



UW Oshkosh Telecommuting Guidelines for Supervisors

Office of Human Resources

Released: June 2021

Last Revised: September 2021

GENERAL TELECOMMUTING INFORMATION

Telecommuting agreements will be used when an employee spends a meaningful part of their work month at a location other than their normal campus office or workspace. The creation of a telecommuting agreement serves three important risk management interests for the UW Oshkosh:

- ✓ Employee health and safety
- ✓ Data and information system security
- ✓ Workforce management

When we authorize a remote workspace, we are creating a satellite UW Oshkosh work location. These satellite work locations are subject to the same policies, procedures, and Occupational Safety and Health Administration (OSHA) requirements as our regular work locations.

- Liability associated with employees is the same when the employee works at a remote work location as when they work in a traditional workplace.
- Responsibilities to keep our confidential data secure and protect our information systems from intrusion are the same whether the employee is working at a remote location or in a traditional workplace.
- If an employee is injured at a remote work location, worker's compensation applies. If the injury is the result of a safety violation, our responsibilities under OSHA are the same.
- If an employee sexually harasses another person at a remote work location, we have the same obligations and responsibilities under Title VII.
- If a third party is injured while visiting a remote work location on UW Oshkosh business, our exposures are the same as if the person were injured on campus.

The telecommuting policy and the associated Telecommuting Agreement form are designed to mitigate the risks to the UW System associated with allowing employees to operate without supervision, at a remote site over which we have no direct control.

WHAT IS NOT CONSIDERED TELECOMMUTING

The telecommuting agreement allows for the creation of a new UW Oshkosh remote workspace. Not all work performed away from a traditional headquarters location is considered telecommuting. Here are some examples of remote work that would not be considered telecommuting:

- Business travel
 - Sending an employee to a conference, attending a business lunch, or going to a meeting at some other entity's business location is not telecommuting. Neither UW Oshkosh nor our employee has any legal control over the destination property. This type of remote work is also likely intermittent and the destination locations likely vary from trip to trip.
- Employees holding meetings off-site
 - A group of employees attending a meeting at a restaurant or some other public accommodation are not telecommuting. We may still be responsible for any misconduct, but if an employee is injured because a chair breaks in a restaurant, we will not be fined by OSHA.

- An employee visiting another employee’s home outside of normal work hours.
 - If the visit occurs outside of normal work hours, this will not fall under the telecommuting policy’s prohibition against business visitors.
- Time spent away from the office by a salaried employee, unless there is an expectation by the employer that the employee will perform work at a remote work location.
 - For salaried employees, the critical question is not how many hours are spent on campus versus elsewhere, but rather whether the employer expects the employee to perform work at a remote work location on a regular basis. For example, a salaried employee may spend 30 hours a week on campus on Mondays, Wednesdays, and Fridays, but remain at home on Tuesdays and Thursdays. A telecommuting agreement is only required if the institution has approved and expects the employee to work from home on Tuesdays and Thursdays.
- An employee staying home on FMLA leave.
 - FMLA leave is intended to provide an employee with protected, unpaid, time off of work if such leave is necessary due to an employee being unable to work due to illness/injury, following the birth or adoption of a child, or to care for a family member with a serious health condition. An employee on FMLA leave is, by definition, not working. An employee who is telecommuting is working.

Combining leave with telecommuting:

It is permissible under the policy for an employee to combine part-time telecommuting with paid or unpaid leave. If such an arrangement is acceptable to both the employee and the institution, the telecommuting agreement should be very clear about both the work expectations, and the amount and type of leave being used. Any leave used should still be tracked by normal processes, separate from the telecommuting agreement.

PROCESSING A TELECOMMUTING AGREEMENT

This section of this document addresses the UWS Telecommuting Agreement, including how a supervisor should respond to certain data fields or certain information provided on the form.

Section 1(A) Designated Workspace

Telecommuting Agreements must identify the location of the employee’s remote workspace.

