

Policy #: 456
Title: TELEWORKING
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Reviewers: MSA Human Resources Director; MSA Superintendent

I. PURPOSE

The purpose of this policy is to provide structure and clarity to the process for teleworking arrangements for certain employees of the Minnesota State Academies (MSA). At MSA, teleworking is provided in two forms – permanent (long-standing) teleworking or situational/as-needed teleworking. Permanent teleworking is established in mutually agreeable work schedules between the MSA administration and the employee that benefits both parties. Situational or as needed telework arrangements allow certain employees the flexibility to perform work at home or from an alternative location in times when situations prevent them from working from their usual office spaces. This arrangement may provide alternate benefits to MSA, including supporting the state's requirements for continuity of operations; attracting skilled workers; minimizing the impact of inclement weather; and increasing productivity. As appropriate, MSA employees may have the option to telework at the discretion of MSA if their performance is satisfactory and if it meets MSA's needs.

II. SCOPE

This policy applies only to certain MSA employees identified by the MSA superintendent as eligible for permanent or situational teleworking. Employees who provide direct services to students (i.e., teachers, support service personnel, paraprofessionals, dorm staff) as well as those whose services cannot be provided by teleworking (i.e., physical plant staff; food services staff) are not eligible for permanent teleworking under this policy.

Under normal circumstances, very few MSA employees are eligible for permanent teleworking, following definitions set forth in MMB HR/LR Policy #1422 as almost all of MSA's essential services require physical presence on MSA's campuses to serve students, parents/family members, staff, and community members.

However, in some situations, situational teleworking arrangements can be made. Situations in which temporary teleworking arrangements might be made are as follows:

- 1) School Closures due to snow, extreme cold, or other weather conditions
- 2) Poor road conditions preventing normal commute to work
- 3) Unique needs due to scheduling or travel arrangements
- 4) Unique situations requiring specific accommodations that are only available in alternate locations
- 5) Incident requiring implementation of MSA's Continuity of Operations Plan (COOP) or Crisis Implementation Plan

Identified employees requesting teleworking (either permanent or situational) will have their requests reviewed by their supervisor and passed along to the superintendent's office. Employees who are approved for teleworking will be notified by the Superintendent's office and required to complete a teleworking agreement, outlining the understanding between MSA and the employee regarding work expectations and conditions prior to any telework. The plan is not a contract and can be changed or canceled at any time at the discretion of MSA. After teleworking agreements are completed, the employee and their supervisor will agree on schedules, expectations, and work products completed during teleworking.

III. DEFINITIONS AND KEY TERMS

- A. **Core hours:** The designated period of each workday when generally all agency employees are expected to work.
- B. **Permanent/Principal work location:** The location to which a position is permanently assigned
- C. **Permanent telework:** A work arrangement that allows an employee to perform work on a scheduled, regular, recurring basis at a telework location that is not the employee's permanent/principal work location. This arrangement must be pre-approved by the employee's supervisor and the superintendent's office.
- D. **Situational Telework:** A work arrangement that allows an employee to perform work on an as-needed basis at a telework location that is not the employee's permanent/principal work location. This arrangement must be pre-approved by the employee's supervisor.
- E. **Telework schedule and acknowledgement form:** A document identifying the employee's expected telework schedule and which the employee acknowledges the requirements of the telework arrangement.
- F. **Telework location:** An approved worksite, different from the permanent/principal work location, in which an employee is authorized to conduct telework. In most cases, the telework location will be an employee's home.
- G. **Teleworker:** An employee who has an agreed-upon schedule during which they are expected to work at a telework location rather than their permanent/principal work location.

IV. EMPLOYMENT CONDITIONS

- A. General Expectations
MSA employees with at least satisfactory performance may telework if MSA determines it meets MSA's needs. Employees in probationary or pre-probationary status may be eligible for telework at the sole discretion of MSA if consistent with MSA needs and the duties of the position. Telework is not an express or implied employee right or benefit, but a staffing and work arrangement at the sole discretion of MSA and is not subject to appeal or grievance. Not all work situations are appropriate for telework, nor is telework appropriate for all employees, and all telework agreements must meet MSA needs. The use and approval of telework is at the sole discretion of MSA and MSA may change or cancel a telework arrangement at will.

B. Compliance with Federal/State Employment Laws

Telework arrangements must comply with state and federal employment laws that apply to all state employees. This includes the Fair Labor Standards Act (FLSA) which regulates the payment of overtime for FLSA non-exempt employees.

C. Job Duties and Responsibilities

A teleworker remains responsible for all the job duties, responsibilities, and obligations of their position while teleworking. The terms and conditions of employment, as specified in the applicable collective bargaining agreement/compensation plan, do not change based on telework status.

D. Compliance with Bargaining Agreements/Plans

Applicable provisions of the bargaining agreements or compensation plans must be followed when implementing teleworking arrangements. Salary, retirement benefits, and state-sponsored insurance coverage remain unchanged.

