

Model Advocacy for Post-Pandemic Telework and Work Schedule Flexibility

This document was compiled by the DOJ Gender Equality Network (DOJ GEN) and is a template that DOJ GEN members from around the Department can use to advocate for continued workplace flexibilities after the pandemic. The draft is meant to be adapted to the needs of different components with a wide range of cultures and missions. DOJ GEN will identify a point person from each component to coordinate a discussion among DOJ GEN members from that component to determine how to modify and deliver the recommendations.

DOJ GEN has considerable experience working on these issues. If we can be of help in strategizing on an approach, please contact the Workplace Flexibility Working Group by emailing Stacey.Young2@usdoj.gov or Melanie.Krebs-Pilotti@usdoj.gov.

Dear [Relevant Component Leadership],

We are members of the DOJ Gender Equality Network (DOJ GEN)¹ from [component], and we write to encourage [component] 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 [component] 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, [most]/[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 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, 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 abate, the complex logistics of modern life will return and make continued schedule flexibility an important tool for [component].⁵

During the last year, [describe some of the ways people in your component have been able to modify work to complete tasks while teleworking and the ways in which people modified schedules effectively]. In short, we have learned that employees who are effective in person are just as likely to be effective in a flexible, virtual 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.⁶ Flexible work arrangements are a major factor in encouraging employees to stay

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 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/>.

⁶ 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

longer in their jobs, while employers offering flexible work arrangements benefit from significant reductions in employee turnover.⁷ Flexible work arrangements can help attract and recruit a wider range of employees of all ages, including working parents.⁸ Additionally, such policies can help expand workforce diversity,⁹ help close the gender pay gap,¹⁰ and enable more women to serve in leadership positions.¹¹

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.¹² The Federal Viewpoint Survey (FEVS) results similarly highlight the desire for greater telework and flexibility within DOJ [and within our component]. 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.¹³ Nearly 30% of DOJ respondents indicated dissatisfaction with the DOJ teleworking policies as compared to nearly 20% government-wide.¹⁴

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.¹⁵ Adapting to the changing landscape of work and the evolving

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>.

⁷ 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/>.

⁸ 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>.

⁹ 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>.

¹⁰ 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>.

¹¹ 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/remotes-companies-have-more-women-leaders-these-are-hiring/>.

¹² 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>.

¹³ 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/>.

¹⁴ *Id.*, question 79.

¹⁵ 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-

expectations of workers will enhance [component]'s ability to compete with the private sector in efforts to recruit and retain the highly qualified individuals necessary to fulfill its mission.

Employees in [component] 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, [component] 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 [component] have compiled the following list of recommendations responsive to the concerns listed above.

(1) All [component] offices should have a default option of telework at least [x] days per week.

We believe the default option for all employees and contractors should include a telework option at least [x] days a week. Management should provide a specific, written basis for excluding any positions or individuals from this presumption.¹⁶

We encourage [component] to use telework as a recruitment tool. To effectively attract new talent, we recommend permitting new hires to be eligible for telework immediately.

(2) Supervisors should be permitted to telework.

We recommend that supervisors be permitted to telework, just like the employees 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) [Component] should develop guidance and training for supervisors to ensure teleworking employees are not disadvantaged.

[Component] should address concerns that employees 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

Commented [YS(1): Note to those adapting this document: This letter largely refers to employees only. You may want to discuss with other signers in your component whether your management controls contractors' flexible work options; if it does, we encourage you to refer to "employees and contractors" throughout the letter.

Commented [FD(2): Note to those adapting this document: If you think it would be useful to your component, you may consider adding a note about the option of establishing core days or hours when all employees are expected to be in the office.

If you would like to add this recommendation, potential language is: "To the extent that management believes effective onboarding or team building is best accomplished in person, [component] may consider implementing core work days in which employees would work in-person from their offices."

pandemic future with a lot more flexibility"), available at: <https://www.pwc.com/us/en/library/covid-19/us-remote-work-survey.html>.

¹⁶ We recognize that [component] may need to review applicable collective bargaining agreements or satisfy appropriate collective bargaining obligations before implementing flexible work schedule changes for certain employees.

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, along with their expectations for employees 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.

(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) [Component] should permit distant telework for eligible employees for limited time periods.

During the pandemic, [component] 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, employees who request a temporary geographic change be permitted to telework from a distant location for [x time] each year. In certain circumstances, section chiefs should be allowed discretion in approving additional distant telework.

(6) [Component] 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.¹⁷ We recommend that [component] adopt maxiflex, glide and compressed work schedules for both in-office and remote work.

Maxiflex is a type of flexible work schedule that allows employees to complete their basic work requirement by determining their own schedule within limits set by the agency. An

¹⁷ 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/>.

Commented [FD(3)]: Note to those adapting this document: Some components have offered long term duty station changes to individuals who are teleworking full time. You may consider advocating for a change in policy permitting permanent long distance telework.

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 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) [Component] should make investments in training and communications equipment.

As the [component] workforce adjusts to a hybrid work environment, we recommend that [component] make certain important investments early on. It would be useful for employees to have some training on how to maximize the effectiveness of hybrid meetings. It will also be necessary for [component] to invest in conferencing equipment for meeting rooms so that staff working in person can seamlessly engage with remote colleagues.

(8) [Component] should modify its directives to clearly incorporate JMD Guidance permitting telework with older children at home.

A sizeable number of [component] 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.¹⁸ [Component] should adopt this guidance into its directives, making clear that employees 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 [component] would welcome the opportunity to partner with [component's] leadership to develop policies that will enable us to meet our mission, retain a talented staff, and be happy while we do it.

[Component] DOJ GEN

[Can include specific signatories here]

Commented [FD(4)]: Note to those adapting this document: Some components have already made this clear. In those components this recommendation can be deleted.

¹⁸ JMD's Telework and Dependent Care Policy Guidance, issued by Mary Lamary, former JMD Director of Human Resources (Jan. 25, 2018).