This may be a home, apartment, or rented/owned office space. It should not be a location in which the employee exercises no control/dominion over the property (e.g. a coffee shop, a friend’s house). Employees cannot guarantee compliance with our IT Security protocols, our business record security/confidentiality standards or our workplace safety standards in a location they do not control.

The address should also be a Wisconsin address. If the employee is seeking to telecommute from a location outside the state of Wisconsin, the approval of a Vice-Chancellor is required.

This approval shall only be granted after that Vice Chancellor has consulted with University Legal Services and the Office of Human Resources to ensure all appropriate considerations have been taken with respect to the tax, insurance and employment law implications of an employee telecommuting from another state or country.

Such arrangements are not prohibited, per se, but a supplemental agreement may be required if the institution is so advised by legal counsel. The employee should also be fully aware of the additional impacts created by telecommuting from out of state. (See Appendix A.)

The employee should specify if the remote workspace is a room or a portion of a room. This is important in the event an accident or injury occurs at the employee's home and is also important for the employee's income taxes, if they intend to claim deductions related to the maintenance of a home office.

Section 1(B) Telecommuting Schedule

This section of the Telecommuting Agreement allows the employee and the supervisor to specify the employee's expected work schedule, as well as which days they are expected to work from home and which days they will work in their regular headquarters office. **The employee's schedule should be estimated as accurately as possible.** It is important to have this information in the event an incident occurs at the employee's remote work location. **If the employee's schedule varies, this information should be included in the text boxes for specifying hours.**

The beginning and end date of the agreement should be specified. If it is intended that the agreement is ongoing, then it is not necessary to enter a date in the "End Date" field. Instead, an annual review date should be entered in the "Review Date" field. If a telecommuting agreement has a fixed end date and the total duration of the agreement is less than one year, it is not necessary to specify a review date. If the agreement is indefinite or for a duration of longer than one year, a review date is required.

Multiple intermittent periods of telecommuting in the same year:

The intermittent telecommuting option available in the policy is intended for short-term, unplanned, periods of telecommuting. It should not be used in lieu of a telecommuting agreement when the employee is telecommuting on a recurring basis.

Note regarding out-of-state telecommuting:

The intent of this process is not to unduly limit telecommuting for those employees who may live across state lines but live within a reasonable commuting distance of their home campus. The intent is to ensure that all stakeholders have appropriate notice about the special legal considerations that exist when an employee is working for the UW Oshkosh from outside the State of Wisconsin.

Section 1(C) Expectations

This section provides an opportunity for the employee and the supervisor to articulate other expectations for the employee as related to the telecommuting agreement. Best practice with remote employees includes routine contact with the supervisor and other co-workers to ensure the employee does not become disconnected from their colleagues, and as an accountability factor. This is a greater concern with full-time telecommuters than with part-time telecommuters. The information in this section may be minimal for part-time telecommuters who are in the office one or more days per week.

Telecommuting expectations for faculty:

Faculty that observe a flexible, nonroutine schedule that involves working from multiple locations (campus office, classroom, lab, home office, etc.) are not required to complete a telecommuting request form. Faculty that will be working remotely on a routine, consistent basis should complete the form. This includes any faculty that are working out-of-state.

Section 1(D) Records Management

In this section, the acknowledgement of our remote IT security policies is mandatory. The requirement to notify the employer of any change in residence is also mandatory. An employee who is relocating their remote work location should not be permitted to begin work in the new location until their telecommuting agreement has been updated with the new address information along with the necessary approvals (i.e. out of state address).

The employee is required to maintain homeowner's or renter's insurance and to retain proof of that insurance. The supervisor may require this documentation at any time. UW System insurance policies may not cover negligent damage to UW System furniture or IT assets located at a remote work location.

Section 2 Communications Expectations

Acknowledgement of UW System communication expectations is mandatory.

