

STATEWIDE OUT-OF-STATE TELECOMMUTING REQUEST GUIDANCE AND EXPECTATIONS

Disclaimer: Out-of-state telecommuting is discouraged and will only be considered in compelling circumstances.

PURPOSE

This guidance is intended to provide information and awareness of unique out-of-state telecommuting requests. While telecommuting can attract employees in hard-to-fill and hard-to-retain positions, there are certain legal requirements impacting the State of Idaho (State) as an employer when considering out-of-state telecommuting for state employees. These requirements, outlined below, need to be researched by the requesting agency's Human Resources (HR) staff and legal and are not addressed in this guidance.

NOTE: This document is not intended to reduce an agency's authority to determine which positions are eligible for telecommuting in general or specifically for out-of-state telecommuting.

This guidance seeks to find a balance between recruitment and retention for rare or critical skillsets, while mitigating risks associated with employing individuals to telework outside the state of Idaho.

- All telecommuting requests must meet the requirements of the [Statewide Telecommuting Policy](#) prior to seeking approval for out-of-state telework.
- Out-of-state telecommuting requests¹ must be reviewed and approved by the Division of Human Resources (DHR) Administrator and the Division of Financial Management (DFM) Administrator **prior to** implementation. Failure to obtain approval prior to implementation may result in denial of the request.

The State of Idaho does not permit out-of-country telecommuting.

1. REASONS OUT-OF-STATE TELECOMMUTING MAY BE CONSIDERED

The state of Idaho has a clear interest in recruiting and investing in a resident workforce. However, there may be exceptional circumstances where a state agency decides to hire a new employee who lives outside the state of Idaho or allow a current employee who moves outside the state of Idaho to maintain their employment. This section addresses reasons an agency may consider requests to work outside the state.

- Recruiting or retaining a skillset:** To meet business needs, an agency may seek to recruit an out of state employee with a rare or critical skillset or background. Similarly, an agency may seek to retain an employee with a skillset that is rare or critical to the success of an agency.
- Retaining an employee who is moving out of state:** An agency may wish to retain a current employee who is moving out of state, and the employee has

¹ Refer to section 7C.6 of Executive Branch Statewide Policy Section 7: Telecommuting.

demonstrated strong performance, and in some cases has also successfully telecommuted in Idaho.

- C. **Recruiting an applicant who has plans to relocate to Idaho in the future:** An agency may seek to employ an applicant who does not yet live in Idaho and support out-of-state telecommuting temporarily until the employee permanently resides in Idaho. The agency and applicant should discuss and agree to a reasonable timeframe, such as six months or less.
- D. **Small applicant pool:** An agency may wish to pursue an applicant in instances where a recruitment receives a small number of qualified applicants, and the most qualified applicant lives out of state.
- E. **Border state residents:** For employees residing in a state that borders Idaho, including Washington, Oregon, Nevada, Montana, Wyoming, and Utah, telecommuting may be necessary in order to allow the employee mobility that similarly situated employees residing in Idaho may experience.
- F. **Legacy agreements:** Agencies may consider continuing to support previously approved or implemented out-of-state telework agreements if they are working well and continue to be needed based on business need.

2. CONSIDERATIONS AND REQUIREMENTS FOR OUT-OF-STATE TELECOMMUTING REQUESTS

Telecommuting from other states creates legal uncertainty because Idaho law may not govern work performed outside of Idaho. Telecommuting from other states creates legal considerations related to the resident state's labor laws and employee benefits. In general, laws related to employment such as wage-and-hour, fair-employment, overtime, worker's compensation, parental leave, taxable income and withholdings, etc. are applied based on where the individual performs the work, i.e. the employee's state of residency for out-of-state telecommuting.

The agency retains full discretion to deny requests to telecommute out-of-state, or to reverse approval if necessary.

The following is a list of considerations the agency must explore prior to submitting a request. This list is not intended to be all inclusive, and requests must still be preapproved by DHR² and DFM. **DHR and DFM retain full discretion to deny requests to telecommute out-of-state.**

- A. **Resident Taxing State Outside of Idaho:** Payment of payroll taxes when employees work from another state is one of the most important compliance tasks involved in supporting out-of-state workers. The requesting agency is required to do the following:
 - 1. Coordinate directly with the State Controller's Office (SCO) and the Division of Statewide Payroll (DSP) to ensure taxable wages are reported correctly and set up the applicable state tax withholding structure.

² Agencies are encouraged to first check with DHR to determine if the requesting state has already been researched.
OUT-OF-STATE TELECOMMUTING GUIDANCE
DHR AUGUST 2022

2. Update the employee's taxing state in the payroll system to the state where the employee is performing work.
 3. Communicate taxing expectations to the employee.
 4. Verify the employee's primary address is accurately reflected in the payroll system for taxing and payroll deductions.
- B. Workers' Compensation:** It is important to know coverage determinations are made on an individual basis for each worker based on their circumstances. The requesting agency is required to do the following:
1. Contact a Risk Analyst³ at the Idaho Department of Administration, Risk Management, to discuss out-of-state coverage based on where the employee lives.
 2. Work directly with Risk Management regarding the workers' compensation payment.
 3. There may be a requirement to set up state specific workers' compensation policies and payments to the State Insurance Fund.
- C. Payroll:** To ensure accurate reporting, W-2s must be filed manually with each state where the employee has worked.
- D. Unemployment Insurance (UI):** Unemployment laws apply where the work is performed. The agency should contact the local UI agency for the state in which the employee is physically located to understand how the employee will be covered.
- E. State Specific Employment and Labor Laws:** States may have employment laws that contradict Idaho employment laws, such as at-will employment, or laws regarding termination. The requesting agency is required to do the following:
1. Research the state where the employee lives and all related employment and labor and taxing laws/rules in that state prior to submitting a request for approval. This information must be included in the request.
 2. Remain diligent in keeping up to date with the labor laws in the state where employees are telecommuting out of.
- F. Time Zone Differences:** There are a variety of issues that can arise when employees work in different time zones. Agencies should consider the business needs and pay considerations when reviewing requests to telework in a different time zone.
- G. Budgetary Impacts:** The requesting agency is required to consult with their DFM analyst on any budgetary impacts of allowing a position/employee to work in a state other than Idaho.

³ Agency must complete the New Employee – All States WC Form and submit to Risk Management.
OUT-OF-STATE TELECOMMUTING GUIDANCE
DHR AUGUST 2022

H. **Equipment:** The teleworking employee may use state or personal equipment that is approved for use by OITS for state business and must ensure the property is secured and that expectations for information security are met. The requesting agency is required to do the following:

1. Maintain an equipment inventory, for the service and maintenance of agency equipment, and for ensuring equipment is returned at the end of a teleworking arrangement.
2. Follow the IT Security and Equipment expectations outlined in the Statewide Telecommuting Policy.

3. REQUEST AND APPROVAL FOR OUT-OF-STATE TELECOMMUTING

When evaluating a request for out-of-state telecommuting, agencies should consider specific position requirements, impact on a team, employee performance concerns, and whether the employee can effectively perform the job duties of the position while telecommuting out-of-state.

Approval for out-of-state hiring, or for current employees to become remote, must be supported by a compelling reason, based on the need to recruit or retain an employee with a rare or critical skillset, or for other extenuating circumstances.

A formal submitted request will include **both** the completed telecommuting application from the statewide [policy](#) and the completed Out-of-State Telecommuting Request Form from the agency.

DHR and DFM will review all applicable forms and any supplemental information and make a determination. The final determination will be communicated back to the agency.