

Telework: Risks and Rewards

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Who Has Authority to Adopt Telework Policies?

Authority Over Personnel Policies

DSS Board?

- No authority over personnel policies

County Commissioners?

- G.S. 153A-94 -- the BOCC has authority to adopt personnel policies applicable to county employees.

OSHR/SHRC?

- If a county has filed its personnel policy with OSHR, the DSS director must comply with those policies (G.S. 126-9).
- If a county has *not* filed its personnel policy with OSHR, then SHRC rules and OSHR policies apply to DSS to the extent that there are applicable SHRC rules and OSHR policies governing a particular issue/area. (G.S. 126-9).

Authority Over Personnel Policies

What if a county has not filed its personnel policy with OSHR, and there are no SHRC rules or OSHR policies applicable to local governments on a particular topic?

→ If county policies address topics state rules are silent on, it's reasonable to assume that DSS employees must comply with those county policies as well.

What if there isn't a county policy addressing a particular topic?

→ DSS director could fill that "gap" with a department-specific policy.

→ Not feasible if the county's personnel policy (or another BOCC resolution or ordinance) explicitly states that department heads *cannot* create their own policies.

Authority Over Personnel Policies

What if the DSS director wants to adopt a policy that **conflicts with or deviates from** an existing county policy on a particular topic (such as teleworking)?

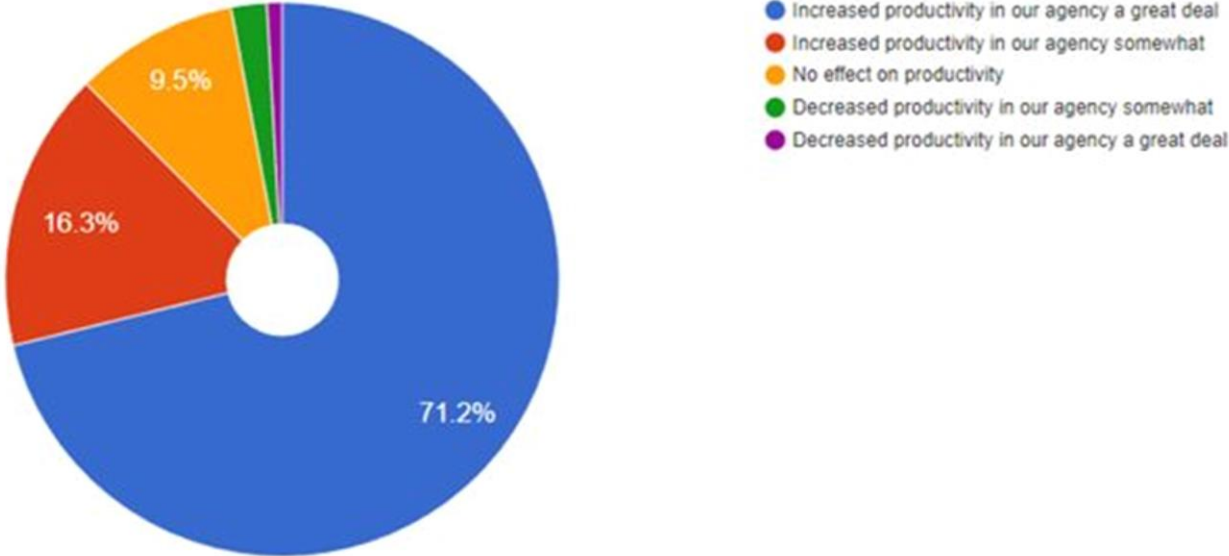
- Consult with county manager and BOCC -- could allow a deviation for a specific department or group of employees.

What if the BOCC refuses to allow a deviation or disapproves of a director's "gap-filler" policy?

