

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES DEPARTMENT OF LABOR,
THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 12,
THE NATIONAL COUNCIL OF FIELD LABOR LOCALS,
AND
THE NATIONAL UNION OF LABOR INVESTIGATORS

Introduction

The Department of Labor and its employees are first and foremost responsible for achieving the mission of the Agency to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

Further, Department of Labor management and its Labor counter parts, the NCFLL, Local 12 and NULI, recognize that in order to achieve this mission, it must ensure that all parts of the mission are covered by its key assets, the Department's talented and hard-working employees.

In its endeavors to achieve this mission, the Department of Labor recognizes that it must be a leading example for demonstrating a commitment to providing a positive workplace for its employees. DOL recognizes the importance of workplace flexibilities for its employees and its responsibility as a model employer. In an effort to attract, empower, and retain a talented and productive workforce in the 21st century, and in support of the Department of Labor's Reentry and Post Reentry Future of Work Plan, we must continue to enable employees to balance their responsibilities to deliver exceptional and efficient service to the American public while meeting family and other needs at home.

This is a Memorandum of Understanding (MOU) entered into between the United States Department of Labor (DOL), the American Federation of Government Employees (Local 12), the National Council of Field Labor Locals (NCFLL), the National Union of Labor Investigators (NULI) (collectively "Unions"), in accordance with the applicable provisions of the DOL/Local 12 CBA; DOL/NCFLL CBA; and the OLMS/NULI CBA.

Subject

This MOU concerns the Department of Labor's Expanded Work Schedule Flexibilities, establishes an electronic Telework system which will include a unified Telework Agreement Form and unified Telework Employee Self-Certification Safety Checklist for all DOL bargaining unit employees. This

MOU replaces the Mid-Day Flex MOU that became effective October 19, 2016, and the Workplace Flexibilities MOU that became effective on March 24, 2016.

Terms

The mission of the Department must take priority. The parties understand that the need to meet the mission of the Agency is the highest priority and are committed to ensuring this occurs. Due to specific job requirements in some offices, a lack of available work because of the nature of the position, and the varying types of work completed throughout DOL, all employees may not be allowed to utilize the full range of work schedule flexibilities, designated below. Managers and supervisors may require an employee or groups of employees to suspend flexible or compressed schedules temporarily to meet Agency needs. For example, DOL employees required to engage in the following mission-based work and coverage requirements, understand that their use of workplace flexibilities in this MOU may be limited on specific days of the week or hours of the day based on business needs by these and other activities:

- conduct inspections and investigations or survey data collection,
- attend training,
- attend legal proceedings,
- be present at worksites during specific work hours,
- be present at work for blocked periods of time such as the end of the fiscal year or other high-volume time periods for fiscal or other reasons, or
- provide administrative office coverage.

Section I – Flexible Work Schedules

A. Provisions

1. The Department's default work schedule remains the variable work week schedule and requires the following:

All DOL employees will automatically be assigned a variable workweek schedule unless an employee requests and is approved for a fixed work schedule or an Alternative Work Schedule (AWS). If DOL management assigns a different schedule to an employee, it must follow the procedures for doing so in the applicable CBA.

2. All parties agree that the [DOL Workplace Flexibilities Frequently Asked Questions and Workplace Flexibilities Guide](#), serve as guidance and a resource for both employees and management.
3. Employees may work a maximum of 13 ½ hours per workday, unless otherwise directed by management and subject to applicable pay regulations and collective bargaining articles.

B. Definitions

1. **Core Hours** are time periods during the workday, workweek, or pay period that are within the tour of duty which an employee covered by a flexible work schedule is required by the applicable flexi time plan to be present for work. With the supervisor's approval, an employee may use credit hours or leave to account for absences during core hours as well as absences outside of core hours.
2. **Work Band** is the time between the first and last hour in a day that an employee may work before receiving overtime pay.

C. Exclusions

Article 25, Section 2.C. of the CBA between NCFLL and DOL specifically discusses the First 40- hour tour of duty for MSHA authorized Representatives and Right of Entry Employees and these employees are excluded from Section I of this MOU. Part Time BLS CPI Economic Assistants, including those covered by the MOU between NCFLL and DOL, dated January 15, 2015, are excluded from Section I of this MOU.

