

June 21, 2021

Lee Lofthus
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Justice Management Division
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Dear Assistant Attorney General Lofthus:

The DOJ Gender Equality Network¹ wants to thank you for your work thus far in ensuring that Department of Justice workers have been able to continue working in a maximum telework posture throughout the pandemic. The pandemic came suddenly and required a quick reaction from leadership; yet despite the obstacles, the Department has been able to function at high levels while permitting most workers to remain at home. We hope that JMD will consider this achievement and strongly encourage individual components to implement long-term flexible work policies that are generous and equitable.

As components develop their post-reentry workplace plans, DOJ GEN members are advocating, within their own components, for updated flexible work policies that are as expansive as their components' missions allow. Almost 500 of our members have signed or will soon sign on to one of 15 letters to different Department components.² Each letter explains why offering a range of flexible work options will expand the component's ability to recruit, hire and retain top talent, while advancing each component's mission and the goal of gender equity and equality. The letters also include detailed recommendations that the signatories believe their specific component should take. We have included a sample, sent by 54 DOJ GEN members to Civil Division leadership, that largely resembles most of the letters. *See* Exhibit.

We ask that JMD establish guardrails for components during their decision-making processes that are in line with the June 10, 2021 return-to-work memorandum that OMB, OPM and GSA sent to department and agency heads.³ Doing this will help ensure that each component, to the maximum extent possible, will continue to achieve its mission while also building "a collaborative and flexible workplace environment that embraces the wellbeing of its employees."

¹ DOJ GEN is a worker-run advocacy organization with approximately 1,000 members hailing from across the Department. Since its formation in 2016, it has worked diligently to promote gender equity and equality among DOJ's workforce. To that end, DOJ GEN strives to eradicate pay inequities and sexual harassment, while encouraging the Department to increase diversity and promote flexible work options.

² Letters were sent to the Antitrust Division, the Bureau of Prisons, the Civil Division, the Civil Rights Division, the Criminal Division, the Community Relations Service, the Environmental and Natural Resources Division, the Executive Office for Immigration Review, the FBI, the National Security Division, the Office of Information Policy, the Office of Justice Programs, the Office of Legal Policy, the Office of Violence Against Women, numerous U.S. Attorney Offices and the Executive Office of United States Attorneys, and the Tax Division.

³ Memorandum M-21-25, available at: <https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-25.pdf>.

We appreciate that the nature of some DOJ jobs makes certain flexible work options impractical or impossible for some people. For example, BOP correctional officers will usually not be able to telework. But we believe that in all components, most workers can avail themselves of some flexible work options at least some of the time, and in many components, the vast majority of workers should be able to choose from numerous flexible work options while executing their component's missions effectively.

While we agree that components have the ability to determine which positions are not conducive to certain flexible work arrangements, we ask that JMD urge components to recognize the "clear and immediate imperative to reimagine our policies and practices"⁴ and encourage workplace flexibility and general consistency across components. For instance, if attorneys and paralegals in the Civil Division are permitted to telework four days per week, similarly situated attorneys and paralegals in the Antitrust Division should be granted the same flexibility. We believe that consistency begets equity, and that workers' ability to manage their work lives should not be constrained by leaders who create artificial limitations that are not supported by mission-related necessities.

DOJ GEN asks that JMD require, or at least strongly encourage, all components to take the following steps when possible.⁵ We also ask that components conduct a case-by-case analysis of which flexible work arrangements are feasible when certain options, like telework, are not.

- (1) Allow supervisors and non-supervisors to telework at least three days per week.
- (2) Develop guidance and training for supervisors to ensure that those who telework are not disadvantaged.
- (3) Ensure that telework policies do not require excessive reporting from staff.
- (4) Permit distant telework for eligible individuals at least for limited time periods.
- (5) Allow workers maximum flexibility of hours, which may include pandemic-level maximum flexibility, maxiflex, glide, compressed, and part-time work schedules.
- (6) Make investments in training and communications equipment.
- (7) Modify policies, if necessary, to clearly incorporate JMD Guidance permitting telework with older children at home.
- (8) Explore the idea of hiring contract workers only from companies that provide flexible work options.