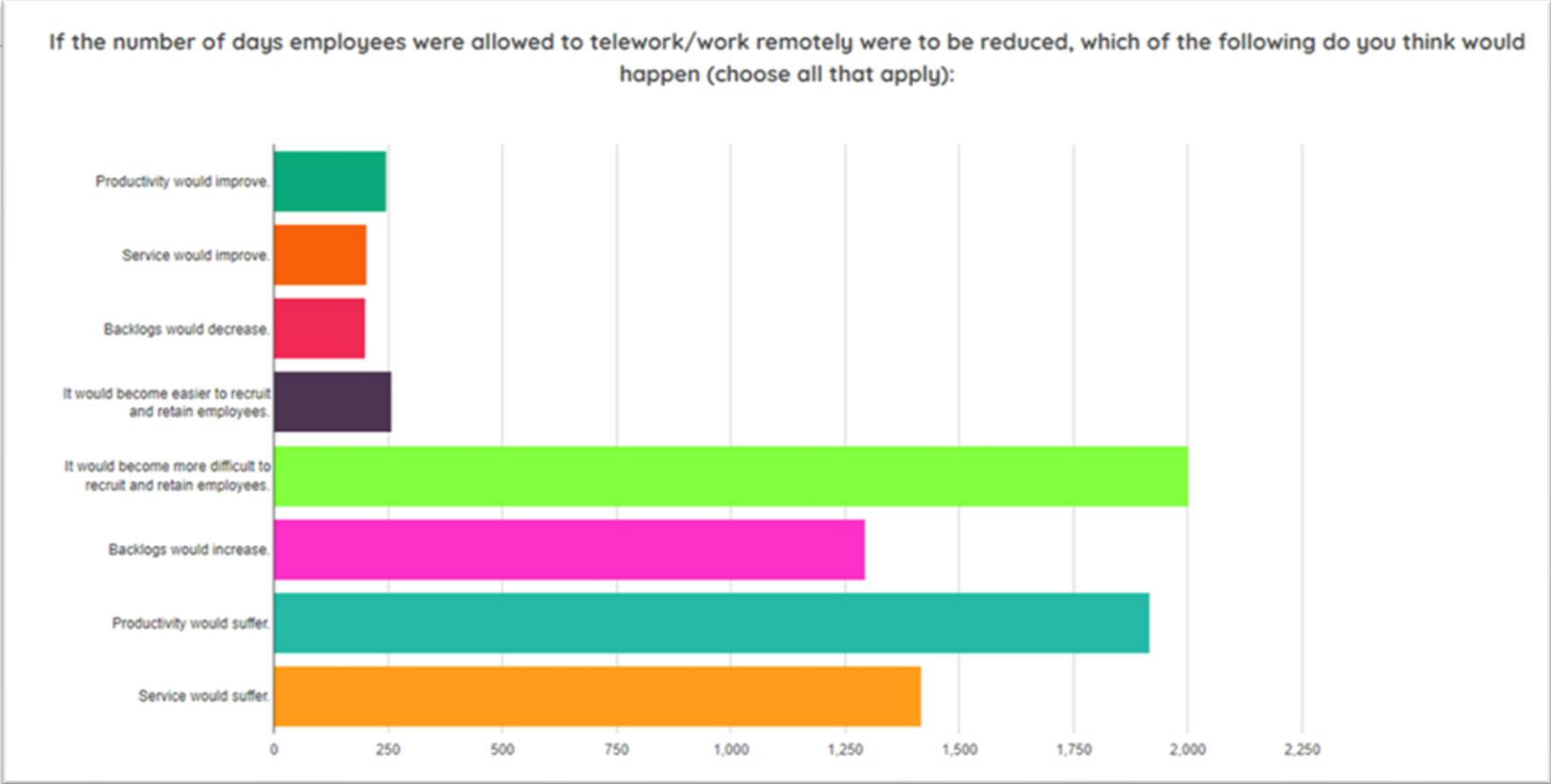
Making Decisions About Telework

AFGE Survey of Federal Employees

How have remote work and telework affected productivity at your agency?



