

StanfordLawSchool

Policy Lab: New Frames for Remote Work in Government Agencies (Law 807P)

Report to the California State Controller's Office

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I. INTRODUCTION

This joint project between the California State Controller's Office and Stanford Law School began as a pandemic was sweeping the world in the winter and spring of 2020 and ended during a time of racial awakening around the globe in June 2020. The research that was undertaken to identify best practices for telework by state employees was infused from the beginning by Controller Betty Yee's request that equity be fundamental to the development of recommendations for implementing an effective telework within her agency. The research, analysis, and drafting of this report could not help but be impacted by both her mandate and the emerging and long overdue recognition that policies and procedures throughout our society, including in the workplace, are replete with inequalities that must be addressed.

A. California State Controller's Office

The Office of the State Controller in California was established by the state Constitution. Betty T. Yee was first elected in November 2014, reelected in 2018, and has served as the Controller of California since 2015.

The Controller serves as the Chief Financial Officer of the state. The State Controller's Office (SCO) provides a broad spectrum of critical and essential services within California, through various divisions and bureaus. For example, the SCO's Local Government Programs and Service Division manages all of the payment of state funds for K-12 schools as well as California's 115 community colleges. Its Personnel and Payroll Division verifies attendance records to issue payments to over 265,000 state employees. In addition to performing critical financial services, the SCO also conducts audits and ensures compliance with local, state, and federal laws related to disbursements of public funds as well as analyzing thousands of transactions for compliance with best accounting practices.

The SCO itself employs approximately 1,400 employees, in a range of employment classifications, which include 5 bargaining units.

B. Stanford Law School Policy Labs: Format and Goals

Engagement in public policy is a core mission of teaching and research at Stanford Law School. Through its Law and Policy Lab, a team of law students, supervised by faculty advisers, provide research to counsel real world clients on current pressing issues that they have identified. The Law and Policy Labs are offered each quarter throughout the academic year.

C. The Impact of COVID-19 on the Workplace

The pandemic that engulfed the world in early 2020 created uncertainty and health emergencies, disrupted every sector of society, requiring changes to how day-to-day life is lived. Due to the rapidity of transmission rates, public health guidance sought to protect the general population by requiring individuals to shelter in their homes and to maintain physical distance from others. However, not all employees were able to work from home, either due to the functions they

performed or due to a lack of access to adequate technology, physical space, or effective physical setups.

This impacted every public and private employer, including state agencies, and required employers to quickly develop plans for employees to work outside of their normal workplaces. It did not take long for analyses to be issued that Black, Latinx, and other workers of color were differentially able to work from home. The data that emerged reflected long-term racial, economic, and educational stratification within the United States, and the lack of investment in creating opportunities for Black communities and other people of color.¹

In California, the shelter in place orders manifested initially in the Bay Area and then throughout the state as public health orders that required individuals who were not deemed to be essential workers to shift to remote work. With the sudden onslaught of the COVID-19 pandemic creating emergency requirements regarding professional and social distancing, government agencies in California had to implement remote work policies quickly, with limited guidance and limited awareness of best practices.

II. THE PROJECT

Working with the California State Controller's Office, Stanford Law students developed research goals and a plan to identify best practices for remote work by government employees to ensure that critical government functions continue during a variety of disasters and emergencies.

Students were also asked to identify equity frameworks and develop equity analyses that would allow the SCO to evaluate and implement the most effective telework policies.

III. METHODOLOGY

Students enrolled in this policy lab engaged in literature reviews, interviewed key individual leaders within state government, and researched best practices in numerous sectors through websites, public reports, and other public data.

For research regarding municipal best practices, students surveyed the five largest cities (by population) in California: (1) City of Los Angeles; (2) the City of San Diego; (3) the City of San Jose; (4) the City and County of San Francisco; and (5) the City of Fresno. For each surveyed city, students reviewed existing telecommuting policies as well as continuity of operations plans, emergency orders, collective bargaining agreements, human resources training materials, and other personnel policies when such materials related to a city's telework program.

¹ Christian Davenport, Aaron Gregg, and Craig Timburg, "Working from Home Reveals Another Fault Line in America's Racial and Educational Divide," *Washington Post*, March 22, 2020, <https://www.washingtonpost.com/business/2020/03/22/working-home-reveals-another-fault-line-americas-racial-educational-divide/>; Katie Clarey, "Black, Hispanic Workers Have Less Access to Remote-Capable Jobs," *HR Dive*, March 23, 2020, <https://www.hrdiver.com/news/more-asian-white-workers-than-black-hispanic-working-remotely/574676/>.

Students were also encouraged to bring their own developing expertise as participants in new remote learning environments and as volunteers in pro bono experiences to analyze what they read and heard.

IV. BACKGROUND ON TELEWORK

The State of California has adopted an overall telework policy, pursuant to California Government Code Sections 14200-14203, which is currently in the process of revision. A model policy was created by the Department of General Services and most recently made available for adoption and modification by other agencies in 2010. The SCO has not previously adopted an official telework policy.² On March 17, 2020, the California Department of Human Resources (CalHR) issued a directive to department directors to create a plan for their employees to work remotely. Later that day, the SCO issued guidelines regarding an Emergency Telework Program.

Prior to the pandemic, the prevailing view of a telework option was that it was a discretionary benefit to employees of the state, which could be requested for a specific reason.³ Based upon interviews with California department leaders, following the experience of remote work within the COVID-19 regime, the view of telework held by many managers has shifted from one of a benefit solely for employees to more of a perspective that it can create good outcomes for both the State as an employer and for eligible employees. To our knowledge, the State has not previously undertaken a review of telework to identify its potential benefits or downsides, or to assess obstacles for broadening its use.

The federal government has documented a variety of benefits from telework. The United States Office of Personnel Management (OPM) is the agency responsible for implementing the government's telework policies, which includes an annual report to Congress regarding the effectiveness of remote work policies.

According to the OPM, as of 2018, approximately 42% of federal employees were eligible for telework, with the most common form of telework being situational, rather than full-time, remote work.⁴ Over three quarters of federal agencies promote telework through their Continuity-of-Operations Plans (COOPs), and over half of agencies use agency-wide meetings to explain their remote work policies and expectations.⁵

² Andrew Sturfels (Deputy Director for Administration, California Department of General Services), interview with the authors, May 10, 2020.

³ Sturfels, interview, May 10, 2020; Eraina Ortega (Director, CalHR), interview with the authors, April 27, 2020.

⁴ "Status of Telework in the Federal Government, Report to Congress: Fiscal Year 2018," *United States Office of Personnel Management*, March 2020, www.telework.gov/reports-studies/reports-to-congress/2019-report-to-congress.pdf.

⁵ "Status of Telework in the Federal Government."

