



NEW MEXICO  
**LAW OFFICES OF THE  
PUBLIC DEFENDER**

Chief Public Defender  
Bennett J. Baur

---

## LOPD Telework Policy

- 1) **Purpose** – Telework (aka telecommuting; remote work) is a work flexibility arrangement that allows employees to work from a telework site other than their assigned office location. Telework is not a right nor a State benefit. The goal is to ensure that both the employee and LOPD will benefit from this arrangement. Telework is consistent with sound business practices and may help the LOPD attract and retain talented and skilled employees. Telework can also increase productivity and morale of employees and reduce operating costs. Although not all jobs can be performed remotely, LOPD recognizes that, in some cases, teleworking arrangements can provide a mutually beneficial option for both the Department and its employees.
- 2) **Scope** - These guidelines apply to all teleworking activities of the NM LOPD. All supervisors and teleworkers must be familiar with the contents of these guidelines and supporting documents. This policy refers both to voluntary telework and required telework by employees, if circumstances require it.
- 3) **References** - The Fair Labor Standards Act, 29 U.S.C. § 201, et seq., as amended; 10.12.1, NMAC General Provisions; 10.12.2 NMAC Appointments; 10.12.6, General Working Conditions, 10.12.7 NMAC Absence and Leave; 10.12.9 Performance Appraisals;
- 4) **Related Forms** – LOPD Employee Telework Agreement Form
- 5) **Definitions**
  - a) **Telework** (aka telecommuting; hybrid work model; remote work) - A work flexibility arrangement, under which an employee performs the assigned duties and essential functions of their classification, from an approved telework site other than the employee's assigned office location, including from an employee's residence, during any part of their regular scheduled hours. There are three types of telework arrangements available as laid out in h and i below.
  - b) **Telework Site** – A location, other than the employee's assigned office location, that has been approved for the performance of assigned duties and essential functions. The site may be an employee's home or other approved location that is conducive to performing the employee's official duties.
  - c) **Assigned Office Location** – LOPD office location from which an employee was hired or assigned to regularly perform their duties for their regularly scheduled work hours.
  - d) **Teleworker** – An eligible employee who has an approved telework agreement in place, and has the required work necessities (e.g., equipment, materials) to effectively perform their duties at an approved alternative worksite.
  - e) **Eligible Employee** - An employee, in an eligible position, who has been identified by the employee's supervisor as satisfactorily meeting performance standards, terms and conditions of employment of their position and, has no disciplinary actions on file for the current or immediately preceding review period.
  - f) **Telework Eligibility** – An employee whose position/classification, job responsibilities, and job performance have been deemed suitable for telework without affecting the productivity of the office and client services.

- g) **Telework Agreement** – A written agreement that outlines the terms and conditions for an employee authorized to telework. Agreements must be approved by the appropriate supervisor and manager(s). Telework agreements are mandatory for an employee's participation in the telework program.
- h) **Hybrid Telework** – A telework arrangement in which the eligible employee teleworks from an approved alternative telework site on a recurring, regularly scheduled basis – *for example: three (3) days or 24 hours per week or six (6) days or 48 hours per pay period.*
- i) **Occasional Telework** – A telework arrangement in which the eligible employee aka Occasional Teleworker, teleworks without a set schedule (e.g., telework as a result of inclement weather, personal appointment, special work assignment). An employee with an approved occasional telework arrangement must obtain advance approval from their supervisor in order to telework on a particular day(s).
- j) **Rare Teleworker** – An employee who, with the approval of their supervisor, teleworks on an infrequent basis.