In addition, we recommend that DOJ create an intranet site where components can post their policies that advance gender equity and equality, including those related to flexible work

⁴ Memorandum M-21-25 at p. 13.

⁵ The letter contained in the Exhibit fleshes out the details of and justifications for these recommendations.

options. Such an information-sharing mechanism will assist in the creation of best practices and facilitate consistency across the Department.

OMB, OPM and GSA instructed departments to “regularly solicit feedback” from employees as departments “introduce, pilot, evaluate, and scale new and different personnel policies in the post-reentry work environment.” To help fulfill that mandate, we hope you will use DOJ GEN as a resource—both while you finalize DOJ’s phased plans for reentry and post-reentry by the Safer Federal Workforce Task Force’s July 19, 2021 deadline, and beyond.

And as always, we appreciate your consideration.

Respectfully,

Members of DOJ GEN’s Board of Directors and
Flexible Work Options Working Group (FWO WG):

Ilene Albala <i>Board Member</i>	Kathryn McHugh <i>FWO WG Member</i>
Juliana Barrett <i>FWO WG Member</i>	Carmel Morgan <i>Board Member</i>
Georgette Brown <i>Board and FWO WG Member</i>	Colleen Phillips <i>Board and FWO WG Member</i>
Elizabeth Carr <i>FWO WG Member</i>	Patricia Stasco <i>FWO WG Member</i>
Eliza Dermody <i>Board and FWO WG Member</i>	Mimi Tsankov <i>Board Member</i>
Lindsay Dunn <i>Board Member</i>	Carolyn Vines Sapla <i>Board and FWO WG Member</i>
Shana Eaton <i>Board Member</i>	Taryn Wilgus Null <i>FWO WG Member</i>
Deena Fox <i>FWO WG Member</i>	Kimberly Wilkins <i>Board Member</i>
Stefanie Hennes <i>Board and FWO WG Member</i>	Stacey Young <i>DOJ GEN President</i>
Melanie Krebs-Pilotti <i>DOJ GEN Vice President</i>	Liza Zamd <i>Board Member</i>
Mary Mason <i>FWO WG Member</i>	

cc: Arthur Gary
Theresa Toll
Shawn Flinn
Megan Scofield
Michael Sena

EXHIBIT

June 4, 2021

VIA EMAIL

Acting Assistant Attorney General Brian Boynton, Civil Division
Deputy Assistant Attorney General Sarah Harrington, Civil Division Appellate Staff
Deputy Assistant Attorney General Michael Granston, Commercial Litigation Branch
Deputy Assistant Attorney General Arun Rao, Consumer Protection Branch
Deputy Assistant Attorney General Brian Netter, Federal Programs Branch
Deputy Assistant Attorney General Christopher Tenorio, Office of Immigration Litigation
Deputy Assistant Attorney General Varu Chilakamarri, Torts Branch

Re: Recommendations for Post-Pandemic Workplace Flexibilities within the Civil Division

Dear Civil Division leadership,

We are members of the DOJ Gender Equality Network (DOJ GEN)¹ from the Civil Division, and we write to encourage the Civil Division to permanently adopt many of the telework and flexible work policies that were implemented in response to the COVID-19 pandemic. In the first part of this letter, we address the importance of such policies in the context of recruitment, hiring, retention, and gender equity and equality. In the second part, we provide eight specific policy recommendations that we hope the Civil Division will consider.

The COVID-19 health emergency has radically altered our understanding of the efficacy of telework and the potential for much more flexible work schedules. By necessity, nearly all of us have been teleworking for over a year. And to manage other obligations during the pandemic, many of us have worked outside of usual business hours. We have learned that we can do our work, and do it well, remotely, and with maximum flexibility. This was true even under the sub-optimal conditions of the past year.²

¹ DOJ GEN is an employee-run advocacy organization with approximately 800 members hailing from across the Department. Since 2016, it has worked diligently to promote the equal and supportive treatment of Department employees and contractors regardless of gender. To that end, DOJ GEN strives to eradicate pay inequities and sexual harassment, while encouraging the Department to increase its diversity and promote workplace flexibility. DOJ GEN is reaching out to component leadership throughout the Department to advocate for flexible work policies.