D. Training

New Employees participating in the alternative work schedule program for the first time must complete mandatory training in advance of participation.

E. Dispute Resolution

The parties agree to make best efforts to informally resolve disputes regarding the application of this MOU and the work schedule changes, as follows:

1. Best efforts should be made between first line supervisors and employees to informally resolve the matter.
2. In the event that the matter cannot be resolved informally,

AFGE Local 12 bargaining unit employees' grievances will be treated as Grievance Board Grievances pursuant to Article 44, Section 8 of the CBA between Local 12 and DOL.

NCFLL bargaining unit employees' grievances will be handled in accordance with Article 15 of the NCFLL/DOL CBA.

NULI bargaining unit employees' grievances will be handled in accordance with Article XX of the NULI/OLMS CBA.

F. Variable Work Week

1. The Department's core hours are 10:00am to 2:30pm, Tuesday and Thursday of each work week during the bi-weekly pay period. There are no core hours on Monday, Wednesday, and Friday.
2. The Department's work band, excluding those employees on a fixed work schedule, is 6:00 am to 8:00 pm, Monday through Friday. In some DOL locations, utilities (such as HVAC and lighting) may not be available past certain times and will not be extended in buildings where they are shut off prior to 8:00 pm. Employees should take these factors into consideration when planning work schedules and make plans accordingly.
3. Employees on the variable work schedule are required to satisfy a basic work requirement of no less than five days per week, to include hours worked, leave, or a combination of both.
4. Employees on the variable work schedule are required to satisfy a basic workday requirement of no less than four hours, to include hours worked, leave, or a combination of both.
5. Employees who intend on working for four (4) hours on either a Monday, Wednesday, or Friday will notify their immediate supervisor or designee of their planned start time of work no later than 11am (except in an emergency or unanticipated events) the preceding workday. Sufficient notice includes, but is not limited to, emails.

G. Alternative Work Schedule

1. Notwithstanding any contractual provisions to the contrary, the following flexible work schedule, Alternative Work Schedule (AWS), is established and available to all eligible DOL employees. Under AWS, a full-time employee may complete their basic 80-hour work requirement in fewer than 10 work days.
2. The core hours and work band described in Section F. listed above, apply to AWS.
3. Employees participating in AWS may earn and request and use credit hours in accordance with policy and the applicable CBA articles.
4. The employee's schedule – including the regular work day off – will be discussed and established in advance with an employee's immediate supervisor. The employee's schedule – including the regular work day off will be recorded on a standard employee schedule form. [See attachment].
5. To ensure the supervisor is able to plan and assign work within the work unit, the regular work day off will be the same each pay period.
6. If an employee on AWS requests to change a regular work day off and the request is denied due to business reasons, the supervisor must explain the decision in writing and attempt to agree on a different day.
7. If the regularly scheduled day off falls on a federal holiday, the employee is entitled to an "in lieu of" day.
8. To the extent practicable, the work schedules described above will be available to eligible part-time DOL BU employees. Appropriate arrangements will be worked out between the employee and the supervisor, consistent with the needs of the office and

the spirit of the program. However, supervisors retain the right to establish and make final decisions relative to any work hour arrangements for part time employees.

9. AWS Day off/Scheduling adjustments/conflicts: When these situations occur, supervisors retain the right to establish and make final decisions relative to any alternative work schedule arrangements, including providing final approval concerning the employee's regularly scheduled day off under an AWS agreement. If conflicts arise as a result of several employees requesting the same regularly scheduled day off, then employee seniority (as defined by the applicable CBA), will be the deciding factor.
- H. This MOU does not supersede contractual, statutory or regulatory provisions related to management's right to assign work or determine work schedules, including the need to ensure office coverage during whatever regular business hours are specified in the applicable CBA or as determined by the individual field offices.

Section II - Expanded Work Schedule Flexibilities

A. Provisions

1. Exclusions

Article 25, Section 2.C. of the CBA between NCFLL and DOL specifically discusses the First 40- hour tour of duty for MSHA authorized Representatives and Right of Entry Employees and these employees are excluded from this Section II of this MOU. Part Time BLS CPI Economic Assistants, including those covered by the MOU between NCFLL and DOL, dated January 15, 2015, are excluded from Section II of this MOU.