A. Employer Benefits

The federal government has been particularly successful over the last several years to track the benefits of telework. According to the OPM, the government has seen the following benefits from an increased focus on remote work:

- (1) Remote work is a valuable non-monetary incentive for attracting prospective employees to public service because many employees view flexibility as a form of compensation;
- (2) Remote work helps agencies “retain... employees with specific skills, accommodat[e] temporary or long-term medical needs, and facilitat[e] knowledge management among employees who would otherwise retire”;
- (3) Remote work mitigates the negative impact of commuting on the environment and helps save employees time;
- (4) Remote work promotes improved productivity and performance by supporting adaptive work conditions to meet employee needs and preferences;
- (5) Remote work saves the government money by reducing the amount of required physical real estate overall; and
- (6) “The 2018 results show that teleworkers exhibit higher self-reported engagement scores (73 percent versus 63 percent), overall job satisfaction (69 percent versus 59 percent), and retention intent (68 percent versus 61 percent).”⁶

B. Employee Benefits

The OPM has also found that increased remote work policies can help employees deal with unexpected issues and minimize the amount of time employees take leave. OPM estimates that employees miss nearly 12 days of work annually because of last-minute family and dependent care problems. Although telework does not substitute for dependent care, it can provide much-needed flexibility that increases (rather than decreases) productivity. Notably, the OPM estimates that by 2022, “the number of federal employees with a responsibility to care for a family member or dependent is expected to increase from 36% to 64%” and remote work policies can play a part in responding to this change in the workforce.⁷

The view of remote work is shifting with the workforce along with demographic and generational changes. For example, “[m]illennials, employees born between 1980 and 1995, indicated the ability to telework was an important factor when making a decision to take a new job (51% for millennials and 43% for all other cohorts).”⁸

⁶ “Status of Telework in the Federal Government.”

⁷ “Telework Insights: A Current Look at Telework in the Federal Government and Promising Practices to Support a 21st Century Workforce,” *United States Office of Personnel Management*, 2020, <https://www.opm.gov/policy-data-oversight/worklife/federal-work-life-survey/telework-insights.pdf>.

⁸ “Telework Insights: A Current Look at Telework in the Federal Government and Promising Practices to Support a 21st Century Workforce.”

C. Potential Recruitment and Retention Benefits

Offering flexible work arrangements can be a cost-effective way to attract and retain good employees. Organizations that provide telework and other alternative work schedules tend to have a competitive advantage over organizations that do not.⁹

Telework has also been used to retain skilled employees nearing retirement but who are willing to continue working under a flexible work arrangement and employees forced to relocate due to a spouse's job transfer. In addition, some organizations have been able to expand their geographic reach by hiring full-time teleworkers who live in other parts of the country, without requiring them to relocate.

A 2019 State of Remote Work survey¹⁰ finds that the ability to work remotely makes employees happier, feel more trusted, better able to achieve work-life balance, and more inclined to take a pay cut to benefit from added flexibility. Similarly, the federal government telework statistics report¹¹ finds that telework improved employees' morale, helped them to better manage stress, and improved their health. The report also finds that the option to telework helps to recruit employees and increases loyalty to their jobs.

Based upon interviews with leaders within the SCO organization, it is anticipated that a California indexed wage could expand the talent pool across the United States. This could also be true for creating new opportunities for hiring throughout California, especially in rural and underserved areas.¹² In normal times, the strength of California's private sector makes public sector wages less competitive, especially in major metropolitan areas such as San Francisco and Los Angeles. However, remote work could provide opportunities for public minded individuals whose personal living situations require them to live outside of Sacramento (for example, for a spouse's job or to care of elderly relatives) to view work at SCO as an attractive option.

Several recruitment and retention issues were described by various members of SCO: (1) difficulty in attracting new hires to move to Sacramento to work specifically for the SCO, (2) the departure of long-time employees due to family or personal circumstances that required relocation, and (3) the potential of delaying retirements. Currently the SCO recruits primarily from the greater Sacramento area or from those who are moving to the Sacramento area for other reasons. A pervasive remote work program could allow the SCO to expand its talent pool and

⁹ County of San Mateo Office of Sustainability, *Telework and Flex-Schedules Toolkit*, June 2018,

https://www.commute.org/files/programs/SMC_Telework_Toolkit.pdf?fbclid=IwAR1fQo1pMit02aZIS-BA5Pd7H6rlwjgcB_gCcDHC0xsDYixluOWWEMazST4.

¹⁰ "State of Remote Work," *Owl Labs and Global Workplace Analytics*, 2019,

<https://www.owllabs.com/hubfs/Owl%20Labs%202019%20State%20of%20Remote%20Work%20Report%20PDF.pdf>.

¹¹ "Status of Telework in the Federal Government."

¹² Wes Venteicher, "With 31,000 Job Openings, California Government Ramps up Recruitment in Tight Labor Market," *Sacramento Bee*, February 5, 2020,

<https://www.sacbee.com/news/politics-government/the-state-worker/article239972258.html>.

hire from other parts of the state, or even country. This would have the added benefit of increasing the racial and ethnic diversity of potential applicants.

NOTE: We do not provide advice and did not research the state income tax or unemployment insurance issues that will require assessment for both SCO and an employee working outside of the State of California. The California Franchise Tax Board oversees the process through which out-of-state employees of in-state employers must file tax returns and pay California income tax.

V. CREATING AN EFFECTIVE TELEWORK PROGRAM

A. Overview

As with any other program design process, a clear articulation of goals for the program is necessary in order to identify stakeholders, prioritize and create necessary resources, learn obstacles to achievement, and then to create the best policies and processes for success. The SCO's stated goals for this policy lab were to identify best practices for effective telework that can ensure the critical services of the various divisions of the agency are being provided and are carried out with an equity lens to overcome obstacles to participation that could detrimentally impact diversity and inclusion.

This relies upon a workforce that is able and prepared to work from home. Critical to assessing this workforce capacity is understanding potential obstacles to telework and how to overcome them as well as obtaining input from employees.

B. Equity Considerations

Recognizing the current and broader diversity goals of the SCO thus requires an equity frame from the outset to envision and create an effective program.

For the purposes of this report, we define an equity approach as one that ensures each person gets what they need to survive or succeed—access to opportunity, networks, resources, and supports—based on their current position and their desired outcome.¹³ We distinguish equity from equality, diversity, and inclusion. *Equality* focuses on fair distribution or providing the same treatment to everyone. *Diversity* focuses on whether a range of identities are present. *Inclusion* stretches further and asks whether those present feel welcome to participate, and may include developing procedural mechanisms to institutionalize listening to historically marginalized groups. A result that included an unequal distribution of goods or lack of representation or an imperfect procedural mechanism to listen to all voices may still be equitable.

¹³ Kris Putnam-Walkerly and Elizabeth Russell, “What the Heck Does Equity Mean?” *Stanford Social Innovation Review*, September 15, 2016, https://ssir.org/articles/entry/what_the_heck_does_equity_mean. The authors cited to Nonet Sykes, director of race equity and inclusion at the Annie E. Casey Foundation, whose work is discussed below.

Equity, in short, focuses on material resources and substantive outcomes. Equity requires us to ask: Does everyone have what they need? Are the outcomes equitable, given what everyone had when they started and what everyone was provided with going through the process? What about our outcomes proves that the policy is equitable? What about our outcomes suggests that we can improve our policies and practices?