² During the pandemic, most parents of school-age children were juggling telework and remote schooling, while many parents of very young children had no childcare for extended periods of time. The pandemic also resulted in countless stresses and mental health challenges. Employees and contractors, including some who had not teleworked in the past, had to transition to full-time telework virtually overnight without all of the technology or equipment that facilitates effective telework. Many of these challenges were unique to the public health crisis and can be expected to disappear or abate post-pandemic.

Not only did our staff continue to produce high-quality work product and maintain productivity, but they also appreciated the flexibility that telework affords.³ It is widely accepted that teleworking improves employee satisfaction and engagement, improves work-life balance by reducing commuting time, and can improve employee retention and recruiting. Parents and those with caregiving needs or after-work demands are better able to contribute to the workplace. Technology advancements have enabled more productive teleworking than existed even five years ago. An April 2021 survey of nearly 14,000 federal government workers found that, during the pandemic, staff overwhelmingly benefitted from reduced commuting time and costs, had better work-life balance, and learned new technologies.⁴

Staff also benefitted from and appreciated the additional flexibilities offered this year related to scheduling work duties. Permitting staff to begin work early or late to manage other obligations, for example, can be especially useful to working parents or others with caregiving responsibilities. During the past year, some have had to take breaks during the workday to assist with remote schooling, pick up children who have returned to school, or manage other responsibilities related to the pandemic. As many of the complications of this year begin to abate,⁵ the complex logistics of modern life will return and make continued schedule flexibility an important tool for the Civil Division.⁶

During the last year, employees and contractors within the Civil Division successfully continued to argue their cases, file motions, and conduct discovery unabated. In certain cases, staff were able to accomplish even more because of the remote environment. By way of example, in one case 17 expert depositions were taken in a five-week period before the close of discovery, something that would not have been possible had travel and in-person attendance been required. In addition, rather than being chained to east-coast hours, Civil Division staff have been able to adapt their work schedules to the needs of their cases, which are litigated

³ As the acting OPM director noted in the 2020 Federal Employee Viewpoint Survey results, “Workplace flexibilities played a significant role in ensuring employees were able to meet both their work and family responsibilities.” Available at: <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-management-report/governmentwide-report/2020/2020-governmentwide-management-report.pdf>.

⁴ NTEU, *Survey: Federal Employees Support More Telework Options* (April 23, 2021), available at: <https://www.nteu.org/media-center/news-releases/2021/04/23/teleworksurvey>.

⁵ Enhanced cleaning procedures at many daycares have resulted in shorter operating hours that are likely to remain in place until vaccines are available for children under age two. For working parents who rely on daycare, increased telework is a necessity that allows parents to work a full day, despite the reduced hours at daycare.

⁶ Continuing flexibility is consistent with OPM’s guidance, which explains that flexible work options “have the potential to enable managers and supervisors to meet their program goals while, at the same time, allowing employees to be more flexible in scheduling their personal activities. As employees gain greater control over their time, they can, for example, balance work and family responsibilities more easily, become involved in volunteer activities, and take advantage of educational opportunities. The employee benefits provided by [flexible work options] also are useful recruitment and retention tools.” OPM Handbook on Alternative Work Schedules, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/>.

nationwide. Moreover, office procedures that were previously performed in hard-copy have been streamlined and adapted electronically to take advantage of new technologies and minimize processing time. In short, we have learned that employees and contractors who are effective in person are just as likely to be effective in a flexible, remote setting.