2. Employees may, with supervisory approval, utilize the expanded work schedule flexibilities listed below.
3. To be eligible for approval for the expanded workplace flexibilities, employees must have at least a "Fully Successful" summary rating on their most recent rating of record and must not have had a written reprimand or disciplinary actions related to time, attendance, telework, or work schedules within the preceding year.
4. Employees may be denied the use of one or more of the expanded flexibilities if a supervisor identifies that there is an adverse impact on the mission of DOL. Denial does not prevent an employee from requesting the use of expanded flexibilities if the reason for denial has changed.

5. Dispute Resolution

- a. The parties agree to make best efforts to informally resolve disputes regarding the application of this MOU and the work schedule changes, as follows:
 - i. Best efforts should be made between first line supervisors and employees to informally resolve the matter.
 - ii. In the event that the matter cannot be resolved informally between supervisor and employee,
 1. AFGE Local 12 bargaining unit employees' disputes will be handled by the Agency Vice President and servicing Labor

Relations Officer.

2. NCFLL bargaining unit employees' disputes will be handled by the Local President and the regional Labor Relations Officer or their designee.
3. NULI bargaining unit employees' disputes will be handled by the Regional Director and NULI Regional Vice President.
- iii. In the event the resolution processes above are not successful, the parties agree to bring concerns to the attention of the Director, DELMR, or their designee, or, for NULI, to the Deputy Director of OLMS, or designee, to discuss and address timely.
- iv. The parties agree that disputes related to expanded work schedule flexibilities are excluded from the negotiated grievance processes in the Local 12/DOL CBA; the NCFLL/DOL CBA; and the NULI/OLMS CBA, and that any outcomes from the dispute resolution process are not subject to grievance and arbitration processes, contingent on the parties following steps (i) through (iii) above. With respect to Local 12, NCFLL or NULI, the Local 12, NCFLL or NULI President will address the issue with the Director, DELMR, and their decision will be final.

6. Expanded Work Band

- i. With advance supervisory approval, the work band for employees on DOL's flexible work schedules (variable week and DOL alternative work schedule (AWS)) is expanded to 5:00 a.m. – 10:00 p.m. Monday – Friday.
- ii. The expanded work band flexibility is only for use when an employee is at their approved telework or remote location and not for on-premises work.
- iii. Except in exigent circumstances, employees must make a request to their first line supervisor or their designee by email no later than 11:00 a.m. on the business day preceding the use of the requested expanded flexibility and indicate their anticipated work schedule. The first line supervisor or their designee will respond in writing as soon as possible. Supervisors may provide advance approval for a proposed work schedule that extends for more than one pay period.
 - a. Saturdays and Sundays are not within the flexible work band and therefore employees may not work on Saturdays and Sundays, unless otherwise required to do so by their supervisor.
 - b. Premium pay rules, including those governing overtime and compensatory time, still apply as appropriate and when approved in advance.
 - c. Credit hour rules still apply (any hours worked past 80 hours up to 24 hours maximum carryover).
 - d. Employees may continue to work a maximum of 13 ½ hours per workday.

7. Mid-Day Flex

- i. With advance supervisory approval, employees on a variable workweek schedule or

AWS may request to take a mid-day flex break on Monday, Wednesday and Friday, or outside of core hours on Tuesday and Thursday of no less than 30 minutes from duties during the regular workday to undertake personal, non-work activities without the employee being required to use leave. During the mid-day flex break, the employee is in an off-duty status and is not eligible for any form of pay, travel costs or reimbursements, paid leave including wages, compensatory time and/or credit time from the Department. Employees participating in a mid-day flex break must continue to meet the basic 80-hour tour of duty work requirement with work hours, approved leave, or accrued credit time.

