

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 1059.1: Telework

Issue Date: February 16, 2022

Superseded: None

- 1. Purpose/Background.** This Directive establishes U.S. Immigration and Customs Enforcement's (ICE) policy and procedural requirements for telework.¹ Telework enhances ICE mission accomplishment by enabling eligible ICE employees to work from various locations without diminished employee performance or negative mission impact.
- 2. Policy.** It is ICE 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. Positions should be considered for telework on a case-by-case basis and consistent with this Directive, DHS and Office of Personnel Management (OPM) guidance. Telework is not an employee right or entitlement, and approval is at the discretion of ICE management based on the specific needs of the organization. To facilitate proven efficiencies and in accordance with ICE's mission and strategic goals, all ICE Directorates and Program Offices must incorporate telework as part of their strategic operations to the greatest extent possible.

This policy does not govern remote work. Remote work is an alternative work arrangement that involves an employee performing their official duties at an approved alternative worksite away from an agency worksite, without regularly returning to the agency worksite during each pay period. ICE's Remote Work policy is addressed separately in ICE Directive 1060.1.

- 2.1. Effective Date.** This Directive is effective upon publication and applies to telework arrangements and agreements entered into after its effective date. Generally, telework arrangements and agreements in place prior to this Directive's effective date remain valid but will expire at the one-year anniversary of the arrangement/agreement, and any follow-on agreements shall comply with this Directive.
- 2.2. Applicability to bargaining unit employees.** Employees and supervisors of employees covered by a Collective Bargaining Agreement (CBA) should consult all relevant CBAs for additional information.² This Directive does not supersede existing CBA articles and must be used in conjunction with the agreements and procedures contained in applicable CBAs.

¹ This Directive applies to the Office of the Principal Legal Advisor (OPLA) to the extent it is not inconsistent with directives, policies, or formal guidance issued by the General Counsel of the Department of Homeland Security (DHS). DHS Delegation No. 0400.2, Delegation to the General Counsel (Sept. 14, 2004).

² ICE currently has two CBAs that may impact an employee's ability to conduct telework: ICE and AFGE Local 511, Professional Employees Agreement 2019 (arts. 15 and 17; apps. F–Employee Decision Period Work Schedule Request Form, H–Telework Program Agreement, and I–Telework Program Work Plan); Agreement 2000 Between U.S. Immigration and Naturalization Service and National Immigration and Naturalization Service Council, AFGE Council 118 (Agreement 2000).

2.3. Supplemental Direction. Directorates, Program Offices, and Field Offices may establish policies, guidelines, and procedures (subject to CBA obligations) to supplement this Directive. All guidance or procedures must be developed in consultation with the Office of Human Capital (OHC)–Human Capital Policy Unit and the Office of Regulatory Affairs and Policy (ORAP).

2.4. Continuity of Operations. During any period where ICE is operating under a continuity of operations or emergency plan, including, but not limited to, a pandemic, terrorist or cyber-attack, the requirements of the plan may supersede this Directive and employees’ existing telework agreements.

3. Definitions. The following definitions apply for purposes of this Directive only.

3.1. Agency Worksite. The official Federal agency location where work activities are based, generally considered a centralized location of an employee’s assigned organization. The term regular worksite is also used to describe agency worksite..³ Generally, this is the location where non-telework employees work.

3.2. Alternative Worksite. Generally, an employee’s approved telework site, which is listed as the place where the employee performs official duties away from the agency worksite under a telework agreement. An alternative worksite can be the employee’s residence, an Approved Telework Center, or another approved location.

3.3. Alternative Worksite Inspection. A site inspection of the alternative worksite by the employee or a designated ICE representative. An alternative worksite inspection is primarily conducted to ensure that the worksite meets acceptable safety standards. An inspection may also evaluate maintenance and storage of government-furnished equipment (GFE), safeguards for data security, and other specifications or requirements in this or other applicable directives.