## 6) Policy

- a) Telework is an effective strategy for mission accomplishment, ensuring continuity of operations in a crisis, recruiting and retaining valued talent, reducing commuting miles or organizational savings while meeting client needs. LOPD policy is to promote telework that does not diminish employee performance, client services, or adversely affect the ability of the Department to achieve its mission. Employees do not have a presumptive right to telework. An employee's participation in the telework program is voluntary and must only be approved when it is deemed to be in the best interest of the Department. Telework may not be suitable for all employees and/or positions. While many positions may be suitable for telework, there are certain positions that are not conducive to telework.
- b) Unless otherwise authorized, telework employees shall maintain a normal 40-hour work schedule (8:00 a.m. to 5:00 p.m. Monday-Friday). LOPD retains the right to approve or deny any alternative telework schedule requests.
- c) An approved telework agreement must be in place in order for an employee to participate in telework and must be in place *prior* to the employee teleworking. Occasional and Rare telework agreements will require advance approval from an employee's supervisor for each instance of telework.
- d) The LOPD may rescind or the employee may discontinue the telework arrangement at any time. Telework may be temporarily suspended or terminated by management due to employee performance, misconduct or the operational needs of the Department.
  - i) Telework employees shall perform all duties and responsibilities of their position and maintain an "Achieves" performance rating or better on all evaluation criteria in any evaluation. Failure to do so may result in revocation of the telework arrangement and/or discipline, up to and including dismissal.
  - ii) Employees under discipline may have their telework agreement revoked.
  - iii) Telework employees shall adhere to all LOPD policies and procedures, including but not limited to: accurately entering their actual and accurate work time in the SHARE system, requesting leave in advance, complying with all departmental requirements regarding compensatory time, including that all overtime and extra hours must be approved by a supervisor prior to the hours being worked, ensuring confidentiality and protecting client and LOPD information.
- e) Any request for an exception to this policy should be submitted to the supervisor or manager and their Deputy Chief. The request should be submitted by email and fully describe the

circumstances and a justification for the exception. The letter should include as much detail as possible, such as: the specific section or requirement in this plan for the exception, start and end date for the exception, if all other job requirements can be met, and impact if the request is not granted.

## 7) Telework Eligibility

- a) To the extent that mission requirements are not jeopardized, LOPD may permit eligible employees who exhibit suitable work performance and conduct, to occupy positions suitable for telework, and have access to an appropriate alternative telework site, to telework to the extent feasible. Telework eligibility criteria must be applied impartially and consistently and be based on appropriate business and departmental needs. While telework is a workplace flexibility arrangement, it is not an employee entitlement, not all employees are eligible to telework, and not all jobs can be performed away from the office location. The employee's supervisor, in conjunction with the manager/district defender, will determine position eligibility of the employee requesting a telework arrangement.
- b) Compliance with Policies & Guidelines – telework employees must adhere to all LOPD policies and guidelines, which include, but are not limited to: LOPD Code of Conduct, Drug and Alcohol Policy, Loss Prevention Control, Internet and Email Usage, Professionalism & Supervision Guidelines, Respectful Workplace Guidelines and Social Media.
- c) Work and non-work hours – The employee is expected to accurately account for work and non-work hours during their workday and take the appropriate leave (sick, annual, leave without pay) to account for any time spent away from normal work-related duties during their scheduled workday, or when they are unavailable to work, or unavailable to be recalled back to the office. For example, any time spent providing personal care to or homeschooling of dependents or tending to personal business cannot be considered hours worked.
- d) Employee Eligibility
  - i) After determining that the position is suitable for telework, the supervisor must determine the employee's eligibility to telework.
  - ii) Candidates for telework agreements must:
    - (1) have successful job performance and conduct,
    - (2) have satisfactory attendance and timeliness,
    - (3) have no disciplinary actions for the current or immediately preceding review period,
    - (4) have displayed dependability, responsibility and conscientiousness,
    - (5) have demonstrated self-motivation, self-discipline, the ability to work independently, the ability to manage distractions, and the ability to meet deadlines,
    - (6) possess good time-management and organizational skills, and
    - (7) have provided timely responses and maintained consistent contact with clients, co-workers, supervisors, and outside entities, such as criminal legal partners.

## 8) Request & Review Process

- a) **Telework requests are reviewed by the employee's immediate supervisor on a case-by-case basis for a determination, with next level manager having final approval, such as the District Defender, Managing Attorney, Division Head, or Deputy Chief if applicable.** Not all positions are appropriate or feasible for remote work. Employees interested in teleworking arrangements should discuss the matter with their supervisors and submit the "LOPD Employee Telework Agreement Form." The employee requesting to telework will be informed of the

decision, with the approved or denied request form being routed back to them. If the request is denied, the reason(s) for denial will be noted on the form.

- b) A new telework agreement form must be discussed and renewed when the employee is assigned a new supervisor, a new position, new job duties or the job classification description is modified.

## 9) Telework Schedule Modification

- a) Supervisors may require teleworkers to report to the employee's assigned office location on scheduled telework days to accommodate workload demands or for other operational requirements (e.g., to attend a mandatory staff event). When possible, the employee will be provided advance notice in writing of any change to their telework schedule.
- b) Requests by the employee to change their scheduled telework day in a particular week or biweekly pay period must be submitted in writing in advance and approved by the supervisor.
- c) A teleworking employee must obtain their supervisor's advance written approval before working overtime. Working overtime without such approval may result in termination of the teleworking agreement and/or other appropriate action.
- d) A permanent change in the telework arrangement requires a new telework agreement to be completed and approved.

