

TABLE OF CONTENTS

PREFACE	I
----------------------	----------

SECTION 1

TELEWORK ENHANCEMENT ACT OF 2010

CHAPTER 1: HISTORY AND OVERVIEW	3
--	----------

I.	HISTORY AND OVERVIEW OF THE TELEWORK ENHANCEMENT ACT OF 2010.....	3
A.	HISTORY	3
B.	HIGHLIGHTS OF THE ACT	4
II.	TELEWORK AND COVID-19.....	5
A.	HISTORICAL GUIDANCE.....	5
B.	REENTRY.....	6
C.	REENTRY GUIDELINES	9
III.	PROPOSED LEGISLATION: TELEWORK REFORM ACT OF 2023	10

CHAPTER 2: ROLES UNDER THE ACT: OPM, AGENCIES AND THE TELEWORK MANAGING OFFICER	11
--	-----------

I.	OFFICE OF PERSONNEL MANAGEMENT	11
A.	RESPONSIBILITIES ASSIGNED TO OPM BY THE TELEWORK ENHANCEMENT ACT	11
B.	OPM.GOV/TELEWORK.....	12
C.	REPORTING AND OTHER REQUIREMENTS	12
II.	AGENCY RESPONSIBILITIES.....	12
III.	TELEWORK MANAGING OFFICER.....	15

CHAPTER 3: DEFINING TELEWORK.....	17
--	-----------

I.	DEFINING THE PARTIES	17
A.	"EMPLOYEE"	17
B.	"EXECUTIVE AGENCY"	18
II.	DEFINING TELEWORK	19
III.	TYPES OF TELEWORK.....	20
A.	AD-HOC OR "SITUATIONAL" TELEWORK.....	21
B.	CORE OR "ROUTINE" TELEWORK.....	22
C.	EMERGENCY TELEWORK.....	22
D.	UNSCHEDULED TELEWORK.....	22
E.	OTHER TELEWORK RELATED TERMS	23

CHAPTER 4: ELIGIBILITY	27
I. ELIGIBILITY	28
A. POSITION ELIGIBILITY	29
1. Notifying Employees	30
2. Selected Agency Policies on Position Eligibility	31
B. INDIVIDUAL EMPLOYEE ELIGIBILITY	35
1. Selected Agency Policies on Individual Eligibility	36
2. Determining Number of Days for Telework.....	38
II. LIMITATIONS ON TELEWORK ELIGIBILITY UNDER THE ACT AND AGENCY POLICIES.....	39
A. SECTION 6502 LIMITATIONS.....	39
1. Defining AWOL	40
2. Retroactivity.....	41
B. AGENCY IMPOSED LIMITATIONS ON TELEWORK ELIGIBILITY	41
1. Misconduct	41
2. Length of Time With Agency	42
3. Equipment.....	43
4. Work Ethic Considerations.....	44
CHAPTER 5: PARTICIPATION	47
I. AGENCY POLICY.....	48
II. PARTICIPATION IS NOT REQUIRED OR GUARANTEED	49
A. DENIALS BASED ON EMPLOYEE PERFORMANCE	51
1. Consistently Applied	51
2. Performance Requirements	52
3. Period of Ineligibility.....	54
4. Other Requirements From Selected Agency Policies	54
III. MANDATORY TRAINING	54
A. EXEMPTED EMPLOYEES	55
IV. MANDATORY WRITTEN AGREEMENT	55
A. CONTENT	56
B. TERMINATION OF A TELEWORK AGREEMENT	58
V. SETTLEMENT AGREEMENTS WITH TELEWORK PROVISIONS	68
VI. GRIEVANCES	68
VII. PAY	69
VIII. HOURS	71
CHAPTER 6: THE TELEWORK ACT AND AGENCY POLICY LIMITATIONS ON TELEWORK AND REASONABLE ACCOMMODATION REQUESTS.....	73
I. LIMITATIONS REVIEW	73

II.	TELEWORK LIMITATIONS AND QUALIFIED EMPLOYEE'S RIGHT TO REASONABLE ACCOMMODATION.....	74
A.	OPM GUIDANCE.....	74
B.	AGENCY POLICIES.....	77
C.	AGENCY'S MUST MODIFY POLICIES REGARDING WHERE WORK IS PERFORMED.....	78
D.	OVERCOMING SECTION 6502 AND AGENCY LIMITATIONS FOR INDIVIDUALS REQUIRING REASONABLE ACCOMMODATION.....	79