Our experience with telework is consistent with the research, which demonstrates that providing flexible work arrangements benefits both employees and employers. Employees with access to flexible work arrangements tend to be more engaged, satisfied, and committed to their workplaces.⁷ Flexible work arrangements are a major factor in encouraging employees to stay longer in their jobs, while employers offering flexible work arrangements benefit from significant reductions in employee turnover.⁸ Flexible work arrangements can help attract and recruit a wider range of employees of all ages, including working parents.⁹ Additionally, such policies can help expand workforce diversity,¹⁰ help close the gender pay gap,¹¹ and enable more women to serve in leadership positions.¹²

⁷ Urban Institute and Georgetown Law, Workplace Flexibility, “The Business Case for Flexible Arrangements” (2008) (Employees with access to flexible work schedules “tend to be more satisfied, committed, and engaged with their jobs.” Flexible work arrangements “improve retention and recruitment; foster greater employee satisfaction, commitment and engagement; and are correlated to increased productivity . . .”), available at: <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1001&context=legal>. In fact, “[r]oughly two thirds of Gen X, Gen Y and HR professionals believe that an organization that has adopted a flexible, mobile and remote work model has a competitive advantage over one that requires employees to be in the office from 9am to 5pm every weekday.” Cisco, 2014 Connected World Technology Final Report, available at: <https://www.cisco.com/c/dam/en/us/solutions/collateral/enterprise/connected-world-technology-report/cisco-2014-connected-world-technology-report.pdf>.

⁸ Federal News Network, “Fearing a post-pandemic talent exodus, agencies view telework as key retention tool” (April 16, 2021) (describing federal agency efforts to attract and retain employees using telework and workplace flexibilities), available at: <https://federalnewsnetwork.com/workforce/2021/04/fearing-a-post-pandemic-talent-exodus-agencies-view-telework-as-key-retention-tool/>.

⁹ McKinsey & Company, “Preparing for a New Era of Work” (Nov. 1, 2012) (finding that older workers often seek flexibility to help care for family members, while younger workers prefer workplaces offering flexibility), available at: <https://www.mckinsey.com/business-functions/organization/our-insights/preparing-for-a-new-era-of-work>.

¹⁰ Forbes, “How Remote Work Can Enhance Workplace Diversity” (Jul. 28, 2020) (discussing opportunities related to flexible work options, including opening the workplace to individuals with caregiving responsibilities, particularly women, and individuals with disabilities), available at: <https://www.forbes.com/sites/forbesbusinesscouncil/2020/07/28/how-remote-work-can-enhance-workplace-diversity/?sh=6595ba37e6a7>.

¹¹ Claudia Goldin, *A Grand Gender Convergence: Its Last Chapter*, 104(4) Am. Econ. Rev. 1091 (2014) (concluding that increased workplace flexibility helps to close the gender pay gap), available at: <https://www.aeaweb.org/articles?id=10.1257/aer.104.4.1091>.

¹² Brie Reynolds, “Remote Companies Have More Women Leaders, and These Are Hiring,” REMOTE.CO (Nov. 6, 2017) (citing Remote.co study finding that fully and mostly remote companies have a higher percentage of women in leadership roles), available at: <https://remote.co/remote-companies-have-more-women-leaders-these-are-hiring/>.

Staff in our component and across DOJ value workplace flexibility and would like to see more of it. As the results from a DOJ GEN survey conducted before the pandemic reveal, expanded schedule flexibility and increased telework were already priorities.¹³ The Federal Viewpoint Survey (FEVS) results similarly highlight the desire for greater telework and flexibility within DOJ and within the Civil Division. The 2019 FEVS results show that only about 5% of respondents from DOJ teleworked at least one day a week, while about 15% of respondents government-wide teleworked at least that frequently.¹⁴ Nearly 30% of DOJ respondents indicated dissatisfaction with the DOJ teleworking policies as compared to nearly 20% government-wide.¹⁵

The Department is not unique: Across the country, workers value workplace flexibility, and employers and employees alike expect to retain at least some of the increased flexibility adopted during the pandemic.¹⁶ Adapting to the changing landscape of work and the evolving expectations of workers will enhance the Civil Division's ability to compete with the private sector in efforts to recruit and retain the highly qualified individuals necessary to fulfill its mission.

Employees and contractors in the Civil Division lead full lives with demanding work schedules, and many of us have long struggled to balance heavy workloads with life out of the office. Many of us also have long, stressful commutes to our offices, spending two or more hours commuting on a typical workday. Over the last year, our eyes have been opened to that fact that we need not live in perpetual motion. In order to retain our skilled, diverse workforce, the Civil Division should embrace the tools we relied on over the last year and establish policies that permit significantly increased workplace flexibilities.