## 10) Responsibilities

- a) **Supervisors**
  - i) **All supervisors (including deputy chiefs, district defenders, managing attorneys, division directors, office managers and supervisors) will assess departmental and client needs to determine the frequency that managers and supervisors should be in their office location and supervise and direct the work of their teams.**
  - ii) **Supervisors are required to be in office at least three (3) days a week, unless the supervisor requested and received a written approval from their direct supervisor and Deputy Chief. That request must include a detailed justification and time frame (start and end date for telework requests for more than two [2] days a week).**
  - iii) **When a new hire begins work, the immediate supervisor (or designee who is also a supervisor) and the new employee must be present in the office to onboard all new employees on their first day of work and for subsequent training.**
- b) Employee and supervisor responsibilities are also included in the attached "Addendum A".
- c) Employees teleworking and supervisors with teleworking employees are encouraged to review the additional resources included in the attached "Addendum B".

## 11) Confidentiality

- a) Employee is responsible for properly protecting and securing confidential information in compliance with 10.12.1 NMAC, Paragraph G, of LOPD Code of Conduct, and departmental guidelines.
- b) LOPD employees are responsible for maintaining confidentiality and security at the alternate workplace in order to protect the security and integrity of data, information, paper files, and access to internal network computer systems.
- c) Documents and records used and/or developed while teleworking shall remain the property of LOPD, and are subject to LOPD policies regarding confidentiality and records retention

requirements. Teleworkers must ensure confidential documents are properly shredded when discarded. Confidential information must be retained until it can be shredded or destroyed.

## 12) Equipment/Furnishings/Office Supplies

- a) Equipment that LOPD provides is property of the Department. LOPD retains control over the property and reserves the right to monitor department property even when used at an employee's remote location. Employees must keep the property safe and avoid any misuse. Equipment supplied by the Department is to be used for business purposes only. The remote worker will complete an inventory log of all department property received and agree to take appropriate action to protect the items from damage or theft. The inventory log is contained in the "LOPD Employee Telework Agreement Form."
- b) Employees must take proper measures to secure department information, assets and systems. LOPD may provide teleworking employees with equipment that is essential to their job duties, such as employee's computer and/or laptop, monitor, keyboard and mouse. LOPD will install VPN and department-required software. Employees are expected to provide internet service and other general utility costs at their own expense. Employees are responsible for equipping and maintaining their home offices so that they can accomplish their work in an efficient and expeditious manner. Printers, scanners, data and telecommunications equipment, and other equipment may be provided by LOPD.
- c) Requests for additional equipment will be assessed by the supervisor, HR, and Deputy Chief Public Defender, depending on the type of telework agreement, duties, staffing, office space, and budget availability.
- d) Upon termination of employment, all Department property will be returned to LOPD.
- e) Employees are responsible for providing office furnishings such as desks, chairs, file cabinets, and lighting, at their own expense.
- f) LOPD will provide common office supplies, such as paper, pencils, pens, and paper clips, for employees' work use in their home offices. Printer ink will not be provided. Out-of-pocket expenses for supplies normally available at the official office location will not be reimbursed. Teleworkers need to obtain these supplies at the assigned office location.

## 13) Compensable Time & Expenses

- a) Reimbursement will not be made for travel between the telework site and assigned office location. Mileage between the home and the employee's telework location shall be considered commute mileage and shall not be reimbursed.
- b) Work related long-distance phone calls should be planned for days worked in the assigned office location, if there is a cost to making such calls.
- c) Employees are responsible for the cost of maintenance, repair and operation of personal equipment not provided by the Department.
- d) The LOPD is not responsible for loss, damage, or wear of teleworker-owned equipment. Repair and/or replacement costs and liability for privately owned equipment and furniture used during telework is the responsibility of the teleworker.
- e) LOPD may pursue recovery from the teleworker for LOPD property that is deliberately, or through negligence, damaged, destroyed, or lost while in the teleworker's care, custody, or control, or for property not returned upon termination of employment.