V. EMPLOYEE EXPECTATIONS

A. Personal Activities

Telework hours are regular work hours and may not be used to perform personal activities. Just as with regular work hours, teleworkers are expected to follow agency vacation and sick leave policies and procedures to request time off from telework to engage in non-work activities. While the presence of dependents or others in the household should not be a bar to teleworking, employees should not engage in dependent care activities when performing job duties. While occasional, brief interruptions may occur, interruptions should be kept to a minimum to avoid work disruptions.

B. Work Schedule/Meetings

The work schedule, including normal workday hours, breaks, core hours, and use of vacation/sick leave will be discussed by the supervisor and the teleworker within the framework of the FLSA, MSA policy, and the applicable bargaining agreement or compensation plan. Any changes to the telework schedule due to flex time, overtime, or other situations must follow the applicable plan or bargaining agreement. Core hours are those hours during which the teleworker is expected to be available to communicate with the supervisor, co-workers, or the public by telephone, e-mail, videoconferencing, fax, etc. The supervisor will pre-approve any temporary teleworking schedules in advance. Any overtime hours for non-exempt employees must also be pre-approved.

If there are any assigned meetings related to the performance of the job/position during the period of time when the employee is teleworking, the supervisor will determine how the teleworker should participate in the meeting (phone, videoconference, etc.)

Temporary teleworking locations for employees do not change the permanent/principal work location for teleworkers.

C. Travel Between Locations

Normal commute time between a telework location and the permanent/principal work location is not work time. If occurring during (not before or after) the teleworker's normally scheduled work hours, and not interrupted by personal activities, travel time between the telework location and the permanent/principal work location is considered work time. For example, if a teleworker begins work at the telework location at 8 a.m., and then directly travels to the permanent/principal work location beginning at 10 a.m. for work-related purposes, travel time would be considered work time. Travel home from the permanent/principal work location is not work time, unless the teleworker continues to perform work activity from the telework location after directly returning from the permanent/principal work location. In addition, if the employee teleworks for part of the day, works at the permanent/principal work location for part of the day, but completes personal tasks in between, the travel time is not work time but is unpaid commute time. See DOL Opinion Letter December 31, 2020.

Mileage between the telework location and the permanent/principal work location is considered commuting mileage and is not subject to reimbursement. However, if the employee's travel time is considered work time (as described above), the mileage for the associated travel may be reimbursable if permitted by the applicable collective bargaining agreement or compensation plan.

If the teleworker is working at an alternative work site (such as a field location, and not the telework location or the permanent/principal work location), the mileage from the alternative work site to the permanent/principal work location is reimbursable in accordance with the applicable collective bargaining agreement or compensation plan. Any travel to the alternative work site, that is not interrupted by personal activities, is considered work time if it occurs during (not before or after) the teleworker's normal work hours.

D. Communications

Teleworkers must be reachable by supervisors, colleagues, and clients during agreed upon hours, by the means and methods as determined by their supervisor. Teleworkers must notify supervisors and/or office staff if they leave their telework location during work hours just as they would if they were in the office. They must also notify the supervisor if they are not performing work due to illness or personal reasons and must follow the normal procedures for requesting time off.

E. Supplies and Expenses

Office supplies, such as pens, paper, notepads, etc. needed for the telework location will be obtained through the normal office supply request procedures. Expenses will be reimbursed only if pre-approved and to the extent reimbursement is provided by the applicable collective bargaining agreement or compensation plan, and consistent with applicable MSA and statewide policies. The agency assumes no responsibility for operating costs associated

with the telework location beyond a computer if provided by the agency, including but not limited to maintenance or modification of the telework location, internet, telephone, furniture, utilities, and insurance. If there are any additional expenses, they must be pre-approved by the supervisor and teleworkers must follow MSA policies/procedures for reimbursement.

F. Responsibilities during Teleworking

The teleworker is responsible for establishing and maintaining a safe and adequate telework location when the telework location is in their home. Aside from items employees may be permitted by the agency to transport to the telework location from the permanent work location, teleworkers are responsible for all costs related to modifications of the telework location, including but not limited to providing any furniture, remodeling, electrical or any other space modifications. Teleworkers are responsible for ensuring that their offices are set up appropriately for virtual meetings (appropriate lighting, background, etc.). ADA reasonable accommodation requests related to the telework location will be reviewed on a case-by-case basis and are excluded from this policy. In-person business meetings may not be held in home telework locations; meetings may be conducted via video conference, phone conference, or other applicable technology.

G. Privacy and Security

Teleworkers must make arrangements with their supervisors regarding any necessary access to confidential or sensitive information while working at a telework location. Teleworkers are responsible for protecting the privacy and confidentiality of data and information at their telework location, which includes compliance with enterprise security policies. Teleworkers must ensure the security of data and information that is transported to and from their telework location.

H. Insurance

Any insurance for state-owned equipment is the responsibility of the agency. The agency is not responsible for insuring the telework location. Teleworkers are responsible for purchasing personal insurance for employee-owned equipment and for the telework location, if desired. The agency is not responsible for any loss or damage to any employee-owned equipment or to the telework location.

I. Return of Property

Any state-owned property used for teleworking purposes, documents, and other information must be returned upon termination of the telework arrangement.

