

FLEXIPLACE CLARIFICATION MEMORANDUM

March 11, 2002

MEMORANDUM

To: AFGE Union Presidents HROS
PMOS

From: Steve Sharfstein, Director
Labor and Employee Relations
Paul Sacker, Vice- President
AFGE Council 238

Subject: Clarification on AFGE Flexiplace and Work-At-Home Agreement

On November 13, 1998, AFGE and the U.S. EPA entered into an agreement for a Flexiplace Program. In accordance with Section XII.E of the Agreement, the parties met on March 29, 2000 to discuss and identify concerns and issues regarding the program. Through subsequent discussions, the parties developed the following document to clarify and address issues that were identified. Individuals who have questions about this document should contact their Local Flexiplace Coordinator or Union representative.

1. Concern:

Annual Flexiplace data is not being reported in an uniform format to EPA HQ or the Union.

Response:

The Parties have agreed that our goal is to have a uniform format and the Agency will request at the end of each calendar year a Flexiplace report from each organization that has an AFGE local that includes name, job, title, series, grade, location, type of Flexiplace, number of days per week of Flexiplace, and beginning and ending dates of the Flexiplace assignment (if any). The report will be provided to AFGE National by the end of the first quarter of the following year.

2. Concern:

Clarification on the definition of Regular Flexiplace is needed. What is the minimum amount of days allowed, is there a maximum?

Response.

The Agreement states under Section III.A.1, Definition of Regular Flexiplace that "Normally, employees will be scheduled to work no more than two days per week at the Alternative Work Location (AWL)." The parties understand that "Normally," establishes the 2 days as a maximum under regular circumstances. Management could use their discretion in granting more than two

days per week for special circumstance. An example of a special circumstance would be the San Francisco earthquake that occurred a few years ago, a transit strike, or the post- September 11, 2001 situation in New York.

Regular flexiplace schedules may be less than 2 days a week based on the need for office coverage, lack of portable work, or lack of equipment.

Flexiplace day(s) must be the same days every week under this form of Regular Flexiplace unless management grants an exception on an individual basis.

3. Concern:

Can employees temporarily change their flexiplace schedule to make up a Flexiplace day that was missed due to a holiday or because the employee was required to come into the office?

Response:

Management always has the prerogative to grant a temporary change to all schedules at the employee or supervisor's request.

4. Concern:

There needs to be a streamlined episodic Flexiplace application process for reoccurring projects so that employees need not reapply each time.

Response:

The parties agree that a one-time application for Episodic Flexiplace with management's prior approval for certain dates for a reoccurring project is acceptable. For other types of episodic Flexiplace, one application could be completed with an attached log listing the date, project, and supervisor and employees signatures. The controlling factor is that the work must be clearly defined and measurable.

5. Concern:

Certain employees have reoccurring medical conditions, such as sensitivity to ozone alert days or seasonal allergies, that may require they stay at home periodically. Except for difficulty in getting to the office, these employees could perform work rather than using sick leave. Can employees in such situations apply for a reoccurring medical flexiplace?

Response:

The parties agree that employees can apply for a episodic/medical flexiplace in advance. Medical documentation of a preexisting condition must be made available at the time of the application. Once the application is approved, employees can, on days when they believe they will not be able to travel to their duty station because of their medical condition ask for their supervisor's

approval to work at their AWL and describe what portable work they intend to perform. Approval of such requests will be based upon the portability of the employee's current work load. If the supervisor does not believe the employee has portable official work available at the AWL, then the employee must report to the duty station or request appropriate leave.

6. Concern:

Can employees on Regular Flexiplace apply for episodic flexiplace for a specific project or for medical Flexiplace if the employee has a condition that meets the requirements?

Response:

The agreement does not prohibit the use of more than one type of Flexiplace concurrently. In unique circumstances, employees may be approved for different types of Flexiplace at the same time. For example, an employee may be approved for regular Flexiplace and later suffers a temporary illness or medical condition that prevents them from performing their job duties in their normal work site. Upon providing appropriate medical documentation, the employee could apply and be approved for medical Flexiplace for the remaining work days. The employee would continue to perform his or her regular work assignments.

7. Concern:

What happens if an employee on Medical Flexiplace has a permanent condition and cannot return to work after the 6 month time frame?

Response:

According to the agreement, an employee will not normally take more than six months of medical flexiplace for a specific condition. If an extension beyond six months is needed, a determination from a medical professional must be made to ascertain if the condition is temporary or permanent. Temporary conditions are eligible for an extension of up to an additional six months of flexiplace provided suitable medical documentation is provided to the supervisor indicating the extent of time the condition may continue.