3.4. Approved Telework Center. A General Services Administration or ICE approved facility established by state, local or county governments or private sector organizations for use by teleworkers. Telework centers are alternative worksites that typically house either rented or leased workstations and provide a professional atmosphere conducive to effective job performance.

3.5. Eligible Employee. An employee in a position with tasks identified by the employee’s supervisor or manager and, where required, the appropriate Headquarters or Field Responsible Official, as being suitable for telework in accordance with this Directive. Eligible employees must also meet performance and conduct requirements as required by law and policy.

3.6. Employee. An individual as defined by 5 U.S.C. § 2105.

³ See 5 C.F.R. 531.605(d).

- 3.7. Field Responsible Official (FRO).** The highest-ranking official in any ICE field location. This includes Special Agents in Charge, Field Office Directors, Chief Counsel, ICE Attachés, and any other officials who have been designated in writing by the Director.
- 3.8. Headquarters Responsible Officials (HROs).** Executive Associate Directors (EADs) of Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI), and Management and Administration (M&A); the Associate Director of the Office of Professional Responsibility (OPR); the Principal Legal Advisor; and the Assistant Directors, Officers, or equivalent positions who report directly to the ICE Director, Deputy Director, or Chief of Staff.
- 3.9. Misconduct.** On-duty or off-duty behavior by an employee that violates ICE Policy No. 1033.1, Employee Code of Conduct (Aug. 7, 2012) or other applicable statutes, regulations, and policies. Such misconduct may result in the agency taking a conduct action (e.g., disciplinary or adverse) pursuant to ICE Directive 30012.2, Disciplinary and Adverse Action (Dec. 3, 2019), or as amended.
- 3.10. Official Worksite.** As determined by management, the location of an employee's position of record where the employee regularly performs his or her duties. For employees covered by a telework agreement under this Directive, the official worksite and agency worksite are the same.⁴
- 3.11. Telework.** A work flexibility arrangement under which an employee, under a written agreement, is scheduled to perform their work at an alternative worksite other than the location from which the employee would otherwise work. There are two categories of telework:
- 1) **Routine Telework.** The employee teleworks on a routine, regular, and recurring basis one or more days per week. A schedule for routine telework is delineated in the written telework agreement that establishes normal telework frequency based on an agreed upon day or days during a bi-weekly pay period; the agreement should also specify the hours to be worked during telework days. It is ICE policy that individuals engaged in routine telework must be scheduled to report to their official worksite a minimum of two days each biweekly pay period under their written Telework Application and Agreement.
 - 2) **Episodic or Situational Telework.** The employee teleworks on an occasional, non-routine, intermittent, or irregular basis as the need arises. Situational or episodic telework is approved on a case-by-case basis and the hours worked are not part of a previously approved, ongoing, and regular telework schedule. An authorization to perform situational or episodic telework does not negate compliance with all the telework application procedures, including executing an agreement prior to teleworking. Under extenuating circumstances, such agreements can be executed

⁴ For employees on a telework or remote work agreement whose work involves regular travel or whose work location varies on a daily basis, additional rules at 5 C.F.R. § 531.605(d)(1)-(4) apply. For these employees, ICE must determine and designate the official worksite for pay purposes on a case-by-case basis.

within a reasonable period of time after teleworking commences. Episodic or situational telework for continuity of essential government functions across a wide range of emergencies and events may be executed in accordance with applicable laws, policies, and procedures.

3.12. Telework Agreement. An agreement between an ICE employee and management that outlines the terms and conditions of the telework arrangement, and establishes specific details regarding the arrangement, including the address of the alternative worksite, and schedule. Typically, telework agreements are documented on a Telework Application and Agreement (Attachment 1) or CBA-required appendix form(s), but in exigent circumstances (e.g., injury) documentation may be delayed for a short period to minimize work disruptions.

3.13. Telework Application. An employee's request to participate in telework. The request is normally documented on a Telework Application and Agreement (Attachment 1). An employee may request telework informally (by phone, text, or email) when circumstances hinder formal application. However, the request, along with management's decision, must be formally documented on a Telework Application and Agreement as soon as possible.

