

**Idaho Division of Human Resources**  
Executive Branch Statewide Policy  
Section 7: Telecommuting  
Out-of-State Telecommuting Guidance and Expectations

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

## **Purpose**

For purposes of this guidance, an employee is considered to telecommute out-of-state if 50% or more of their work is performed in a state other than Idaho.

This guidance is intended to provide information and awareness of the unique nature of out-of-state telecommuting requests. 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 agency Human Resources (HR) staff and legal and are not fully addressed in this guidance.

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 requests<sup>1</sup> 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.

Specific work location requirements by state are found at the end of this document and should be reviewed prior to a new request. The State of Idaho does not permit out-of-country telecommuting.

## **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 following is a list of considerations the agency must explore and document prior to a request being approved. This list is not intended to be all inclusive, and requests must still be pre-approved by DHR and DFM. The agency, DHR and DFM retain full discretion to deny requests or to reverse approval if necessary.

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

Agencies should contact DHR to determine if specific states have been researched and/or approved in the past. DHR may need to provide pre-approval in order for the agency to discuss taxing and payroll concerns with the SCO.

- 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. 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 once the request has been approved by DHR and DFM:
  - 1. Contact a Risk Analyst<sup>2</sup> 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, employees should be notified that their 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 and/or research 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 minimum wage, at-will employment, or laws regarding termination. The requesting agency is required to do the following:

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<sup>2</sup> Agency must complete the New Employee – All States WC Form and submit to Risk Management.

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<sup>3</sup>.
  2. Maintain a regular review of relevant labor laws and benefit requirements for states (and potentially cities/counties) that active employees are telecommuting from.
- 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.
- H. Equipment: The teleworking employee may use state or personal equipment that is approved for use by OITS or agency-equivalent IT approval 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.

## Request and Approval for Out-of-State Telecommuting

In most cases, approval for out-of-state hiring, or for current employees to become remote, will be based on the position's requirement to perform the job duties in another state. Other approvals 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.

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<sup>3</sup> Agencies are encouraged to first check with DHR to determine if the requesting state has already been researched.

## Out-of-State Telecommuting Addendum

### Out-of-State Work Location Requirements

*This is a living document that will be updated as information is gathered/researched.*

#### 1. California

Due to vastly differing employment laws and minimum wage laws, out-of-state requests for California will not be approved.

#### 2. Colorado

Colorado has minimum wage [laws](#) that are not comparable to Idaho. Out-of-state requests for Colorado will not be approved.

#### 3. Montana

Montana does not have “at-will” employment laws. As such, out-of-state requests for the state of Montana will not be approved for nonclassified employees.

Given the potential for legal and employment implications, including compliance with different state employment laws and jurisdictional issues, it is unlikely out-of-state requests will be approved for classified employees.

#### 4. Oklahoma

The state of Idaho is not set up to withhold taxes in Oklahoma and would therefore be the employee’s responsibility to withhold. However, Oklahoma requires employers to withhold and if the employer does not, the employer may be penalized. Due to the contradiction, out-of-state requests for Oklahoma will not be approved.

#### 5. Oregon

Beginning in September 2023, employees working in Oregon are eligible for [Oregon Paid Family Medical Leave Insurance](#). This insurance provides employees with paid leave for family, medical, or safe leave. The program does not allow employers or employees to opt out and requires both employers and employees to contribute into the program. For these purposes, only employees whose positions are required to work in the state of Oregon will be approved.

Agencies with affected employees must post this [notice](#).

#### 6. Vermont

Vermont has a variety of [labor laws](#) that conflict with Idaho. Out-of-state requests for Vermont will not be approved.