For situations where the condition is chronic, the employee can apply for reasonable accommodation under the Americans with Disabilities Act and Rehabilitation Act (ADA). Under ADA an employee must submit sufficient medical information establishing that they are a qualified handicapped employee entitled to reasonable accommodation under the law. By this, they have demonstrated that they have a condition which substantially limits one or more major life activities and that with or without accommodation, they can perform the essential duties of their position. In some cases, an alternative work site may be determined to be a reasonable accommodation.

8. Concern:

Certain job classifications such as RPMS or clericals are being refused flexiplace or limited 1-day per payroll period or week of regular Flexiplace, rather than employees applications being

reviewed on a case-by-case basis.

Response:

Each Flexiplace application will be reviewed on an individual basis and individual decisions will be made based on the portability of the work, office and telephone coverage, customer service, and other criteria outlined in the Agreement. Restrictions will not be placed on groups or employee classifications.

9. Concern:

Electronic submission of time worked is in conflict with the timekeeping manual.

Response:

The form is used only for self-certification of time worked at an Alternate Work Location (AWL). The timekeeper still maintains all required documents.

10. Concern:

Employees are not being reimbursed for local toll calls since the telephone company does not itemize local calls on the bill.

Response:

The agreement permits management to pay for business related toll calls. It is recommended that local management consider using phone cards which documents all calls and eliminates the need for reimbursement checks. However, in those locations where this is not an option, employees who make local toll calls should keep a log or ask the telephone company for an itemized bill.

11. Concern:

No expiration date/renewal date should be on Regular flexiplace applications. What is the intent of "annual re-certification."

Response:

The application, Appendix A, includes an "annual re-certification" check-off, which does not require a new application and approval process each year but a discussion between the employee and supervisor. The parties agree that the intent of this "annual re-certification" is to have a discussion or dialogue between the supervisor and the employee at least once a year about the employee's flexiplace performance. Regular Flexiplace applications do not "expire" and will only be terminated in accordance with Section IX or X of the Agreement.

12. Concern:

What is the process for dealing with alleged damage of personal computer or other equipment being used in the performance of agency business while an employee is at their AWL?

Response:

The Agency's ability to compensate employees for loss or damage to personal property used incidental to Government service is governed by the Military and Civilian Employees Claim Act, (MCE) and the implementing regulations at 40 CFR Part 14.

The regulations require that we address each such claim on a case by case basis, based on the specific facts and on the limitations of the regulations. As such, blanket advice would not be appropriate on what would or would not be covered if an employee on a Flexiplace assignment suffers a loss or damage to personal property incidental to carrying out their official functions. Should this situation arise the employees should submit a claim to David R. Lloyd in the Office of General Counsel for consideration. The claim forms can be obtained from Mr. Francis Bonds, (202) 564-5674. OCG is also available to discuss any fact specific inquiry related to the MCE statute and regulations David's telephone number is (202) 564-5436.

13. Concern:

Should personal injury or property damage be reported to the supervisor or HRO?

Response:

Employees should report any injury or property damage to the immediate supervisor but they should also contact Human Resources or OGC for appropriate forms to complete.

14. Concern:

Prior advanced notice of 24 hours required for home inspections should be given to employee and union.

Response:

Under Article 20, Section 9 of the MCBA, Health and Safety, management must notify the Union in advance of an health and safety inspection and be permitted to accompany the inspection team. Since inspections of employee's home are for the purpose of "site conformance with safety standards and other specifications in these guidelines." it is management's responsibility of alerting the Union of an upcoming inspection.

15. Concern:

As a matter of good customer service, employees should be permitted to call forward those calls coming into their Agency telephone to their AWL number instead of leaving instructions to customers on their voicemail to call them again at their AWL.

Response:

The Flexiplace program requires employees be accessible to the supervisor, co-workers and customers to the same extent that they are in the office, by phone and LAN. This includes an agreement by the employee to release his/her AWL telephone number to "customers." However, the parties agree that it may be more efficient and more in keeping with customer service guidelines to also allow call forwarding of calls to an employee's Agency telephone to his/her AWL telephone, rather than have customers make two calls to contact the employee. Local management is responsible for making decisions on the forwarding of office number as an alternative. It is noted that the telephone company charges commercial rates for call forwarding instead of reduced FTS rates and this may effect local level management's decision.

16. Concern:

Does new tax deduction legislation for home office change the provision in the Flexiplace Agreement?

Response:

Section VII.I.6 of the Agreement states that each employee should discuss his/her specific situation with a tax or financial expert.

17. Concern:

Employees should be permitted to bundle projects into one day.

Response:

This is a local management decision. The Agreement does not prohibit this arrangement, however, it does not require management to make any changes in the way duties are performed or to restructure the job.

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