HR/LR Policy # 1447

Remote Worker Policy

Date Issued: 09/17/2021
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Authority: Enterprise Employee Resources, Department of Administration, Office of MN.IT Services

OVERVIEW

Objective

To provide state agencies guidance on when they may employ a remote worker, and to set forth expectations for agencies, supervisors and remote workers.

Policy Statement

State agencies may employ remote workers only when doing so meets the agency's business needs. Agencies must consider the following when reviewing positions for remote work:

- Need for highly specialized employees for difficult to fill positions; and
- Whether work can only be completed in a specific geographical location

Scope

This policy applies to all agencies in the executive branch, as defined in Minnesota Statutes, section 43A.02, subdivisions 2 and 22, the Minnesota State Retirement System, the Public Employees Retirement Association, and the Teacher's Retirement Association, and all remote workers employed by those agencies.

Definitions and Key Terms

Terms	Definitions
Core hours	The designated period of each workday when generally all agency employees are expected to work.
Permanent/principal work location	The location to which a position is permanently assigned.
Remote worker	An employee who, as a condition of their appointment, has their home or alternative location as the assigned work location, works permanently from that location, and does not have an agency permanent/principal work location.
Mobile worker	An employee who travels continuously for work or who performs work at multiple locations outside of an agency office, such as a field location or other site.
Remote work	A work arrangement that allows an employee, as a term and condition of their employment, to perform work on a regular basis at a remote work location that is the employee's permanent/principal work location. Remote work is a condition of employment and required in the job posting and position description.
Remote work location	A worksite other than an agency worksite, to which a remote worker is permanently assigned, which is the employee's permanent/principal work location. In most cases, the remote worker's remote work location will be the employee's home.
Teleworker	An employee who has an agreed-upon schedule during which they are expected to work at a telework location rather than their permanent/principal work location.

Exclusions

This policy does not apply to employees who:

- Work at home as a reasonable accommodation
- Work at home on a case-by-case or situational basis
- Are mobile workers or teleworkers

GENERAL STANDARDS AND EXPECTATIONS

Remote work is a term and condition of employment and must be addressed in the job posting and position description. Not all positions are appropriate for remote work. Agencies must provide justification for designating a position as a remote work position, including, among other things, whether a position is difficult to fill due to specialized qualifications, and/or whether the duties must be performed in a specific geographic location. Requests for remote work designations must be submitted to MMB for approval.

I. EMPLOYMENT CONDITIONS

a. **Compliance with Federal/State Employment Laws**. Remote work must comply with all applicable state and federal employment laws. This includes the Fair Labor Standards Act (FLSA), which regulates the payment of overtime for FLSA non-exempt employees. Additionally, the I-9 process requires that documentation presented for verification must be physically examined. Agencies must be aware that any required travel to the agency location by a remote worker is considered compensable travel time. As a result, agencies should arrange for I-9 document review and verification at a location proximate to the remote worker's permanent/principal work location rather than requiring the remote worker to travel to the agency location for I-9 and other onboarding purposes.
b. **Job Duties and Responsibilities**. A remote worker is responsible for all the job duties, responsibilities and obligations of their position. Remote work is a term and condition of employment and as a result, a remote worker cannot be converted into an in-person worker, teleworker or mobile worker. Just as any other employee, remote workers are subject to discipline up to and including discharge if they fail to fulfill the duties or responsibilities of their position.
c. **Compliance with Bargaining Agreement/Compensation Plans**. Applicable provisions of the bargaining agreements or compensation plans must be followed.

II. REMOTE WORKER EXPECTATIONS

a. **Personal Activities**. Remote work hours are regular work hours and may not be used to perform personal activities. Remote workers are expected to follow agency vacation and sick leave policies and procedures to request time off from work to engage in non-work activities. Employees should not be engaging in dependent care activities when performing job duties. While occasional, brief interruptions may occur, interruptions should be kept to a minimum to avoid work disruptions.
b. **Work Schedule**. The supervisor and remote worker must discuss the work schedule, including expected work hours, breaks, and Core Hours (if required by agency policy), and use of vacation and sick leave. The work schedule must comply with the FLSA, agency policies and procedures, and the applicable bargaining agreement or compensation plan. Any changes to the schedule due to flex time, overtime, or other situations must follow the applicable plan or bargaining agreement. Exempt employees must notify their supervisor if they will not be available during the work schedule due to flexing time.
c. **Meetings.** Remote workers are expected to attend meetings as scheduled using applicable technology. The supervisor and remote worker must discuss expectations for meetings.
d. **Communications**. During the hours of the work schedule, remote workers must be reachable by customers, co-workers, managers, supervisors, and agency leadership, by the means and methods as determined by the supervisor. Remote workers must notify assigned office staff and/or their supervisors if they leave their

remote work location during work hours. They must also notify the supervisor if they are not performing work due to vacation or sick time and must follow the normal procedures for requesting time off.

