

TELECOMMUTING (OUTSTATIONING) PROGRAM MODEL

Prepared by Human Resource Management Services with input from Agency HR Contacts

Telecommuting is an alternative work arrangement that allows employees to work at home, on the road, or in an alternative location designated by an agency for all or part of the regular work week.

The State of North Dakota considers telecommuting or “outstationing” of employees to be a viable option to increase employment opportunities throughout the state and to provide workplace flexibility as a key component in recruiting and retaining skilled government workers. Agencies are encouraged to consider a telecommuting or outstationing option prior to advertising vacancies.

The State of North Dakota promotes telecommuting because this type of program:

- Provides employment opportunities for the rural areas of the state
- Potentially keeps more spending dollars in rural communities
- May attract well-qualified applicants who otherwise might not apply because of the position location
- Serves as a tool in the recruitment/retention of skilled employees
- Takes advantage of electronic technologies and maximizes employee efficiency
- May reduce the cost of central office space rental or avoids having to rent more space
- Generally operates with no additional costs and may eventually reduce or eliminate costs
- Reduces commute time to and from the central office
- Improves employee morale, job satisfaction, and productivity
- Reduces employee absenteeism and turnover
- Provides immediate cost savings to employees by reducing travel-related expenses
- May reduce vehicle emissions in North Dakota by reducing travel

Guidelines for Telecommuting

Participation in a telecommuting arrangement is discretionary on the part of management and voluntary on the part of the employee, unless specifically stated as a condition of employment. It is not a state benefit and does not change the terms and conditions of employment with the state. Telecommuting is NOT an employee right or entitlement. Telecommuting arrangements focus on the business needs of the organization first, but also give consideration to employees who desire workplace flexibility. The guidelines provided herein will assist managers in the decision-making process when considering telecommuting or outstationing employees. Any telecommuting agreement should be reviewed by counsel before implementing.

Guidelines for Telecommuting When Accommodating a Person with a Disability

The Equal Employment Opportunity Commission, in reference to the Americans with Disabilities Act, has said that allowing an individual with a disability to work at home may be a form of reasonable accommodation. Reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to apply for a job, perform a job, or gain equal access to the benefits and privileges of a job. The ADA does not require an employer to provide a specific accommodation if it causes undue hardship, i.e., significant difficulty or expense.

Not all persons with disabilities need or want to work at home. Not all jobs can be performed at home. Allowing an employee to work at home, however, may be a reasonable accommodation where the person’s disability prevents successfully performing the job on-site and the job, or parts of the job, can

be performed at home without causing significant difficulty or expense. Therefore, it may be necessary for an employer to provide telecommuting as a reasonable accommodation to a person with a disability or waive certain eligibility requirements or otherwise modify its telework program for someone with a disability who needs to work at home unless it would cause undue hardship. An example of waiving an eligibility requirement might be when an employer generally requires that employees work at least one year before they are eligible to participate in a telework program. If a new employee needs to work at home because of a disability, and the job can be performed at home, then an employer may have to waive its one-year rule for this individual. Another example might be modifying workplace policies to allow individuals to work from home even though the employer does not have a telework program and does not generally allow other employees to telecommute.

Once an employee informs the employer of a medical condition that requires the need to change the way a job is performed, an interactive process must take place between the employee and employer to determine the type of accommodation needed. To determine if any or all of a job can be performed at home, the employer needs to identify the essential functions of the position. Once the essential functions are identified and all considerations are taken into account such as the amount of one-on-one contact with others, coordination of work with other employees, the amount of supervision required etc., the employee and employer decide which of the duties can be performed at home and what if any accommodation is needed. As part of the interactive process, the employer should also discuss with the employee whether the disability necessitates working at home full-time, part-time, or intermittently. The employer has the right to select the most effective accommodation even if it is not the one preferred by the employee. (The Enforcement Guidance on reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act revised by the EEOC 2002 found at www.eeoc.gov/policy/guidance.html should be consulted for additional information on this topic.)

