

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

### ICE Directive 1060.1: Remote Work

**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**Superseded:** None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 remote work.<sup>1</sup> 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.
2. **Policy.** It is ICE policy 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. Positions should be considered for remote work on a case-by-case basis and consistent with this Directive, DHS and Office of Personnel Management (OPM) guidance. 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. Remote work, like traditional telework, is primarily a flexible work arrangement established to facilitate the accomplishment of work; but it involves more complex considerations. 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 an ICE agency worksite without a requirement to work at the agency worksite on a regular and recurring basis. Employees may work remotely from any agreed upon location in all 50 states, the District of Columbia, Puerto Rico, and all other U.S. Territories and tribal areas. ICE Directorates and Program Offices may develop specific guidance in accordance with this Directive and subject to collective bargaining obligations, which may include a determination of which positions will be eligible for remote work.

This policy only governs Remote Work; for ICE policy regarding Telework, please refer to ICE Directive 1059.1.

- 2.1. **Effective Date.** This Directive is effective upon publication and applies to remote work arrangements and agreements entered into after the effective date. Generally, remote work agreements in place prior to this Directive's effective date remain valid for the duration of their term.
- 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

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<sup>1</sup> 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).

additional information.<sup>2</sup> This Directive does not supersede existing CBA articles and must be used in conjunction with the agreements and procedures contained in applicable CBAs.

**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.

**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 remote work 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.<sup>3</sup> Generally, this is the location where non-remote work and non-telework employees work.

**3.2. Alternative Worksite.** Generally, an employee's approved remote work site, which is listed as the place where the employee performs official duties away from the agency worksite under a remote work 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. Business Rationale.** A written justification that weighs the benefits against the costs for a particular position to be designated for remote work. This justification must consider the duties and responsibilities of the position, as well as analyze, 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.

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<sup>2</sup> ICE currently has two CBAs that may impact an employee's ability to conduct remote work, including utilizing 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).

<sup>3</sup> See, e.g., 5 C.F.R. § 531.605(d).

- 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 remote work 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.
- 3.7. 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. Locality Pay.** Locality-based comparability payment under 5 U.S.C. § 5304 and 5 C.F.R. § 531.604 or equivalent payment under another authority is pay prescribed by OPM regulation. This pay is defined as the geographic area for General Schedule employees and other employees whose federal pay is extended and authorized based on the location of the employee's worksite. Federal employee pay is based upon certain location-based pay entitlements such as locality payments, special rate supplements, and non-foreign area cost-of-living allowances at the location of the employee's official worksite as associated with the employee's position of record.
- 3.10. 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.
- 3.11. 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 remote work agreement under this Directive, the official worksite and alternative worksite are the same.<sup>4</sup>
- 3.12. Personal Identifiable Information (PII).** Any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual regardless of whether the individual is a U.S. citizen; lawful permanent resident; visitor to the United States; or ICE employee, detailee, or contractor.

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<sup>4</sup> 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.

- 3.13. Reduction in Force (RIF).** The release of an employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, and individual's exercise of reemployment rights or restoration rights, or reclassification due to erosion of duties when it occurs within 180 days of a formally announced RIF in the competitive area.
- 3.14. Relocation.** Relocation is change of an employee's official worksite that involves a physical move.
- 3.15. Remote Work.** Remote work is an arrangement under which an employee is scheduled to perform work within or outside the local commuting area of an agency worksite and is not expected to report to the agency worksite on a regular and recurring basis (e.g., at least two days per biweekly pay period as required for employees approved for telework).
- 3.16. Remote Worker.** An employee who works at an alternative worksite (residence, Approved Telework Center, or another approved worksite) and does not report to the agency worksite at least twice each biweekly pay period on a regular recurring basis (and for which a temporary exception to this requirement has not been approved).
- 3.17. Remote Work Agreement.** An agreement between an ICE employee and management that outlines the terms and conditions of the remote work arrangement, and establishes specific details regarding the arrangement, including the address of the alternative worksite, schedule, provisions regarding cost reimbursement, and the frequency of anticipated reporting back to the agency worksite, as applicable. Typically, remote work agreements are documented on a Remote Work Application and Agreement (Attachment 1).
- 3.18. Remote Work Application.** An employee's request to participate in remote work. The request should be documented on a Remote Work Application and Agreement (Attachment 1), and an employee is not allowed to begin working under such a request until it is formally documented and approved.
- 3.19. Remote Work Coordinator.** The ICE official responsible for coordinating and managing the ICE Remote Work Program in OHC.
- 3.20. Remote Work Data.** A summary of information provided by agencies on the status of their Remote Work programs.

