

SECTION 1

TELEWORK ENHANCEMENT ACT OF 2010

CHAPTER 1

HISTORY AND OVERVIEW

Work is something you do, not someplace you go. There is no magic to strapping yourself in a metal box and driving, sometimes up to an hour and a half to our workplaces, and sitting in front of our computers all day.

—Congressman Frank Wolf (Virginia) in his remarks before the House of Representatives during the November 18, 2010, hearing on the Telework Enhancement Act of 2010.

I. HISTORY AND OVERVIEW OF THE TELEWORK ENHANCEMENT ACT OF 2010

Telework is a federal workforce strategy to cost savings, a better work-life balance for its employees, greater flexibility in managing its workforce and achieving continuous government services in times of emergency. It also is said to lend a greater competitive advantage to the federal government as an employer to attract and retain talent. Other benefits include reduced energy consumption, environmental concerns and traffic congestion.

A. HISTORY

The federal government allowed for telework long before President Obama signed into law the Telework Enhancement Act of 2010. As early as 1991, federal agencies were authorized to pay for telephone lines and equipment related to telework. Pub. L. 101-509, Section 624 (Nov. 5, 1990). Public Law 106-346, Section 359 (Oct. 23, 2000), required agencies to “establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance.” The measure ambitiously also required that “[n]ot later than 6 months after the date of the enactment of this Act, the Director of the Office of Personnel Management shall provide that the requirements of this section are applied to 25 percent of the Federal workforce, and to an additional 25 percent of such workforce each year thereafter.” With participation still low, in 2003, [Public Law 108-7, Section 623](#), granted funding to certain agencies to implement telework and required each agency to report on their programs every six months. More of the same came in years 2004 and 2005.

Nine years after Public Law 101-509, a report by the Committee on Oversight and Government Reform found that telework was still underutilized. H.R. Rep. No. 111-474 at 7 (2009). Only five percent of federal employees participated in telework programs. OPM, *Status of Telework in the Federal Government* (Aug. 2009). Lack of participation was due, in large part, to management resistance, with managers

citing to productivity issues and lack of control over employees. H.R. Rep. No. 111-474 (2009) at 7; S. Rep. No. 111-177 (2010). Definitions, implementation, and tracking strategies of telework also varied from agency to agency. *Id.* The Senate's Committee on Homeland Security and Governmental Affairs noted the need for additional legislation to bolster the use of telework in the federal government, citing some of the benefits:

Management considerations, such as productive and satisfied workers; environmental considerations, such as reduced traffic congestion and improved air quality; and quality of life considerations, such as accommodating the short- or long-term health problems or family responsibilities of employees, have been offered as justification for telework programs. Some believe that the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, and the discovery of anthrax in Washington, DC, and other cities have fundamentally changed the workplace and demonstrated the practical application of telework to the continued operation of the government. Issues of security, crisis management, disaster recovery, and remote access to office computer systems are prompting some federal executive and legislative branch agencies and their employees to expand existing telework programs or to consider telework...

The Telework Improvements Act of 2009 was introduced and, after some changes, became what we now know as the Telework Enhancement Act of 2010, H.R. 1722.

B. HIGHLIGHTS OF THE ACT

President Barak Obama signed the Telework Act into law on December 9, 2010. The purpose of the statute is "[t]o require the head of each executive agency to establish and implement a policy under which employees shall be authorized to telework." In an effort to make telework more consistent among agencies, the Act sought to transform the federal government's approach to telework by providing a framework for executive agencies to follow in implementing telework. Also driving the Act was an effort to bring about consistency among federal agencies as to participation in and frequency of telework. Highlights, some discussed in detail in the chapters to follow, include:

- Statutory definitions to the terms "employee," "executive agency" and "telework."
- Each Executive agency must establish a telework policy and determine eligible employees. The policy must include a written agreement between the teleworking employee and the agency as a condition to participation.
- Limitations to participation are established.
- Each Executive agency must provide a telework training program for supervisors, managers, and employees.
- Agency development of telework policies must include consultation with the Office of Personnel Management.

