



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



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| POLICY NUMBER | |
| PRS: 32 | |
| EFFECTIVE DATE: 06/29/2021 | ORIGINAL ISSUED ON: 06/29/2021 |
| ORIGINAL | |

SUBJECT: NON-MANDATORY TELEWORK POLICY

1.0 PURPOSE

The purpose of this policy is to establish a process for non-mandatory telework, providing employees and NMDPS alternatives in employee work locations, while adhering to Federal and State statutes and regulations. Telework is a work alternative that may be appropriate for some employees and some jobs. It is not a right, it is not an entitlement, and it is not a State benefit.

2.0 POLICY

This policy is only for employees who desire to telework and request a change to their worksite location. It changes no other terms and conditions of employment with NMDPS.

This policy shall not govern telework arrangements under emergency conditions.

This policy shall not govern telework arrangements for future employees, if any, who may be hired directly into telework positions with no other worksite designated, whose positions may be converted to permanent telework status, or for whom telework is mandatory.

If any provision of this policy conflicts with a provision of an applicable Collective Bargaining Agreement (CBA), the CBA shall control.

3.0 APPLICABILITY

This policy applies to all DPS personnel

4.0 REFERENCES

The Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, as amended.

5.0 DEFINITIONS

- A. HR or Human Resources** - means NMDPS's Human Resources Division.
- B. Personally Identifiable Information (or "PII")** - means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual such as date and place of birth, mother's maiden name, etc.

NON-MANDATORY TELEWORK POLICY

- C. Sensitive Agency Information** - means any confidential information, information system resources, data, records, PII, proprietary information, and other sensitive information handled by NMDPS and protected by applicable laws, regulations or policies.
- D. Telework** - means a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position from an approved worksite other than the location from which the employee's assigned position location, during any part of regular, paid hours, including from an employee's residence

6.0 PROCEDURE

A. OVERVIEW

1. Either an employee, a supervisor, or a manager may suggest telework as a possible work arrangement. Employees cannot be mandated to telework under this policy.
2. Unless otherwise authorized, telework employees shall maintain a normal 40-hour work schedule (8:00 a.m. to 5:00 p.m. Monday-Friday). NMDPS retains the right to approve or deny any alternative telework schedule requests.
3. Unless otherwise agreed to, telework employees shall telework from home. NMDPS retains the right to approve or deny any alternative telework location requests. No employee's telework location shall be outside of New Mexico, unless the employee would regularly commute across the New Mexico border to travel to and from the normal worksite daily, in which case the employee may telework from his or her home outside of New Mexico with NMDPS approval, provided that such approval must be specifically given by The Cabinet Secretary of NMDPS.
4. Telework employees shall perform all duties and responsibilities of their position and maintain an "Achieves" performance rating or better on all evaluation criteria in any performance appraisal permitted by State Personnel Board Rule 1.7.9 NMAC. Failure to do so may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.
5. Telework employees shall be accessible by phone, text, and email during their scheduled work hours and must report to their normal worksite no later than three (3) hours after receiving the request to report in person. Failure to be accessible and/or to report to their normal worksite may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.
6. Telework employees shall communicate with their supervisors and managers as needed to fulfill their job responsibilities successfully and shall maintain contact with their supervisor as directed. Failure to do so may result in revocation of the telework arrangement and/or discipline, up to and including

NON-MANDATORY TELEWORK POLICY

dismissal.

7. Telework employees shall adhere to all NMDPS policies and procedures, including but not limited to: accurately recording their actual work time and attendance in the SHARE system, requesting leave in advance, not working overtime or extra hours for which additional compensation or compensatory time might be due without prior authorization, and submitting to all required drug and alcohol testing, including testing based on reasonable suspicion. Failure to do so may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.
8. NMDPS will determine the appropriate equipment needs (including, but not limited to, hardware, software, modems, phone and data lines, facsimile equipment or software, and photocopiers) for each telework arrangement on a case-by-case basis. The telework employee's supervisor, HR and information technology divisions will serve as resources in this matter. Equipment supplied by NMDPS will be maintained by NMDPS and remain the sole and exclusive property of NMDPS. Equipment supplied by the telework employee, if deemed appropriate by NMDPS will be maintained by the employee. NMDPS accepts no responsibility for damage or repairs to employee-owned equipment. NMDPS reserves the right to determine whether any equipment is appropriate, subject to change at any time. Equipment supplied by NMDPS shall be used for business purposes only. The telework employee shall sign an inventory acknowledging receipt of all NMDPS equipment and agrees to take all NMDPS-directed and otherwise appropriate action to protect NMDPS equipment from damage, loss or theft. Neither family members nor other non-State employed individuals are authorized to access, handle or use any NMDPS equipment. The telework employee shall immediately notify employee's supervisor of any damage, loss or theft of NMDPS equipment. Supervisors are responsible for immediately notifying the Agency Head and/or Agency CIO of any damage, loss or theft of NMDPS equipment. Damage, loss or theft of NMDPS equipment may result in revocation of the telework arrangement and/or discipline, up to and including dismissal, as permitted by NMDPS policy. Upon termination of employment all NMDPS equipment shall be returned to NMDPS.
9. NMDPS equipment and remote access to NMDPS's networks shall be provided in accordance with Department of Information Technology regulations. All sessions performed remotely are subject to periodic and random monitoring by NMDPS.
10. Telework employees shall ensure the protection of all Sensitive Agency Information as required by privacy and confidentiality laws and regulations and by NMDPS policy, procedures and practice regarding

