

**WORKPLACE FLEXIBILITIES SETTLEMENT AGREEMENT  
BETWEEN  
THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
THE NATIONAL TREASURY EMPLOYEES UNION**

The following guidance is being issued by Health and Human Services (and its divisions) and the National Treasury Employees Union based on the Workplace Flexibilities Agreement signed on October 21, 2022.

**Remote Work.** Remote work allows an employee the flexibility to work from an approved alternative worksite within or outside the local commuting area of the agency worksite with no expectation to report to the agency worksite on a regular bi-weekly pay period basis.

A. A position may be eligible for remote work (within or outside of the local commuting area) if the duties require less than 16 hours per bi-weekly pay period at the agency worksite.

1. Positions should be designated as “remote within the local commuting area of the agency worksite,” if there is some regular and recurring frequency with which the position requires work to be performed at an agency worksite each month, but less than 2 days per bi-weekly pay period. For these positions, employees should have an official worksite/alternative worksite within the local commuting area.

2. Positions should be designated as “remote outside the local commuting area of the agency worksite,” if the position requires little to no onsite presence (e.g., once annually, quarterly). For these positions, employees are not required to have an official worksite/within the local commuting area.

3. The designation of a position as “remote outside the local commuting area” will not preclude an employee from requesting a remote work location within the local commuting area.

B. To participate in telework and remote work an employee must demonstrate that he/she meets the eligibility requirements set forth in the HHS-NTEU Workplace Flexibilities MOU and must continue to meet them throughout the eligible period. A determination that a position is eligible for telework and/or remote work is made based on the specific nature, content of the job, and actual duties, rather than just the job series and/or title.

C. Remote Work Eligibility Criteria.

1. Employees are eligible for remote work when: a. The employee’s duties require less than 16 hours per bi-weekly pay period at the agency worksite;

b. The employee has a performance plan in place and is performing at least at the fully successful level or its equivalent and participation is not expected to cause an adverse impact on organizational productivity; and

c. The employee has not been officially disciplined for being absent without permission for more than 5 days in any single calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

2. Other than the telework training required by the Telework Enhancement Act, there are no additional training requirements. The training requirements found in the Telework Enhancement Act will not be used as an eligibility requirement to deny an employee's remote work application.

3. Employees hired in positions that were advertised as remote have no additional eligibility requirements beyond those identified in the HHS-NTEU Workplace Flexibilities Agreement.

4. Remote work requests will be decided on a case-by-case basis, consistent with the parties' agreement. Reasons for disapproval must include ineligibility (per the terms in the negotiated HHS-NTEU Workplace Flexibilities MOU) and including a specific reason. Supervisors shall not unreasonably or arbitrarily deny an employee's request.

5. The Employer has determined it will consider budget, including travel, when considering remote work requests, particularly requests in which the employee would be required to be approved for TDY when traveling into a facility. Before denying a remote work request based on budget, the Employer will notify the requesting employee of the specific impact on budget, and attempt to find a resolution (e.g., the parties could agree to limit any required travel to a TDY). If the Employer denies a remote work request for budgetary reasons, it will provide the specific budgetary reasons for its decision to the requesting employee. Denials may be grieved.

6. Eligible employees may submit a completed Workplace Flexibilities Agreement (WFA) for remote work to their immediate supervisor.

7. The rules governing the Agency's authority to require an employee's presence in an agency worksite are set forth in Article 26 Section 2(C)(2) of the parties' 2023 National Agreement.

8. Workplace flexibility agreements do not expire; however, supervisors may review, if necessary, workplace flexibility agreements on an annual basis; this process is not a re-application process. Updates to an agreement may be made at the request of an employee and/or must be consistent with the provisions of the parties' Agreement.

9. The WFA form for employees to apply for remote work is attached as Appendix 26-1 to the parties 2023 National Agreement.

# **NTEU Bargaining Unit Employee FAQs on Telework and Remote Work under Article 26 of the 2023 National Agreement**

## **General**

### **1. What is the controlling language for telework and remote work?**

The NTEU-HHS 2023 National Agreement (NA) went into effect on July 2, 2023. Article 26 of the NA contains the terms and requirements for telework and remote work.

### **2. Who is covered under Article 26?**

NTEU bargaining unit employees (BUEs). Management Officials, Executives, Political Appointees, and non-bargaining unit employees are excluded from coverage under Article 26 and the NA. To verify your bargaining status, you may contact your HR Liaison or check Box 37 of your SF-50 or check Article 1 of the NA.

### **3. Do I need to update or submit a new application/form for telework or remote work if I already have one approved under the previously negotiated MOU?**

If you already applied for telework or remote work under the parties' previous MOU (Workplace Flexibilities MOU signed October 21, 2022), and have one approved, you do not need to resubmit or reapply. If you do not have an approved arrangement or need to make corrections to your address or your preferred schedule, you will need to apply using the Workplace Flexibilities Agreement (WFA) referenced in Appendix 26-1 of the NA.

## **Remote Work**

### **4. What is remote work?**

Remote work allows an employee the flexibility to work from an approved alternative worksite within or outside the local commuting area of the agency worksite (i.e., a 45-mile radius) with no expectation to report to the agency worksite on a regular bi-weekly pay period basis.

