

STATE OF COLORADO

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

6848 South Revere Parkway
Centennial, Colorado 80112
Phone (720) 250-1500
Fax (720) 250-1509



December 21, 2021

Jared Polis
Governor

Policy Title: Flexible Work Arrangements

Major General Michael A. Loh
The Adjutant General
Executive Director

Effective Date: 15 January 2022

Summary: Provides Authority for Alternate Work Locations and Schedules

Applicability: All DMVA State Employees

Staff Proponent: Executive Director

Supersedes: **DMA Instruction 1035-20-1 Telework/Flexwork**

A. Purpose:

To identify and provide structure and format for flexplace, an arrangement between an employee and the department whereby the employee works from home or another remote location away from their DMVA office. The arrangement may be on a full-time, part-time, or as-needed basis. A flexplace arrangement may also be used in the event that the department's Continuity of Operations Plan (COOP) is activated by The Adjutant General and employees are required or pre-approved to work remotely on a temporary basis. The goal of the flexplace arrangement is to create an environment whereby both the employee and the department benefit. The employee may realize a more satisfying work-life balance while the department may enjoy increased productivity and job satisfaction on the part of the employee.

B. References:

Flexible Work Arrangements Fiscal Policy – Office of the State Controller
Flexible Work Arrangements – Universal Policy – Division of Human Resources

C. Definitions:

Appointing Authority – See 4 CCR 801-1-8 et seq. The appointing authorities in the Department of Military and Veterans Affairs are:

- i. Executive Director
- ii. Deputy Executive Director
- iii. Director, Division of Veterans Affairs

D. Background:

Flexible work arrangements (FWA) outlined in this policy are distinguished from positions that have been designated as full-time remote either during or after the hiring process at the designation of the supervisor in coordination with the appropriate Appointing Authority. FWA are focused on balancing employee needs with the needs of the Department, whereas designated remote work is generally focused on the requirements of the position and space planning. In remote work, there is no designated state workspace to perform work, and the position is considered full-time remote regardless of the individual in the position.

All limitations in this policy regarding remote workplace flexible work arrangements (e.g., limitations on out-of-state work) also apply to designated remote positions (positions designated as fully remote workplace). Additionally, FWA do not include employees occasionally working remotely or working a different schedule with their supervisor's approval on a short-term, day-to-day basis. Temporary changes to an employee's regular work schedule or work location in order to adjust for unplanned, short-notice, or sporadic events do not require formal agreements (e.g., periods when the building is inaccessible or commuting to work presents difficulties, such as power outages or adverse weather conditions when the Governor does not declare a closure). Further, this policy is not intended to address schedule modifications or scheduling assignments made by an appointing authority to fulfill the operational needs of the work unit.

E. Policy:

DMVA is committed to the use of flexible working arrangements as a model employer for the State of Colorado. As used in this policy, FWA's refer to deviations in time or place from the standard approach of working onsite during core business hours, including alternate and flexible work schedules (e.g., flextime, flex scheduling, compressed scheduling, reduced hours/part-time, and job sharing) and remote work (e.g., hoteling, telecommuting, telework, work from home or alternative offices).

Colorado Constitution, Article XII, Section 13 requires that employees in the state personnel system reside in Colorado unless the work to be performed is primarily within 30 miles of Colorado's border. Ongoing remote work outside of Colorado is not allowed for classified or non-classified employees at DMVA. Any work performed out-of-state for other extenuating circumstances is permissible only on a temporary, non-permanent basis and shall not exceed eight weeks in a calendar year.

International remote work shall not be allowed unless the position's duties require international travel to conduct official State business. Work-related international travel is approved by the Executive Director, therefore such approval will constitute the aforementioned remote work approval. . If approved, all international remote work for the purposes of conducting official State business must comply with the OIT Acceptable Use Policy.

All FWA must conform to the Federal Fair Labor Standards Act (FLSA) for employees covered by those provisions. Non-exempt (overtime eligible) employees are prohibited from working more than 40 hours per the State's standard workweek or a "work period" under the FLSA between seven (7) consecutive days to twenty-eight (28) consecutive days in length or incurring overtime without prior management approval.

Flexible Work Arrangements of any kind must be requested by the employee using the forms included in this policy. This includes both flexplace and flextime requests. Requests must be approved by the supervisor prior to being routed to the Executive Director (or his/her designee) for review and approval. The request must be approved prior to the effective date of commencement.