3.14. Program Telework Coordinator. Telework Coordinators compile telework data for their area of responsibility; assist with development of Directorate, Program, or Field Office-specific procedures; and review training records to ensure compliance.

3.15. Telework Data. A summary of information provided by agencies on the status of their telework programs.

3.16. ICE Telework Managing Officer. The ICE primary point of contact with the Department of Homeland Security (DHS) and office of Personnel Management (OPM) on telework matters.

3.17. Teleworker. An employee (permanent, temporary, full-time, or part-time) who teleworks (routine, or episodic or situational) at an alternative worksite (residence, Approved Telework Center, or another approved worksite) pursuant to a written Telework Application and Agreement.

4. Responsibilities.

4.1. HROs are responsible for:

- 1) Ensuring compliance with the terms of this Directive within their Directorate or Program Office;
- 2) Approving, or designating management officials to approve, positions under their purview as eligible for telework;
- 3) Designating Program Telework Coordinators and points of contact; and

- 4) In consultation with OHC and ORAP, establishing detailed Directorate or Program Office-specific procedures for telework implementation that are consistent with this Directive, as necessary and appropriate.

4.2. FROs are responsible for:

- 1) Ensuring compliance with this Directive in their field location;
- 2) Approving, or designating management officials to approve, positions under their purview as eligible for telework;
- 3) Designating Program Telework Coordinators and points of contact; and
- 4) Implementing any additional Directorate or Program Office-specific procedures or guidance for their particular field office.

4.3. The ICE Chief Human Capital Officer (CHCO), or their designee, is responsible for:

- 1) Ensuring ICE telework practices conform with applicable law, rule, regulations, and any relevant OPM, DHS, and ICE policies;
- 2) In coordination with OPLA, providing and interpreting applicable statutes, regulations, policies, and standards for managing the Telework Program;
- 3) Providing ICE officials with advice, technical assistance, and consultative services for teleworking issues;
- 4) Preparing, maintaining, and reporting any telework data necessary for the Telework Program to the DHS CHCO on an annual or as-required basis; and
- 5) Designating an ICE Telework Managing Officer (TMO) to administer and oversee implementation of the Telework Program at ICE.

4.4. The ICE Chief Information Officer, or their designee, is responsible for:

- 1) Issuing and maintaining information technology (IT) policies and minimum implementation standards for remote access security, which includes access to IT systems required for networks. These policies and minimum implementation standards must outline responsibilities of teleworkers to enable an effective working environment for the teleworker and the protection of ICE systems from undue risk;
- 2) Assisting Directorates and Program Offices with the purchase of government IT equipment as needed, including notebook or desktop computers, telephones, printers, and scanners;

- 3) Establishing security controls that must be set out in written telework agreements which outline the terms and conditions of the telework arrangement;
- 4) Providing installation, configuration, and repair services for government IT equipment to the Directorates and Program Offices to ensure effective and secure operations at alternative worksites. Such services will be performed only at an ICE facility;
- 5) Providing a means for remote users to update equipment to remain aligned with ICE images; and
- 6) Providing a means to recover equipment for periodic replacement and reassignment.

4.5. The ICE TMO within the OHC is responsible for:

- 1) Assisting with the management of Telework Program consistent with applicable law and OPM, DHS, and ICE policies;
- 2) Providing ICE officials with advice, technical assistance, and consultative services for teleworking issues;
- 3) Coordinating ICE-wide communications and outreach efforts with respect to the Telework Program;
- 4) Acting as consultant to the Program Telework Coordinators; and
- 5) Obtaining, consolidating, maintaining, and preparing any telework data necessary for the Telework Program from the Program Telework Coordinators on an annual or an as-required basis and providing the same to the ICE CHCO.

4.6. Program Telework Coordinators, through the established chain of command, are responsible for:

- 1) Conducting Directorate, Program, or Field Office telework training;
- 2) Acting as a focal point for all telework related matters within each ICE Directorate, Program Office, or Field Office, and coordinating with the ICE TMO;
- 3) Maintaining telework records and reports and up-loading agreements to the designated share point site for their respective ICE office; and
- 4) Obtaining, consolidating, and preparing any telework data for reporting to the ICE TMO on an annual or an as-required basis; reports are subject to supervisory review and approval.