NON-MANDATORY TELEWORK POLICY

information security for employees working at the normal worksite. Steps include following all agency information and data security policies, guidelines, and protocols; use of encryption; use of locked cabinets and desks; regular password maintenance and any other steps directed by NMDPS or appropriate for the job and the environment. Neither family members nor other non-State employed individuals are authorized to handle or view any Sensitive Agency Information. Telework employees shall immediately notify employee's supervisor of any potential or confirmed breach in security or disclosure of Sensitive Agency Information in violation of privacy or confidentiality laws or regulations or NMDPS policy, procedure or practice. Supervisors are responsible for immediately notifying the Agency Head and/or Agency CIO of any potential or confirmed breach in security or disclosure of Sensitive Agency Information. Telework employees shall be liable for disclosure of any Sensitive Agency Information protected by state or federal privacy or confidentiality laws, regulations, rules, policies, or procedures to the same extent as employees working at the normal worksite. Improper, unlawful, unauthorized, or negligent disclosure of Sensitive Agency Information may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.

11. NMDPS will supply the employee with appropriate office supplies (pens, paper, etc.) for successful completion of job responsibilities. NMDPS is not responsible for any operating costs associated with an employee's use of his or her personal residence as an alternative worksite, including but not limited to home maintenance, insurance and/or home utilities, including phone and data lines and service.
12. Mileage reimbursement will not be available for an employee's travel between a telework location and a normal worksite/duty location. Mileage reimbursement for the employee's other pre-approved business travel, if any, will be based on the employee's telework location.
13. In the event that more than one employee requests telework, and NMDPS determines that granting all the telework requests is not in the best interest of NMDPS, The Cabinet Secretary of NMDPS may in his or her sole discretion deny all requests, deny some requests, modify requests, implement alternative telework schedules, or take other action. If two bargaining unit employees request telework, and NMDPS determines that telework would be suitable for both employees (as determined in Section 5.3 below) but also determines it is in the best interest of NMDPS to approve only one of the bargaining unit employee's telework requests, then Agency Seniority, as defined in the applicable collective bargaining agreement, shall be used to determine which bargaining unit employee's telework request shall be approved.

NON-MANDATORY TELEWORK POLICY

14. Requests for leave under the Family and Medical Leave Act (FMLA) or reasonable accommodations under the Americans with Disabilities Act, as amended, (ADA) are not governed by this policy. Such requests are governed by NMDPS's FMLA policy and ADA policy, respectively.
15. Telework employees shall be responsible for ensuring they have a clean, professional, and safe workspace at their telework location. It is the responsibility of the employee to ensure that a proper work environment is maintained.
16. Telework employees shall report any job-related injuries that occur in the course and scope of employment while teleworking at the earliest reasonable opportunity, pursuant to NMDPS policy.
17. It is solely the employee's responsibility to comply with any personal tax or other personal legal obligations arising from a telework arrangement pursuant to this policy.
18. To perform telework under this policy, employees shall utilize the NMDPS's attached Telework Arrangement form.
19. Employees requesting to telework must present a draft Telework Arrangement to their immediate supervisor for review. Employees must complete the employee information, telework schedule and location, and equipment sections of the Telework Arrangement. If the requested location is outside of New Mexico as specified by Subsection 4.3 herein, the employee must secure the approval of the NMDPS as required by that provision.
20. Supervisors will evaluate the suitability of the proposed telework arrangement, paying particular attention to the following areas:
 - a. Job responsibilities. The supervisor will assess the employee's job responsibilities and determine if the position is appropriate for a telework arrangement, including, but not limited to, any scheduling issues particular to the employee's position and the importance of having the employee present at the normal worksite to interface with supervisors, colleagues, and the public. Some positions are not generally suitable for telework, including, but not limited to: positions that require the employee to have daily, in-person contact with co-workers, supervisory officials, customers, or the general public in order to be effective; positions where operational requirements dictate the employee's presence at a specific location; positions that require routine access to protected information which cannot be accessed remotely or NMDPS is unable or unwilling to allow to be accessed remotely
 - b. Employee performance and suitability. The supervisor will assess the