e. **Supplies and Expenses**. Office supplies, such as pens, paper, and notepads, needed for remote work will be obtained through the normal office supply request procedures. Expenses will be reimbursed only if pre-approved and to the extent reimbursement is provided by the applicable collective bargaining agreement or compensation plan, and consistent with applicable agency and statewide policies. The agency assumes no responsibility for operating costs associated with the remote work location beyond a computer if provided by the agency, including but not limited to maintenance or modification of the remote work location, internet, telephone, furniture, utilities, and insurance.

f. **Travel Expenses.** If a remote worker is required to report to an agency location in-person, the agency is responsible for travel expenses based on the applicable collective bargaining agreement or compensation plan. Agencies must be aware that any required travel to the agency location by a remote worker is considered compensable travel time. As a result, agencies should arrange for virtual on-boarding.

g. **Responsibilities for the Remote Work Location**. The remote worker is responsible for establishing and maintaining a safe and adequate remote work location. The remote worker will be responsible for all costs related to modifications of the remote work location, including but not limited to providing any furniture, remodeling, electrical or any other space modifications. ADA reasonable accommodation requests related to the remote work location will be reviewed on a case-by-case basis and excluded from this policy. In-person business meetings may not be held in remote work locations; meetings may be conducted via video conference, phone conference, or other applicable technology.

h. **Privacy and Security**. Remote workers must make arrangements with their supervisors regarding any necessary access to confidential or sensitive information. Remote workers are responsible for protecting the privacy and confidentiality of data and information including at their remote work location, which includes compliance with enterprise security policies. Remote workers must ensure the security of data and information that is transported to and from their remote work location.

i. **Insurance**. Any insurance for state-owned equipment is the responsibility of the agency. The agency is not responsible for insuring the remote work location. Remote workers are responsible for purchasing personal insurance for employee-owned equipment and for the remote work location, if desired. The agency is not responsible for any loss or damage to any employee-owned equipment or to the remote work location.

j. **Return of Property**. Any state-owned property, documents, and other information used for remote work purposes must be returned upon separation from employment.

k. **Notice to Supervisor**. Remote workers are responsible for promptly notifying their supervisor of an equipment malfunction, failure of either state-owned or employee-owned equipment needed to do assigned work, or connectivity issues. If the malfunction prevents the remote worker from working, the remote worker must notify the supervisor immediately. Equipment malfunction and connectivity issues or other issues at the remote work location do not constitute emergencies under HR/LR Policy #1437 Emergency Closure of State Agency Facilities. The remote worker and supervisor should discuss flex scheduling for these situations or other options available for completing work.

l. **Performance**. Remote workers' duties and responsibilities are not altered by the remote nature of their work. Remote work is a term and condition of employment, and remote workers are responsible for meeting performance expectations and standards and maintaining satisfactory work performance.

m. **Taxes**. Federal and state tax implications of remote working and use of the home as a remote work location are the responsibility of the remote worker.

III. SUPERVISOR EXPECTATIONS

a. **Communication Plan**. The supervisor must work with the remote worker to develop an effective communication plan to effectively manage their workload. In addition, the supervisor should set expectations for responding to emails and phone calls during the work day and for maintaining regular communication with the remote worker.
b. **Emergency Plan**. The supervisor and remote worker must develop emergency and back up plans with necessary phone numbers and a messaging plan in case of an emergency (e.g. equipment failure, power outage).

IV. EQUIPMENT AND MATERIALS

a. **Agency-Provided Equipment**. Agencies must provide computer hardware equipment, and software deemed necessary for the remote worker to perform assigned work. A remote worker's use of state-owned technology is subject to state policies and procedures, including the Appropriate Use of Electronic Communication and Technology Policy, and other IT use policies.
b. **Record of Equipment**. Agencies must maintain an inventory record of state-owned hardware, software, and other equipment located at the remote work location, and conduct periodic review and reconciliation of equipment.
c. **Employee-Owned Equipment**. Agencies may authorize remote workers to use employee-owned computer hardware equipment and software that is necessary to perform assigned work. A remote worker's use of employee-owned technology for work purposes is subject to state policies and procedures, including the Appropriate Use of Electronic Communication and Technology Policy, and other IT use policies.
d. **Maintenance and Repair of State-Owned Equipment**. Agencies are responsible for maintaining and repairing state-owned equipment with normal wear-and-tear, and the installation and testing of software and software upgrades for state-owned electronic equipment. Employees are responsible for transporting state-owned equipment to the agency office unless installation, testing, maintenance and repair can be conducted remotely. Nothing in this policy waives the agency's ability as may be permitted by law to pursue costs for lost or stolen State-owned property or for damages beyond normal wear-and-tear.
e. **Repair of Employee-Owned Equipment**. Agencies will not provide maintenance and repair of employee-owned equipment, hardware and software used for remote work.
f. **Business Use Restrictions**. All equipment, hardware and software agencies furnish to the remote worker remain the property of the state and are subject to the same business use restrictions as if the property was located on state premises. To address hardware and software security for state-owned equipment, all software used for remote work must be approved by the agency. State-owned software cannot be installed on employee-owned hardware unless authorized by the agency. Employee-owned software cannot be installed on state-owned hardware. Remote workers must continue to comply with enterprise technology policies.