CHAPTER 7: EQUAL TREATMENT UNDER THE ACT81

SECTION 2

TELEWORK AND EEO PRINCIPLES

CHAPTER 8: TITLE VII AND TELEWORK87

I.	BASIC LEGAL REQUIREMENTS.....	87
II.	DETERMINING TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT...	88
A.	TELEWORK AS A TERM, CONDITION, OR PRIVILEGE OF EMPLOYMENT.....	89
B.	MOTIVATED BY DISCRIMINATORY ANIMUS.....	92
III.	TERMINATION OR DENIAL OF TELEWORK ON PROHIBITED BASES OTHER THAN DISABILITY	98
IV.	HARASSMENT CLAIMS.....	99
V.	REPRISAL CLAIMS.....	101
VI.	SETTLEMENT AGREEMENTS CONTAINING TELEWORK PROVISIONS	103

CHAPTER 9: THE REHABILITATION ACT AND REASONABLE ACCOMMODATIONS 107

I.	THE REHABILITATION ACT AND REASONABLE ACCOMMODATIONS—THE BASIC REQUIREMENTS.....	107
A.	QUALIFIED INDIVIDUAL.....	108
B.	ESSENTIAL FUNCTIONS	109
C.	INTERACTIVE PROCESS	113
D.	REASONABLE ACCOMMODATION AND UNDUE HARDSHIP.....	114

CHAPTER 10: TELEWORK AS A REASONABLE ACCOMMODATION 117

I.	REQUESTS TO TELEWORK AS A REASONABLE ACCOMMODATION	117
A.	INTERACTIVE PROCESS AND MEDICAL DOCUMENTATION	117
1.	Continuing Obligation.....	119
B.	WHAT IT MEANS TO BE A QUALIFIED INDIVIDUAL	125
1.	Episodic Conditions	127
2.	Presence at Work.....	128

3.	Failure to Meet Production Standards	130
C.	TELEWORK MUST BE AN EFFECTIVE ACCOMMODATION	132
D.	THE ESSENTIAL FUNCTIONS OF THE JOB/POSITION SUITABILITY	134
1.	Duties That Can Only Be Accomplished in the Office.....	141
2.	Duties Implicating Access to Secure Information and Those That Cannot Be Handled Remotely.....	143
3.	Senior and Supervisor Positions and Essential Job Functions	145
4.	Removal of Essential Job Functions Is Not Required	147
5.	Essential Job Functions and Poor Work Performance	149
6.	Poor Performance and Whether Telework Would Be an Effective Accommodation	153
E.	UNREASONABLE DELAY IN PROVIDING ACCOMMODATION	156
F.	EQUIPMENT AND ASSISTIVE TECHNOLOGY TO SUPPORT TELEWORK.....	157
G.	DENIAL OF TELEWORK BASED ON UNDUE HARDSHIP	158
H.	TELEWORK AS A REASONABLE ACCOMMODATION TO REDUCE OR ELIMINATE COMMUTE.....	163
I.	TELEWORK AS A REASONABLE ACCOMMODATION TO ADDRESS PRIVACY CONCERNS.....	166
II.	COUNSELOR CONTACT: EXPRESS DENIAL OF TELEWORK AS A REASONABLE ACCOMMODATION IS A DISCRETE EVENT	167
III.	TELEWORK AGREEMENTS ARE NOT INDEFINITE	168
IV.	CONFLICTS BETWEEN THE TELEWORK ENHANCEMENT ACT OF 2010 AND AGENCY ASSOCIATED POLICIES AND THE REHABILITATION ACT ...	169
A.	CONFLICTS WHERE EMPLOYEE PERFORMANCE AND/OR ATTENDANCE IS DEFICIENT	175
CHAPTER 11: RELIGIOUS AND PREGNANCY ACCOMMODATIONS AND TELEWORK REQUESTS.....		183
I.	RELIGIOUS ACCOMMODATION	183
II.	PREGNANCY DISCRIMINATION.....	184
CHAPTER 12: TELEWORK AND THE MSPB		189
I.	EMPLOYEE ELIGIBILITY TO TELEWORK	189
II.	TELEWORK AND ADVERSE ACTION CHARGES	190
A.	PHYSICAL INABILITY TO PERFORM THE DUTIES OF A POSITION...	190
B.	ABSENCE WITHOUT LEAVE	197
III.	CONSTRUCTIVE ADVERSE ACTIONS.....	204
IV.	AFFIRMATIVE DEFENSES BEFORE THE BOARD RELATING TO TELEWORK	212
QUICK REFERENCE TO POLICY AND GUIDANCE.....		217