AFGE Survey of Federal Employees

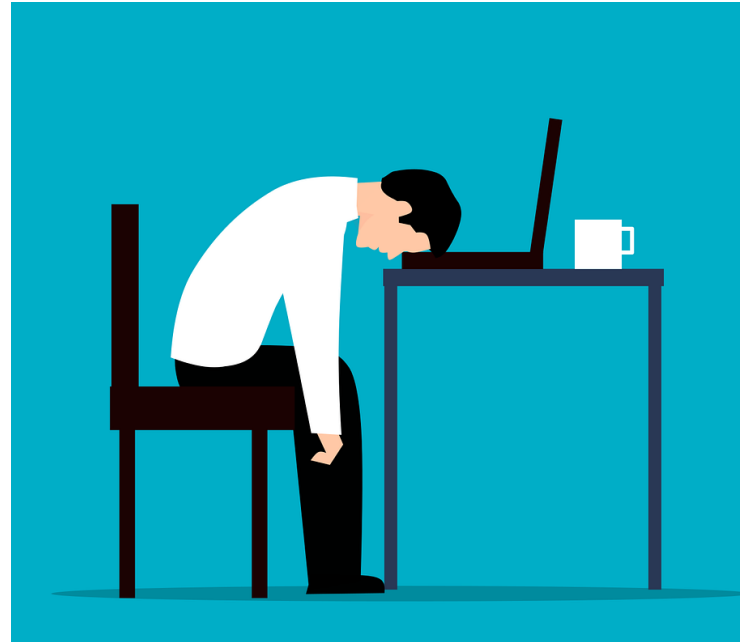


Hybrid Work

- A February 2022 Gallup study of more than 140,000 U.S. workers found that 42% of remote-capable employees had a hybrid schedule, while 39% worked from home entirely. Among those remote-capable employees, 60% prefer hybrid work.
- Controlled trial: 1,600 people at one company over 6 months. Randomly assigned to 3 days onsite vs. five.
 - Quitting down 35%, sick days down 12% among hybrid workers
 - Increased job satisfaction among hybrid workers
 - No cost to performance or promotions among hybrid workers

Potential Challenges

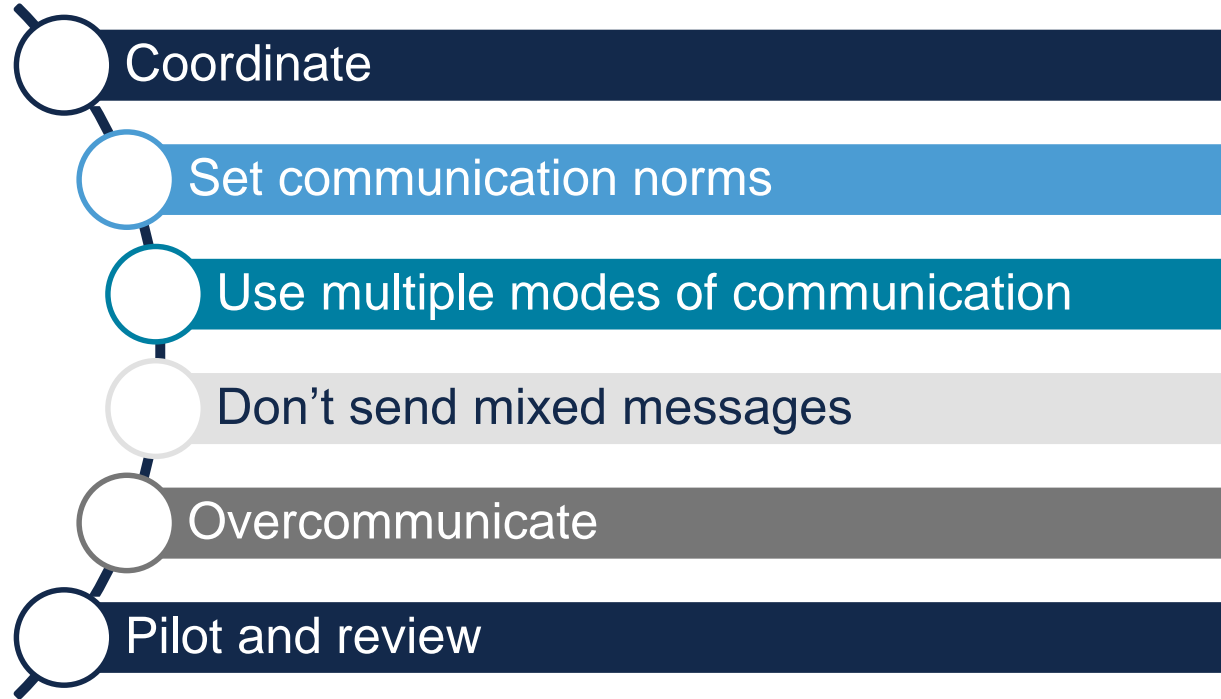
- Isolation/loneliness
- Training/mentorship
- Building agency culture and commitment
- Creativity/collaboration