The SCO asked us to consider equity along a number of dimensions, including race and ethnicity, gender and sex, disability, and sexual orientation. During the course of our research, we have also gained a deeper understanding of how each of the above dimensions intersects with each other and with these specific issues of concern: socioeconomic status or class, home environment, and the urban-rural internet connectivity divide.

It should be noted that an equitable work-from-home policy in times of crisis differs in a few key aspects from applying an equity framework to a broader, more sustained remote work policy. One of the most important distinctions is how different types of emergencies impact employees in really different ways. Taking the current pandemic as one example, physical distancing measures require most employees to work in their homes. For many, this was not a choice and perhaps not a preferred mode of work, but also, many employees were simply inadequately prepared for physical distancing. Work-from-home setups are just one of many issues employees are facing. Joann Lee Wagner, Vice President of People Operations at Common Future, a leading social justice-oriented nonprofit, urges the importance of normalizing the abnormal by centering those who are most impacted at this time.¹⁴ The rest of this section will discuss how to operationalize this approach.

Challenges of Remote Work

There are three main themes for employee-related challenges for telework: home life, infrastructure, and wellness and disability. For each theme, we describe the various factors that are related to the theme and discuss potential equity implications.

1. Home Life

While employers may be aware employees have different home life situations, these differences are exacerbated when work-from-home is mandated to comply with emergency guidance. Crowded apartments or homes, familial or household obligations, and adequate physical workspaces are all issues that can contribute to or exacerbate inequity for telework. However, the SCO should take these factors into consideration to improve training for managers and employees and to create an equitable policy moving forward.

a) Number of People in the Home

While every worker is different, it is generally accepted that a certain amount of peace is required for at least some work tasks. A busy or crowded household can make it difficult to

¹⁴ “Human Resources: Balancing Urgency & Equity during COVID-19,” *Nonprofit Quarterly*, April 23, 2020, <https://nonprofitquarterly.org/human-resources-balancing-urgency-equity/>.

complete tasks without distraction, keep one from volunteering to speak up during meetings for fear that a partner, roommate, child, or parent may choose that moment to appear, and use up scarce connectivity resources.

These issues are always in play, but during an emergency these concerns may be aggravated. The chances are that if a state government agency has been pushed to remote work by outside circumstances, so, too, have other businesses, organizations, and schools, resulting in many more people competing for quiet space and resources during working hours.

The SCO should also keep in mind that cultural and socioeconomic factors impact how probable it is that an employee's home will be more or less crowded. The Pew Research Center published a report that describes how Asians, Latinxs, and Blacks are more likely to live in multigenerational households than are white Americans.¹⁵ Further, foreign-born Americans are more likely than those born in the United States to live with multiple generations in the household.¹⁶

Similarly, socioeconomic status is a critical consideration for telework. State employees of color occupy fewer executive roles and thus are paid less on average than white counterparts.¹⁷ Moreover, Black, Indigenous, and people of color are, overall, less wealthy and are less likely to have intergenerational wealth or own property,¹⁸ and given the gendered aspect of the racial wealth gap, the SCO's concern here may be more necessary, given the SCO's positive track record in hiring women of color.¹⁹

Socioeconomic position directly impacts one's ability to access housing, and, especially given the costs of housing in California, the racialized, gendered wealth gap is even more impactful on employees' lives. Living with fewer people is a luxury many cannot afford. During an emergency that impacts economic positioning, employees may face housing insecurity, even if the SCO's employees are still employed, should partners or spouses or roommates be laid off and unable to pay rent. This may result in increased numbers of people living in an employee's

¹⁵ D'Vera Cohn and Jeffrey S. Passel, "A Record 64 Million Americans Live in Multigenerational Households," *FactTank: News in the Numbers*, Pew Research Center, April 5, 2018, <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>.

¹⁶ Cohn and Passel, "A Record 64 Million Americans."

¹⁷ "2018 Annual Census of Employees in State Civil Service: A Report to the Governor and Legislature," *California Department of Human Resources & California Government Operations Agency*, 2020.

¹⁸ Kriston McIntosh et al., "Examining the Black-White Wealth Gap," *Brookings Institution*, February 27, 2020, <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap>.

¹⁹ United States Bureau of Labor Statistics, "Highlights of Women's Earnings in 2014," *BLS Reports* No. 1058 (November 2015): , <https://www.bls.gov/opub/reports/womens-earnings/archive/highlights-of-womens-earnings-in-2014.pdf>. See generally, "Women and the Racial Wealth Divide," *Inequality.org*, accessed June 16, 2020, <https://inequality.org/racial-wealth-divide-snapshot-women/>.

home or contribute to an employee's mid-term housing precarity. For example, from 2007-2009, the years marking the height of the Great Recession, there was a 10.5% increase in the number of Americans living in multi-generational households even as the population only increased by 1.8%.²⁰

Finally, socioeconomic position, age, race, and gender interact in complex ways. For example, millennials are more likely to live in multiple generation households than are older adults and have roommates.^{21 22}

b) Familial and Household Obligations

When considering implications of telework, the SCO should also be cognizant of the ways in which household obligations are divided. While this can be especially prevalent in households with children, even for childless employees there may still be ways that gender, race, sexuality, and ability play into how household labor is divided between partners. Managers should be aware of the ways that different characteristics may impact obligations, while also asking employees about their own bandwidth while working from home, as it will vary case-by-case.

Gendered divisions of household labor come to mind first. Women do almost twice as much domestic work and childcare as their male partners.²³ Research suggests that the teleworking experience for women may include substantial role conflict, because women are expected to fulfill other (often, domestic and social) roles while also fulfilling their role as an employee.²⁴ As a result, women may have more additional work to do during telework hours. In addition, women also report that “their working at home is not seen as ‘real’ work and that neighbors and friends felt it was acceptable to ring or pop in when the teleworker was in fact working.”²⁵

²⁰ “Demographics of Multi-Generational Households, Fighting Poverty in a Bad Economy, Americans Move in with Relatives,” *Pew Research Center*, October 3, 2011, <https://www.pewsocialtrends.org/2011/10/03/chapter-3-demographics-of-multi-generational-households/>.

²¹ Richard Fry, “More Adults Now Share Their Living Space, Driven in Part by Parents Living with Their Adult Children,” *FactTank: News in the Numbers*, *Pew Research Center*, January 31, 2018, <https://www.pewresearch.org/fact-tank/2018/01/31/more-adults-now-share-their-living-space-driven-in-part-by-parents-living-with-their-adult-children/>.

²² Alessandra Malito, “Why American Millennials May Never Get to Live Alone,” *MarketWatch*, April 8, 2017,

<https://www.marketwatch.com/story/why-millennials-may-never-get-to-live-alone-2017-02-23>.

²³ Suzanne M. Bianchi et al., “Housework: Who Did, Does or Will Do It, and How Much Does It Matter?” *Social Forces* 91, no. 1 (September 2012): 55–63, <https://doi.org/10.1093/sf/sos120>.

