

Addressing Out-of-State Telework

Issue overview

The COVID-19 pandemic drove a shift to full-time remote work for approximately half of the state workforce in 2020. Now, remote work as a long-term option is more attractive and more viable for employees than ever before. Out-of-state telework and remote work, while previously rare, is not new, as several employees have resided in nearby bordering states. However, now agencies are getting more employee requests for out-of-state remote work for many different reasons.

The state has a clear interest in investing workforce funding inside the state of Nevada. The economic benefit of good state jobs strengthens our communities. However, there may be some exceptional circumstances where a state agency may decide to allow a state employee to move out of the state of Nevada and maintain employment. A state agency may also decide to recruit both within and outside the state if necessary to hire someone with the right skills for the job. No state agency is required to approve a request to work outside the state, or to present reasons why they have denied such a request.

The guidance found here attempts to balance the critical goals of finding and retaining the best, most qualified candidates to perform the important work of our state government, while prioritizing the reinvestment of taxpayer dollars back into our State of Nevada communities.

Reasons to approve out-of-state remote work

State agencies and higher education institutions may, but are not required to, decide to support out-of-state remote work. They may do so where it helps them meet a business need or where there is a supporting policy rationale. These situations include:

- 1. Supporting military families.** Agencies should support military families. They can do this by continuing the employment of a military spouse if the active service member transfers to another state.
- 2. Providing care for others.** Agencies may allow a current employee to move if they are providing care to a family member. The agency can consider this for a spouse, child, sibling, sibling-in-law, parent, or grandparent as defined under the Family Medical Leave Act or Paid Family Medical Leave Program.
- 3. Recruiting or retaining a rare skillset.** To meet business needs, an agency may seek to keep (or recruit) an out-of-state employee with a rare, hard-to-find skillset or background.
- 4. Supporting victims of violence or stalking.** An employee may need to leave the state as part of a protective or restraining order, or to escape victimization. Supporting these employees as part of a safety-related accommodation is encouraged.

5. Border state residents. There is a question of fairness for employees living in California, Idaho, Oregon, Utah, and Arizona (bordering states) who are working for a Nevada state agency. Denying them out-of-state telework would deny them access to mobility that similarly situated employees residing in Nevada may enjoy.

6. Positions that must perform work out-of-state. There are some positions that have customarily and historically worked outside the state. Their assigned work requires them to work beyond the borders of the state of Nevada.

7. Legacy agreements. Agencies may also consider continuing to support previously approved out-of-state telework agreements that may not meet the criteria listed above, as legacy agreements, if they are working well and based upon continuing to meet business needs.

Telework designation and agency discretion

Nothing in this document is intended to reduce the employer's authority to determine which positions are eligible for telework generally or for out-of-state telework specifically. Not all positions that can telework are able to do so full-time. There are some types of work that must be performed on-site to meet operational needs, and identifying that work is the purview of the agency. The guidance above addresses only situations where an employee holds a position designated as telework-eligible and the agency may decide to allow them to work from outside the state of Nevada.

How to support out-of-state teleworkers and remote workers

The purpose of this guidance is to provide agencies with information and increased awareness for how to support out-of-state telework. It is also meant to help HR staff spot the greatest areas of concern when employees work out-of-state and outline how agencies can address them, with the goal of mitigating risk while maximizing flexibility for the agency.

This guidance does not comprehensively address every scenario nor serve as a substitute for legal advice. There are nuances to payroll taxation or benefit eligibility that require research by agency HR or payroll staff, or the agency's assigned DAG.

Suggestions for requests to work outside the state of Nevada

(a) Decisions about out-of-state remote work should be made on a case-by-case basis and may be informed by factors that include legal compliance obligations of the other state. (b) When an employee's alternate workplace is outside of Nevada, the agency's Human Resources designee should submit their request for out-of-state work to the Department of Administration's Risk Management Division. They may provide guidance on whether out-of-state workers' compensation coverage is needed. The request should also be submitted to the agencies' Deputy Attorney General for review.