IT) infrastructure.
- 6) Be willing to abide by the Telecommuting Policy with an understanding that telecommuting is a privilege that can be terminated at the supervisor's discretion.
- 7) Progress on tasks and activities must be measurable.
- 8) It is the employees' responsibility to block their phone number if using a personal phone.
- 9) The alternate work location's broadband internet shall meet minimum upload and download speeds as recommended by DTI, including a minimum download speed of 25 Mbps and a minimum upload speed of 15 Mbps. Employees can check the alternate work location's internet speed by Googling "internet speed test" and then select the "Run Speed Test" button.
- 10) Employee personnel files and other files containing personal data should not be taken off site. Employees shall maintain records and documents confidentially, safely, and securely at the alternate work location.

b. Agency Responsibilities:

- 1) Performance Reviews, conducted within the last 12 months, should demonstrate that employees meet the criteria. The reviews should indicate that employees are performing satisfactorily or better

in all areas. Prior performance reviews should not show an unresolved history of needing improvement in these areas.

- 2) A supervisor and employees in consultation with the Department of Technology and Information (DTI) will determine the equipment needed for telecommuting including appropriate technology services, access to State IT infrastructure and any equipment/software required for the alternate work location. Employees may be responsible for any licensing costs incurred for installation of required software at their alternate work location at the Agency's discretion.
- 3) The supervisor must maintain the original Telecommuting Agreement and provide a copy to employees and their Human Resources section.
- 4) The supervisor will maintain and enforce this policy and the Telecommuting Agreement in accordance with the State's Merit Rules and any other relevant documents.
- 5) The equipment needed to enable employees to telework will depend on the specific facts of the situation associated with the accommodation request. Employees who were already receiving a reasonable accommodation prior to changing from their on-site work location to an alternate work location may be entitled to an additional or modified accommodation if it does not cause the employer undue hardship. The employer is to discuss with the employees whether the same or a different disability is the basis for this new request and why an additional or modified accommodation is needed.

c. Security and Data Integrity

- 1) Employees must comply with all State and Agency procedures to assure that security measures are in place to protect equipment and data from physical damage, theft, loss, or access by unauthorized individuals.
- 2) Employees must protect information from modification, destruction, or inappropriate release. This includes protection from family members or other individuals who may access employees' equipment at the alternate work location. Data containing employee identifying information must be sent encrypted.
- 3) Access to sensitive documents, data, records, etc., at the alternate work location must comply with the State's Acceptable Use Policy.
- 4) The State will not incur any liability or assume any costs resulting from the use, misuse, loss, theft, or destruction of equipment in the employees' alternate work location. Liability is the sole responsibility of the employees. Exceptions to this term may apply.
- 5) Employees must ensure that software use conforms to copyright laws and any contractual agreements.
- 6) The DTI network or Agency security administrators will restrict access to the minimum necessary to fulfill defined mission requirements.

- 7) Employees must access the State network according to DTI standards and policies via Virtual Private Network (VPN) or authorized connection from the alternate work location. More information is found on DTI's Remote Workforce Information web page: <https://dti.delaware.gov/state-agencies-portal/Remote%20Workforce%20Information/>.
- 8) The State reserves the right to monitor and log, without notice, all telecommuting activity, including email. Employees that are telecommuting should have no expectation of privacy in the use of State-related resources or business. (See Acceptable Use Policy.)

6. EXCLUSIONS OR EXCEPTIONS

At the Department of Education, employees may be permitted to telecommute prior to having a summative evaluation.

7. DISSEMINATION AND TRAINING

Agencies are to distribute this policy to their employees and review with their supervisors within 30 days of its effective date.

8. DATA REPORTING

Agencies are to maintain records of their employees who are telecommuting and the duration of their teleworking.

9. ASSOCIATED POLICY/REGULATIONS/INFORMATION

- [Acceptable Use Policy](#)
- [ADA Reasonable Accommodation Procedure](#)

10. FORMS ASSOCIATED WITH THIS POLICY

- [Telecommuting Policy Agreement Form](#)
- Security Form for VPN access

This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law.