

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

The Memorandum of Understanding Regarding Workplace Flexibilities (“Workplace Flexibilities MOU”) between the National Treasury Employees Union (NTEU or Union) and the Department of Health and Human Services (HHS or Agency) was executed on October 21, 2022. After the parties’ agreement went into effect, different divisions within HHS began to circulate guidance that was allegedly inconsistent with the provisions found in the Workplace Flexibilities MOU and were allegedly using practices that violated the terms of the Parties’ MOU. For example, different divisions began to issue blanket, canned denials to employees who were requesting a workplace flexibility agreement. As a result, NTEU filed four National Grievances alleging violations of the Workplace Flexibilities MOU (listed in section D, below). The National Grievances were filed prior to the issuance of the Office of Budget and Management (OMB) Memorandum 23-15.

NTEU and HHS, collectively “the Parties,” hereby enter into this global settlement agreement (the Workplace Flexibilities Settlement Agreement) to resolve the national grievances arising out of the implementation of the Parties’ Workplace Flexibilities MOU.

In consideration of the obligations identified below, the Parties agree as follows:

- A. The Agency will issue new guidance in collaboration with NTEU within 30 days of the effective date of this settlement agreement to clarify any inconsistent prior guidance. The new guidance will supersede inconsistent prior guidance, issued by the Agency and its divisions, and the prior distributed inconsistent guidance will have no effect. The Agency will also:
1. comply with Article 26 of the Parties’ 2023 National Agreement, the Workplace Flexibilities MOU, and any other agreements between the parties relevant to this dispute;
 2. ensure that any future guidance issued by HHS and its divisions regarding the procedures and considerations when considering telework requests are in compliance with Article 26 of the Parties’ National Agreement and the Workplace Flexibilities MOU, and any other agreements between the parties relevant to this dispute; and
 3. ensure supervisors are evaluating and adjudicating remote work requests in accordance with the procedures established by Article 26 and the Workplace Flexibilities MOU, and other relevant agreements between the parties;
 4. provide any and all bargaining unit employees who wish to be reconsidered, the opportunity do so pursuant to the process in section E, below.

- B. HHS and NTEU will jointly distribute Appendix A as joint guidance on the program as well as frequently asked questions. Guidance that is not retracted will be shared with NTEU.
- C. The rules governing travel reimbursements for employees under a WFA for remote work are set forth in Article 26, Section 2(C)(2) of the parties' 2023 National Agreement.
- D. NTEU will withdraw the following litigation:
1. National Grievance and ULP— Agency's Violations of the Parties' Workplace Flexibilities MOU, and 5 U.S.C. § 7116(a)(1), (5) and (8) (filed January 10, 2023) alleging FDA had unilaterally implemented a position designation process without negotiating with NTEU;
 2. National Grievance and ULP— Agency's Violations of the Parties' Workplace Flexibilities MOU, and 5 U.S.C. § 7116(a)(1), (5) and (8) (filed January 10, 2023) alleging Office of Medicare Hearings and Appeals; Administration for Children and Families; Health Resources and Services Administration; and other Operating Divisions (OPDIV) and/or Staff Divisions or Offices to be considered Staff Divisions (STAFFDIV) sent out unreasonable and arbitrary denials of remote work requests through the use of canned, boilerplate denials, without consideration to the employee's individual duties and circumstances;
 3. National Grievance – National Grievance and ULP — Agency's Violations of the Parties' Workplace Flexibilities MOU and 5 U.S.C. § 7116(a)(1), (5) and (8) (February 7, 2023) alleging OMHA limited eligibility to employees who live “within the local commuting area of their assigned agency worksite;” and
 4. National Grievance and Unfair Labor Practice — Agency Violations of Article 3, the Parties' Workplace Flexibilities MOU, and 5 U.S.C. § 7116(a)(1), (5) and (8) (February 7, 2023) alleging HHS managers have communicated “guidance” and other information to employees that there is a requirement to reapply for a workplace flexibility agreement on an annual basis.
- E. Upon the effective date of this Agreement, any employees who are, or believe they are eligible for remote work under the terms of the MOU, may apply at any time. Employees who are denied remote work, may file a local grievance pursuant to Article 45.
- F. Employees who were denied remote work and have a pending local grievance may, within thirty (30) days of the effective date of this Agreement, request to be reconsidered for remote work based on the new guidance. The local grievance will be stayed until a decision is issued by the Agency on the reconsideration. If the employee's application for remote work is denied based on this reconsideration, the local grievance will no longer be stayed. The issues that arise from the new denial will be included in the original grievance. The parties will proceed to process the grievance(s) per the parties' Article 45 in 2023 National Agreement or any successor agreement.
- G. All active local grievances in existence at the time of the effective date of this

Agreement, which were not stayed, will continue to proceed forward in accordance with the National Agreement.

- H. For any local grievance invoked for arbitration as of the effective date of this Agreement, the parties will meet within thirty (30) days to discuss potential settlement.
- I. The Parties agree to the following additional terms:
 - a. The timeframes in this Settlement Agreement may be extended by mutual agreement of the Parties.
 - b. The Parties agree to fulfill their obligations under this Settlement Agreement in good faith.
 - c. The Settlement Agreement is not precedential.
 - d. The obligations of the Parties under the terms of this Settlement Agreement constitute consideration sufficient to render this Settlement Agreement enforceable by either party.
 - e. If a binding determination is made that any term(s) of this Settlement Agreement is/are unenforceable, such unenforceability shall not affect any other provisions of this Settlement Agreement, and the remaining terms of this Settlement Agreement shall remain effecting unless prohibited by law.
- J. **Effective Date:** The effective date of this Settlement Agreement is the date upon which the Settlement Agreement has been signed by all Parties identified below. An electronically scanned signature shall be valid as an original signature.

By their signatures below, the signatories hereby acknowledge and affirm that they have the authority to enter into this Settlement Agreement and bind their respective principals to the terms herein. The Parties have read this Settlement Agreement, and each of the undersigned is signing voluntarily and freely, without coercion.

FOR HHS:

FOR NTEU:

Christina V. Ballance
Executive Director
National Labor and Employee Relations

Rocio P. Topete
National Negotiator
National Treasury Employees Union

Date: 7/7/2023

Date: _____

APPENDIX A

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.