- OPM is required to provide policy and guidance and “assist each agency in establishing appropriate qualitative and quantitative measures and teleworking goals.” 5 USC 6504.
- The Office of Management and Budget, in coordination with the Department of Homeland Security and the National Institute of Standards and Technology, must issue security guidelines to secure government information and information systems.
- Each agency must appoint an employee of the Office of the Chief Human Capital Officer or comparable office as the Telework Managing Officer.
- OPM must, on an annual basis, submit a report on the telework programs of each agency.
- OPM must establish and maintain a central telework website.

CHAPTER 2

ROLES UNDER THE ACT: OPM, AGENCIES AND THE TELEWORK MANAGING OFFICER

I. OFFICE OF PERSONNEL MANAGEMENT

The Office of Personnel Management or OPM is an independent agency of the federal government that, among other things, sets policy on the management of federal human resources and oversight of the merit civil service system.

A. RESPONSIBILITIES ASSIGNED TO OPM BY THE TELEWORK ENHANCEMENT ACT

The Telework Act establishes OPM as the “standard setter” of all things telework related in the federal government. Agencies are required to consult with OPM in developing their telework policies, and to that end, the Act assigns several duties to OPM in the areas of policy, support and guidance, including:

- Providing consultation, policy and policy guidance to executive agencies on telework with respect to “pay and leave; agency closure; performance management; official worksite; recruitment and retention; and accommodations for persons with disabilities” 5 USC 6504(b)(1)
- Assisting “each agency in establishing appropriate qualitative and quantitative measures and teleworking goals” 6504(b)(2)
- Consulting with the General Services Administration on telework policy and guidance with respect to “telework centers, travel, technology, equipment and dependent care” 6504(b)(3)(A)
- Consulting with the Federal Emergency Management Agency on telework policy and guidance “for telework in the areas of continuation of operations and long-term emergencies” 6504(b)(3)(B)
- Consulting with the National Archives and Records Administration on telework policy and guidance “in the areas of efficient and effective records management; and preservation of records, including Presidential and Vice-Presidential records” 6504(b)(3)(C)

B. TELEWORK.GOV

Under the Telework Act, at 6504(e), OPM is responsible for maintaining a “central telework website.” Included on that website are telework links, announcements, “guidance developed by the Office of Personnel Management; and guidance submitted by the Federal Emergency Management Agency, and the General Services Administration to the Office of Personnel Management.” This central website may be accessed at www.telework.gov. It is a comprehensive and easily navigable website targeted to “the federal community,” including employees, managers and supervisors, and Telework Managing Officers and Coordinators, with guidance, training, resources, reports, studies, and links to relevant legislation. OPM’s *Guide to Telework in the Federal Government* (April 2011), frequently cited to in this book, can also be found on the [website](#). It is a wonderful resource for the federal teleworking community.

C. REPORTING AND OTHER REQUIREMENTS

In collaboration with each executive agency covered by the Act, OPM is required annually to compile and submit a report on the telework programs of each agency. 5 USC 6506. Reports to Congress, testimony, and agency reports can be found on OPM’s telework website, telework.gov. OPM is also responsible for researching how telework is used by public and private sector entities in order to identify best practices and make recommendations to the federal government. *Guide to Telework in the Federal Government* at Pg. 9 (April 2011). Finally, OPM is tasked with reviewing “the outcomes associated with an increase in telework, including the effects of telework on energy consumption, job creation and availability, urban transportation patterns, and the ability to anticipate the dispersal of work during periods of emergency; and [to] make any studies or reviews performed under this subsection available to the public.” *Id.*

II. AGENCY RESPONSIBILITIES

OPM notes in its *Guide to Telework* that the Telework Enhancement Act is the most comprehensive piece of legislation on agency responsibilities with regard to telework. In general, the Act requires all federal executive agencies to establish a telework policy, and several agencies, along with OPM, have additional duties to assist agencies to achieving that end.

- The Office of Management and Budget, in collaboration with the National Institute of Science & Technology and Department of Homeland Security, is required to issue guidelines “to ensure the adequacy of information and security protections for information systems used while teleworking.” The Director of OMB must also issue policy guidance ensuring that computers purchased by federal agencies enable and support telework.
- The Federal Emergency Management Agency is required to submit to OPM its own guidance on telework to be included on the telework.gov website.

FEMA also provides consultative support to OPM concerning “telework in the areas of continuation of operations and long-term emergencies.”

- The General Services Administration assists OPM to develop “policy and policy guidance for telework in the areas of telework centers, travel, technology, equipment, and dependent care.”