#### **4. Responsibilities.**

##### **4.1. HROs are responsible for:**

- 1) Ensuring compliance with this Directive within their Directorate or Program Office;



- 2) Approving or designating management officials to approve, encumbered positions in their respective Directorates or Program Offices for remote work and deciding whether newly created or vacant positions will be designated and advertised as eligible for remote work; the approval process must include reviewing and approving the written justification (which must include a business rationale) for a position to be designated for remote work;
- 3) Designating a Program Remote Work Coordinator and points of contact; and
- 4) In consultation with OHC and the ICE Office of Regulatory Affairs and Policy, establishing detailed Directorate or Program Office-specific procedures for remote work 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 encumbered positions under their control for remote work and deciding whether newly created or vacant positions will be designated and advertised as eligible for remote work; the approval process must include reviewing and approving the written justification (which must include a business rationale) for a position to be designated for remote work; and
- 3) Designating a Program Remote Work Coordinator and points of contact.

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

- 1) Ensuring ICE remote work 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 Remote Work Program;
- 3) Providing ICE officials with advice, technical assistance, and consultative services for remote work issues;
- 4) Preparing, maintaining, and reporting any remote work data necessary for the Remote Work Program to the DHS CHCO on an annual or as-required basis; and
- 5) Designating an ICE Remote Work Coordinator to administer and oversee implementation of the Remote Work Program at ICE.

**4.4. The 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 remote workers to enable an effective working environment for the remote worker and the protection of ICE systems from undue risk;

- 2) Assisting the 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 Remote Work Application and Agreements which outline the terms and conditions of the remote work 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 the alternative worksite 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 Remote Work Coordinator** within the OHC is responsible for:

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

**4.6. Program Remote Work Coordinators**, through their established chain of command, are responsible for:

- 1) Conducting Directorate, Program, or Field Office remote work training;

- 2) Acting as a focal point for all remote work-related matters within each ICE Directorate, Program Office, or Field Office, and coordinating with the ICE Remote Work Coordinator;
- 3) Maintaining remote work records and reports and uploading agreements to the designated share point site for their respective ICE office; and
- 4) Obtaining, consolidating, and preparing any remote work data for reporting to the ICE Remote Work Coordinator 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) Assessing annually—and on an ongoing basis to account for any change in circumstances—an employee’s eligibility for remote work and whether it is in the best interests of the agency, Directorate, Program Office, and division (or subdivision);
- 2) Ensuring approved encumbered positions in their respective work unit are properly designated for remote work and verifying that newly created or vacant positions approved for remote work are designated and advertised as eligible for remote work;
- 3) Completing a written justification, which includes a business rationale, for each position that will be remote work eligible;
- 4) Advising HROs/FROs on remote work-eligible positions;
- 5) Completing applicable remote work training prior to reviewing and approving employee requests for remote work;
- 6) Ensuring employees receive and complete all required remote work training before they enter into a remote work agreement;
- 7) Evaluating an employee’s remote work request (see Section 5.3);
- 8) Conducting alternative worksite inspections (virtually or in-person), as appropriate;
- 9) Working with employees to determine equipment and travel needs and ensuring funds are available to support eligible remote work expenses;
- 10) Determining when it may be necessary, on an infrequent and non-recurring basis, for an employee who works remotely to travel to an agency worksite; in such cases, the employee should be provided with reasonable notice of the travel;
- 11) Approving the Remote Work Application and Agreement (Attachment 1), or other documents as required by any CBA, if applicable, and submitting all supporting

documentation (for example, Application, Alternative Worksite Checklist) and SF-52, Request for Personnel Action, to the Human Resources Operations Center to process the change of worksite, if applicable;

- 12) Promptly complying with the Federal Employees' Compensation Act in case of an injury or occupational disease occurring at the employee's alternative worksite;
- 13) Maintaining and reporting remote work-related data and records to the Program Remote Work Coordinator and the ICE Remote Work Coordinator as applicable, on an annual or as-required basis;
- 14) Certifying the accuracy of employees' time and attendance; and
- 15) Identifying remote workers who are designated "emergency employees" or "mission critical" emergency employees and ensuring that designation appears in the employee's Remote Work Application and Agreement.

