



**NEW MEXICO JUDICIAL BRANCH
GENERAL PERSONNEL POLICY AND PROCEDURE:**

POLICY NO. 2021.NMJB.200

TELEWORK AND ALTERNATIVE WORK LOCATION POLICY

Dev.: 9/13/2021; Rvd.: 2/1/2022; 11/28/2022
Inquiries: AOC HRD 505/470-7205

TELEWORK AND ALTERNATIVE WORK LOCATION POLICY

1. PURPOSE

The purpose of this policy is to establish a procedure for Judiciary employees to request and management to approve alternative working locations, while ensuring the judicial entity's operational needs are met, services are timely provided, and the workplace culture thrives, while adhering to federal and state statutes and regulations.

2. REFERENCES

New Mexico Judicial Branch Personnel Policy No. 2020.NMJB.19, *Pandemic, Communicable Disease Emergency, including the Coronavirus (COVID-19) Policy and Emergency Leave*.

The Fair Labor Standards Act, 29 U.S.C. § 201, et seq., as amended.

3. DEFINITIONS

- A. Alternative Work Site** - An approved secondary work location, in addition to an employee's official worksite, to include a judiciary facility or location. The alternative site can include court facilities, other judicial branch offices, other state agency offices, and a home address.
- B. Telework and Alternative Work Location Request** – An agreement between an employee, their supervisor, work team, and approved by their division director and administrative authority that outlines the terms and conditions of the alternative worksite assignment, under this policy. In all cases where an employee is using an alternative worksite, even on an occasional, irregular basis, a written agreement must be kept on file.
- C. Official Work Site** – An employee's assigned judicial entity's post of duty as indicated in the employment offer letter.
- D. Primary Workplace** – An employee's usual and customary place of work.
- E. Telework** – Working from an approved alternate work location.



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- F. **Teleworking Location** – The location from which the Teleworker will be working. The location must be approved in advance and must be the employee's home or approved alternative worksite.

4. POLICY

Due to the COVID-19 public health emergency, a hybrid working model of both remote and office-based work has been utilized; however, there is no presumption of permissible telework.

A judicial entity may approve an employee to telework in compliance with Supreme Court Orders, Protocols or Rules, and when determined appropriate as outlined in this policy.

In no event shall this policy supersede the Supreme Court Orders or Protocols, or regulations under federal and state law, including federal and state law regarding terms and conditions of employment for which employees are eligible, including the Fair Labor Standards Act, the Family Medical Leave Act, and the Americans with Disabilities Act.

Telework is a work alternative that may be appropriate for some employees and some jobs. The requesting employee's supervisor and the judicial entity, as discussed in Section 5, Procedures, below must determine approval to telework. A telework schedule should not exceed more than 50% of the employee's work schedule (i.e., 40 hours per pay period for a full-time employee). At the discretion of the Administrative Authority, 100% of the employee's work schedule may be approved for those employees who hold a position in the Attorney job classification series.

Approval to telework due to the coronavirus (COVID-19) is at the discretion of the chief judge, administrative authority, or designee in each judicial district based on individual circumstances and is separate from this non-emergency telework policy.

- A. Unless otherwise authorized, telework employees shall maintain a normal 40-hour work schedule (8:00 a.m. to 5:00 p.m. Monday-Friday). The NMJB retains the right to approve or deny any flexible work schedule requests separate from this policy.
- B. No employee's telework location, for purposes under this Policy, shall be outside of New Mexico, unless the employee would regularly commute across the New Mexico border to travel to and from the normal worksite daily, in which case the employee may telework from his or her home outside of New Mexico with their Administrative Authority's approval. Prior to teleworking, telework employees must include on the Telework Request Form their street address of the teleworking location, and mailing address if different from street address.
- C. Telework employees shall perform all duties and responsibilities of their position and maintain a "Meets Requirements" performance rating or better on all evaluation criteria



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in any performance appraisal. Failure to do so may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.