Characteristics of Work Suitable for Telecommuting/Outstationing

- Results-oriented
- Quantifiable, measurable, reasonably tracked
- Easily portable
- Limited requirement for face-to-face internal/external interaction and communication
- Minimal supervision required
- Information-based

Some Examples of Jobs that May be Suitable for Telecommuting/Outstationing

- Analyst, Claims Analyst
- Architect
- Attorney
- Computer Programmer, Software Developer
- Engineer
- Graphics Designer, Artist
- Project Coordinator or Manager
- Researcher
- Word Processor
- Writer/Editor
- Data entry operator

Eligibility

Telecommuting is available for regular and temporary full-time and part-time employees who:

- possess a demonstrated skill level in the work to be performed or have been employed by the agency for a period of time to achieve a competency level
- have demonstrated the ability to work independently and manage their own time and workload
- have exhibited above average performance in accordance with the performance appraisal process.

Procedure

Before entering into any new telecommuting agreement, the employee and supervisor shall evaluate the suitability of such an arrangement, paying particular attention to the following areas:

- Employee Suitability – the employee and manager will assess the needs and work habits of the employee, compared to traits customarily recognized as appropriate for successful telecommuters.
- Job Responsibilities – the employee and supervisor will discuss the job responsibilities and determine if the job is appropriate for a telecommuting arrangement.
- Equipment needs, work space design considerations, and scheduling issues
- Tax and other legal implications for the business use of the employee's home based on IRS and state and local government restrictions; responsibility for fulfilling all obligations in this area rests solely with the employee.

Once the employee and supervisor agree, a telecommuting agreement is prepared and signed by all parties. A trial period may be implemented.

If a trial period is agreed upon, evaluation of telecommuter performance during the trial period could generally include daily interaction by phone and/or e-mail between the employee and the supervisor, and weekly face-to-face meetings to discuss work progress and problems. At the conclusion of the trial period, the employee and manager may want to each complete an evaluation of the arrangement and make recommendations for continuance or modifications. Evaluation of telecommuter performance beyond the trial period will be consistent with that received by employees working at the office in both content and frequency, but will focus on work output and completion of objectives.

Management Responsibilities

- Approve or disapprove the employee's participation in the program.
- Approve or disapprove worksite arrangements.
- Assess the impact of the telecommuting arrangement on the productivity of the office, the assigned work, and on any other affected employee; ensure that customer service will not be negatively impacted.
- Maintain regular contact with employee; address work-related issues.
- Monitor and evaluate the efficiency and effectiveness of the program.
- Evaluate and monitor cost/benefit effectiveness of the telecommuting arrangement.
- Assess the portability of the employee's workload away from the central office.
- Develop, amend, and implement performance standards and measurements for work performed; monitor, evaluate, and manage employee's work performance.
- Assure equipment is available for the employee to adequately perform assigned work.

Employee Responsibilities

- Abide by all work-related policies and regulations, work behavior, and expectations as required of any regular employee of the organization.
- Maintain proper management, retention, and confidentiality of information and records. Disclose information and records only to those authorized to have knowledge or access to information.
- Assure the worksite is equipped and maintained in a manner to complete work as assigned.
- Observe agreed-upon hours of work in accordance with policy.
- Assist in the identification of training needs and participate in and/or provide appropriate training.
- Maintain access to appropriate computer equipment.
- Maintain safe conditions in the work area and, if working at home, have adequate homeowners insurance as required by State Risk Management.
- Be responsible for lost, stolen, or damaged equipment owned by the State.
- Spend previously agreed-upon time in the central office setting; attend required meetings.
- Provide input during the development and implementation of the Telecommuting Agreement.