²⁴ Renata Forste and Kiira Fox, “Household Labor, Gender Roles, and Family Satisfaction: A Cross-National Comparison,” *Journal of Comparative Family Studies* 43, no. 5 (2012): 613-31, www.jstor.org/stable/23267837. See also David Smith and Brad W. Johnson, “Gender Equity Starts in the Home,” *Harvard Business Review*, May 4, 2020, <https://hbr.org/2020/05/gender-equity-starts-in-the-home>.

²⁵ Forste and Fox, “Household Labor,” 613-31.

Women of color may experience even more acute telework-related stress. The Center of Women Policy Studies explains this dynamic in the following way: “While more than half of respondents share household responsibilities with their spouse or partner, this is less often an option for African American women and Native American women. Two thirds (66 percent) of Asian American women and 60 percent of Latinas share household chores with spouses or partners, compared with 54 percent of Native American women and 50 percent of African American women.”²⁶ LGBT employees, too, face complex labor distributions at home. While “same-sex couples wrestle with the same dynamics as heterosexuals,” “transgender people tend to divide chores along masculine and feminine lines.”²⁷

2. Infrastructure

a) Adequate Physical Work Space

Particularly when an emergency requires remote work, living spaces are likely not set up for work. While a kitchen table or favorite living room chair may be appropriate for limited work in the evenings or on the weekend, these setups are rarely adequate to support computer-based work for eight-plus hour workdays. Improper, inadequate, or non-ergonomic work spaces may result in severe physical discomfort and possibly long-term injuries, and will likely reduce employee efficacy.

Moreover, if employees are living in intergenerational households or with roommates, they may lack the physical space to work in privacy. Additionally, some employees may lack the physical space to set up an office, even if they can afford one. Finally, employees living in rural areas may lack reliable cell phone or high-speed internet service, both of which negatively impact an employee’s ability to telework efficiently and effectively. SCO has allowed staff to bring some equipment from home to potentially fill these gaps. It should endeavor to develop concrete and transparent policies about how employees are able to access these resources.

b) Availability of Required Technology

Unlike predetermined arrangements for remote work, an emergency shifts people into work-from-home who may not be prepared. Many employees who expect to work in the office may not have a personal laptop, strong and fast internet connectivity, or mobile phone plans that allow them to conduct the technology-intensive task of working from home. Additionally, employees at some pay grades may lack the means to acquire stable internet access, to buy a desk and/or a suitable chair, to buy a printer, or to purchase an additional screen. These are all readily-available in an office to facilitate worker efficiency and, in many cases, accessibility and

²⁶ Jennifer Tucker et al., “No More ‘Business as Usual’ Women of Color in Corporate America: Report of the National Women of Color Work/Life Survey,” *Center for Women Policy Studies*, 1999, <https://www.shrm.org/hr-today/news/hr-news/documents/wfl.pdf>.

²⁷ Claire Cain Miller, “How Same-Sex Couples Divide Chores, and What It Reveals About Modern Parenting,” *New York Times*, May 16, 2018, <https://www.nytimes.com/2018/05/16/upshot/same-sex-couples-divide-chores-much-more-evenly-until-they-become-parents.html>.

readability, but again, these differences likely fall disparately along race, gender, and class lines. Again, SCO has issued hundreds of laptops to attempt to address potential resource issues faced by employees but moving forward should evaluate any ongoing technological needs that were not able to be met during the COVID-19 regime.

3. Wellness and Disability

Emergencies exacerbate the often silent mental health struggles employees deal with on a daily basis. They can also create new anxieties for those not previously afflicted. Thus, SCO should consider disability and mental health issues for its employees to be questions of *when* and not just *if* they will arise. People with disabilities, both visible and invisible, are likely to experience more adverse effects as a result of the pandemic. Much of this will involve invisible disabilities and new disabilities. Like the virus itself, a “secondary epidemic” in the form of increased rates of anxiety, depression, and substance abuse is expected to affect far more people than the existing healthcare system can address, leaving employers to pick up the slack.²⁸

Teleworking can increase the “sense of isolation, solitude and being an outsider, for example by decreasing knowledge sharing and reducing knowledge awareness (‘who knows what’) among co-workers.”²⁹ A 2018 study found that public servants in particular experience negative effects from teleworking, including “greater professional isolation and less organizational commitment on the days that they worked entirely from home.”³⁰

a) Existing Precarity³¹

COVID-19 disparately impacts people of color, especially Black people, and people with pre-existing conditions, like asthma and diabetes. Racial minorities are more likely to have preexisting conditions, more likely to live in areas with inadequate, substandard or nonexistent medical services, and are less likely to access timely, adequate care, even before the pandemic. COVID-19 has highlighted the results of such inequities: higher rates of Black, Indigenous, and people of color are dying from COVID.

²⁸ Arianne Cohen, “U.S. Employers Scramble to Address Mental Health Epidemic,” *Bloomberg News*, May 19, 2020, https://www.bloomberglaw.com/product/blaw/document/X5F9MOK000000?criteria_id=b557a6b9ee3dd937b0219c73099fa64f&searchGuid=4e371e1c-b1a6-41b1-aba1-aa993533478b&bna_news_filter=bloomberg-law-news.

²⁹ Saswat Mohalik et al., “Increasing the Adoption of Teleworking in the Public Sector,” presented at *International Society for Professional Innovation Management Connects, Ottawa, Canada, April 7-10, 2019*, 4, <https://search-proquest-com.stanford.idm.oclc.org/docview/2220696921?accountid=14026>.

³⁰ Hanna de Vries, Lars Tummers, and Victor Bekkers, “The Benefits of Teleworking in the Public Sector: Reality or Rhetoric?” *Review of Public Personnel Administration* 39, no. 4 (2019): 570, <https://doi-org.stanford.idm.oclc.org/10.1177/0734371X1876012>.

³¹ “COVID-19 – Racial Equity & Social Justice Resources,” *Racial Equity Tools*, accessed June 16, 2020, <https://www.racialequitytools.org/fundamentals/resource-lists/resources-addressing-covid-19-with-racial-equity-lens>.

b) Disability and Wellness, Addressing Mental Health Concerns

The mental health impact of COVID-19 has been referred to as a “second wave” of the global pandemic.³² Telework even under normal circumstances can be psychologically challenging. According to one study, teleworking can cause an increase in loneliness, irritability, and worry as well as additional mental health symptoms of stress.³³

To ensure employee wellbeing, managers should have written teleworking policies dealing with sick leave and working hours, as remote employees are more likely to work while sick due to the blurred division between work and home life. These policies should emphasize the fact that teleworkers should enjoy the same rights as their office-working colleagues, even though they are less visible.³⁴

In both emergency and non-emergency circumstances, remote employees may suffer from increased frustration due to technological difficulties and a sense of being physically distant from the source of problems. To help alleviate this frustration, technical support for remote workers should be prioritized.³⁵ SCO could set up a specific team with office hours to support teleworkers on issues of technology use. Helpful hints and FAQs could also be developed and provided about common issues that arise and how they might be resolved.

