



Telecommuting Toolkit

Greetings PEF leaders and Staff:

This toolkit is intended to educate and support your efforts in achieving telecommuting agreements at your agencies. We will be summarizing the current and tentative contract language, GOER documents, and conversations PEF has had with the State over the expectations and intentions of the future of telecommuting. We hope you find this toolkit helpful in your advocacy and efforts.

In solidarity,

PEF Field Services

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Summary of Current Policies, MOA, Understandings, Timeline

GOER has confirmed that agencies may proceed under the assumption that the contract will be ratified. Language may be included in agreements/policies that state that the agreements/policies are assuming ratification of the PEF/State Tentative agreement for the purposes of expediency.

Telecommuting agreements under the PEF/State MOA are intended to be developed at agency-level LM committees, not local committees. To the extent the LM team determines that a local agreement is warranted due to the specific nature of a local facility or work site, such local agreements must be vetted

and approved by the agency-level LM committee and incorporated by reference into the agency-level agreement.

In the interest of continuing a robust telecommuting program, and in light of the fact that there is a short period for agencies to develop and adopt a telecommuting policy, policies developed by July 31 should be set to expire on December 31, 2021. These interim policies (between July 2 and July 31) can be either a reversion to agency pre-COVID telecommuting agreements/policies or the development of new policies/agreements.

If the July 31–December 31 telecommuting policy is satisfactory, it can be continued beyond December 31, 2021, if both PEF and the State acknowledge

that it meets the TA's requirements. On the other hand, if the July 31–December 31 agreement is not satisfactory or does not include terms from the TA, then PEF should continue to work with the agency to develop a policy consistent with the terms of the TA to be implemented no later than nine months after ratification.

June 18, 2021 GOER Memo

This memo issued by GOER to State agencies and authorities intends to provide guidance to agencies on telecommuting.

Agencies have been directed to:

- Inform employees that Statewide emergency COVID telecommuting agreement expired July 2.
- After July 2, agencies may resume their pre-COVID telecommuting agreements.
 - If they did not have telecommuting agreements pre-COVID, they have been directed to continue to utilize the COVID telecommuting agreement while they develop their own policies with PEF at the LM table.
 - All agencies must have their own specific telecommuting program reviewed by GOER and in effect no later than July 31, 2021.
 - Additionally, the Tentative Agreement requires all agencies to develop a telecommuting agreement within nine (9) months of ratification.
 - Agencies must consult obligations for reasonable accommodations as required by the ADA/NYS Human Rights law, and have a policy regarding COVID-19 specific accommodations for employee issues outside of ADA/HRL (such as child or elder care).

Time Line

JULY 2

Emergency COVID Agreement expired.

JULY 3 – JULY 31

Pre-COVID telecommuting programs may be reinstated or the emergency agreement may be continued.

JULY 31

All agencies & authorities must have a specific telecommuting agreement developed in the LM forum, reviewed by GOER and implemented by this date.

JULY 31 – DECEMBER 31, 2021

Telecommuting Agreement, either a stopgap policy/agreement pending a more robust agreement or a fully developed agreement PEF leaders are satisfied is complete.

NO LATER THAN 9 MONTHS POST-RATIFICATION

Permanent (reviewed annually) telecommuting agreement completed and implemented.

Tentative Agreement Highlights and Improvements

Note: These improvements do not go into effect until after ratification of the tentative agreement. However, for purposes of the July 31–December 31 policies, ratification can be assumed.

- Requires all agencies to develop a telecommuting policy consistent with operational needs with PEF in the LM forum. The specifics related to employee involvement in the telecommuting program, including where telecommuting is programmatically feasible, must be developed in the labor/management forum. Failure to do so is subject to the grievance and arbitration provisions of the CBA.
- A yearly Executive level labor-management meeting shall be convened to review and make mutually beneficial changes to the program.
- Parties must meet no less than 60 days before the end of any telecommuting policy.
- Policies shall include a review process above the employees' supervisor and employees shall be afforded the reasons for the denial of their inclusion in the program.
- Eliminates the 4 days per pay period cap and instead notes that agencies, to the greatest extent possible, should allow flexibility in the employee's choice of which and how many days to telecommute per pay period or per week.
- Policies shall include procedures by which work is assigned and managed.

General Recommendations and Guidance

- All italicized sections of the MOA, both in the current agreement and in the tentative agreement, are subject to the grievance procedure through step 4 (arbitration).
- Either a formal MOA under the LM Committee or an accepted policy on telecommuting that was "developed" in the L/M forum is appropriate.
- If the agency sets forth a policy and the LM committee does not agree with its contents, or the agency fails to meaningfully engage with the union on the agreement, we strongly recommend LM committees not to sign off on the agreement or agree to any language that states that the policy was "developed" in the LM forum.

Areas to Include in the LM Agreement

- Equipment, supply needs and responsibilities to provide and protect them on both the employer and employee side.
- Objective, consistently-applied criteria for selection of employees to participate, based on operational needs and employee interests.
- A review/appeal process for employees that have been declined participation. The agreement should identify who hears the appeal, and PEF should propose a structural process like the performance evaluation appeal process, with equal numbers of PEF representatives involved.
- Procedure for withdrawal from the program (recommended 30-day notice).
- Training on the procedures to work from home.
- Development of procedures on how the work will be performed, and how it will be managed.
- If the agency insists on access to an employee's home, PEF should resist such language and note that this provision was not included in the COVID telecommuting agreement. If the agency still insists, then the language should be very narrow as to where the employer can access, for what purpose, and with adequate notice.
- If you think it would be useful, propose to identify which program areas telecommuting will be offered.
- Decide whether seniority will be a factor in deciding telecommuting days where relevant.
- Telecommuting is voluntary, under both current and proposed MOA (whereas under expiring S/W program, the State could mandate it).
- PEF must be offered an opportunity to review training curriculum and may attend during general presentations.
- Interim July 31–December 31 agreements should include the following statement: "Nothing stated herein relieves the agency of obligations under the 2019–2023 PEF/State Tentative Agreement, if ratified, to develop and implement a telecommuting program consistent with the terms of the 2019–2023 Agreement within nine months of ratification."
- A list of the areas of the agency in which telecommuting is deemed operationally feasible. Language could state, "includes but not limited to the following areas ..."

- We need to take a strong stance and oppose any absolute cap (i.e., 50%) because that does not allow for individualized determinations. Agencies have full discretion to grant telecommuting up to 100% of an employee's work time under the tentative agreement.
- The improved language in the TA should be quoted directly in the agreement. Such as, "(Agency), to the greatest extent possible, should allow flexibility in the employee's choice of which and how many days to telecommute per pay period or week."
- The appeal process should be spelled out in detail. We should strongly encourage agencies to allow a representative chosen by PEF to sit on the appeals panel, similar to performance evaluation appeals.
- If satisfactory performance is required to telecommute, the absence of an unsatisfactory evaluation rating should be deemed satisfactory.
- The union must be offered the opportunity to review the training curriculum and attend presentations.
- Management cannot access or otherwise use any personal information on an employee's personal device, consistent with the language in the emergency agreement.
- Procedures for the employee's withdrawal from the telecommuting agreement must be mutually agreed upon.