Section 3 Travel Status and Expenses

This section allows for the pre-approval of any future reimbursable travel-related expenses that are known at the time the Agreement is signed.

For an employee operating under a full-time Telecommuting Agreement, their remote work location is considered their principal place of business. Travel to other locations, away from that remote work site, may be reimbursable travel. For an employee on a part-time telecommuting agreement, the employee's UW System workplace is considered their principal place of business. Travel from the employee's home to their UW System workplace is considered non-reimbursable commuting.

Section 4 Telecommunication and Equipment Costs

This section provides for the documentation of the telecommunications, office equipment and computing resources that will be provided to the telecommuting employee.

UW Oshkosh policy does not provide internet service to telecommuters. Employees must secure their own service as a condition of telecommuting.

Ergonomic office furniture/equipment is a requirement for telecommuting. The employee may provide their own furniture (provided it meets our ergonomic standards), or the institution may provide furniture/equipment.

Employees are required to use UW Oshkosh-issued computers for routine telecommuting. Asset tracking is required for any issued equipment. Only UW Oshkosh IT personnel may perform maintenance on UW Oshkosh computers or equipment.

Section 5 Confidentiality of Data & Record Management

This section is mandatory. At a minimum the employee must check “yes”. If the employee is working with particularly sensitive records or there are numerous other individuals in the household, it is appropriate to fill in the additional text box to describe steps the employee will take to protect sensitive records.

TELECOMMUTING SAFETY CHECKLIST

Questions 1 through 15 relate to OSHA workplace safety standards. The employee must self-certify that the answer to each question is “yes”. If an employee answers “no” to one or more of these questions, the remediation of those hazards should be a prerequisite to the approval of the Telecommuting Agreement.

Question 16 is a domestic violence screening question. If the employee answers “no” to this question, the supervisor should contact the HR Office. A private meeting will be scheduled with the employee and an HR team member that has completed the UW System domestic violence training. **Answering “no” to this question does not automatically disqualify an employee from eligibility for telecommuting, but it is mandatory that the DV-trained HR representative authorize the telecommuting agreement to proceed, notwithstanding the “no” answer.**

TELECOMMUTING ERGONOMIC CHECKLIST

The seventeen questions in this section are designed to mitigate the risk of workplace illnesses or injuries related to ergonomic workspace design. If an employee answers “no” to one or more of these questions, the supervisor will work with the employee to mitigate the issue.

Mitigation may include institution-provided ergonomic furniture and lights, reimbursing the employee for the purchase of ergonomic furniture, the employee using existing furniture or equipment within

their home, or through other measures such as stretch breaks, reorganization of workspace, choosing a different room for the remote workspace, etc..

If, after mitigation attempts, the answer to one or more questions is still “no”, the supervisor may assess the ergonomic risk and approve or deny the application accordingly. If the application is approved, it is recommended that the supervisor follow up with the employee on a regular basis during the term of the Telecommuting Agreement to determine if the employee is developing any signs of injury related to poor workspace ergonomics. If such signs appear, the supervisor should revisit the mitigation measures with the employee. If necessary, a Telecommuting Agreement can be modified or discontinued to mitigate ergonomic injuries. **Supervisors should keep documentation of ergonomic concerns and mitigation measures that arise from these conversations.**

Any questions related to telecommuting not addressed in this guide may be directed to UW Oshkosh Human Resources Staff at: hroffice@uwosh.edu.

Appendix A – Issues associated with Telecommuting from Outside the State of Wisconsin*

I. Out-of-State Remote Work

Out-of-state remote work is complex and involves increased costs and legal risks to the UW System due to employment laws, taxation rules, cybersecurity risks, and other compliance requirements in other states. In addition, the System's workers' compensation coverage and employee liability protections do not automatically extend to locations outside the State of Wisconsin, so special arrangements must be made with Risk Management and the Office of General Counsel before an employee starts remote work from outside the State of Wisconsin. The employment laws of other states will typically apply to employees working within their jurisdiction, even if the employer is an out-of-state entity. Some of these laws may be similar to Wisconsin's, but others may be substantially different.