### **5. What is the difference between telework and remote work?**

Telework employees are in positions that are required to report to the agency worksite at least two days (approximately 16 hours) during a pay period. Remote workers are in positions who are required to report to the agency worksite less than 16 hours in a pay period. Also, telework employees are assigned to their duty station for pay purposes, as opposed to remote workers whose home becomes their duty station for pay and other

reasons.

**6. What types of remote work options are there?**

Pursuant to Article 26, Section 2 of the NA, the types of remote work are (1) remote within the local commuting area of the agency worksite or (2) remote outside the local commuting area of the agency worksite.

**7. What is a remote employee's official worksite?**

An approved WFA for remote work will result in a change in the employee's official duty station. The alternative worksite identified on the WFA becomes the employee's official worksite.

**8. What pay changes may occur if remote work is granted?**

Updating the official duty station for an employee approved for remote work to reflect the alternative worksite address identified on the WFA may impact the locality pay and result in a decrease or increase in overall income.

**9. What criteria is used to determine eligibility for remote work?**

- An employee's duties require less than 16 hours per bi-weekly pay period at the agency worksite;
- A performance plan must be in place;
- The employee is performing at the fully successful level (Achieved Expected Results);
- Participation is not expected to cause an adverse impact on the organizational productivity; and
- The employee has not been officially disciplined for being absent without permission for more than 5 days in any calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

**10. When is an employee considered ineligible for remote work?**

- An employee's duties require at least 16 hours per bi-weekly pay period at the agency worksite;
- The employee does not have a performance plan;
- The employee is performing at less than fully successful (Partially Achieved Expected Results or Achieved Unsatisfactory Results);
- Participation is expected to cause an adverse impact on the organizational productivity; or
- The employee has been officially disciplined for being absent without leave for more than 5 days in any calendar year; or was officially disciplined for violations

of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635, Subpart G) for viewing, downloading, or exchanging pornography, including child pornography on a Federal Government computer or while performing Federal Government duties.

**11. Can an employee request remote work if they are located outside the local commuting area?**

Yes. An employee in a position that requires little to no onsite presence (e.g., once annually, quarterly) may be eligible for remote work outside the local commuting area of the agency worksite.

**Travel to the Agency Worksite**

**12. Can employees with an approved remote work agreement participate in the Transit Subsidy Program?**

Remote work employees are not eligible to participate in the GovGo Transit Benefits Program as reporting to an Agency workplace is not commuting when the Official Duty Station is the home address or another alternative worksite.

**13. As a remote work employee, will my travel expenses to the agency worksite be covered or reimbursed by my organization?**

Yes, you will be reimbursed for supervisor-approved travel expenses including mileage reimbursement or other travel means and per diem, should you meet the qualifications for such reimbursements even if your official worksite is within a 45-mile radius.

**Remote Work Request Review Process**

**14. How long does management have to evaluate a remote work request?**

Within ten (10) calendar days of submission, the employee's management will approve or disapprove the employee's request.

**15. If my remote work request is approved, how will it be processed?**

The Agency will complete an SF-52 and notify you if the change in duty station may impact your locality pay. You will be given five (5) workdays from the date of notification to advance or withdraw your workplace flexibilities agreement (WFA) for remote work. If the Agency provides notice to you, under this section, while you are on leave, you will be given five (5) workdays from your return from leave to advance or withdraw your WFA for remote work. The SF-50 effective date will be the date the

WFA is signed and dated by the employee and the employer. An employee's official duty station will be updated on the SF-50 as soon as administratively feasible but no later than two full pay periods from the WFA effective date.

**16. If my remote work request is denied, what will happen?**

If an employee's request (i.e., initial request, modification request, or termination request) is denied, within five (5) workdays the employee will be advised in writing with the reason(s).

**Modification or Termination of a Remote Work WFA**

**17. Under what conditions can a remote work agreement be terminated or modified?**

The Agency can terminate or change the agreement for cause and in circumstances in which work is no longer portable, organizational productivity has been adversely impacted, or the employee no longer remains eligible to participate per Article 26, Subsection 3H. Examples of items for a reason may include the following:

- AWOL for more than five days;
- discipline related to violations of the Standards of Ethical Conduct for viewing, downloading, or exchanging pornography on a Federal Government computer or while performing Federal Government duties;
- the employee failed to comply with the agreement; or
- if the employee's performance falls below Partially Achieved Expected Results.

**18. What happens to the employee if the remote work agreement is terminated?**

The employee will be assigned to an Agency worksite. Subject to workload considerations, the Agency will make every reasonable effort to reassign the employee to a duty station within the employee's Office's workspace located within the employee's local commuting area. Where the Agency offers the employee a choice of several official worksites, the employee may select a post of duty closest to the employee's remote work duty station. Because the employee's official duty station will change, the employee's locality pay may also change. Employees who voluntarily terminate their remote work agreement or whose remote work agreement are terminated for cause are not entitled to relocation reimbursement. Employees whose remote work agreement is terminated because their work is no longer portable is entitled to relocation reimbursement.