Work Schedules

The employee and supervisor will agree on the number of telecommuting days each week, the work schedule the employee will customarily observe, and the manner and frequency of communication. Work schedules may parallel those in the central office setting or be structured to meet the needs of the employee and supervisor. The employee agrees to be accessible by phone or e-mail within a reasonable time period during the agreed upon work schedule. Telecommuting employees who are not exempt from the overtime requirements of the Fair Labor Standards Act will be required to record all hours worked in a manner designated by the agency. Hours worked in excess of those specified per day and per week will, in accordance with state and federal requirements, require the advanced approval of the supervisor. Failure to comply with this requirement can result in an immediate termination of the telecommuting agreement. Each monthly timesheet should reflect hours worked, and/or leave taken, as appropriate and in accordance with Fair Labor Standards Act requirements.

Salary

An employee's compensation, benefits, and work status will not be affected by participation in a telecommuting arrangement when the same work would have been performed in the central office setting. If an employee takes a different position to locate in a rural area or is assigned different work, the classification of an employee's position and the employee's salary may be different from when that employee worked in the central office setting.

Travel

Travel to the central office location is the responsibility of the employee. Business travel in the course of the workday is reimbursable. If state fleet vehicle access is available, the agency encourages use whenever possible. Use of personal vehicles is not prohibited, but requires authorization by a manager.

An employee with an out-of-state residence will use the North Dakota border when calculating mileage associated with work and identifying a start time for travel. Travel from a personal residence to the North Dakota border is personal time.

Business Contacts

An employee in a telecommuting arrangement where the work site is the home shall not meet with clients, customers, the public, other staff members (except his/her supervisor) or professional colleagues at his/her residence for business purposes. *[Note: There are some jobs in which it is feasible for telecommuting employees to hold meetings at their residence. The agency should determine, considering risk management issues, if this is allowable.]*

Long Distance Phone Calls

Options for handling long distance phone calls include:

- Phone credit card for the employee
- Access to an “800” toll free line
- Reimbursement

Equipment & Supplies

The agency shall determine, with information supplied by the employee and the supervisor, the appropriate equipment needs for each telecommuting arrangement on a case-by-case basis. Consideration shall be given to the types of office furniture, equipment, supplies, and technical support that the agency will provide. Equipment and software must meet organizational standards.

Equipment provided by an agency is to be used by the employee and for business purposes only. Use by family members or others is prohibited. Equipment supplied by the agency will be maintained by the agency. The agency accepts no responsibility for damages or repairs to employee-owned equipment. The telecommuter should sign an inventory of all office property, and agrees to take appropriate action to protect the items from damage or theft. Upon termination of the telecommuting agreement or employment, all agency property will be returned to the agency, unless other arrangements have been made.

Agency policies relating to computer hardware and software usage applies in the telecommuting arrangement unless specifically authorized by the appointing authority.

The agency should supply materials necessary to complete assigned work at the work site through the employee’s in-office visits. Out-of-pocket expenses for supplies normally available through the agency should not be reimbursed.

Inclement Weather

If the central office location is closed due to an emergency or inclement weather, the manager will contact the employee. The employee may continue to work at the work site. If there is an emergency, such as a power outage, at the work site, the employee shall notify the manager as soon as possible.

Pandemic

In the event of a pandemic (i.e., widespread outbreak of a communicable disease), the agency will make temporary telecommuting arrangements as it deems necessary under the special circumstances created by the pandemic.

Telecommuting Agreement Termination

Any telecommuting arrangement made could be on a trial basis for a period of time and may be discontinued at any time at the request of either the telecommuter or the agency. A telecommuting arrangement may be suspended temporarily due to operational needs of the agency. Management retains the right to refuse or terminate a telecommuting arrangement at any time followed up with written notice to the employee.

Workers Compensation

Any accident or injury must be brought to the immediate attention of the employee's supervisor.

Workers compensation coverage will be provided for the employee while in the telecommuting arrangement when injuries are sustained in conjunction with the employee's regular work duties. However, the agency assumes no liability for injuries occurring to the employee at the work site when the injuries are not sustained in conjunction with the employee's regular duties. The employee is liable for any injuries sustained by visitors to his or her work site.