**4.8. Employees are responsible for:**

- 1) Completing a Remote Work Application and Agreement and an Alternative Worksite Checklist;
- 2) Completing all periodic and required training prior to entry into a remote work agreement;
- 3) Accurately coding and validating their time and attendance record to reflect remote work;
- 4) Maintaining alternative worksite internet connection capabilities to ensure completion of work assignments;
- 5) Complying with the terms set in the Remote Work Application and Agreement, all applicable policies, procedures, guidance, and regulations, to include standards of conduct, drug testing, and performance and procedures for updating software and enhancing security for any GFE;
- 6) Obtaining approval from their supervisor prior to changing the location of their remote worksite. If approved, the supervisor must initiate a personnel action to change the location of the employee's remote worksite, including to properly identify locality pay implications, if applicable.
- 7) Engaging in or conducting relocation activities outside of official time unless directed by the Agency;
- 8) Promptly notifying their supervisor when events arise that make them unable to perform their duties (e.g., internet or power outages, computer issues, etc.);



- 9) Immediately reporting to their supervisor an injury or occupational disease occurring at the employee's alternative worksite;
- 10) Providing government employees or designated support contractors physical and virtual access to their approved alternative worksite and their government-furnished equipment to ensure proper maintenance of government-owned property and worksite conformance with safety standards and requirements;
- 11) Maintaining a work area that is suitable and safe for performance of official duties and acknowledging that ICE will not be responsible for operating costs (e.g., home maintenance, insurance, or utilities, internet service provider fees, office space, office furniture);
- 12) Allowing inspections of the alternative worksite; and
- 13) Securing supervisory approval prior to taking PII and sensitive non-classified data to a remote worksite and taking precautions to protect this information from unauthorized disclosure.

## **5. Procedures/Requirements.**

**5.1. Access to Remote Work.** A position may be designated for remote work when it is encumbered or vacant. An employee in an encumbered position may apply for remote work. If the application is approved, the position will be designated for remote work. Unencumbered positions may be designated eligible for remote work by the applicable HRO or FRO in coordination with OHC staff. When a position designated for remote work becomes unencumbered, it may be subsequently advertised as a remote work-eligible position, if desired, or the remote work designation may be removed.

**5.2. Remote Work Considerations.** A decision regarding remote work should be primarily based on the position and consideration of its duties and responsibilities. Remote work should be considered for positions where it is in the best interest of the agency and there is no negative impact on mission accomplishment. This means that only positions with duties and responsibilities that can be accomplished effectively in a remote work environment should be designated as eligible for remote work. Additional considerations include, but are not limited to:

- 1) Providing career development opportunities for qualified employees without certain geographical restrictions;
- 2) Providing flexibility for positions where work assignments and frequency do not require regular interface or collaboration in a traditional office setting;
- 3) Creating virtual projects or work teams;

- 4) Enabling employees whose job entails significant travel to work virtually; therefore, reporting to an ICE worksite on a regular basis is not necessary;
- 5) Facilitating recruitment for hard to fill positions; and
- 6) Retaining valued employees who desire to relocate while retaining their current position.

The decision to designate a position for remote work must be documented in writing and approved by the relevant HRO (or their designee) or FRO (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.

**5.3. Remote Work Request Evaluation.** When evaluating an existing employee's remote work request or an applicant's suitability for a remote work-designated position, supervisors should consider both the nature of the position (see Section 5.2) and the employee's or applicant's ability to:

- 1) Prioritize work to meet deadlines;
- 2) Accomplish job duties with minimal supervision;
- 3) Understand their role and expectations;
- 4) Be organized, highly disciplined, and self-motivated;
- 5) Meet performance expectations as outlined in performance work plan;
- 6) Communicate effectively with clients, stakeholders, and team members; and
- 7) Manage time effectively.

**5.4. Documentation.** Remote work applications and approval, modification, or revocation decisions must be fully documented.

- 1) ICE employees wishing to begin remote work must provide a remote work application to their supervisor or manager.
- 2) Supervisors or managers are required to document all decisions made regarding employee requests for remote work.