NON-MANDATORY TELEWORK POLICY

needs and work habits of the employee, including, but not limited to, the employee's demonstrated ability to work independently and fulfill the responsibilities of the job without direct, in-person supervision. NMDPS may refuse to grant telework for any employee with less than an "Achieves" performance rating on all evaluation criteria in any performance appraisal permitted by State Personnel Board Rule 1.7.9 NMAC or any employee currently on a performance development plan (PDP).

- c. Ability to monitor. The supervisor will assess the ability to monitor the employee's productivity and quality of work under the telework arrangement.
- d. Equipment and service needs. The supervisor will assess NMDPS's ability to meet the employee's equipment needs under the telework arrangement and employee's access to phone and data lines or other necessary services.
- e. Best interest. The supervisor will assess the business and operational needs of NMDPS and consider any other factors in the best interest of NMDPS.
- f. The supervisor may approve, amend, or deny the telework request if it is in the best interest of NMDPS. All denied requests shall state the reason for the denial on the Telework Arrangement and be discussed with the employee. If the supervisor approves the proposed telework arrangement or a modified version of the proposed telework arrangement, and HR concurs, then the supervisor will modify the Telework Arrangement as needed, complete the job duties and telework review sections of the Telework Arrangement, and present a finalized Telework Arrangement to the employee for discussion
- g. After the employee and the supervisor have signed the Telework Arrangement, the supervisor will send the Telework Arrangement to the NMDPS or designee, with the supervisor's recommendation whether to approve the telework request.
- h. The NMDPS or designee shall review the Telework Arrangement and approve, amend, or deny the telework request. All denied requests shall state a reason for the denial on the Telework Arrangement and be explained to the employee by the employee's supervisor.
- i. Once approved, amended, or denied by the NMDPS or designee and discussed with the employee, the employee's supervisor shall forward the Telework Arrangement to HR to be placed in the employee's personnel file. Any additional changes to the employee's work schedule requiring approvals must be completed on the required forms and

NON-MANDATORY TELEWORK POLICY

forwarded to HR to be placed in the employee's personnel file.

- j. HR shall maintain the original request and Telework Arrangement whether approved, amended, or denied. HR will provide the employee with a copy of the signed Telework Arrangement. The employee shall use the TELWK timecode in SHARE to code any time spent teleworking under an approved Telework Arrangement. HR will provide a copy of any approved Telework Arrangement to the supervisor, who is responsible for employee compliance with this Telework Policy and the Telework Arrangement and for ensuring that a forty (40) hour work week is completed.
- k. In the event that an employee is unable to perform telework at his or her telework site due to circumstances beyond his or her control (e.g., power failure or loss of internet connectivity), administrative leave may be provided on a case-by-case basis pursuant to State Personnel Board Rule 1.7.7.14 NMAC. If administrative leave is not granted to an employee, he or she may request to use accrued annual leave or other appropriate paid time off (i.e., earned compensatory time).
- l. During inclement weather, telework employees shall be governed by the current version of SPO General Memorandum 2011-006 (Revised).

21. Cancellation

Supervisors, with the approval of The Cabinet Secretary of NMDPS or designee, may permanently or temporarily cancel, suspend, or modify telework arrangements for any reason if it is in the best interest of the agency, including but not limited to: workload issues; special projects; special assignments; training; failure to safeguard NMDPS equipment from damage, loss or theft; failure to safeguard NMDPS Sensitive Agency Information from improper, unlawful, or negligent disclosure; any violation of this policy or the Telework Arrangement; or employee discipline. Employees shall be given as much advance notice as possible, and, where appropriate, NMDPS shall make every effort to give no less than two (2) weeks' notice when canceling, suspending, or modifying telework arrangements. Employees shall have the right to cancel their telework arrangements for any reason and will give their supervisor as much advance notice as possible, and no less than two (2) weeks' notice

NON-MANDATORY TELEWORK POLICY

7.0 ATTACHMENTS

A. NMDPS Non-Mandatory Telework Arrangement Form

8.0 APPROVAL

APPROVED BY: s/Tim Q. Johnson DATE: June 29, 2021
DPS Cabinet Secretary