4.7. Supervisors and Managers, as designated, are responsible for:

- 1) Determining whether positions or the employees filling them are eligible for telework;
- 2) Understanding the Agency's emergency plans and ensuring that the use of telework is planned for and utilized in the case of such an event to ensure continuity of operations;
- 3) Advising HROs/FROs on telework-ready positions;
- 4) Reviewing each employee's request for telework participation promptly, ensuring the requesting employee has completed the required training, and properly recording all decisions made;
- 5) Completing all applicable supervisory required trainings and surveys on telework;
- 6) Approving, disapproving, modifying, or terminating employees' participation in telework;
- 7) Conducting alternative worksite inspections (virtually or in-person), as appropriate;
- 8) Promptly complying with the Federal Employees' Compensation Act in case of an injury or occupational disease occurring at the employee's alternative worksite;
- 9) Certifying the accuracy of employees' time and attendance;
- 10) Maintaining and reporting telework-related data and records to the Program Telework Coordinator and the ICE TMO as applicable, on an annual or an as required basis; and
- 11) Identifying teleworkers who are designated "emergency employees" or "mission critical" emergency employees and ensuring that designation appears in the employee's telework agreement.

4.8. Employees are responsible for:

- 1) Completing a telework application and alternative worksite checklist in accordance with this Directive;
- 2) Completing all required ICE telework training prior to teleworking (except in the event of an unexpected work disruption);
- 3) Completing all work as assigned and in line with applicable performance standards;
- 4) Accurately coding and validating their time and attendance record to reflect telework;
- 5) Maintaining a work area that is suitable and safe for performance of official duties

and acknowledging that the Government will not be responsible for operating costs (e.g., home maintenance, insurance, or utilities, internet service provider fees, office space, office furniture). Office supplies may be provided by the employees work unit, if practicable;

- 6) Allowing inspections of the alternative worksite;
- 7) Promptly notifying their supervisor when events arise while teleworking that make them unable to perform their duties (e.g., internet or power outages, computer issues, etc.);
- 8) Immediately reporting to their supervisor an injury or occupational disease occurring at the employee's alternative worksite;
- 9) Securing supervisory approval prior to taking PII and sensitive non-classified data to an alternative worksite and taking precautions to protect this information from unauthorized disclosure; and
- 10) Obtaining approval from their supervisor prior to changing the location of their alternative worksite. If approved, the employee's telework agreement must be updated to reflect the new alternative worksite location.

5. Procedures/Requirements.

5.1. Access to Telework. Participation in a telework arrangement is not an employee entitlement or right. However, all ICE employees occupying telework eligible positions, as determined by their supervisor or manager, may be permitted to telework to the extent suitable work is available and they are able to meet all requirements of this Directive and applicable law or regulation. Ultimately, managers and supervisors must ensure that telework does not diminish employee performance or agency operations. While telework participation is encouraged for all telework-eligible employees, ICE may place reasonable limitations on an employee's ability to telework at a given time due to a demonstrable operational need. Limitations on telework shall not be arbitrary or capricious. Employee participation in telework is voluntary. However, during a Continuity of Operations Plan⁵ (COOP) activation, pandemic health crisis, or other declared emergency, employees may be required to telework or not be permitted to telework, as necessary and appropriate.