November 2002

Rev September 2005

Rev January 2007 – added Pandemic section, removed Incentive section, which had sunset of 6/30/05

TELECOMMUTING AGREEMENT MODEL

This Agreement between [employee name] and the [agency name] is to formalize a process whereby [employee name] will be conducting state business in [specify his/her home or telecommuting office] for a [number] month period. This arrangement will begin on [date] and at any time can be terminated at the will of the employee, [employee name] or the Agency, [agency name] with written notification.

Both parties to this Agreement voluntarily agree to the following terms and conditions of telecommuting:

- This Agreement is for the period [specify dates or time periods] , which may be extended, and is of mutual benefit to the [agency name] , hereinafter referred to as Agency, and to [employee name] , hereinafter referred to as Employee.
- *[If the work site is a personal residence and if clients or vendors will be coming to the residence on State business]* Prior to beginning work under this Agreement, the Employee must submit proof of homeowner's, renter's, commercial general liability coverage to the Agency indicating the limits of coverage at the home worksite. In addition, the Agency will inspect the premises according to Risk Management guidelines.
- The Employee will work away from the central office setting at [specify his/her home or telecommuting office] . The Employee's work schedule will be set and mutually agreed upon between the Employee and the Employee's immediate supervisor on a [specify weekly or other] basis. The employee will complete assigned work as agreed upon. Time and attendance will be recorded according to the Fair Labor Standards Act in accordance with agency policy.
- Compensation, benefits, and work status will not change due to this Agreement when the employee is performing the same work as when in the central office setting.
- The Employee will be allowed to use [specified equipment] which will be provided by the Agency. Employee agrees to protect any State-owned equipment and to use the equipment only for official purposes. Use by family members and others is prohibited. The Agency agrees to install, service, and maintain any State-owned equipment issued to the telecommuting employee. Any State-owned equipment will be returned to the Agency at termination of the Telecommuting Agreement.
- Employees must obtain supervisory approval before taking leave in accordance with established procedures. The employee agrees to follow established procedures for requesting and obtaining approval of leave.
- The Agency will supply materials necessary to complete assigned work at the work site through the Employee's in-office visits. Out-of-pocket expenses for supplies normally available through the Agency will not be reimbursed.
- Necessary telephone lines will be provided by the employee. Long distance business calls and internet connection fees will be [specify reimburse, made on credit cards, etc.] .
- All Agency data must be handled in a secure and confidential manner.

- The Employee must maintain safe conditions in the work area and practice the same safety habits in the designated work area as the Employee would in the Employee’s office on the Agency’s premises.
- Workers compensation coverage will be provided for the Employee while in the telecommuting arrangement when injuries are sustained in conjunction with the employee’s regular work duties. The Agency assumes no liability for injuries occurring to the Employee at the work site outside of the agreed-upon work schedule or when injuries sustained are not in conjunction with the performance of the regular work duties.
- The employee will continue to work in pay status while working at a home office. An employee working overtime, ordered and approved in advance, will be compensated in accordance with the Fair Labor Standards Act and agency policy. The employee agrees that failing to obtain proper approval for overtime work may result in removal from the telecommuting program or other appropriate action.
- The agency will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g. utilities) associated with the use of the employee’s residence. The employee does not give up any reimbursement for authorized business for the agency because the employee works from home or another location.
- The agency will not be liable for damages to the employee’s property resulting from participation in the telecommuting program. In signing this document, the employee agrees to hold the agency harmless against any and all claims, excluding worker’s compensation claims.
- The evaluation of the employee’s job performance will be based on established standards. Performance must remain satisfactory to remain as a telecommuter. Employees will not be allowed to telecommute while on a performance improvement plan.
- The employee will apply safeguards that are approved by the employer to protect records from unauthorized disclosure or damage. All records, papers, and correspondence must be safeguarded for their return to the office.
- The employee agrees to work at the office or telecommuting location and not from another unapproved site. Failure to comply with this provision may result in termination of the agreement and/or other appropriate disciplinary action.

We agree to abide by the terms and conditions of this agreement:

Employee Signature Date

Supervisor’s Signature Date

Agency Head’s Signature Date