- D. Telework employees shall be accessible by telephone, text, and email during their scheduled work hours and must report to their normal worksite no later than two (2) hours after receiving the request to report in person. Failure to be accessible and/or to report to their normal worksite may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.
- E. Telework employees shall communicate with their supervisors and managers as needed to fulfill their job responsibilities successfully and shall maintain contact with their supervisor as directed. Failure to do so may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.
- F. Telework employees shall adhere to all NMJB policies and procedures, including but not limited to: accurately recording their actual work time and attendance in the SHARE system, requesting leave in advance, not working overtime or extra hours for which additional compensation or compensatory time might be due without prior authorization, and submitting to all required drug and alcohol testing, including testing based on reasonable suspicion. Failure to do so may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.
- G. The telework employee's judicial entity will determine the appropriate equipment needs including, but not limited to, hardware, software, modems, phone and data lines, facsimile equipment or software, and photocopiers, for each telework arrangement on a case-by-case basis. The telework employee's supervisor, HR and Judicial Information Division (JID) will serve as resources in this matter. Equipment supplied by the judicial entity will be maintained by the judicial entity and remain the sole and exclusive property of the judicial entity. Equipment supplied by the telework employee, if deemed appropriate by the judicial entity, will be maintained by the employee. The NMJB accepts no responsibility for damage or repairs to employee-owned equipment. The NMJB will not pay the costs of acquiring or using employee-owned equipment. The NMJB reserves the right to determine whether any equipment is appropriate, subject to change at any time. Equipment supplied by the NMJB shall be used for business purposes only. The telework employee shall sign an inventory acknowledgement for receipt of all NMJB equipment and agrees to take directed and otherwise appropriate action to protect NMJB equipment from damage, loss or theft. Neither family members nor other non-judiciary employed individuals are authorized to access, handle or use any NMJB equipment. The telework employee shall immediately notify employee's supervisor of any damage, loss or theft of NMJB equipment. Supervisors are responsible for immediately notifying the CEO and Administrative Authority of any damage, loss or theft of NMJB equipment. Damage, loss or theft of NMJB equipment may result in revocation of the telework arrangement and/or



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discipline, up to and including dismissal, as permitted by NMJB policy. Upon termination of employment, all NMJB equipment shall be returned to the NMJB.

- H. NMJB equipment and remote access to NMJB's networks shall be provided in accordance with JID regulations. All sessions performed remotely are subject to periodic and random monitoring by JID.
- I. Telework employees shall ensure the protection of all sensitive and confidential information as required by privacy and confidentiality laws and regulations and by the NMJB policy, procedures and practice regarding information security for employees working at the normal worksite. Steps include following all required information and data security policies, including but not limited to the NMJB Computer and Internet Use Policy, as well as, guidelines and protocols; use of encryption; use of locked cabinets and desks; regular password maintenance and any other steps directed by NMJB or appropriate for the job and the environment. Neither family members nor other non-Judiciary employed individuals are authorized to handle or view any sensitive or confidential information. Telework employees shall immediately notify employee's supervisor of any potential or confirmed breach in security or disclosure of sensitive or confidential information in violation of privacy or confidentiality laws or regulations or NMJB policy, procedure or practice. Supervisors are responsible for immediately notifying the CEO or Administrative Authority of any potential or confirmed breach in security or disclosure of sensitive or confidential information. Telework employees shall be liable for disclosure of any sensitive or confidential information protected by state or federal privacy or confidentiality laws, regulations, rules, policies, or procedures to the same extent as employees working at the normal worksite. Improper, unlawful, unauthorized, or negligent disclosure of sensitive or confidential information may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.
- J. The NMJB will supply the employee with appropriate office supplies (pens, paper, etc.) for successful completion of job responsibilities. The NMJB is not responsible for any operating costs associated with an employee's use of their personal residence as an alternative worksite, including but not limited to home maintenance, insurance and/or home utilities, including phone and data lines and service.
- K. Prior approval is required for mileage reimbursement, and if the distance from the telework location is less than the distance from the post of duty, the telework location will be used.
- L. In the event that more than one employee requests telework, and the judicial entity determines that granting all the telework requests is not in the best interest of the judiciary or judicial entity, the Administrative Authority may, in their sole discretion, deny all requests or some requests, modify requests, implement alternative telework schedules, or take other action.