II. International Remote Work

Employing individuals to perform work outside the United States is complex and involves increased costs and legal risks to the UW System due to employment laws, taxation rules, cybersecurity risks, and other compliance requirements in other countries. In addition, the University's employee liability protections do not automatically extend to locations outside the State of Wisconsin, so special arrangements must be made with Risk Management and OGC before an employee starts remote work from outside the United States.

Prior to approval for international remote work, the following risks and liabilities need to be addressed between the institution, identified campus offices or departments, and the employee. The final arrangements will be reflected in a separate, supplemental *International Remote Work Agreement*. Approval for international remote work may require the expenditure of significant money on outside legal counsel (arranged through OGC), purchase of additional insurance, and consideration of tax laws, regulatory, or other impacts on the University. Payment for the cost of legal fees and insurance is the responsibility of the Institution.

- a. **Employment Laws:** As a general rule, employment laws of a host country apply to foreign nationals and U.S. expatriates employed in positions outside the United States. This principle applies to laws relating to dismissal, compensation, taxes, benefits, severance, and furlough, among others. A country may require the UW System to register, seek licensure, create a separate legal entity, or seek other permission to employ individuals in the country. Creation of a separate legal entity will require the approval of the UW System Board of Regents.
- b. **Payroll and Benefits:** For a foreign national employed outside of the United States, there are tax implications that require substantial and detailed document tracking. Access to benefits can be affected by the availability of a Social Security number, previous health care coverage, and strict enrollment windows.
- c. **Data Security:** Data security protections may be required based on United States or international laws, regulations, or policies, as well as cybersecurity risks or vulnerabilities, and certain countries' network access rules. The Office of Information Security will review proposed

arrangements to provide guidance regarding an international remote worker's use of technology, equipment, and network access to accomplish their work.

- d. **Data Privacy:** The data an international remote worker intends to access may be protected by United States, European Union (EU), or other jurisdictions' laws and regulations, such as the Health Insurance Portability and Accountability Act (HIPAA), Family Educational Rights and Privacy Act (FERPA), or General Data Protection Regulations of the European Union (GDPR). The Office of Compliance will review proposed arrangements to provide guidance regarding how to reduce risks to the privacy of the data involved. As needed, the Office of Compliance also will consult with the Office of the Registrar, Office of General Counsel, and/or other data privacy experts at UW System Administration.
- e. **Liability Caps and Statutory Immunity:** The liability caps and statutory immunity applicable to the UW System do not apply to litigation in a foreign jurisdiction.
- f. **Intellectual Property:** Foreign and international intellectual property laws may apply to an employee working remotely from another country.
- g. **Export Control:** A license may be required to provide education services, conduct research, or work for the UW System while outside the United States. No online learning or remote work will take place in countries that are considered restricted by the UW System due to export control. The list of restricted countries is updated occasionally; a current list can be obtained from the Office of Export Control. In addition, there is a risk to working in countries that are restricted or embargoed by the Departments of State and Treasury, including China and Russia. To ensure export compliance, further control measures may be required from certain countries over others.
- h. **Worker's Compensation:** UW System's State of Wisconsin Self-Funded Worker's Compensation Program does not provide coverage for employees who sustain occupational injury or illness while working outside of the United States under an international remote work arrangement. Special arrangements must be made with Risk Management and the Office of General Counsel before an employee starts international remote work.
- i. **Purchasing/Procurement:** Purchasing and procurement for employees in foreign countries is complex and involves the university's obligations under State of Wisconsin rules.
- j. **Research and Sponsored Project Awards:** Sponsors generally expect to be informed at the time of proposal if research activities will take place outside of the United States. The activities may need approvals, permits, or licenses. For example, employees supported by a National Institute of Health (NIH) award and working in a foreign country may need to notify the NIH Institute/Center through their institution's Office of Research and Sponsored Programs, or functionally equivalent office. If the work performed outside the United States is significant, NIH requires additional approval. Other sponsors need to be notified of work in a foreign country to ensure compliance with sponsor terms and conditions.