In their guide for leading online meetings during the coronavirus pandemic, Rewa and Hunter emphasize “honor[ing] people’s emotional state in this crisis” and recommend strategies that include creating space for people to acknowledge their emotions, creating a culture of checking in, and using frequent breaks.³⁶

The coronavirus pandemic has resulted in increased rates of burnout, with nearly half of U.S. employees reporting that they feel burnout and one in four attributing their stress to the pandemic.³⁷ Because remote workers have a tendency to work longer hours, their timesheets

³² John Grohol, “The Second Wave: Coronavirus & Mental Health,” *PsychCentral*, last updated May 24, 2020, <https://psychcentral.com/blog/the-second-wave-coronavirus-mental-health/>.

³³ Sandi Mann and Lynn Holdsworth, “The Psychological Impact of Teleworking: Stress, Emotions and Health,” *New Technology, Work and Employment* 18, no. 3 (2003): 199-200, <https://doi-org.stanford.idm.oclc.org/10.1111/1468-005X.00121>.

³⁴ Mann and Holdsworth, “The Psychological Impact of Teleworking: Stress, Emotions and Health,” 200.

³⁵ Mann and Holdsworth, “The Psychological Impact of Teleworking: Stress, Emotions and Health,” 200.

³⁶ Jeanne Rewa and Daniel Hunter, “Leading Groups Online: A Down-and-dirty Guide to Leading online Courses, Meetings, Trainings, and Events during the Coronavirus Pandemic” (Daniel Hunter, 2020), 10-11, <http://www.leadinggroupsonline.org/ebooks/Leading%20Groups%20Online.pdf>.

³⁷ “Organizational Strategies for Battling Burnout During the COVID-19 Pandemic,” *Eagle Hill Consulting*, April 15, 2020, <https://www.eaglehillconsulting.com/video/organizational-strategies-for-battling-burnout-during-the-covid-19-pandemic/>.

may indicate if they are at risk of burning out.³⁸ If a remote employee is consistently logging extra hours, managers should encourage them to make more time for personal activities or use some PTO.³⁹ To ensure that employees are not working after hours, managers could consider turning email servers off after hours and during holidays, as Volkswagen does.⁴⁰ However, any resort to such a policy should not be implemented in a way that dampens the flexibility of working remotely.⁴¹

While there is little the SCO can do to immediately mitigate the long-term public health impacts of racism, discrimination, and ableism, there are steps the SCO can take to mitigate the immediate consequences of these dynamics. For example, the SCO could provide tools and support for employees during the course of the regular workday, including webinars on topics like pandemic resilience and work-life balance. The human relations professionals within SCO could develop additional resources and referral options for mental health supports. The SCO could also train managers to know the early signs of psychological struggle and to intervene early to offer additional support to employees. The SCO could also work to normalize the existence and prevalence of mental health challenges. Elke Van Hoof, a psychologist who specializes in stress and burnout, suggests that normalizing the fact that anyone can suffer is key to reducing stigma. Rather than labeling a worker as depressed or sleep disordered, Van Hoof emphasizes the possible underlying, relatable issues: cognitive fatigue or an inability to re-energize.⁴² It is helpful to simply acknowledge that everyone is struggling during an emergency situation that requires working remotely or from home.

Managers may also provide varied and innovative opportunities for interaction.⁴³ Simple solutions may include remote lunches and video one-on-ones to promote understanding and compassion among teammates. We provide further recommendations for effective management techniques in the implementation section of this report.

On an external level, the SCO may consider providing employees with benefits that assist them in prioritizing their health. These could include access to virtual yoga and fitness classes, attention training, and mindfulness courses.⁴⁴ Furthermore, advice and input on dealing with

³⁸ Abe Turner, “Employee Burnout: Don’t Prize Productivity Over Your People,” *Insperty*, accessed June 4, 2020, <https://www.insperity.com/blog/employee-burnout/>.

³⁹ “Managing Remote Employees Without Micromanaging: 7 Do’s and Don’ts,” *Insperty*, accessed June 4, 2020, <https://www.insperity.com/blog/managing-remote-employees-without-micromanaging-7-dos-and-donts/>.

⁴⁰ Small Business Tip of the Day, “How to Manage Remote Workers,” *Time*, June 6, 2012, <https://business.time.com/2012/06/06/how-to-manage-remote-workers/>.

⁴¹ “Managing Remote Employees Without Micromanaging: 7 Do’s and Don’ts.”

⁴² “U.S. Employers Scramble to Address Mental Health Epidemic,” *Mental Health Association in New York State*, May 27, 2020, <https://mhanys.org/mh-update-5-27-20-responding-to-mental-health-needs-of-employers-during-covid-19/>.

⁴³ Mann and Holdsworth, “The Psychological Impact of Teleworking: Stress, Emotions and Health,” 210.

⁴⁴ “Dealing with Employee Burnout? Here’s How to Help,” *Segal*, May 7, 2020, <https://www.segalco.com/consulting-insights/dealing-with-employee-burnout>.

stress, work, and family boundaries as well as work-family conflict should be provided to remote employees.⁴⁵

C. Engage Employee Input

The SCO can mitigate telework impacts on the employer-employee relationship by obtaining employee input as it develops its program. Engaging employee feedback when constructing the framework of a teleworking program benefits agency operations in two major ways. First, employees have valuable ground-level insight which may otherwise be unavailable to management. Second, allowing employees a proverbial “seat at the table” can promote positive labor-management relationships. It is important to note that a positive relationship between labor and management may become especially important during times of crisis and during an agency’s response to the related fiscal stresses of such crises.

Below are various stages of the telework program development process that can facilitate employee feedback. These stages are largely adopted from a framework for telework program development timeline created by the San Diego Association of Governments and, where noted as such, modified using information from our survey of best practices.⁴⁶

1. Staffing the Telework Program Team

SCO could designate a Telework Program Coordinator to oversee the development and administration of its program. One way to facilitate more employee feedback in the development of an agency’s telework program is to ensure that the Coordinator has substantial human resources and labor relations experience.

In addition, SCO might also consider charging other agency employees with providing support to the Coordinator in addition to fulfilling their existing job duties. For example, it can be helpful for the Coordinator to receive input and guidance from Information Technology (IT), executive leadership, and departmental leadership. However, in order to maximize employee feedback throughout the development of a telework program, the agency should either (1) include labor and direct employee representatives in the support team; or (2) collect employee feedback and share that feedback with the Coordinator.

2. Surveys and Intermediaries

SCO can also use surveys requesting information about employees’ home set up situations and the viability of telework or obstacles to effective telework. Should employees feel sensitive about providing certain types of information, they could initially provide it anonymously. SCO

⁴⁵ Mann and Holdsworth, “The Psychological Impact of Teleworking: Stress, Emotions and Health.”