Members of DOJ GEN from within the Civil Division have compiled the following list of recommendations responsive to the concerns listed above.

¹³ Results from DOJ GEN survey on the need for workplace flexibility at DOJ, available at: <https://static1.squarespace.com/static/5a7097c0d55b41a81fbefaec/t/5ffb60c23e8417325192d04e/1610309826951/Workplace%2BFlexibility%2Band%2BFamily%2BLeave%2BReport+%2810%29.pdf>.

¹⁴ 2019 Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency, question 78 at p. 173, available at: <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2019/2019-agency-report/>.

¹⁵ *Id.*, question 79.

¹⁶ PricewaterhouseCoopers, "It's time to reimagine where and how work will get done" (Jan. 12, 2021) ("PwC's second survey into attitudes about remote work finds US executives and employees converging around a post-pandemic future with a lot more flexibility . . ."), available at: <https://www.pwc.com/us/en/library/covid-19/us-remote-work-survey.html>.

(1) All Civil Division offices should permit telework 4 days per week.

We recommend that employees and contractors be permitted to telework 4 days per week. Management should provide a specific, written basis for excluding any positions or individuals from this presumption.¹⁷

We encourage the Civil Division to use telework as a recruitment tool. To effectively attract new talent, we recommend permitting new hires to be eligible for telework immediately.¹⁸

(2) Supervisors should be permitted to telework.

We recommend that supervisors be permitted to telework, just like the employees and contractors they supervise. Supervisors who telework can help establish a tone for offices that both telework and on-site work are valued. Furthermore, encouraging telework among supervisors can promote a diverse leadership team. Limitations on telework disproportionately dissuade working parents and others with caregiving responsibilities from applying for management positions.

(3) The Civil Division should develop guidance and training for supervisors to ensure teleworking employees and contractors are not disadvantaged.

The Civil Division should address concerns that employees and contractors who telework may be disadvantaged or overlooked for leadership opportunities in favor of staff who choose to work exclusively in the office.

The past year has only reinforced the reality that women disproportionately shoulder more responsibility for childcare and household management. We have concerns that as workplaces transition to hybrid in-office and telework schedules, more men may return to offices while women opt to telework, a decision that could negatively affect advancement due to a continued negative stigma associated with telework.

To minimize such stigma, supervisors should clearly communicate and publicly endorse the flexibilities and work schedule(s) that are available to their employees and contractors, along with their expectations for those electing to use any new flexibilities. We recommend that supervisors and lead attorneys be trained to manage and engage both remote and in-office staff, and that they be evaluated on their effectiveness in doing so. We also recommend creating clear guidance that an employee's decision to telework cannot be a factor in decisions related to hiring, promotions or other advancement.

¹⁷ We recognize that the Civil Division may need to review applicable collective bargaining agreements or satisfy appropriate collective bargaining obligations before implementing flexible work schedule changes for certain employees and contractors.

¹⁸ Civil Division office directors may, in their discretion, choose to implement core work days in which all employees and contractors would be expected to work in-person from their offices.

(4) Supervisors should not require excessive telework reporting from staff.

Extensive telework reporting requirements are needlessly time-consuming and lower staff morale by making staff feel like they are not trusted or valued. More than a year of teleworking successfully has demonstrated that staff are completing work remotely and has debunked any myths that employees regularly abuse telework privileges. Staff who are authorized to telework should not be burdened with reporting requirements beyond those imposed on staff working in the office.

(5) The Civil Division should permit distant telework for eligible employees and contractors for limited time periods.

During the pandemic, Civil Division staff have collaborated effectively from homes located across the country. Some employees spent the pandemic year in the homes of family—far from official work locations—with no impact on work performance. We recommend that post-pandemic, Civil Division office directors be given discretion to authorize employees and contractors to telework from a distant location for a certain length of time each year, provided there is no need to change the individual’s duty station.

We also ask that leadership consider granting Civil Division office directors discretion to authorize full-time distance telework from a different duty station on an individualized basis, as appropriate. For those individuals who already have a distance telework agreement in place, we recommend that those agreements be reviewed every 2-3 years rather than on an annual basis.