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- M. Requests for leave under the Family and Medical Leave Act (FMLA) or reasonable accommodations under the Americans with Disabilities Act, as amended, (ADA) are not governed by this policy.
- N. Telework employees shall be responsible for ensuring they have a clean, professional, and safe workspace at their telework location. It is the responsibility of the employee to ensure that a proper work environment is maintained.
- O. Telework employees shall report any job-related injuries that occur in the course and scope of employment while teleworking at the earliest reasonable opportunity but in no event later than 72-hours after injury and pursuant to the NMJB Workers' Compensation Policy.
- P. It is solely the employee's responsibility to comply with any personal tax or other personal legal obligations arising from a telework arrangement pursuant to this policy.

5. PROCEDURES

- A. To perform telework under this policy, employees shall utilize the NMJB's attached Telework and Alternative Work Location Request form.
- B. Employees requesting to telework must present a draft Telework and Alternative Work Location Request form to their immediate supervisor for review. Employees must complete the employee information, telework schedule and location, and equipment sections of the Telework and Alternative Work Location Request. If the requested location is outside of New Mexico as specified by Subsection 4.C herein, the employee must secure the approval of the Administrative Authority as required by that provision.
- C. **SUITABILITY OF TELEWORK:** Management will evaluate the suitability of the proposed telework arrangement, and paying particular attention to the following areas, determine if they recommend approval in full or in part, or denial of the request:
 - a. **Job responsibilities.** Management will assess the employee's job responsibilities and determine if the position is appropriate for a telework arrangement, including, but not limited to, any scheduling issues particular to the employee's position and the importance of having the employee present at the normal worksite to interface with supervisors, colleagues, and the public. Some positions are not generally suitable for telework, including, but not limited to: positions that require the employee to have daily, in-person contact with co-workers, supervisory officials, customers, or the general public in order to be effective; positions where operational requirements dictate the employee's



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presence at a specific location; positions that require routine access to protected information which cannot be accessed remotely or NMJB is unable or unwilling to allow to be accessed remotely

- b. Employee performance and suitability.** Management will assess the needs and work habits of the employee, including, but not limited to, the employee's demonstrated ability to work independently and fulfill the responsibilities of the job without direct, in-person supervision.
 - c. Morale of other employees.** Management will consider and assess the potential impact the request may have on the office morale and team relationships that may require daily interaction for the successful performance of duties or operational needs of the bureau or section. Management should consider the effect of telework upon the overall morale of the judicial entity, and upon the employees with public facing positions that may not be conducive to telework.
 - d. Ability to monitor.** Management will assess the ability to monitor the employee's productivity and quality of work under the telework arrangement.
 - e. Equipment and service needs.** Management will assess the NMJB's ability to meet the employee's equipment needs under the telework arrangement and employee's access to phone and data lines or other necessary services.
 - f. Best interest.** Management will assess the business and operational needs of NMJB and consider any other factors in the best interest of NMJB.
- D.** The supervisor must receive approval through their chain of command from the Administrative Authority prior to communicating any possible approval or denial of the teleworking arrangement.
- E.** The judicial entity may approve, amend, or deny the telework request if it is in the best interest of the judicial entity or the judiciary. Denied requests should state the reason for the denial and be discussed with the employee. If the supervisor approves the proposed telework arrangement or a modified version of the proposed telework arrangement, then the supervisor will modify the telework arrangement as needed, complete the job duties and telework review sections of the Telework and Alternative Work Location Request, and present a finalized Telework and Alternative Work Location Request to the employee for discussion. A copy of the Telework and Alternative Work Location Request must be sent to the judicial entity's human resources professional for inclusion in the employee file.
- F.** After the employee and the supervisor have signed the Telework and Alternative Work Location Request, the supervisor will send the Telework and Alternative Work Location



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Request to the Administrative Authority or designee, through the chain of command with the supervisor's recommendation whether to approve the telework request.