⁴⁶ “Telework Implementation Process,” *San Diego Association of Governments*, accessed June 25, 2020, <https://www.icommutesd.com/docs/default-source/telework/telework-implementation-guidelines.pdf?sfvrsn=2>.

could also use the heads of its agency’s bargaining units as an intermediary to obtain feedback and information about concerns or potential obstacles.

D. Data: Information Needed and Collection Mechanisms

1. Data Collection

Data collection is a critical part of both the development and the administration of a telework program. SCO should analyze the objectives for its telework program and devise measurable goals that relate to those objectives (e.g., environmental benefits, increased recruitment and retention, or reduced absenteeism). Data collection efforts should be shaped around assessing the success of the program in achieving these goals *and* collection should begin prior to program design and implementation.

Data collection could begin through pilot program studies or through baseline surveys about employee and manager perceptions of telework. After operationalizing a program, SCO should require employees participating in telework to also participate in studies regarding their teleworking experiences. Finally, SCO should construct a timeline for (1) preparing reports summarizing the success of the program in achieving the program goals to date and (2) considering what kind of modifications are necessary to improve performance of the program.

One robust example of data collection measures by a local government can be found in the City of San Jose. In San Jose, telework employees are required to participate in all studies, surveys, training, reports, and analyses related to the telework program. In addition, the City conducts an annual survey in which all teleworking employees must also participate.⁴⁷ San Jose also requires that each department designate a representative for their overall Telework Program. The department representative monitors changes in employee retention and absenteeism, changes in required parking spaces, and employee productivity. The Office of Employee Relations, however, is the designated record keeper of City-wide participation in the Program.⁴⁸

The U.S. Government Accountability Office (GAO) has also studied the effects of telework, finding that agencies with the most successful remote work policies collect “supporting data for either the benefits or costs associated with their telework programs.”⁴⁹ For example, the General Services Administration calculated that it had saved nearly \$1 million in 2015 due to an increase in telework, based entirely on a reduction in the use of transit subsidies compared to previous years. Similarly, the Department of Transportation “reported avoiding approximately 21.7 million kg of carbon dioxide emissions in fiscal year 2014 [due to remote work], which is equal to 1.7 kg on average per employee, per day.”⁵⁰

⁴⁷“Flexible Workplace Policy,” edited by Office of Employee Relations, *City of San Jose*, 2014.

⁴⁸ “Flexible Workplace Policy,”

⁴⁹ “Federal Telework: Better Guidance Could Help Agencies Calculate Benefits and Costs,” *United States Government Accountability Office*, GAO-16-551, July 2016, <https://www.gao.gov/assets/680/678465.pdf>.

⁵⁰ “Federal Telework: Better Guidance Could Help Agencies Calculate Benefits and Costs.”

2. Employee Census Data

To enable SCO to assess the impacts of telework on different employees, it should also be mindful of the demographics of its workforce. According to the 2018 California Employee Census, the SCO employed 1,377 people. Of those, the majority were women and were people of color. The SCO employed considerably more women and over twice as many Asian-Americans when compared to the state average.

	SCO ⁵¹		All State Employees ⁵²	California ⁵³
	#	%	%	%
<i>Sex, Disability, Veteran Status (Overlapping, does not sum to 100%)</i>				
Women	790	57.4%	46%	50.3% ⁵⁴
Men	587	42.6%	54%	49.7% ⁵⁵
PWD	195	14.2%	10.9%	6.8% ⁵⁶
Veterans	48	3.5%	5.2%	5.1% ⁵⁷
<i>Race & Ethnicity (Not overlapping, sums to 100%)</i>				
Asian (aggregated)	425	30.9%	18.4%	14.7%
Black	128	9.3%	9.6%	5.8%
Hispanic/Latinx	245	17.8%	25.4%	39.3%
Native American of Alaskan Native	7	0.5%	0.7%	0.8%
Pacific Islander	11	0.8%	0.7%	0.4%
White (non-Hispanic)	508	36.9%	42.5%	36.6%
Other or Multiple	53	3.8%	3.4%	5.1%
	1,377	100.0%	100.0%	100.0%

Even though the SCO’s overall demographics reflect a diverse workforce, there are potentially equity-related issues at an individual position and unit level. We recommend that the SCO conduct a comprehensive analysis that compares:

⁵¹“2018 Annual Census of Employees in State Civil Service: A Report to the Governor and Legislature,” *California Department of Human Resources & California Government Operations Agency*, 2020.

⁵² “2018 Annual Census of Employees in State Civil Service: A Report to the Governor and Legislature.”

⁵³ United States Census Bureau, *Quick Facts: California*, accessed June 16, 2020, <https://www.census.gov/quickfacts/CA>.

⁵⁴ United States Census Bureau, *Quick Facts: California*.

⁵⁵ United States Census Bureau, *Quick Facts: California*.

⁵⁶ United States Census Bureau, *Quick Facts: California*.

⁵⁷ American Community Survey 1-year estimates, *United States Census Bureau*, retrieved from Census Reporter Profile page for California, 2018, <http://censusreporter.org/profiles/04000US06-california/>.

- Demographics and salary (baseline for the position and for the specific employee) that can be analyzed by telework eligibility, home internet access, home work space availability, childcare obligations, and other relevant information.
- Of eligible positions, the demographics and salary information for those who elected to pursue telework vs. who elected to not pursue telework.
- Of eligible positions, the demographics and salary information for certain types of timekeeping codes, like FLSA, ATO, and sick time.

E. Technology and Equipment Requirements

Based upon information provided by the Chief Information Office of SCO, Todd Boltjes, the Controller's Office has a plan for addressing the baseline technology needs of the agency overall.⁵⁸ Mr. Boltjes is confident in the security protocols that are in place. Once the shelter in place orders were issued, SCO was able to provide a majority of its employees with secure devices. Mr. Boltjes also noted that there are currently some essential functions of the SCO that cannot be conducted remotely, primarily where there needs to be a public customer service interface and where physical objects are necessarily involved, such as printing checks or with certain types of unclaimed property that the SCO must hold.

There were two issues raised by Mr. Boltjes worthy of attention: (1) more uniformity in the software and apps used throughout the agency and within or across divisions to increase ease of communications, robust training, and overall learning from consistent use of the same products and (2) increasing the number of SCO-owned devices that can be used by employees ensuring improved access to SCO platforms and mainframe.

An additional issue we have identified is the need to assess the technology necessary for two-way communications with stakeholders and clients, including financial institutions, partner government agencies, and others to assure that telework capacities meet their needs.

Beyond technology, SCO should assess the types of equipment that is necessary should expansion of access to remote work be the goal. The SCO's Confidential Business Continuity Plan describes in detail the types of equipment that could be necessary, including TDD phones, copiers, fax machines, and scanners.

1. Issues Related to Technology and Device Use

a) Employee Information Tracking (Utility and Implications)

The COVID-19 crisis has led to increases in two distinct uses of technology of which SCO should be aware: (1) the use of contact tracing technology and (2) the use of employee monitoring software.

