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Office of Regulatory Affairs and Policy

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

February 16, 2022

MEMORANDUM FOR:

Tae D. Johnson
Acting Director

THROUGH:

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Acting Deputy Director

Corey A. Price /S/
Executive Associate Director
Enforcement and Removal Operations

Steve K. Francis /S/
Acting Executive Associate Director
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Associate Director
Office of Professional Responsibility

Kerry E. Doyle /S/
Principal Legal Advisor
Office of the Principal Legal Advisor

FROM:

Deborah Fleischaker /S/
Assistant Director
Office of Regulatory Affairs and Policy

SUBJECT:

ICE Directives 1059.1, Telework, and ICE Directive
1060.1, Remote Work

Purpose

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To Request your approval of U.S. Immigration and Customs Enforcement (ICE) Directive 1059.1, Telework, and ICE Directive 1060.1, Remote Work, as well as related template applications and agreements, alternative worksite checklist, and communications materials.

Background

While ICE employees have been permitted to engage in telework and remote work, ICE has never issued agency-level policies governing either alternative work arrangement. Since the beginning of the COVID-19 pandemic, the ICE Office of Human Capital (OHC) and the ICE Office of Regulatory Affairs and Policy (ORAP) have been working to develop ICE-level telework and remote work policies as part of the agency's Workplace Transformation Initiative. Additionally, the issuance of agency-wide policies is required by the Office of Personnel Management (OPM) for any agency with telework and remote work programs—a requirement that the issuance of these directives will satisfy.

Discussion

Telework and remote work are alternative work arrangements that provide flexibility and enhance mission performance by enabling eligible ICE employees to work from various locations without negative mission impact. Alternative work arrangements can enhance ICE's ability to recruit and retain talented employees, and they provide a framework for continuity of operations when work at traditional agency worksites is impractical or undesirable. Both telework and remote work support ICE's ongoing Workplace Transformation Initiative and can help the agency become a more flexible, agile, and fiscally efficient agency through the use of technology.

Although both offer employees alternative work arrangements, telework and remote work differ in key respects. Remote work enables employees to work at an approved location (for example, the employee's residence) either within or outside of the local commuting area of the original ICE agency worksite without a requirement to report to the original agency worksite on a regular and recurring basis. Conversely, telework is a work arrangement that enables employees to perform their work at an alternative worksite other than the location from which the employee would otherwise work; however, teleworking employees are required to report to the agency worksite on a regular, recurring basis each biweekly pay period (a minimum of two days each pay period, per OPM requirements).

ICE Directive 1059.1, Telework

ICE Directive 1059.1 establishes ICE's policy and procedural requirements for telework. It articulates an agency policy that telework be made available to eligible employees to the maximum extent possible, provided there is no negative impact to either mission accomplishment or employee performance, and it requires that ICE Directorate and Program Offices incorporate telework as part of their strategic operations to the greatest extent possible. However, the Directive makes clear that telework is not an employee right or entitlement, and that approval is at the discretion of ICE management based on the needs of the organization.

Importantly, it requires that ICE Directorates and Program Offices establish, in consultation with OHC and ORAP, implementing procedures and guidance for their organizational unit.

ICE Directive 1059.1 sets out important roles and responsibilities for employees, supervisors, and management officials with respect to telework. Notably, it provides guidance regarding telework eligibility, required documentation for telework participants, expectations for employees who are teleworking (e.g., limitations on providing dependent care), alternative worksite suitability standards, and parameters for the modification or termination of telework agreements, among other things.

Notably, because various employees within ICE are subject to Collective Bargaining Agreements (CBA) that address telework, the policy states that employees and supervisors of employees covered by a CBA should consult all relevant CBAs for additional information, as the Directive does not supersede existing CBA articles and thus must be used in conjunction with the agreements and procedures contained in applicable CBAs. It is further expected that Directorates and Program Offices with bargaining-unit employees will be required to bargain regarding their implementation of this Directive with respect to employees subject to a CBA.

ICE Directive 1060.1, Remote Work

ICE Directive 1060.1 establishes ICE's baseline policy on remote work. Similar to the aforementioned telework directive, it requires that ICE Directorates and Program Offices issue their own specific policies, procedures, and guidance regarding the use of remote work within their organizational unit. Additionally, ICE Directive 1060.1 also states that it does not supersede existing CBA articles and must be used in conjunction with the agreements and procedures contained in applicable CBAs.¹

The Directive states that remote work may be made available to eligible employees occupying qualified positions where it is in the best interest of the agency and there is no negative impact on mission accomplishment. It notes that, similar to telework, remote work is not an employee right or entitlement, and approval is at the discretion of ICE management based on the specific needs of the organization. The policy requires that positions be considered for remote work on a case-by-case basis. Importantly, the decision to designate a position for remote work must be documented in writing and approved by the relevant Headquarters Responsible Official (or their designee) or Field Responsible Official (or their designee), in consultation with OHC. The written justification must reflect that, based on all relevant factors, it is in the best interest of ICE to designate the position as one for remote work. It must also contain a business rationale that analyzes, at minimum, the short- and long-term impact of designating the position for remote work on agency business operations, budget, continuity of operations plans, and emergency response requirements. All written justifications must be retained by the applicable Program Remote Work Coordinator.

¹ It is also expected that Directorates and Program Offices with bargaining-unit employees will be required to bargain regarding their implementation of ICE Directive 1060.1 with respect to employees subject to a CBA.

Beyond establishing procedures and requirements for designating employees and positions for remote work, ICE Directive 1060.1 also sets out expectations and requirements for remote work employees, required documentation for those applying for or participating in remote work, restrictions on remote work and remote employees, remote worksite requirements, and procedures for terminating or modifying remote work agreements.

Duty to Bargain

OHC has reviewed both directives and determined that notice and bargaining regarding the implementation of these directives by Directorates and Program Offices with respect to bargaining-unit employees is required. The Office of the Principal Legal Advisor has concurred in this conclusion. Accordingly, however, as the bargaining will address their implementation, there is no reason to delay their issuance, and they may be immediately implemented with respect to non-bargaining-unit employees.

Communications Materials

Because of the anticipated interest in these directives, as well as telework and remote work, ORAP, OHC, and the ICE Office of Public Affairs have collaborated on the development of communications materials to accompany their issuance. Specifically, beyond a broadcast message, draft content for InSight and an ICE Breaker have been created, as have telework and remote work overviews and FAQs for OHC's intranet site.

Review and Clearance

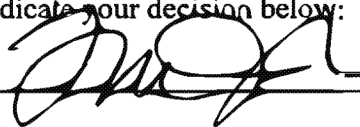
The directives, worksite checklist, and template agreements have been reviewed and approved by Enforcement and Removal Operations, Management and Administration, Homeland Security Investigations, the Office of Professional Responsibility, the Office of the Principal Legal Advisor, OHC, and ORAP.

Recommendation

I recommend approval of ICE Directives 1059.1 and 1060.1, as well as related template agreements, worksite checklist, and communications materials.

Please indicate your decision below:

Approve



Disapprove

Modify

Needs more discussion

Attachment(s):

1. ICE Directive 1059.1, Telework.
2. ICE Directive 1060.1, Remote Work

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3. ICE Alternative Worksite Checklist
4. ICE Telework Application and Agreement
5. ICE Remote Work Application and Agreement
6. Duty to Bargain Scorecard
7. Broadcast Message, ICE Issues Telework and Remote Work Directives
8. ICE Breaker Draft Content
9. InSight Draft Content
10. ICE Telework and Remote Work Overview and FAQs

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