V. DATA AND SECURITY

a. **Data Practices Act.** Remote workers must follow all applicable provisions of the Minnesota Government Data Practices Act ("MGDPA"), any other applicable laws, and agency data privacy policies. The remote worker and supervisor must agree on the security and transfer process of agency data and information necessary to meet

the needs of the agency, to protect the security of the data, and to comply with the MGDPA and any other applicable laws.

b. **Data Privacy.** The address provided for the "location address" in SEMA4 must not contain private data. If the remote work location is the employee's home, leave the "location address" field in SEMA4 blank, or enter "Not Available." In the work "description" field, enter "Not Available" and ensure no private data is listed. The employee's personal phone number must not be listed as the work phone number. The work phone number in SEMA4 must be the number of a state-owned phone or must be left blank.

c. **Data Requests and Retention.** Data created and maintained for the purpose of conducting state business is subject to the MGDPA and the state's records management statute, regardless of whether the work is performed using state-owned or employee-owned equipment. This means the remote worker is responsible for following proper retention and disposal procedures, such data remains the property of the state, and the remote worker must return all such data to the state upon request of the agency or upon the remote worker's separation from employment.

VI. REMOTE WORK LOCATION

a. **Protection from Hazards.** The remote work location must accommodate all work equipment and be protected from hazards and dangers that could affect the remote worker or the equipment. The remote worker is responsible for taking appropriate steps to protect their work location from hazards and minimize any potential damages to state-owned property at the remote work location.

b. **No Third-Party Liability.** The State of Minnesota and its agencies do not assume responsibility for injury or property damage to third parties that may occur at the remote work location.

c. **Workers' Compensation.** An employee is covered by the state's workers' compensation laws while they are acting in the course and scope of their employment. Any injury that occurs in the course and scope of employment must be reported to the supervisor immediately, using the agency's standard workplace injury reporting process. The employee's designated remote work location is considered an extension of state workspace only during scheduled work hours and only for purposes of workers' compensation.

d. **Remote Work Outside Minnesota.** The remote work location may not be outside of the continental United States. Prior to hiring a remote worker who is located outside of Minnesota, agencies must:
   - Consult with Statewide Payroll Services about potential employer obligations for state tax withholding and unemployment compensation reporting
   - Contact the Risk Management Division for information on workers' compensation requirements in other states since it may be necessary for the agency to purchase workers' compensation coverage for the state where the remote work location is located
   - Notify SEGIP of the state from which the employee will be working remotely
   - Confer with their agency general counsel or the Attorney General's Office about other potential legal risks or compliance issues

e. **Timesheets for Out of State Remote Workers.** Agencies must review and follow existing payroll guidance for remote work time reporting from Statewide Payroll Services. Employees must follow the terms of this policy, as well as any procedures for reporting time worked outside of Minnesota. Please contact your agency payroll administrator for further assistance.

VII. REMOTE WORK POSITIONS

Remote work is a term and condition of employment in a remote work position. As a result, positions must be planned for as remote work positions, remote work must be part of the job description, and job postings must include remote work as a requirement of the position. Agencies planning to create remote work positions must create a process for reviewing whether the position should be a remote work position and must receive approval by MMB prior to posting the position.

Agencies must consider the following factors when planning for a remote work designation, among other things:

- Whether the position is difficult to fill due to specialized licensure, experience, or educational requirements; and
- Whether the work can only be completed in a specific geographical location.

Agencies may have other considerations when determining whether a position is a remote work position and should include these considerations in the process for decision making.

VIII. OFFER LETTER

Agencies must include remote work as a requirement in the offer letter for all remote work positions.

RESPONSIBILITIES

Agencies are responsible for:

Adopting this policy and communicating this policy to all remote workers.

Complying with the terms of this policy for any remote work positions.

If the agency plan to create remote work positions, creating a process for reviewing whether a position should be a remote work position and drafting any corresponding agency-specific policies or procedures deemed necessary.

Maintaining corresponding tools/resources created by the agency.

Providing applicable supervisor and remote worker training. Topics could include: remote work policy and procedure, data security and privacy, FLSA, communication, injury reporting, goal and standard setting, technology use and guidelines, safety, time tracking, etc.

Identifying and documenting internal controls related to remote work.

MMB is responsible for:

Maintaining this policy and corresponding tools/resources.

Making modifications to this policy as determined in MMB's sole discretion.

Approving agency requests for remote work designations.

Remote workers are responsible for:

Complying with all applicable terms of this policy.

FORMS AND INSTRUCTIONS

- Template offer letter
- Remote Worker Equipment Checklist

REFERENCES

- Appropriate Use of Electronic Communication and Technology Policy
- M.S. 16E.05, subd. 3, Government Information Access, Capitol Investment
- M.S. 43A.38 Code of Ethics for Employees in the Executive Branch
- M.S. Ch. 13 Minnesota Government Data Practices Act

CONTACTS

MMB's Enterprise Employee Resources Division