⁵⁸ Todd Boltjes (Chief Information Office, State Controller's Office), interview with the authors, April 16, 2020.

Contact Tracing

The White House recently released “Opening Up America Again” Guidelines, which recommended that employers monitor their workforce’s health and prohibit employees with symptoms from returning to workplaces.⁵⁹ In response, some private companies, such as PwC, have developed tools to harness Bluetooth and Wi-Fi signals to track physical proximity of employees to one another as a safety net to protect against employees who develop COVID-19 or other infectious diseases.

These technologies focus on contact tracing techniques from various governments around the world. As it currently exists, employees are required to notify human resources if they are diagnosed with COVID-19. Next, “[u]sing data from the app, PwC can identify other employees whose phones came close to the infected person's phone in prior weeks.” Then, human resources professionals notify employees who may have been exposed to the virus so they can take additional precautions.

PwC is using this technology to prepare for employees’ return to the physical workspace more safely. Privacy concerns exist, but PwC maintains that the technology does not track employees outside of work because it only monitors people when they are on company property.⁶⁰

Salesforce recently released a new tool, Work.com, to help employers “safely reopen.” The website will “enable companies to create online employee health surveys and map the workplace locations visited by employees with coronavirus infections.”⁶¹

Mandatory Temperature Checks

Many governors and public health officials have begun requiring reopening employers “to take employees’ temperatures and/or conduct other employee health screening procedures, such as asking employees about any COVID-19-consistent symptoms using a questionnaire or checklist⁶² For example, employers in Colorado are required to conduct daily temperature checks and monitor symptoms in employees at the worksite.

⁵⁹ “Opening Up America Again Guidelines,” *WhiteHouse.gov*, April 2020, <https://www.whitehouse.gov/openingamerica/>; Natasha Singer, “Employers Rush to Adopt Virus Screening. The Tools May Not Help Much.” *The New York Times*, May 11, 2020, www.nytimes.com/2020/05/11/technology/coronavirus-worker-testing-privacy.html.

⁶⁰ Shannon Bond “Your Boss May Soon Track You at Work for Coronavirus Safety,” *NPR*, May 8, 2020, <https://www.npr.org/2020/05/08/852896051/your-boss-may-soon-track-you-at-work-for-coronavirus-safety>.

⁶¹ Singer, “Employers Rush to Adopt Virus Screening. The Tools May Not Help Much.”

⁶² Littler Mendelson, “This Won’t Hurt a Bit: Employee Temperature and Health Screenings – A List of Statewide Orders, as of May 29, 2020.” *Littler*, May 29, 2020, <https://www.littler.com/publication-press/publication/wont-hurt-bit-employee-temperature-and-health-screenings-list>.

While California has not yet required temperature checks, all opening facilities in California must “[t]rain employees on how to limit the spread of COVID-19, including how to screen themselves for symptoms and stay home if they have them” and must “[i]mplement physical distancing guidelines.”⁶³ Given these new requirements, it is likely that the number of technology applications available to track employee health information will expand in the coming months.

Some companies have started utilizing different technologies, such as Amazon and Walmart “us[ing] infrared cameras to conduct temperature checks for their warehouse workers” and other apps asking employees to self-report their health symptoms and subsequently analyzing a worker’s “risk levels” based on these responses.⁶⁴ The FDA has temporarily allowed companies to market infrared thermal camera systems that have not been vetted by government regulators for use in warehouses and factories, given the immediacy of concerns.⁶⁵

One such company, PopID, offers both hand-held infrared devices and wall-mounted thermal-imaging cameras to assess workers’ temperatures. These devices are currently being implemented in fifty Subway sandwich shops, some Taco Bell franchises, and Lemonade, a California restaurant chain. At Subway, employees are asked to scan their temperature four times a day, with the employee data deleted every thirty days.⁶⁶

Criticism and Concern

One core concern is that some health monitoring tools, including COVID-19 antibody tests and popular infrared thermometers,⁶⁷ can be misleading or even wildly inaccurate, potentially creating a false sense of security that will lead to more exposure of transmittable disease.⁶⁸

In addition, with over 25% of COVID-19 patients asymptomatic, these devices may not catch their intended targets. Indeed, there are also concerns that “they could inadvertently expose

⁶³ “Statewide Industry Guidance to Reduce Risk,” *CA.gov*, May 25, 2020, <https://covid19.ca.gov/industry-guidance/>.

⁶⁴ Natalie Chyi, “The Workplace-Surveillance Technology Boom,” *Slate*, May 12, 2020, <https://slate.com/technology/2020/05/workplace-surveillance-apps-coronavirus.html>.

⁶⁵ “Enforcement Policy for Telethermographic Systems During the Coronavirus Disease 2019 (COVID-19) Public Health Emergency: Guidance for Industry and Food and Drug Administration Staff,” *United States Food and Drug Administration*, April 2020, <https://www.fda.gov/media/137079/download>.

⁶⁶ Singer, “Employers Rush to Adopt Virus Screening. The Tools May Not Help Much.”

⁶⁷ David Yaffe-Bellany, “‘Thermometer Guns’ on Coronavirus Front Lines Are ‘Notoriously Not Accurate,’” *New York Times*, February 14, 2020, <https://www.nytimes.com/2020/02/14/business/coronavirus-temperature-sensor-guns.html>.

⁶⁸ Apoorva Mandavilli, “Coronavirus Antibody Tests: Can You Trust the Results?” *New York Times*, April 24, 2020, <https://www.nytimes.com/2020/04/24/health/coronavirus-antibody-tests.html>.

employees who are running higher temperatures because they are under stress or have other health conditions, issues the workers may have preferred to keep private.”⁶⁹

There are also some legal risks for employers tracking the health of their employees. For example, the Americans with Disabilities Act (ADA) and Genetic Information Nondiscrimination Act (GINA) both “prohibit companies from using health information to make employment decisions and place restrictions on the data that can be collected.”⁷⁰ In addition, companies have begun researching the implications of the Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act (ACA), specifically in regard to storing employee health information in a secure format.

Finally, employees with preexisting health conditions may feel stigmatized by a policy that unduly highlights their health, particularly methods that feel intrusive, so some experts suggest a less heavy-handed approach.⁷¹

Overall, although the use of this technology is in its infancy, SCO may want to consider some version of health collection technology in the future in order to support the safety of employees who cannot work remotely due to the nature of their job, but it should be cognizant of the serious privacy and other concerns raised by leading experts.

b) Employee Work Performance Monitoring

There has also been an increase in technology that monitors employer-issued devices to track the use of these devices by employees throughout the work day. This software can come in many forms, including the following:

1. Slack allows employers access to private messages among employees.
2. TeamViewer is an app that “mirrors everything from an employee’s laptop onto their desktop” which a manager can view in real time to see everything his employees are doing by looking at their desktop monitors.”⁷²
3. Hubstaff is software that takes screenshots of an employee’s device every few minutes and sends reports to the employer, including productivity scores (measuring the percentage of time that the employee spent typing, moving the mouse, and so on).⁷³

⁶⁹ Singer, “Employers Rush to Adopt Virus Screening. The Tools May Not Help Much.”