5.2. Telework Eligibility. Telework eligibility shall be determined by a supervisor or manager and must be primarily based upon an employee's position including whether the employee has work that is conducive with telework. In addition, the decision as to whether an employee is eligible for telework and to what extent will be based on the following:

- 1) Supervisors and management, with input from the employee, must determine how

⁵ When ICE is operating under a COOP, that Plan supersedes this Directive.

much of an employee's work is compatible with telework and set a telework schedule that fully supports work that must be accomplished at the agency worksite;

- 2) An employee may not be deemed eligible to telework under any circumstances when:
 - a) They have been officially disciplined for being absent without permission for more than five days in any calendar year; or
 - b) They have been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer while performing official Federal Government duties;⁶
- 3) In order to be and remain eligible for telework, an employee's performance or agency operations must not be diminished while teleworking. An employee may not be authorized to telework if the performance of that employee does not comply with the terms of the written Telework Application and Agreement between the agency manager and that employee. The employee's most recent performance appraisal must be at least "Achieved Expectations" (or equivalent, depending on the rating system) or greater for all critical elements. If the employee does not meet this performance standard, the supervisor or manager should modify or terminate the telework agreement in addition to pursuing any other appropriate performance-based actions. Second-line supervisors may authorize use of an alternative measure outside of the most recent performance appraisal to assess the employee's ability to perform at the "Achieved Expectations," or equivalent level, where the last performance appraisal is not representative of the employee's current performance. Newly hired employees' performance is presumed to meet requirements for telework eligibility until a supervisor or manager has had sufficient opportunity to assess the employee's performance; and
- 4) All employees' telework agreements must include scheduled work at the agency worksite for at least two days each biweekly pay period.⁷

5.3. Documentation. Telework applications and approval, modification, or revocation decisions must be fully documented.

⁶ 5 U.S.C. § 6502(a)(2)(A)-(B) (2016).

⁷ In certain temporary situations outside an employee's control, such as an extended office closure or other operating status announcement, or where an evacuation has been issued, a teleworker may be precluded from returning to an agency worksite. In such cases, an employee may be permitted by their supervisor or manager to continue to telework from their alternative worksite and will not be required to return to the agency worksite at least two days per pay period. Such an arrangement may also be permitted where the employee is temporarily recovering from an injury or other medical condition but is expected to return to a normal telework schedule upon recovery. In all cases, such exceptions are intended to only apply where relevant events are expected to occur for a limited time and the employee is expected to return to a normal telework schedule (including appearing at the agency worksite at least twice each pay period) in the near future. The bi-weekly pay period attendance requirement applies to all teleworking employees, unless otherwise amended by an agency-granted reasonable accommodation.

- 1) ICE employees wishing to begin telework must provide a telework application and any other required documentation to their supervisor or manager as directed or according to any Employee Decision Period established by a CBA.
- 2) Supervisors or managers are required to document all decisions made regarding employee requests for telework.
- 3) Employees approved to telework must enter into a written telework agreement. The agreement must include all provisions required by law and applicable policy. Additionally, the agreement must include the following, as applicable to the particular employee at issue:
 - a) The term of the agreement;⁸
 - b) The type of telework specified by the agreement (e.g., routine and/or episodic/situational);
 - c) The employee's work schedule;
 - d) The employee's approved telework location(s); and
 - e) Any specific requirements or expectations beyond those required by law or this Directive.

5.4. Expectations. In all situations, the supervisor and teleworker must discuss and clearly understand that it is the employee's responsibility to be responsive to work requirements as if the employee was reporting to an ICE worksite. In addition, all work products and responses to management, customers, and stakeholders must align with quality and timeliness expectations.

- 1) Teleworkers are expected to perform as if they were working at a traditional worksite. Their performance should be managed in accordance with the expectations in the Performance Work Plan and should not differ whether the work is done while teleworking or not. Before signing a telework agreement, the supervisor and employee must have a discussion regarding expectations (communications, work hours, customer service, etc.) for the telework arrangement.
- 2) An employee with a decline in performance may be subject to modification or revocation of the telework agreement. The supervisor or manager will engage with the employee to discuss performance, as well as areas of improvement, prior to modifying or revoking the telework agreement.

⁸ This should generally be a one-year renewable term; however, shorter terms may be appropriate where telework situations may need to be revised more frequently or where required by CBA.