An Institution should follow the processes in this policy to understand the obligations and compliance responsibilities for the Institution and UW System as an employer, ensure that employees are well-informed of the risks and liabilities associated with international remote work, and mitigate the risks and liabilities for the institution and employee.

Appendix B- Special Considerations for Faculty and Instructional Academic Staff

Faculty and Instructional Academic Staff (IAS) require special considerations when deciding whether to utilize a Telecommuting agreement.

As FLSA exempt employees, faculty and IAS do not routinely have their time tracked on an hourly basis. There may also be a history of institutional flexibility with regards to when and where faculty complete their assigned work (except for those hours the faculty member or IAS is assigned to a course section). "Taking work home" is a common practice among faculty and IAS.

As mentioned earlier in this guidance, not every instance of a faculty member or IAS working someplace other than a campus constitutes the creation of a remote work site, and subsequently will not constitute telecommuting for the purposes of this policy.

This Appendix is designed to help supervisors determine when a telecommuting agreement is necessary for faculty or instructional academic staff. To make this determination, ask the following questions:

Have I directed this employee to work at a remote work site?

When you hired this employee, or when you most recently assigned work to this employee, what was your understanding about where the work would be performed? Does the employee have an office or cubicle on campus? Does the employee have access to a shared workspace or hoteling space? If you have provided a place on campus for the employee to complete their assigned work, and have not expressly, or through implication, created the expectation that the employee will perform work elsewhere, then that assigned campus space is the employee's work site.

If I have directed an employee to work at a remote work site, is the length of the assignment long enough to implicate the Telecommuting Policy?

See the policy for the definition of intermittent, short term and long-term telecommuting. Sending an employee to a conference, for example, would not likely be a long enough assignment to go beyond intermittent telecommuting. If the assignment does not meet the duration requirements (longer than 10 consecutive business days to constitute short-term telecommuting, longer than 3 months to constitute long-term telecommuting), then use of a telecommuting agreement is not required.

Faculty Work Sites

One of the primary purposes of our Telecommuting Policy is to identify remote work sites where our employees have been assigned to work. This is important because if we have assigned an employee to work at a remote work site, we have an obligation to ensure that work site is safe.

An employee is assigned to a work site when an employer directs an employee to perform work at a location. This may be an express directive (such as when an employee signs a telecommuting agreement indicating they will work at an identified remote work location on certain days), or this may be an implied directive (an employee is assigned work, but we have not provided space on campus for them to perform this work- by implication, we intend for them to complete the work somewhere else).

If a faculty member/IAS has been assigned, or provided access to, space on campus to complete the work assigned to them, then that is their work site. If a faculty member/IAS has not been given space on campus, or if we know the faculty member/IAS will be based somewhere other than the campus, then we must identify their remote work site.

Telecommuting agreements are required when an employee is assigned to a remote work site (subject to the other elements of the policy)

Do I *know* this employee will routinely be working at an off-campus site, and have I agreed to this arrangement?

Sometimes an employee is hired with the understanding that they will be working from home or some other remote location. Sometimes an employee is hired to teach one or more courses and is not provided with an on-campus workspace. (This creates the situation where the supervisors know, or should know, that the employee will be working from someplace off campus.) In these instances, the employer has tacitly or expressly consented to the creation of a remote work site.

Am I tolerating an employee taking work away from their campus work site, or do I expect the employee to do work off-campus?