Employees who wish to enter into a remote work arrangement and/or work a flextime schedule must have this arrangement approved through their chain of command, up to and including the Executive Director. The ED or designee has the responsibility to ensure consistent and equitable application across the Division or work unit, taking into account individual job duties and requirements. While efforts will be made to accommodate an employee's desired schedule to promote work/life balance, customer service delivery and successful completion of job roles and responsibilities will be the primary considerations in making these decisions.

FWA's must be renewed annually and/or whenever an employee changes positions. The annual renewal period will coincide with the development of the employee's performance plan for the coming year. The appointing authority may require updates/renewals of flexplace agreements for other business purposes as they deem necessary and appropriate. An approved request for an FWA may be rescinded or amended by the Appointing Authority at any time, without notice. A decision to rescind or amend an FWA is not subject to appeal. Failure to comply with any provision of this policy may result in corrective and/or disciplinary action up to and including termination.

In general, employees who participate in flexplace are responsible for providing, at their own expense, the computer/telecommunications hardware and software, and necessary office space, furniture and equipment to enable them to perform their duties seamlessly as if they were in the office. DMVA assumes no responsibility for the maintenance and/or repair of employee owned hardware of software, furniture, office equipment, etc. Likewise, DMVA is not responsible for providing moving services to transfer state owned property at the employee's remote work location. Divisions are responsible for developing effective processes for creating, maintaining and reporting on state-owned inventory that may be issued to employees conducting flexwork. These inventories must be validated annually with the State Property Book Officer in the Controller's Office.

DMVA is not liable for damage to the employee's personal or real property except as provided under existing Colorado law for the usual office location. Likewise, DMVA is not liable for loss, destruction or injury that may occur in or to the employee's home, to family members, visitors or others that may be injured within or around the employee's own premises.

- Employees whose normal workplace is a DMVA office location (regardless of the number of days per week worked in the office) will not be reimbursed for travel expenses associated with commuting (mileage) nor will they be permitted to count travel time (normal commute time) as work time for purposes of determining hours worked in a day.

For further information on this, and other items that may or may not be purchased or reimbursed for employees, please see the State Controller's Flexible Work Arrangements Fiscal Policy. (Appendix 1)

Remote work does not affect an employee's current compensation, FLSA status, or benefits. Employees are expected to work their regularly scheduled hours when working remotely and are required to track and report their time as if they were working in the office. Any change to an employee's schedule or leave taken while working from a remote location must have supervisor approval.

For non-exempt employees, it is the responsibility of their supervisor to verify the employee's FLSA status with them and to review how their status affects their FWA prior to the employee's first flexplace day. The supervisor must also notify the employee that prior written approval must be obtained from the supervisor before working any overtime at the remote location. Flexplace employees are covered by the employer's worker's compensation insurance for injuries arising out of the course and scope of their regular employment; however, the employee must agree to indemnify and hold harmless DMVA from any and all claims, demands or liability resulting from any injury to persons caused, directly or indirectly, by the duties and obligations under this agreement.

Remote and flexplace employees must agree to receiving their final paycheck in paper form in order to ensure that all state property is returned prior to their separation from the department. Prior to the effective date of separation from the agency, flexplace employees must return all state owned property to the office where they are normally assigned. Since the employee will be receiving their final paycheck in paper form, it is suggested that the employee and supervisor meet to reconcile the employee's state property inventory list at least one week prior to the date of the final paycheck being issued. The employee may be required to reimburse the agency for any loss of or damage to state property.

For those employees who need to access DMVA networks for business purposes, using VPN to access the DMVA network is limited to those employees using a state owned asset (computer). The OIT Acceptable Use Policy strictly prohibits the use of VPN on any personal hardware.

DMVA will provide each flexplace employee with a link to a free online ergonomic assessment tool to assist them in making any necessary ergonomic adjustments to their homework space. The use of this tool is strongly encouraged to prevent any injuries from working remotely. Employees requesting a flexplace arrangement are responsible for bearing the cost of any ergonomic adjustments to a home work space, unless the adjustments are part of an approved ADA accommodation.

Any DMVA employee who is working remotely under a flexplace agreement must comply with all existing DMVA policies, division/unit work standards and expectations, rules, practices, and position-specific instructions from management as determined on the DMVA Flexplace Request Form which is signed by all parties (employee, supervisor and appointing authority).