OPM’s *Guide to Telework in the Federal Government* at Pg. 7 (April 2011), notes the responsibilities of all federal executive agencies under the Act, including:

- establishing a policy under which eligible employees may be authorized to telework—6502(a)(1)(A)
- determining employee eligibility to participate in telework—6502(a)(1)(B)
- notifying all employees of their eligibility to telework—6502(a)(1)(C)
- incorporating telework into Continuity of Operations (COOP) plans—6502(b)(5)
- ensuring that each eligible employee authorized to telework enters into a written telework agreement with his/her supervisor—6502(b)(2)
- ensuring that an interactive telework training program is provided to eligible employees and their managers and that the program is successfully completed by employees prior to entering into a written telework agreement—6503(a)(1)
- designating a TMO [Telework Managing Officer] to serve as the primary point of contact with OPM on telework matters on behalf of the agency—6505
- while developing telework policies, consulting with OPM as needed for policy guidance in various areas such as performance management, pay and leave, recruitment and retention—6504(b)

The *Guide to Telework* continues:

When fulfilling the requirements of the Act, Federal agencies will:

- allow pre-decisional involvement on development of telework policies with employee representatives to the fullest extent practicable as provided in Executive Order 13522
- ensure that appropriate collective bargaining obligations are satisfied with employee representatives on agency telework policies.

The Act required agencies to fulfill specific provisions of the law no later than 180 days from enactment (June 7, 2011). Other requirements are ongoing as new employees come on board and policies and agreements are routinely reviewed and modified over time.

Id. at Pg. 8.

III. TELEWORK MANAGING OFFICER

Section 6505 of the Act requires the head of each covered agency to designate an agency employee as the Telework Managing Officer or TMO. The position must function within the Office of Human Capital Officer or comparable office with a similar purpose and must be “a senior official of the agency who has direct access to the head of the agency.” The TMO may hold dual roles, that of his or her regular position and as the Telework Managing Officer. Section 6505(b) sets forth the duties associated with this position:

The Telework Managing Officer shall—

- (1) be devoted to policy development and implementation related to agency telework programs;
- (2) serve as—
 - (A) an advisor for agency leadership, including the Chief Human Capital Officer;
 - (B) a resource for managers and employees; and
 - (C) a primary agency point of contact for the Office of Personnel Management on telework matters; and
- (3) perform other duties as the applicable delegating authority may assign.

OPM, on [telework.gov](https://www.telework.gov), notes that role of a TMO is more than just administrative:

The TMO is meant to be a strategic thinker and planner who will help the agency incorporate telework in a way that makes good business sense. In designating a TMO, agencies should look for the same leadership competencies and high standards they would consider in selecting any leadership position.

...

The TMO is also responsible for leading development of goals and metrics to evaluate the effectiveness of the telework program and data collection related to reporting requirements.

In many cases, the TMO assumes some of the duties of what was formerly the Department-level Telework Coordinator. However, the TMO responsibilities encompass much more than the operational day-to-day aspects of telework and delve more into policy, advising, and an overarching management of the entire telework program for the agency. Given that telework programs can require significant organizational change across an agency, the role of the TMO is strategically critical.

<https://www.telework.gov/federal-community/telework-managing-officers-coordinators/telework-managing-officer/>

CHAPTER 3

DEFINING TELEWORK

Section 6501 of the Telework Act provides:

§ 6501. *Definitions*

In this chapter:

- (1) EMPLOYEE.—The term “employee” has the meaning given that term under section 2105.
- (2) EXECUTIVE AGENCY.—Except as provided in section 6506, the term “executive agency” has the meaning given that term under section 105.
- (3) TELEWORK.—The term “telework” or “teleworking” refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.

I. DEFINING THE PARTIES

A. “EMPLOYEE”

“Employees” are eligible to telework. Sounds simple enough, but the term is further defined by 5 USC 2105, which is a fairly long and complex statute. Subpart (a) of 2105 states who qualifies as an employee:

- (a) For the purpose of this title, “employee,” except as otherwise provided by this section or when specifically modified, means an officer and an individual who is—
 - (1) appointed in the civil service by one of the following acting in an official capacity—
 - (A) the President;
 - (B) a Member or Members of Congress, or the Congress;
 - (C) a member of a uniformed service;