- 3) An employee with an approved telework agreement, whether routine or episodic/situational, is required to report to an agency or other alternative (e.g., the location of agency training) worksite when directed or required in order to carry out responsibilities, attend meetings or training, obtain equipment or IT support, or when otherwise necessary, regardless of whether or not the employee was scheduled to telework on a particular day.

5.5. Restrictions.

- 1) Employees must continue to adhere to DHS and ICE standards of conduct and policies while working at the alternative worksite and using GFE. Unless otherwise specifically addressed herein, all conditions of federal employment, performance of assigned duties, adherence to applicable policies, participation in required training, and satisfaction of standards of conduct apply. Alleged or apparent breaches thereof may subject an employee to formal management review, investigation and, if required, appropriate disciplinary or adverse actions.
- 2) This Directive does not apply to telework outside the U.S. and its territories (overseas). Individuals may not telework temporarily from an overseas location under the provisions of this Directive. U.S. Department of State and OPM guidance governs overseas telework. An agency Domestic Employee Teleworking Overseas (DETO) policy must be in place and a DETO arrangement entered into between the agency and the employee before overseas telework can occur.⁹ ICE employees cannot telework from overseas without an approved DETO agreement.

5.6. Dependent Care.

- 1) Telework employees are expected to have arrangements for dependent care during the workday.
- 2) Telework cannot be used as an alternative for the employee to be the sole source of dependent care (child/elder or dependent). If dependent care arrangements are co-located at the alternative worksite, such as the employee's home, the employee must notify their supervisor or manager as soon as possible if significant work disruption or an emergency occurs and requests appropriate leave to perform dependent care responsibilities.
- 3) Telework may be used in conjunction with alternative work schedules, Family and Medical Leave Act guidelines, and annual leave to allow time for dependent care responsibilities, as long as the employee is not the sole provider of dependent care throughout the workday when they are not on approved leave.

5.7. Dismissal and Closure. Teleworkers are required to telework during any Federal

⁹ U.S. Office of Pers. Mgmt., Overseas Telework, <https://www.telework.gov/guidance-legislation/telework-guidance/overseas-telework/> (last visited Jan. 18, 2022); U.S. Dept. of State, 6 FAH-5 H-352.12, Domestic Employees Teleworking Overseas (DETOs) (2016).

office/worksites closures, delayed arrivals, and early dismissals due to weather or other impacts to the agency worksite, regardless of whether or not they were scheduled to telework or report to the worksite that day. This requirement applies to all employees with an approved telework agreement, whether routine or episodic/situational. Teleworkers should notify their supervisor when weather or emergencies occur that affect their alternative worksite to request leave, other absence options, or worksite relocation, etc. Employees must be aware of the expectation that they will work when their agency worksite is closed, as long as their alternative worksite is not affected. Employees with an approved telework agreement are generally not eligible to receive Weather and Safety Leave. If weather or another emergency affects their alternative worksite and telework readiness, they should immediately contact their supervisor for guidance.

5.8. Worksite Suitability. The employee is expected to create a dedicated work environment at their alternative worksite that is free from interruptions and provides reasonable security and protection, to include, at a minimum, a telephone, workspace suitable to perform the work, high-speed Internet that is reliable and secure, adequate lighting, proper seating, and appropriate ventilation.

- 1) The employee must evaluate their proposed alternative worksite using the Alternative Worksite Checklist (Attachment 2).
- 2) A supervisor or, if the supervisor is unavailable, another management representative, may inspect an employee's alternative worksite for compliance with checklist requirements if there is reason to suspect the worksite is unsuitable. This inspection may be conducted virtually with the assistance of the employee.
 - a) The inspector may bring a witness with them to the inspection, with the approval of the employee, but a witness is not required.
 - b) The supervisor or manager will provide at least three workdays' advance notice and coordinate appropriate arrangements for inspection with the employee.
 - c) The supervisor or manager will document the reason for the inspection and their findings, including a copy of the Alternative Worksite Checklist.
 - d) Employees are expected to remedy any deficiencies identified by a self or management inspection. A supervisor may deny a telework request or rescind an existing telework agreement, if an employee cannot or will not correct alternative worksite deficiencies identified by inspection.
 - e) The employee may rectify deficiencies, after which point the supervisor or manager may approve (or decide not to rescind) the Telework Application and Agreement upon re-inspection or validation of proof provided by the employee.

