

# Options for long-term employee telework agreements

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It's becoming clear that remote work — or telework — is here to stay. That means companies may need to update their telework agreements with employees. Working away from an office setting was already gaining traction before the COVID-19 pandemic upended work life. The pandemic accelerated that trend. Employers found they had no other option when state and local governments deemed their businesses 'unessential' and shut them down.

Fortunately, and perhaps surprisingly, many employers discovered that telework didn't decrease productivity. [One recent survey](#) showed that 52% of employers thought telework did the opposite — it increased productivity. That's up from just 42% in June, 2020. [And if moving trends are any indication](#), employees have embraced telework, moving to lower-cost areas without finding new employment.

But it's not all unicorns and rainbows. Employers have had to figure out how to properly track hours, reimburse for expenses, and manage day-to-day remote work details. That's one reason some are planning to switch teleworkers to independent contractor status. But that, too, carries risk. Here are the latest options for managing your telecommuting workforce.

## Maintain status quo while tweaking telework agreements

Some employers want to reduce office costs and retain employees who are doing well teleworking. If you haven't formalized the process, consider a formal telework agreement. For one, such an agreement will help the employee if she chooses to relocate. That's because most banks demand to see a written long-term telework agreement before underwriting a mortgage. Having that agreement in place makes relocation simpler and means you won't lose the employee to another job.



**Here are some of the essentials to include in a telework agreement.**

- **Expectations.** Specify where the employee will work. Ideally, this should be a designated room in the employee's residence. If it will be a shared space, list expectations for protecting company assets like computers and equipment from damage. If your organization's equipment will be used, make sure the employee understands he can't bypass security measures.
- **IT support.** The agreement must require teleworkers to follow all IT rules for server access and privacy protection. Provide directions for contacting IT.
- **Updates.** Require the employee to promptly report any injuries or equipment failure.
- **Duration.** The agreement should specify if the position is expected to be long-term or temporary. Include a disclaimer that the agreement isn't a promise of permanent employment.
- **Time-keeping.** For hourly teleworkers, include details of how to report hours worked. Teleworkers should report those hours regularly and someone should check that reported hours match your time system counts.

## Return to the office

A transition back to the office or split arrangement may be a part of your telework agreement with employees. The same survey that said employers thought telework increased productivity also found they wanted a partial return to the office. By July 2021, 75% of executives [surveyed](#) expect at least half of office workers will be back in the office. Reasons include existing leases or owned buildings that are sitting largely empty and the perceived need for in-person collaboration. Plus, employees who can't or don't want to relocate to bigger spaces may find returning to the office attractive.

If you plan an office return, make sure you know how to protect employees from potential COVID-19 exposure. There are new OSHA emergency temporary standards (ETS) coming very soon. It makes sense to review these before moving forward with a mass return to the office.

You should also be prepared for requests for continued telework from newly disabled or vulnerable workers. Make sure you follow the regular rules for the interactive accommodations process before rejecting a request.

## Switching to independent contractor status

Some employers are contemplating switching teleworkers to independent contractor status. That would eliminate having to track time, account for home office expenses, and much more. For workers who have already relocated or who are hoping to do so, independent contractor status may prove tempting. Setting themselves up as a business rather than remaining an employee opens up options. These include doing additional work for other organizations, increasing earning power.

### Using independent contractors has significant advantages for employers

- **Tax withholding.** Independent contractors are responsible for paying their own taxes. Employees have those taxes withheld from their pay by their employers who then remit them to taxing authorities.
- **Tax savings for employers.** Employers are responsible for one-half of an employee's social security taxes. Independent contractors pay the entire tab (15% of earnings) themselves. That's a significant payroll savings for employers.
- **Benefits.** Independent contractors have to take care of their own benefits like health insurance. That's frequently a huge employer expense saved with a successful switch to independent contractor usage.
- **Infrastructure savings.** Independent contractors not reporting to a set workplace are responsible for proving their own office furnishings, equipment, and location. Employers would otherwise provide the workplace setting at considerable expense.
- **Flexibility.** Using independent contractors allows flexibility. You can scale up or down as your needs change without having to layoff and rehire staff.

### Becoming an independent contractor has advantages for employees, too

- **Working from anywhere.** The employees you sent home to telework may not be eager to return to the office. That's especially true for those who relocated or were saved from a long, traffic-filled commute. Plus, they have seen a reduction in related costs like gas, insurance, clothing, and bills for dry cleaning and laundry. Others may have found themselves able to manage children more easily, cutting after-school or daycare costs.
- **Ability to scale up or down.** Some employees may welcome a change in status as a way to add work/life balance. Becoming an independent contractor means being able to slow down when needed or take on additional work from other organizations.

If you decide to pursue changing status to an independent contractor agreement, sit down with affected employees. Explain the advantages and disadvantages. Provide them with a sample agreement to review, including telework arrangements. You may even want to offer a clear option — return to the office or choose independence. That way, if the worker later claims you pressured her, you can show she made the choice freely.

### Clearer regulations

Until recently, it looked like DOL was putting in place new, simplified rules for creating independent contractors. The new rules were scheduled to go into effect on March 1, 2021. They focused on how much control the worker had over his schedule and whether his initiative determined loss or profit. It seemed as if letting an independent contractor telework by not controlling work details would satisfy the new standard. Simply put, it was going to be easier to prove that an independent contractor really was independent.

But the Biden administration froze the DOL regulatory change immediately upon taking office. DOL has opened a new comment period and will revisit the simplified test. If you are in the process of making the switch, you may want to delay a bit. Then have your counsel draft up a good independent contractor agreement when the rules become final.

**Additional Resource:** Reads more on the [do's and don'ts of telework and time tracking](#).