- 3) Employees approved for remote work must enter into a written remote work agreement. The agreement must include all provisions required by law, as well as this Directive. Additionally, the agreement must include the following as applicable to the employee at issue:
  - a) The term of the agreement. Remote work agreements under which the employee's alternative worksite is within the local commuting area of the agency worksite will normally be for a period of one year and be subject to annual review and renewal. Remote work agreements under which the employee's alternative worksite is not within the local commuting area of the agency worksite will not have an established termination date; termination or modification will be evaluated when prompted by an agency or employee change of circumstances;
  - b) The employee's work schedule;
  - c) The employee's approved alternative worksite; and
  - d) Any specific requirements or expectations beyond those required by law or this Directive.

**5.5. Expectations.** In all situations, the supervisor and remote worker 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) Remote employees are expected to perform as if they were working at an ICE 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 remotely or not. Before signing a Remote Work Application and Agreement, the supervisor and employee must have a discussion regarding expectations (communications, work hours, customer service, etc.) for the remote work arrangement.
- 2) An employee with a decline in performance may be reassigned by management to an ICE worksite. The supervisor or manager will engage with the employee to discuss performance, as well as areas of improvement, prior to revoking the remote work agreement, consistent with Section 5.10 (Termination of Remote Work Agreements) of this Directive. Such performance issues will be addressed in consultation with Employee Relations and OPLA, and if performance is deemed unacceptable, pursuant to 5 U.S.C. Chapter 43.

#### **5.6. 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) ICE is prohibited from assigning an employee to a worksite outside the local commuting area of the agency worksite within 90 days of a non-temporary competitive appointment.<sup>5</sup> Therefore, unless hired to a position designated and advertised as remote-work eligible, ICE employees may not request remote work for a location outside the local commuting area of their agency worksite within 90 days of a non-temporary competitive appointment.<sup>6</sup>
- 3) An employee will not be eligible for remote work under any circumstances where:
  - 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.
- 4) This Directive does not apply to remote work outside the U.S. and its territories (overseas). Individuals may not work remotely from an overseas location under the provisions of this Directive. U.S. Department of State and OPM guidance governs overseas telework (remote work). 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.<sup>7</sup> ICE employees cannot telework from overseas without an approved DETO agreement.

### **5.7. Dependent Care.**

- 1) Remote work employees are expected to have arrangements for dependent care during the workday.
- 2) Remote work 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

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<sup>5</sup> See 5 CFR § 330.502.

<sup>6</sup> The official worksite of an employee hired to work remotely will be the alternative worksite (normally residence) agreed upon at hiring; no change in worksite is associated with appointment into a remote work position and, thus, the 90-day prohibition discussed in this Section would not apply.

<sup>7</sup> 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).



notify their supervisor or manager as soon as possible if significant work disruption or an emergency occurs and request appropriate leave to perform dependent care responsibilities.

- 3) Remote work 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, so long as the employee is not the sole provider of dependent care throughout the workday when they are not on approved leave.

**5.8. Dismissal and Closure.** Remote workers are required to work during any Federal office/worksites closures, delayed arrivals, and early dismissals due to weather or other impacts to the agency worksite. Remote workers 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, so long as their alternative worksite is not affected. If weather or another emergency affects their alternative worksite, they should immediately contact their supervisor for guidance

**5.9. 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 the employee's 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 official worksite for compliance with checklist requirements, if there is suspicion 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 remote work request or rescind an existing remote work agreement if an employee cannot or will not correct remote worksite deficiencies identified by an inspection.

- e) The employee may rectify deficiencies, after which point the supervisor or manager may approve (or decide to not rescind) the remote work agreement upon re-inspection or validation of proof provided by the employee.
- 3) If during inspection an employee with an existing remote work agreement is found to be in violation of physical or information security requirements, the supervisor may immediately terminate the remote work agreement.

**5.10. Termination of Remote Work Agreements.** Termination of a previously approved and effected remote work agreement may be requested by the employee or initiated by ICE. Termination may be based on the employee's change in life circumstances, failure of the employee to meet the terms and conditions of the remote work agreement, or a change in the operational needs of the organization. ICE must provide notice of the termination, including the basis for termination, and the requirement to report to the newly designated official worksite at a specified future date, not less than 30 calendar days from the date of the notice. If reporting to the new official worksite will require a geographic relocation, this notice should include information regarding eligibility for relocation expenses and refer to the appropriate resources and policies to accomplish the required relocation. An employee may appeal the termination of the remote work arrangement through either the negotiated grievance procedure (if the employee is covered by a CBA and applicable provision) or ICE's administrative grievance procedure.