J. Notice to Supervisor

Teleworkers are responsible for promptly notifying their supervisor of an equipment malfunction, failure of either state-owned or employee-owned equipment needed to do assigned work, or connectivity issues. If the malfunction prevents the teleworker from working, the teleworker must notify the supervisor immediately. Equipment malfunction and connectivity issues

do not constitute emergencies under HR/LR Policy #1437 Emergency Closure of State Agency Facilities. The teleworker and supervisor should discuss flexible scheduling for these situations or other options available for completing work.

K. Performance

Teleworkers' duties and responsibilities are not altered by telework. Teleworkers are responsible for meeting performance expectations and standards and maintaining satisfactory work performance.

L. Inclement Weather

A teleworker who is scheduled to work at their telework location on a day with inclement weather is expected to work as normally scheduled.

M. Closure of Agency Facility

If an agency facility is closed due to a natural or human-made emergency, any employee scheduled or able to telework is expected to work as normally scheduled. Emergency paid leave is not available when agencies must close due to emergencies unless authorized by the MMB Commissioner.

N. Taxes

Federal and state tax implications of teleworking and use of the home as a telework location is the responsibility of the teleworker.

VI. SUPERVISOR EXPECTATIONS

A. Teleworking Plan

Supervisors must work with employees to develop a teleworking plan that includes the following:

1. Communication strategies – ensuring that the teleworker can effectively manage their workload and does not have a negative impact on the department and/or co-workers. Also ensuring that the teleworker and the supervisor have regular communication.
2. Performance Expectations – defining performance expectations and deliverables, including periodic review of the plan.
3. Telework location, work hours, and schedule – defining how documentation will be shared with the supervisor.
4. Equipment, Supplies, Data Privacy/Sharing, and Accessibility – defining how those will be covered during temporary teleworking situations.
5. Emergency Plan – developing emergency and back-up strategies with necessary phone numbers and a messaging plan in case of equipment failure or other emergencies
6. Meetings – planning for participation in scheduled meetings, as necessary.

This plan must be discussed and implemented during the beginning of each school year, in advance of any situation that may require temporary teleworking. The telework arrangement is not open-ended. The plan must be renewed at least annually and can be changed or canceled by MSA at any time. A telework agreement will be canceled if the teleworker has

performance issues, a change in job duties/responsibilities, or when the needs of MSA are not being met.

B. Training

Supervisors should provide training to teleworkers to ensure a successful telework experience. Examples of topics that could be included are:

1. Telework policy and procedure
2. Data security and privacy/Technology use and guidelines
3. Communication protocols
4. Goals and Standards
5. Safety
6. Time tracking

C. Equipment and Materials

Supervisors are responsible for pre-arranging appropriate MSA-provided equipment and access to software, cloud-based storage, and so forth to ensure that the teleworker can perform the assigned work off-site. If necessary, supervisors may authorize teleworkers to use employee-owned computer hardware and software instead.

MSA must maintain a record of state-owned hardware, software, and other property that is assigned to the teleworker that might be used for work off-site (i.e., laptop; iPad; smartphone). MSA will be responsible for installing, testing, maintenance, and repair of equipment and upgrades of software and teleworkers must bring their equipment into the office for such upgrades.

Supervisors must emphasize that any equipment, hardware, and/or software furnished by MSA for teleworking remains the property of the state and are subject to *MSA Policy #524 – Appropriate Use of Electronic Communication and Technology*. State-owned software shall not be installed on employee-owned hardware unless authorized by MSA. Likewise, employee-owned software shall not be installed on state-owned hardware unless authorized by MSA.

VII. DATA AND SECURITY

A. Data Practices Act

Provisions of the Minnesota Government Data Practices Act (MGDPA) and MSA data privacy policies must be followed when performing work at the telework office. The teleworker and supervisor must discuss the type and form of data which will be taken to and from the telework office and must agree on the security and transfer process necessary to meet the needs of MSA, to protect the security of the data, and to comply with the MGDPA.

B. Data Requests and Retention

Data created and maintained during a teleworker arrangement generated for the purpose of conducting state business, is subject to the MGDPA and MSA (and the state)'s records management statute, regardless of whether the telework is performed on state-owned or employee-owned equipment. This means the teleworker is responsible for following proper retention and

disposal procedures, such data remains the property of the state, and such data must be returned upon the request of MSA.

VIII. LIABILITY

MSA does not assume responsibility for third party injury or property damage that may occur at the teleworker's home or alternate work site. Any business meetings held at the telework office must be approved in advance by the superintendent and are at the discretion of MSA.

Legal References:

Minn. Stat. § 16E.05, Subd. 3 (Government Information Access, Capitol Investment)

Minn. Stat. § 43A.38 (Code of Ethics for Employees in the Executive Branch)

Minn. Stat. § 13 et seq (Minnesota Government Data Practices Act)

Cross References:

MSA Policy #524 – Appropriate Use of Electronic Communication and Technology

MSA Records Retention Schedule

Appendix:

456-A: Teleworking Agreement Form