- 3) If during inspection an employee with an existing telework agreement is found to be in violation of physical or information security requirements of this Directive, the supervisor may immediately terminate the telework agreement.

5.9. Termination/Modification of Telework Agreement. Any termination or modification of a telework agreement must be done in writing (email documentation is acceptable). Such a decision must be in accordance with relevant law and this Directive.

- 1) A telework agreement will be terminated immediately:
 - a) Upon the employee's entry on duty to a new position within ICE, or reassignment to a similar position in a different office, division, or work group within ICE;
 - b) If the employee has been officially disciplined for being absent without permission for more than five days in any calendar year;
 - c) If the employee has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties;
 - d) If telework continues to diminish employee or agency performance, even after attempts to mitigate such diminishment have been attempted; or
 - e) If an employee does not comply with the terms of the written Telework Application and Agreement.
- 2) When a telework agreement is being terminated for performance reasons, misconduct, or violation of the terms of the agreement, before a supervisor or manager officially terminates or limits an employee's ability to telework, the employee will be given written notice of any performance deficiencies, articulable misconduct, or telework agreement violations related to the proposed termination of the agreement and be given a reasonable opportunity to modify or remediate the issue(s), unless the deficient performance or misconduct presents immediate risk to the health, safety, or welfare of ICE employees or government interests.
- 3) When a telework agreement is being terminated or modified for mission-related reasons (e.g., an employee's telework arrangement must be modified to ensure mission needs are met), the employee will be given reasonable notice of the modification to allow for changes to personal arrangements to be put in place prior to telework being terminated.
- 4) An employee may make reasonable requests to modify or terminate a telework agreement at any time and in accordance with CBA requirements, as applicable.

5.10. Government Furnished Equipment and Materials

- 1) Using GFE for telework is subject to the IT policies of ICE. No individual (including family, friends, house guests, tenants, etc.) other than the employee performing telework is authorized to use GFE. If the teleworking employee needs additional or specialized IT equipment, the employee should make a request for such equipment through their supervisor. If management determines the additional equipment is needed for the employee to effectively carry out his or her responsibilities, the Directorate or Program Office may be required to fund the equipment.
- 2) The Government is responsible for maintenance of all GFE. Employees will be required to bring or send GFE into an agency worksite for maintenance as directed.
- 3) All files, records, papers, and electronic materials created or worked on while teleworking are the property of the U.S. Government and must be returned upon request. Employees must take appropriate precautions to protect government files, records, and paper and electronic materials. Precautions should include locking file cabinets, safes, encrypted media, and doors, among other precautions.

5.11. Protecting Sensitive Information.

- 1) Teleworkers must have written approval from a supervisor to remove sensitive information from agency worksites for access at an approved alternative worksite.
- 2) Teleworkers with access to records subject to the Privacy Act from an alternative worksite must demonstrate appropriate administrative, technical, and physical safeguards are available to ensure the security and confidentiality of the records.
- 3) Employees may not physically or electronically access classified material from alternative worksite locations. Where an employee needs to review or access classified material, he or she must do so at an ICE-approved Sensitive Compartmented Information Facility.

5.12. Reports. The TMO, Telework Coordinators, supervisors and managers must all ensure that ICE data is accurately collected and reported to OPM.

- 1) The ICE TMO, in coordination with Program Telework Coordinators, will obtain, consolidate, and maintain any telework data or reports necessary for the Telework Program from the Program Telework Coordinators on an annual or an as-required basis and provide such information to OPM as directed by the DHS CHCO.
- 2) Program Telework Coordinators obtain, consolidate, and prepare any telework data for reporting to the ICE TMO on an annual or an as-required basis.