- 1) Management Termination of a Remote Work Agreement—Misconduct or Performance.
  - a) Management may terminate a remote work agreement due to employee misconduct or performance-related issues. In such circumstances, management can direct the remote worker to work at an ICE location, reassign the employee to another position at an ICE location, or terminate the employee in accordance with applicable Government-wide rules and regulations, agency policy, and any CBA, as applicable. Such decisions should be made in consultation with Employee Relations and OPLA.
  - b) If a remote worker refuses to follow management's direction to return to an ICE office or refuses a directed reassignment, ICE may take any necessary steps to involuntarily separate the employee, in accordance with Government-wide rules and regulations, ICE policy, and any CBA, as applicable.
- 2) Employee Voluntary Termination of a Remote Work Agreement.
  - a) A remote worker may request to terminate a remote work agreement by providing a written notice to their supervisor. Supervisors will consider the request on a case-by-case basis. Such requests, if approved, would require employees to return to an agreed upon ICE worksite within 60 days of approval. The employee should coordinate with their supervisor concerning the details of their return to an ICE worksite.

- b) Any remote work agreement must be terminated immediately 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.
- 3) RIF procedures may apply to certain management termination, transfer, or reassignment decisions. Supervisors should consider all available options and are encouraged to minimize the adverse impact on employees during a management decision to terminate remote work agreements.
- 4) Termination of a remote work agreement by management for reasons other than misconduct or performance may make the employee eligible for severance pay where the employee elects to separate in lieu of accepting reassignment outside of their local commuting area. An employee is eligible for severance pay if removed from Federal service by "involuntary separation" for reasons other than misconduct or performance. A separation is considered "involuntary" if an employee declines to accept reassignment outside their commuting area unless the employee's position description or other written agreement provides for such a reassignment. Absent exceptional reasons that have been approved by the ICE CHCO (or their designee), all Remote Work Application and Agreements must contain language clearly stating that a separation resulting from the employee's declination to accept reassignment outside their commuting area is not considered to be an involuntary separation.

**5.10. Government-Furnished Equipment and Materials.**

- 1) Using GFE for remote work is subject to the IT policies of ICE. No individual (including family, friends, house guests, tenants, etc.) other than the employee performing remote work is authorized to use GFE. If the remote employee needs additional or specialized IT equipment, then the employee should make a request for such equipment through their supervisor. The Directorate or Program Office may be required to fund the equipment.
- 2) ICE 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 remote working 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) Remote workers must have written approval from a supervisor to remove sensitive information from agency worksites for access at an approved alternative worksite.

- 2) Remote workers 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, they must do so at an ICE-approved Sensitive Compartmented Information Facility.

**5.12. Reports.** Remote Work Coordinators, supervisors, and managers must all ensure that ICE data regarding remote work is accurately collected and reported to OPM.

- 1) The ICE Remote Work Coordinator, in coordination with Program Remote work Coordinators will obtain, consolidate, and maintain any remote work data or reports necessary for the Remote Work Program from the Program Remote Work Coordinators on an annual or an as-required basis and provide such information to OPM as directed by the DHS CHCO.
- 2) Program Remote Work Coordinators will obtain, consolidate, and prepare any remote work data for reporting to the ICE Remote Work Coordinator on an annual or an as-required basis.
- 3) Supervisors and managers will maintain and report remote work-related data and records (participant data, productivity data, remote work requests, Remote Work Application and Agreements, etc.) to their Program Remote Work Coordinator, as applicable, on an annual or an as-required basis. Remote Work Application and Agreements effected as part of a reasonable accommodation are also reportable to the ICE Office of Diversity and Civil Rights.

**5.13. Liability and Workers' Compensation.** Remote workers are covered under the Federal Tort Claims Act.<sup>8</sup> and the Federal Employees' Compensation Act.<sup>9</sup> As with injuries that occur in the traditional office/worksite setting, for injuries that occur during remote work arrangements at an alternative worksite, 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. Compensation Implications for Remote Work.**

- 1) An employee's pay is determined by the employee's official worksite, which for a remote employee is the same as their alternative worksite; therefore, the employee's supervisor, in coordination with their respective human resources specialist and/or OHC, should review the General Schedule locality pay tables to determine the extent to which salary costs may increase or decrease, if a change in an employee's official worksite is approved. Supervisors must work with their human resources specialist to

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<sup>8</sup> 28 U.S.C. § 2672 (1990).