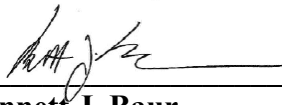
## 14) Costs Associated with Telework at Home or other alternative telework site

- a) Telework may increase certain costs to the employee. The LOPD assumes no responsibility for any costs associated with the employee's home residence or other telework site, including home maintenance, insurance, utilities, internet access and telecommunication costs.

### 15) Liability

- a) The telework site is an extension of the LOPD workspace only when used for work. Employees may therefore be covered for workers compensation if they are injured while performing work on behalf of LOPD in the approved alternate workplace during teleworking hours.
- b) If an injury occurs during teleworking hours, the employee must immediately report the injury to their supervisor.

### Approved by:



\_\_\_\_\_  
**Bennett J. Baur**  
**Chief Public Defender**

9/20/2022

\_\_\_\_\_  
**Date**

**TELEWORKER RESPONSIBILITIES**

- Employee must provide the same level of support, availability, accessibility to clients, coworkers and supervisors as if working at their assigned office location. This includes meeting LOPD and individual work requirements, carrying out the same duties and assignments, and other work obligations including participating in staff meetings, working assigned hours, and responding to phone calls, email/voicemail timely.
- Employee must be reachable by phone or email during work hours with the exception of lunch break.
- Employee should have sufficient work assignments conducive to telework that allow employee to work their full assigned hours, specifically a workweek for all full-time regular employees is 40 hours, divided into five days, Monday through Friday, with employees scheduled to work eight hours per day (unless working an approved alternative schedule that deviates from this).
- Employee must be available to attend scheduled meetings, trainings/conferences and participate in other required office activities at the office location as needed. When possible, the LOPD normally provides at least 24 hours' notice for such events.
- Accurately coding their timesheet to reflect hours teleworked and any leave taken to account for any time spent away from normal work-related duties during their scheduled workday.
- In the event the assigned office location is closed due to inclement weather or other emergency (e.g., power outage) which would prevent an employee from safely traveling to or safely performing work at the employee's assigned office location, employees with a telework agreement in place (and are telework-ready) are required to telework. As such, telework-ready employees must prepare to telework when a weather or emergency event is forecasted or anticipated (e.g., snowstorm) by bringing to their telework site any necessary equipment (e.g., laptop). To the extent that an employee is unable to telework because they failed to make necessary preparations for reasonably anticipated conditions, the employee must use appropriate paid leave, or paid time off (sick leave is not authorized).
- Employees approved to perform telework must have the necessary equipment and have a sufficient amount of work to telework from the approved alternative telework site. If the employee does not have enough work, they must report it to their supervisor immediately, report to their assigned office location, or request appropriate unscheduled leave for hours not worked.
- Employees who are teleworking and experience power outages or internet outages at their telework site must notify their direct supervisor immediately via cell phone. The supervisor may authorize employee to work at office location or take annual/compensatory time (not sick leave) until power or internet services are restored.

**SUPERVISOR RESPONSIBILITIES**

- ✓ Ensuring adequate coverage at office location during business hours so that mission operations continue to be carried out efficiently and effectively.
- ✓ Establishing clearly defined performance standards and using existing quality and quantity standards to evaluate work performance of a teleworker. Managing the teleworker remains the same as for non-teleworking employees in that performance is measured by results.
- ✓ Upon approval of a telework agreement, establishing and communicating clear expectations with employees regarding methods of communication (e.g., customer service, time frames for returning phone calls, email communication), meeting attendance, duty hours, the accurate coding of telework in SHARE, requesting leave, and notification procedures for requesting situational or unscheduled telework.
- ✓ Actively supporting telework and working through minor problems or obstacles that may occur.
- ✓ Ensuring employees protect and secure agency confidential records and sensitive information consistent with established LOPD policies.
- ✓ Being cognizant of opportunities to achieve savings by monitoring and coordinating teleworker schedules to share office space. Supervisors will be proactive in pairing employees in the same office location with opposite schedules (one employee present when another is not) to optimize the use of office space.
- ✓ Treating teleworkers the same as non-teleworking employees concerning performance appraisals, work assignments and requirements, awards and recognition, training and developmental opportunities, promotions, retention, and other employment matters involving management discretion; and treating employees equitably when implementing telework.
- ✓ Reviewing employee time entries in SHARE to ensure entries accurately reflect hours teleworked, worked in office, and including paid leave or paid time off entries.
- ✓ Maintaining records of direct reports' telework agreements.
- ✓ Reviewing and recertifying telework agreements:
  - bi-annually to validate whether the arrangement is still effective and in the best interest of the LOPD,
  - when an employee is assigned to a new classification, a new supervisor, or to effect a permanent change to a telework arrangement (e.g., new telework site, new telework day(s))
  - terminating telework agreements when employees are no longer eligible to telework or the teleworking arrangement fails to meet organizational needs.
- ✓ Supervisor may require an employee to telework when the employee is subject to an investigation or other administrative action that requires the employee to be removed from the workplace, if the employee has an approved telework agreement in place.