- ii. Except in exigent circumstances, employees must make a request to use a mid-day flex break by email no later than 11:00 a.m. on the business day preceding the use of the requested expanded flexibility and indicate their anticipated work schedule. The first line supervisor or their designee will respond in writing as soon as possible. Supervisors may provide advance approval for a proposed work schedule that extends for more than one pay period.
- iii. A mid-day flex break may be used either at an approved telework location or an employee's on-site work location. However, employees cannot use mid-day flex breaks to change work locations (i.e., from the on-site work location to a telework site or vice versa).
- iv. Employees will continue to follow all other rules and procedures outlined in the [Department's Mid-day Flex Guide on LaborNet](#).

Section III - Telework and Remote Work

A. Provisions and Definitions

1. Telework is a work arrangement that allows an employee to perform work at an approved alternate worksite, and the employee is expected to report to their official worksite at least twice per bi-weekly pay period on a regular and recurring basis. The alternate worksite for a teleworker is the physical location approved by management as the employee's telework site.
 - i. Note: In the case of a telework employee **whose work location varies on a recurring basis** (e.g., mobile workers), with supervisory approval, the employee need not report at least twice each biweekly pay period to the regular worksite established by the agency as long as the employee is performing work within the same geographic area (established for the purpose of a given pay entitlement) as the employee's regular worksite.
 1. Mobile (field) work is work which is characterized by routine and regular travel to conduct work in customer or other worksites as opposed to a single authorized alternative worksite. Examples of mobile (field) work include site audits, site inspections, investigations, property management, and work performed while commuting, traveling between worksites, or on Temporary Duty (TDY). The definition of telework does not

include any part of work done while on official travel or mobile (field) work.

- ii. In certain temporary situations, an agency may continue to treat the agency worksite as the official worksite of the employee even though, during that period, the employee is approved to work from an alternative worksite and not returning to the agency worksite at least two days per pay period. Examples of appropriate temporary situations can be found in [OPM's Fact Sheet on Official Worksite for Location-Based Pay Purposes](#)

2. Remote work is a work arrangement under which an employee is scheduled to perform work from an alternate worksite (e.g., a place other than where the employee would normally work absent a remote work arrangement) within or outside the local commuting area of the agency worksite, and the employee is not expected to report to the agency worksite on a regular and recurring basis.

The alternate worksite for a remote worker is the employee's home or other physical location from which the employee is authorized to work as their official worksite that is not an agency office or facility.

3. DOL will continue to follow government-wide guidance related to telework and remote work by appropriate Federal entities including, but not limited to the [Office of Personnel Management's \(OPM\) Guide to Telework and Remote Work](#).
4. DOL employees serving a probationary or trial period may be permitted to participate in a formal telework arrangement or remote work arrangement, subject to supervisory approval and all other conditions in applicable statutes, regulations, and collective bargaining agreements, even if the employee has not received a rating of record.
5. As described in the Telework Enhancement Act of 2010, 5 CFR 611, DPR 611, and the collective bargaining agreements, from a conduct perspective, employees are ineligible to telework if (1) the employee has been officially disciplined for being absent without permission for more than five (5) days in any calendar year; or (2) the employee has been officially disciplined for violations of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography on a Federal government computer while performing official Federal Government duties. Any other eligibility criteria related to conduct or discipline is captured in the employee's applicable collective bargaining agreement.
6. If an employee has been approved for a remote work arrangement, in line with Departmental Personnel Regulation 611 (Telework Program), outside the local commuting area of the agency worksite and their performance diminishes, the supervisor will promptly discuss those performance deficiencies with the employee and where possible, assist in improving those performance deficiencies before requiring the employee to report to the office as a way to facilitate performance

improvement.

7. If an employee was hired into their position at DOL with an expectation outlined in the vacancy announcement that the position was a remote position with no expectation for the employee to report to an official worksite other than their home (except for official travel) and the duties of the position change such that the DOL modifies the employee's official worksite to a DOL office, DOL will pay the applicable relocation costs, if any exist/are required, subject to and in accordance with Federal regulations.
8. When remote work outside the local commuting area of the agency worksite is initiated at the employee's request to accommodate the employee's personal circumstances, the employee agrees that they will not seek or be entitled to relocation costs, either at the beginning or end of the remote work arrangement.