- G.** A teleworking employee must be fit for duty, including appropriate dress for the workplace including any meetings attended virtually.
- H.** The Administrative Authority or designee shall review the Telework and Alternative Work Location Request and approve, amend, or deny the telework request. All denied requests shall state a reason for the denial on the telework arrangement and be explained to the employee by the employee's supervisor.
- I.** Once approved, amended, or denied by the Administrative Authority or designee and discussed with the employee, the employee's supervisor shall forward the Telework and Alternative Work Location Request to HR to be placed in the employee's personnel file. Any additional changes to the employee's work schedule requiring approvals must be completed on the required forms and forwarded to HR to be placed in the employee's personnel file.
- J.** No later than 90-days after the commencement of the telework arrangement, the supervisor and employee must meet and discuss the effectiveness of the arrangement.
- K.** HR shall maintain the original Telework and Alternative Work Location Request whether approved, amended, or denied.
- L.** The employee shall use the TELWK timecode in SHARE to code any time spent teleworking under an approved telework arrangement. The supervisor will provide a copy of any approved Telework and Alternative Work Location Request to the employee, and is responsible for employee compliance with the Telework Policy and the Telework and Alternative Work Location Request and for ensuring that a forty (40) hour workweek is completed.
- M.** During inclement weather, or facility or court closures, telework employees shall not be eligible for Office Closure Leave.

6. REQUIRED REPORTING AND DATA COLLECTION

To determine statewide use and effectiveness, as well as equity, a judicial entity's human resources professional will track and monitor the telework requests received, approved, denied and modified. The data collection should include the employee's name, job title, telework hours approved, and for what duration. The judicial entity's human resources professional shall send monthly reports with this information to the AOC HR Director for statistical review.



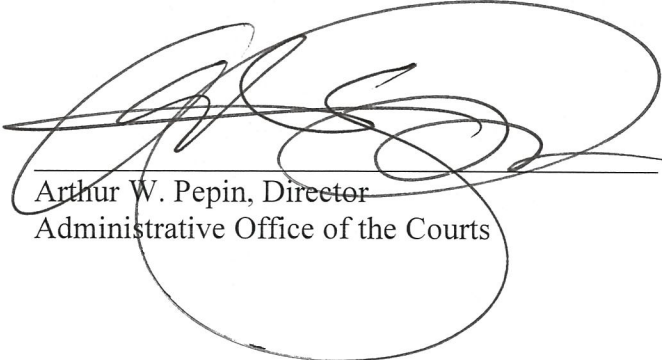
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7. CANCELLATION

Supervisors, with the approval of the Administrative Authority, may permanently or temporarily cancel, suspend, or modify telework arrangements for any reason if it is in the best interest of the judicial entity, including but not limited to: workload issues; special projects; special assignments; training; failure to safeguard NMJB equipment from damage, loss or theft; failure to safeguard NMJB Sensitive Agency Information from improper, unlawful, or negligent disclosure; any violation of this policy or the Telework Arrangement; or employee discipline. Employees shall be given as much advance notice as possible, and, where appropriate the judicial entity shall make every effort to give no less than two (2) weeks' notice when canceling, suspending, or modifying telework arrangements. Employees shall have the right to cancel their telework arrangement for any reason and will give their supervisor as much advance notice as possible.

8. ATTACHMENT

NMJB Telework and Alternative Work Location Request Form



Arthur W. Pepin, Director
Administrative Office of the Courts

11-28-2022
Date