## LOPD TELEWORK POLICY– ADDITIONAL RESOURCES

### “Autonomy- Strengthening Your Ability to Work Independently” Webinar by Well-Being Solutions (located [HERE](#))

**Overview-** If organizations are to be flexible and innovative to meet the challenges of the future, employees will need to be responsible for their own actions and decisions, while having the ability to work independently. Webinar will look at skills necessary for autonomy.

**Objectives-** To understand the difference between accountability and autonomy, as well as the characteristics of people who demonstrate autonomy. Webinar discusses how to recognize the impact autonomy has on work satisfaction, and also reflect and evaluate how to make decisions.

### “Time Management Principles” Webinar by Well-Being Solutions (located [HERE](#))

**Overview-** Responsibilities can feel overwhelming, and it can seem a 24-hour day simply isn’t long enough to get everything done. Webinar will discuss principles to help you be in control of your very busy life.

**Objectives-** Describe how to change “negative self-talk” as it relates to your time and thinking that control your day. Identify “time wasters”, and prioritization principles, discuss the impact of procrastination and how to overcome it.

### Ethical duties of attorneys having privileged conversations at home ([Link to article](#)).

#### Highlights:

- “Besides avoiding client conversations in home spaces where family members can hear them and limiting or prohibiting the use of virtual assistants, Siegel suggested lawyers working remotely encrypt information sent by electronic mail; keep computer operating systems updated to avoid cyberattacks; and they do their work on a VPN (virtual private network) along with two-factor authentication. He also advised having a firmwide policy on what is required for working from home and making sure all employees understand it.”
- “Additionally, his presentation addressed the question of working from home when home is in a state where one is not licensed to practice law. In December, the ABA Standing Committee on Ethics and Professional Responsibility released [Formal Opinion 495](#) which explains that attorneys can work remotely in states where they don’t have law licenses, providing they don’t hold themselves out as being licensed to practice there or advertise that they are licensed to practice there.”

**Feeling Fatigued After a Long Day of Teleconferencing?** Click [here](#) to read the full article

<i>Cause</i>	<i>Solution</i>
1) Excessive amounts of close-up eye contact is highly intense.	<b>Solution:</b> Until the platforms change their interface, Bailenson recommends taking Zoom out of the full-screen option and reducing the size of the Zoom window relative to the <i>monitor to minimize face size</i> , and to use an external keyboard to allow an increase in the personal space bubble between oneself and the grid.



2) Seeing yourself during video chats constantly in real time is fatiguing.	<b>Solution:</b> Bailenson recommends that platforms change the default practice of beaming the video to both self and others, when it only needs to be sent to others. In the meantime, users should use the <i>“hide self-view”</i> button, which one can access by right-clicking their own photo, once they see their face is framed properly in the video.
3) Video chats dramatically reduce our usual mobility.	<b>Solution:</b> Bailenson recommends people think more about the room they’re videoconferencing in, where the camera is positioned and whether things like an external keyboard can help create distance or flexibility. For example, an external camera farther away from the screen will allow you to pace and doodle in virtual meetings just like we do in real ones. And of course, <i>turning one’s video off periodically during meetings is a good ground rule to set for groups, just to give oneself a brief nonverbal rest.</i>
4) The cognitive load is much higher in video chats.	<b>Solution:</b> <i>During long stretches of meetings, give yourself an “audio only” break.</i> “This is not simply you turning off your camera to take a break from having to be nonverbally active, but also turning your body away from the screen,” Bailenson said, “so that for a few minutes you are not smothered with gestures that are perceptually realistic but socially meaningless.”

# Zoom zombies

Some super functional tips to feel better



Too much eye contact will zap you

Scoot back from your screen or shrink the screen size



Seeing yourself during video chats constantly will zap you

Turn off your self view



Video chats drain our eyes and ears

Periodically minimize the video during meetings to give oneself a brief nonverbal rest.