Thus relocation costs will not be provided at the time of establishment of a new remote work arrangement, or if the remote work arrangement is changed or terminated at the employee's or government's initiation, for example because the employee's personal circumstances change, or the government determines that the arrangement is failing to meet government needs or there is a deterioration in the employee's performance.

However, DOL management may consider alternative solutions such as looking for an alternate DOL work site within the employee's commuting area. The parties agree that management retains the right to assign work, including recalling employees from a remote arrangement if work must be conducted on-site.

9. In accordance with the parties' collective bargaining agreements and the DPR 611, employees are responsible for equipment outside of what they need to do their job. Employees are provided laptops which have software to enable telework such as jabber and TEAMS (among others). When the job responsibilities require additional equipment, the agency may provide it. For example, a field investigator may need a mobile phone or tablet. Additional equipment beyond the standard issued laptop should only be provided when there is a need based on the type of work.
10. Employees who are approved for remote work will be provided the following items:
 - Laptop
 - Soft Telecommunication equipment such as VOIP or jabber
 - Headphones
 - Employees will coordinate with their supervisors for any office supplies that are needed.
11. If an employee has been approved for a remote work arrangement and believes that they need specific equipment for remote work due to a disability, and the equipment is not otherwise provided, they may request that equipment through the reasonable accommodation process.

B. Telework Agreement Form

1. In the interest of continuity and best leveraging technology, DOL management is

testing and will deploy an electronic Telework system by which employees will submit requests to telework to their supervisors, using the attached Telework Agreement Form and attached Telework Employee Self-Certification Safety Checklist. DOL management plans to deploy this electronic system as soon as February 2022.

2. When the electronic telework system is deployed, DOL employees must request to participate in telework through the electronic system to ensure the data is up to date.
3. The parties agree that the Telework Agreement Form that is an attachment to this MOU replaces all other Telework Agreement Forms in other locations, to include but not limited to: the NCFLL/DOL CBA effective October 1, 2006; the Local 12/DOL CBA effective July 20, 2020; and the NULI/OLMS CBA effective [insert date].
4. The parties agree that the Telework Employee Self-Certification Safety Checklist that is an attachment to this MOU replaces all other Telework Safety Checklists in other locations, to include but not limited to: the NCFLL/DOL CBA effective October 1, 2006; the Local 12/DOL CBA effective July 20, 2020; and the NULI/OLMS CBA effective [insert date].
5. Annual Recertification of the telework agreement is intended to be a review of the telework arrangement. It is intended to make sure that the arrangement is continuing to meet the needs of the office/agency and that the information in the agreement is still accurate and relevant. The parties understand that management retains the right and obligation to review telework arrangements continuously and may modify or terminate telework agreements at any time, subject to the procedures outlined in the applicable CBA.
6. If management intends to change or modify the agreement based on mission needs, there should first be a discussion with the employee, consistent with the applicable collective bargaining agreement. Absent exigent circumstances, supervisors should not modify or terminate a telework arrangement through the recertification process without first discussing the modification or termination with the employee. All changes made by management or the employee, to the agreement will follow what is written in the applicable CBA.

Training

Telework training-When the electronic system is fully implemented training on the new system will be provided to all DOL employees with refresher training occurring bi-annually.

Space

Space issues will be handled under the provisions of each union's CBA.

Section IV - Posting and Information Distribution Requirements

- A. If a Union representative or a bargaining unit employee has questions, they may continue to utilize the flexibilities@dol.gov email box.
- B. DOL will email all employees the link to this MOU on LaborNet.
- C. This MOU establishes no precedent for any other agreement, practice, or procedure.

Section V – Formation of Teams to discuss Future of Work

Joint management/union teams will be formed by each Agency to address what the new work environment will be post COVID. The parties agree to meet 90 days after the first business day of Phase 3 to discuss the teams and how often they will meet. The parties plan to use already existing forums to meet and discuss future of work matters such as Labor Forums, LMR meetings, and Agency meetings.

DOL recognizes its obligations under the Federal Service Labor Management Relations Statute. As such, DOL will provide notice to the Unions regarding changes to processes that may give rise to a bargaining obligation.

FOR THE DEPARTMENT:

**SHAWN
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Andrew D. Auerbach
Deputy Director, Office of Labor Management
Standards