The employee shall also abide by all departmental rules and provisions regarding the confidentiality of information. To this end, employees are required to use a private, password protected wireless connection when working remotely under flexplace. The use of public wi-fi connections is not allowed. In addition, an employee must establish a Virtual Private Network (VPN) connection before performing any work involving confidential information with the exception of documents stored on the department's drives.

If it is expected that the employee's supervisor/manager will take appropriate steps to account for the employee's time and performance while working remotely. This is particularly critical if an employee is being allowed to work remotely on a more permanent basis whether it be part-time or full-time. Examples include determining productivity measurements, communication availability and/or check-in requirements, meeting attendance and participation, and appropriate protection and care of any confidential information to which the employee may have access.

Flexplace may not be used to provide care for dependents or other individuals in the employee's home or elsewhere on any regular basis. Exceptions may be made in extraordinary circumstances such as a state of emergency declared by the Governor. In such cases, exceptions will be clarified through a temporary amendment to this policy.

In the case of delayed starts or early releases due to inclement weather, remote employees are expected to work their regular schedule for that day. Since remote workers do not commute to and from the office, they are unaffected by weather related changes in office hours. As such, they are not eligible for any Administrative Leave granted to employees who commute to a physical office location. In the event of a full day closure, flexplace employees will be granted Administrative Leave for the day of the closure. In an emergency, e.g., inclement weather or other extraordinary circumstances, when the state has taken official action to relieve employees of duties for the purpose of state commuting, etc. the ED and/or appointing authority may likewise relieve remote workers of their duties by granting Administrative Leave to those who may need to pick up children from school and provide for their care or similar circumstance. The employee may be asked to provide documentation of any formal care arrangements or the need for Administrative Leave in certain circumstances.

Flexplace arrangements are not to be used as a substitute for annual leave.

It is reasonable to expect that an employee may need to report to the office within a specific time frame to meet business needs. As a general guideline, employees who are working remotely should be able to report to the office within a two-hour window. This time frame may be set and adjusted by the appointing authority as necessary.

ALTERNATE WORK SCHEDULES

Any arrangement that allows an employee to work a different schedule than the core workweek (M-F 8:00 a.m. – 4:00 p.m., or T-F 7:00 a.m. – 5:00 p.m., or M-Th 7:00 a.m. – 5:00 p.m.) is considered an alternate work schedule (flexible schedule). A flexible work schedule is a privilege, not a right. Supervisors must give consideration to DMVA's goal of exceptional service to our customers.

The final approval of flextime requests must be based upon business necessity. As such, not all individuals may be able to obtain the days off or reduced hour days they desire. Additionally, supervisors must consider whether adequate supervision is available during the flextime hours requested by the employee.

Standard workweek schedules cannot be adjusted by allowing an hour for hour time off for hours worked outside a normal work schedule within the same work week without prior approval from the supervisor. Any variation from the standard workweek will be considered a flextime schedule which must be approved by the supervisor who has been delegated scheduling authority before the adjusted hours are worked.

Supervisors have the responsibility to accurately verify all hours worked by their employees. The employee's timesheet must always reflect the actual days and hours worked (for example, if, under this policy, an employee works four hours on Saturday and only four hours on the following Friday, the time sheet should reflect four hours on Saturday and four hours on Friday.)

If an employee is scheduled to work more than 8 hours on a day which is an observed holiday, or an employee is on bereavement leave, jury leave or other approved employer provided leave, annual leave must be taken for the difference between the scheduled hours and the hours of Administrative leave except that with the approval of the supervisor, an employee may work the additional hour(s) on another day(s) of the same predefined workweek. The made up time must be recorded accurately on the timesheet. No more than eight hour per day may be granted for administrative or other employer-provided leave. This is also true for a flextime schedule.

If an employee's flex day or schedule day off is on an observed holiday, the holiday must be taken the previous or next workday. For example: If an employee's flextime schedule provided a day off Monday, the employee would be required to take the holiday on Tuesday (the next day); if the flex day is a Friday, the employee would be required to take off Thursday (the previous day). The Fair Labor Standards Act treats each workweek independently. Therefore, adjustments to leave, hours worked and schedules must be made in the week in which the reason for the adjustment occurs.

Official:
DocuSigned by:

Brigadier General Laura Clellan
Brigadier General
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Laura L. Clellan

The Adjutant General of Colorado
Executive Director

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