Factors to Consider

- Is face-to-face interaction with clients needed? If so, in the DSS building or elsewhere?
- Does the employee require access to equipment, systems, documents, or software platforms that are not available outside the workplace?
- Can the employee's work adequately be effectively supervised remotely?
- How much does the employee need to interact with colleagues (or how much would other colleagues benefit from interacting with the employee)?
- Are coworkers with similar roles and responsibilities allowed to telecommute?
- Can the employee effectively perform their key responsibilities remotely?

Adam Grant's Principles for Hybrid Work



Consider a Telecommuting Agreement or Guidelines

- **Information security protocols**
 - Only using secured networks?
 - Locked file cabinet or fire-proof safe?
 - Routine password changes?
- **Equipment**
 - Work purposes only
 - Must take steps to protect from damage/theft
 - Must be returned
- **Safety**
- **Performance Expectations**



Legal Issues

Americans with Disabilities Act

- Must provide a reasonable accommodation for a qualified employee with a disability, unless it would pose an undue hardship
- ADA does not require telework, but telework may be a reasonable accommodation in some cases (even if there's no formal telework program)



Americans with Disabilities Act

- “Telework is certainly contemplated as a viable accommodation in certain circumstances.” *Merrill v. McCarthy*, 184 F. Supp. 3d 221 (E.D.N.C. 2016)
- **Can essential job functions be performed remotely?**



FLSA and “Off the Clock” Claims

- **Nonexempt employees** must be paid for all hours worked (at least the minimum wage and at least one and one-half times their regular rates of pay for hours worked over 40 in a workweek).
- **Adopt and enforce a written policy prohibiting unauthorized overtime.**
 - Limit access to technology?
 - Timekeeping strategies/systems?
- Meal breaks (typically 30 minutes or more, not working)
--not compensable work time
- Short breaks (20 minutes or less) – compensable work time



OSHA

- Home offices are “worksites” under the Occupational Safety and Health Act, but OSHA has advised that it
 - Will not conduct inspections of employees’ home offices; and
 - Does not expect employers to conduct such inspections
- OSHA 300/300A: *Work-related injuries and illnesses experienced by telecommuting employees are still recordable.*
 - Injury at home is work-related “if the injury or illness occurs while the employee is performing work for pay or compensation in the home, *and the injury or illness is directly related to the performance of work rather than to the general home environment or setting.*”
 - Injuries and illnesses that occur while an employee is on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities “in the interest of the employer.”



Workers' Compensation

Injury or illness is compensable under workers' compensation if it arises **out of and in the course of employment.**

Employees typically have the burden of proving that the injury is work-related.

Employer's lack of control over employee's home-based work environment is irrelevant.

- **Consider creating safety guidance/checklists for home working environment:**
 - Ergonomic seating/desk arrangement (e.g., computer at eye-level, supportive seat)
 - Periodic stretching
 - Working smoke detector
 - Electrical safety (e.g., use of surge protectors/power strips/securing loose cords)
 - Access to first aid kit