(6) The Civil Division should adopt maxiflex, glide, and compressed work schedules to encourage greater work schedule flexibility.

Technological advancements now allow us to connect anytime and from anywhere, rendering traditional nine-to-five work schedules largely outdated. Adopting flexible schedules enables staff with a range of needs and obligations to remain in the workforce as effective contributors. Many options for flexible schedules have been implemented successfully in other government and DOJ offices and provide more choice for employees and contractors.¹⁹ We recommend that the Civil Division adopt maxiflex, glide, and compressed work schedules for both in-office and remote work.

Maxiflex is a type of flexible work schedule that allows staff to complete their basic work requirement by determining their own schedule within limits set by the agency. An employee may vary daily arrival and departure times, as well as the length of the workday and/or workweek. Glide schedules are a type of work schedule in which a full-time employee has a basic work requirement of 8 hours in each day and 40 hours in each week but may select a starting and stopping time each day within the established flexible hours. Compressed work

¹⁹ OPM’s guidance explains that flexible work options “have the potential to enable managers and supervisors to meet their program goals while, at the same time, allowing employees to be more flexible in scheduling their personal activities.” OPM Handbook on Alternative Work Schedules, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/>.

schedules are work schedules that permit an employee to complete the 80-hour biweekly basic work requirement in less than 10 workdays, for example, by working nine hours on each of eight days, eight hours one day, and having one day off every two weeks.

(7) The Civil Division should make investments in training and communications equipment.

As the Civil Division workforce adjusts to a hybrid work environment, we recommend that the Civil Division make certain important investments early on. For example, it would be useful for employees and contractors to have some training on how to successfully apply flexible work schedules and maximize the effectiveness of hybrid meetings. It will also be necessary for the Civil Division to invest in conferencing equipment for meeting rooms so that staff working in person can seamlessly engage with remote colleagues.

(8) The Civil Division should modify its directives to clearly incorporate JMD Guidance permitting telework with older children at home.

A sizeable number of the Civil Division staff have older children who require some minimal supervision but not constant monitoring (e.g., not an infant or toddler). In 2018, JMD clarified that while Justice Department employees may not use telework as a substitute for regular dependent care, they may be permitted to telework with older children or other dependents at home.²⁰ The Civil Division should adopt this guidance into its directives, making clear that staff may telework when older children or other dependents are at home (e.g., on telework days during the limited hours when an older child comes home from school and before the end of the work day).

Members of DOJ GEN from the Civil Division would welcome the opportunity to partner with Civil Division leadership to develop policies that will enable us to meet our mission, retain a talented staff, and be happy while we do it.

Sincerely,

Civil Division DOJ GEN

**[NAMES OF 54 CIVIL DIVISION
EMPLOYEES REDACTED]**

cc: Special Counsel August Flentje
Special Master Rupa Bhattacharyya, September 11th Victim Compensation Fund
Director Mark Freeman, Appellate Staff
Director Ruth Harvey, Corporate/Financial Litigation
Director Jeanne Davidson, Foreign Litigation
Director Jamie Yavelberg, Fraud Section

²⁰ JMD's Telework and Dependent Care Policy Guidance, issued by Mary Lamary, former JMD Director of Human Resources (Jan. 25, 2018).

Director Gary Hausken, Intellectual Property Section
Acting Director Martin Hockey, National Courts
Director Gustav Eyster, Consumer Protection Branch
Director Jennifer Ricketts, Federal Programs Branch
Director John Griffiths, Federal Programs Branch
Director Alexander K. Haas, Federal Programs Branch
Director David McConnell, Office of Immigration Litigation, Appellate Section
Director William Peachey, Office of Immigration Litigation, District Court Section
Director Timothy Belsan, Office of Immigration Litigation, Enforcement Section
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CIO & Director Todd Miller, Office of Information Technology
Director Joshua Wood, Office of Litigation Support
Director Parmod Monga, Office of Management Information
Director Doug McManus, Office of Management Operations
Director Kandie Wright, Office of Training
Deputy Designated Agency Ethics Official Michael Granston, Ethics Office