- 3) Supervisors and managers will maintain, and report telework-related data and records (participant data, productivity data, telework requests, telework agreements, etc.) to the Program Telework Coordinator, as applicable, on an annual or an as-required basis. Telework agreements effected as part of a reasonable accommodation are also reportable to the ICE Office of Diversity and Civil Rights.

5.13. Liability and Worker's Compensation. Employees who are teleworking are covered under the Federal Tort Claims Act¹⁰ and the Federal Employees' Compensation Act.¹¹ As with injuries that occur in the traditional office/worksite setting, for injuries that occur during telework arrangements, supervisors may only attest to what they reasonably know. In all situations, employees are responsible for informing their immediate supervisor of an injury at the earliest time possible.

5.14. Transit Subsidy. Telework does not change an employee's eligibility to participate in the Transit Subsidy Program. Employees must be mindful of the requirements under the transit subsidy program and any impact that reduced commuting costs may have on the amount of subsidy they are entitled to receive. Employees must report any reduction in use of transit as a result of telework to enable adjustment of the subsidy. Other than what may be available through the Transit Subsidy Program, teleworkers are responsible for their commuting expenses to/from an ICE worksite when required or directed to report to the ICE worksite, regardless of whether or not the employee was scheduled to telework.

6. Recordkeeping. All relevant documents produced or provided in accordance with this Directive must be maintained in accordance with a National Archives and Records Administration (NARA) General Records Schedule (GRS) or a NARA-approved agency-specific records control schedule. If the records are not subject to a records schedule, they must be maintained indefinitely by the agency until an approved records schedule is in place. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification. Further, all video and audio produced in accordance with the BWC pilot must be maintained in accordance with a NARA-approved agency-specific records control schedule.

7. Authorities/References.

7.1. Telework Enhancement Act of 2010, Pub. L. No. 111-292, 124 Stat. 3165 (Dec. 9, 2010) (codified as amended at 5 U.S.C. § 5711; §§ 6501-6506).

7.2. 5 U.S.C. § 5304 (2009).

7.3. 5 U.S.C. Ch. 43, Performance Appraisal.

7.4. 5 U.S.C. Ch. 81, Compensation for Work Injuries.

7.5. 28 U.S.C. § 2672 (1990).

¹⁰ 28 U.S.C. § 2672 (1990).

¹¹ 5 U.S.C. Ch. 81, Compensation for Work Injuries.

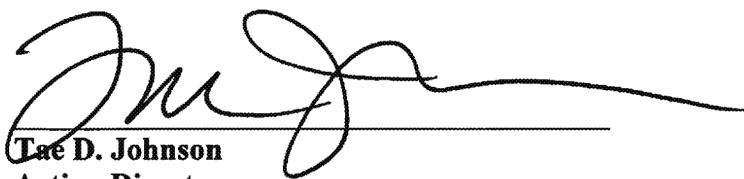
- 7.6. 5 C.F.R. § 531.605(d) (2022).
- 7.7. 5 C.F.R. Chs. 300-304, Federal Travel Regulation System.
- 7.8. DHS Directive No. 123-05, Revision 01, Telework Directive (Feb. 11, 2015).
- 7.9. DHS Instruction No. 123-05-001, Revision 00, Telework Program (Feb. 2, 2015).
- 7.10. ICE Directive 30012.2, Disciplinary and Adverse Action (Dec. 3, 2019).
- 7.11. ICE Policy No. 1033.1, Employee Code of Conduct (Aug. 7, 2012).
- 7.12. U.S. Office of Pers. Mgmt., 2021 OPM Guide to Telework and Remote Work in the Federal Government (Nov. 2021).
- 7.13. U.S. Office of Pers. Mgmt., Overseas Telework, <https://www.telework.gov/guidance-legislation/telework-guidance/overseas-telework/> (last visited Jan. 18, 2022).
- 7.14. U.S. Dept of State, 6 FAH-5 H-352.12 Domestic Employees Teleworking Overseas (DETOs) (2016).

8. Attachments.

8.1. Telework Application and Agreement.

8.2. Alternative Worksite Checklist.

9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



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