If an employee has been provided with an on-campus workspace, and the supervisor has no expectation that the employee will routinely work at a remote location, then the employer has not created a remote work site. Tolerating an employee taking work home on their own initiative is not the same thing as directing the employee to do so. By contrast, in the typical case of non-instructional academic staff and university staff, if a supervisor agrees to allow an employee to spend some portion of their work week away from their primary work headquarters, then there is an expectation that the employee will be performing work during that absence. Through past practice and institutional culture, non-instructional academic staff and university staff have normally been more accountable for their hours of work than faculty and instructional academic staff, as a matter of workforce management. This is related, but separate, from the determination of whether a remote work site is being created by the employer. [It is also related, but separate, from the question of the FLSA status of the employee. Think of the differences between lawyers (whose time is closely tracked) and outside sales reps (whose time is seldom monitored). Both are FLSA exempt, but with very different workforce time management expectations.]

Examples:

- I have hired an assistant professor to teach on-line courses. At the time of hire, the employee told me they plan on working from their home in Illinois.

*We *know* this employee will be routinely working at an off-campus location and have agreed to this arrangement- a Telecommuting Agreement is required.*

- I have an Associate Professor who teaches on campus but spends little time in their office and routinely takes work home.

The employee has an assigned office space on campus. We tolerate the employee taking work home, but do not expect it. The employee could be reasonably expected to do all their work from their campus office if they chose to do so. No telecommuting agreement required.

- I have hired a part-time instructor to teach an on-campus course. We have not provided any workspace or equipment to this employee.

The employee will certainly have work associated with the course outside of the classroom contact hours (prep, grading), and we have not provided the employee with any space to perform this work. We know this employee must perform work from a remote location and have implicitly agreed to this arrangement. A Telecommuting agreement is required.

- I have a faculty member who will be spending a year in Germany as part of a faculty exchange program. We will still be paying this faculty member's salary and benefits during this period.

A Telecommuting Agreement is required. We know this employee will be working at an off-campus site for 1 year. Telecommuting Agreements for out-of-state or out-of-country arrangements require approval of a Vice Chancellor and consultation with the Office of General Counsel.

- I have hired a part-time instructor to teach an on-line course. We have provided the employee with access to a shared on-campus workspace and computers.

The employee has an assigned office space on campus. We tolerate the employee taking work home, but do not expect it. The employee could be reasonably expected to do all their work from the shared office space if they chose to do so. No telecommuting agreement is required.

- I have hired a part-time instructor to teach an in-person course. We have provided them with access to a shared on-campus workspace and computers. We have 3 such spaces available for 200 part-time instructors.

*There is no particular magic ratio when it comes to shared office spaces, but in this extreme example, we could not reasonably expect that the 200 part-time faculty members could do all their work from the shared office spaces if they chose to do so. Telecommuting agreements would be required. Think in these terms- if this employee were working from home and were somehow injured in the course of performing their work, could they make a reasonable argument that UWS *required* them to work from home?*

- I have an associate professor who has been assigned a 100% on-line workload. They still have their usual campus office assigned to them.

*The employee may decide to do much of this work from home, but that isn't necessarily our expectation. We have provided them with a workspace on campus and they could reasonably be expected to perform all their work there, if they chose to do so. The type of assignment isn't as important as what expectations we create for where the work will be performed. No telecommuting agreement required. (Exception- the employee informs us that they will be living in a cabin in South Dakota during this assignment, now we *know* they will be working from a remote location, and must work from that location, since that would be beyond a reasonable commuting distance. A telecommuting agreement IS now required.)*

Faculty/IAS Status and Assignment	Workspace Provided	Telecommuting Status
Any Faculty or IAS Assigned at least 1 on-campus course section	Assigned or provided access to an on-campus workspace	No telecommuting agreement required
Any Faculty or IAS Assigned only on-line course sections	Assigned or provided access to an on-campus workspace	No telecommuting agreement required
Any FT Faculty or IAS Assigned only on-line course sections	Not assigned or provided access to on-campus workspace appointment assumes 100% working from a remote work site	Telecommuting agreement required