<sup>9</sup> 5 U.S.C. Ch. 81, Compensation for Work Injuries.



accurately record the employee's official worksite, which must be documented on the SF-52.

- 2) Employees should similarly be aware of any changes in pay that may result by entering into a remote work agreement and should consider this in any request to change their official worksite.

#### **5.15. Travel/Relocation.**

- 1) Remote workers, in certain circumstances, are entitled to receive travel and relocation benefits under General Services Administration guidelines.<sup>10</sup> Travel and relocation reimbursements are based on the employee's official worksite, as identified on their SF-50.
- 2) If an employee is required to report to a worksite more than 50 miles from their official worksite for meetings or other non-disciplinary business, they may be eligible to receive per diem and any applicable travel reimbursement.
- 3) Remote workers whose alternative worksite is within the normal commuting radius of an agency worksite may be eligible for local travel reimbursement when directed to travel within the local commuting area to a location other than an ICE worksite (for example, to a training site). However, ICE will not reimburse required travel to the agency worksite within the local commuting area.
- 4) A remote employee required to travel to an ICE worksite for official business must be provided with reasonable notice of the date and time of travel. What is "reasonable" must be considered on a case-by-case basis in light of the facts and circumstances at issue.<sup>11</sup>
- 5) Relocation to an official worksite that occurs at the employee's request and is not directed by management is completed at the employee's expense. However, under certain circumstances, (for example, if the agency initiates a change to an employee's official worksite), it may be completed at the agency's expense.

**5.16. Employee Health Benefits.** A change to an employee's official worksite may affect their health benefits plan. Under the Federal Employees Health Benefits (FEHB) Program, some health plan options are only available in certain geographic areas. If the plan an employee is enrolled in is not available in their new location, the employee may change plans as a qualifying life event. The employee is responsible for requesting any change. If enrolled in a nationwide FEHB plan, coverage would not change.

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<sup>10</sup> 41 C.F.R. Chs. 300-04.

<sup>11</sup> "Reasonable notice" may vary based on the particular facts and circumstances of the case and individual at issue. It may be reasonable for a remote employee who lives within 50 miles of the agency worksite to be ordered to travel to said worksite the next day. Where such an employee lives hundreds of miles away, more notice would be necessary to be reasonable to allow the employee to make travel arrangements, etc.

## 5.17. Additional Considerations.

- 1) By signing a Remote Work Application and Agreement, an employee agrees that the decision to approve, disapprove, or terminate an agreement alone, is not challengeable by way of appeal to the Merit Systems Protection Board (MSPB). However, appeal rights to the MSPB and other administrative bodies may be implicated if employees allege a prohibited personnel practice, discrimination, or challenge a personnel action over which that administrative body has jurisdiction.
- 2) When an employee requests remote work due to an injury or as a qualified individual with a disability, the employee should follow reasonable accommodation procedures pursuant to ICE guidance and applicable policies.

**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 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, 6501-06).
- 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).
- 7.6. 5 C.F.R. § 330.502 (2022).
- 7.7. 5 C.F.R. § 531.604 (2022).
- 7.8. 5 C.F.R. § 531.605(d) (2022).
- 7.9. 5 C.F.R. Chs. 300-304, Federal Travel Regulation System.
- 7.10. DHS Directive No. 123-05, Revision 01, Telework Directive (Feb. 11, 2015).

- 7.11. DHS Instruction No. 123-05-001, Revision 00, Telework Program (Feb. 2, 2015).
- 7.12. DHS Office of the Chief Human Capital Officer, Compensation Guidance CG-2-2021, Remote Work (July 15, 2021).
- 7.13. ICE Directive 30012.2, Disciplinary and Adverse Action (Dec. 3, 2019).
- 7.14. ICE Policy No. 1033.1, Employee Code of Conduct (Aug. 7, 2012).
- 7.15. U.S. Office of Pers. Mgmt., 2021 OPM Guide to Telework and Remote Work in the Federal Government (Nov. 2021).
- 7.16. U.S. Office of Pers. Mgmt., Overseas Telework, <https://www.telework.gov/guidance-legislation/telework-guidance/overseas-telework/> (last visited Jan. 18, 2022).
- 7.17. U.S. Dept of State, 6 FAH-5 H-352.12 Domestic Employees Teleworking Overseas (DETOs) (2016).

**8. Attachments.**

- 8.1. Remote Work 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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