⁷⁰ Kelley Zanfardino, “Workplace Health Tracking Initiatives: Benefits and Pitfalls,” *Insperity*, <https://www.insperity.com/blog/tracking-employee-health-metrics-great-idea-big-mistake/>.

⁷¹ Zanfardino, “Workplace Health Tracking Initiatives: Benefits and Pitfalls.”

⁷² Sara Morrison, “Just Because You’re Working from Home Doesn’t Mean Your Boss Isn’t Watching You,” *Vox: Recode*, April 2, 2020, <https://www.vox.com/recode/2020/4/2/21195584/coronavirus-remote-work-from-home-employee-monitoring>.

⁷³ Adam Satariano, “How My Boss Monitors Me While I Work from Home,” *New York Times*, May 6, 2020, <https://www.nytimes.com/2020/05/06/technology/employee-monitoring-work-from-home-virus.html>.

4. Some programs log every keystroke on an employer-issued device at all times, backing up that data on an external harddrive or the cloud.
5. Other less intrusive options include simply blocking access to certain websites (such as social media or video streaming sites).

While employee monitoring technology allows employers to see if workers are keeping up with work during the day, there are tremendous downsides. For example, if an office does not have a positive culture of trust, employees can view the introduction of this technology as a “punishment for something they had no control over in the first place.” According to one industrial psychologist, “if it’s done wrong, then the downside will vastly overshadow any positives.”⁷⁴

SCO should establish clear guidelines as to what measures it is taking to monitor employee technology use to establish a culture of trust and transparency and to promote effective performance management techniques. SCO should also look into emerging technology to protect the health of a workforce at risk for future infectious diseases.

c) Use of Private Accounts and Devices

Summary

California citizens have a right to access public records created or stored on private devices if the records are otherwise disclosable under the California Public Records Act (CPRA). This includes public records created or stored using private accounts. In other words, the mere use of private devices or accounts does not categorically shield documents that would otherwise be discoverable under CPRA. These records can also be used in litigation. SCO should adopt policies that balance employee privacy and public accessibility. Its policy should (1) remind employees of their rights and obligations; (2) train employees on public records; and (3) permit employees to search their own devices.

California Public Records Law Favors Expansive Disclosure

The California Public Records Act (CPRA),⁷⁵ and the California Constitution⁷⁶ create broad rights to access government documents and public records. As courts have held, “[a]ll public records are subject to disclosure unless the Public Records Act expressly provides otherwise.”⁷⁷ Government agencies have the burden of proof to demonstrate that an exemption applies, and any statutory exemptions are narrowly construed.⁷⁸

⁷⁴ Morrison, “Just Because You’re Working from Home.”

⁷⁵ Cal. Gov’t Code §§ 6250, *et seq.*

⁷⁶ Cal. Const. Art. I § 3.

⁷⁷ *Am. Civil Liberties Union of N. Cal. v. Superior Court*, 202 Cal. App. 4th 55, 66 (2011).

⁷⁸ *Id.* at 67.

California Public Records Act

CPRA provides the public with an expansive “right to inspect any public record.”⁷⁹ Public records are defined as any kind of “writing”⁸⁰ that contains “information relating to the conduct of the public’s business” and is “prepared, owned, used, or retained by any state or local agency regardless of physical forms or characteristics.”⁸¹ Documents must bear a “substantive” relation to public affairs to qualify as public records under CPRA.⁸²

California Constitution

Article I § 3 of the California Constitution recognizes “the right of access to information concerning the conduct of the people’s business” and requires that public disclosure laws be “broadly construed if it furthers the people’s right of access.”⁸³ The same section adds that it does not supersede or modify other due process and privacy rights secured by California law.

California Requires Disclosure of Public Records Created or Stored on Private Accounts and Devices

In *City of San Jose v. Superior Court*, the California Supreme Court held that public records stored on private accounts are accessible under CPRA.⁸⁴ The Court ordered San Jose to disclose emails and text messages “sent or received on private electronic devices used by” the mayor of San Jose, two San Jose city council members, and their staffs.⁸⁵

Private Accounts

San Jose disclosed records and communications made using city-issued telephone numbers and email accounts, but did not disclose similar records made using personal accounts.⁸⁶ San Jose argued that they did not have to turn those over because they lacked control or custody of the accounts.⁸⁷

The California Supreme Court rejected San Jose’s argument. It held that CPRA does not require government control of the requested documents.⁸⁸ Instead, a document “prepared” by a government entity falls within CPRA’s disclosure requirements and that records prepared by agency employees, regardless of what accounts they used, are “prepared” by a government

⁷⁹ Cal. Gov’t Code § 6253(a).

⁸⁰ In full, a “writing” is “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.” Cal Gov’t Code § 6252(g).

⁸¹ Cal. Gov’t Code § 6252(e).

⁸² *City of San Jose v. Superior Court*, 2 Cal. 5th 608, 618 (2017).

⁸³ Cal. Const., art. I §§ 3(b)(1)-(2).

⁸⁴ *San Jose*, 2 Cal. 5th at 624-25.

⁸⁵ *Id.* at 614-15.

⁸⁶ *Id.* at 615.

⁸⁷ *Id.* at 619-20.

⁸⁸ *Id.*

agency.⁸⁹ The Court found that employee control of the records was enough to establish constructive possession of the records by the city, even if San Jose could not directly access them.⁹⁰ The Court added that San Jose’s argument ran contrary to California’s longstanding policy of favoring disclosure because officials could get around CPRA by switching to private accounts.⁹¹

Private Devices

San Jose conceded that records created on private devices using public accounts must be disclosed under CPRA.⁹² Even if they had not, it is highly unlikely that such an argument would have succeeded, as it would contradict not only settled case law from the California Courts of Appeal⁹³ but what the *San Jose* court heavily implied. In dicta, the court all but held that documents created using official accounts on private devices would be subject to disclosure, as it was concerned that “[i]f public officials could evade [CPRA] simply by . . . communicating through a personal device, sensitive information could routinely evade public scrutiny.”⁹⁴

Analogous Federal Case Law Similarly Requires Disclosure of Public Records Created or Stored on Private Accounts and Devices

The Freedom of Information Act (FOIA)⁹⁵ provides for public access to federal government documents. While FOIA does not apply to SCO or other California government entities, CPRA was modelled after FOIA and California courts often look to FOIA cases to determine whether a document is disclosable under CPRA.⁹⁶

Federal FOIA case law is broadly consistent with *San Jose*. In *Competitive Enterprise Institute v. Office of Science & Technology Policy*, the D.C. Circuit held that emails sent from private email accounts are disclosable under FOIA.⁹⁷ Like the *San Jose* Court, the D.C. Circuit also found that agencies can control records through their employees.⁹⁸ A document’s content, not storage location or creation method, determines whether it must be disclosed under FOIA. “[R]ecords do not lose their agency character just because the official who possesses them takes them out the door.”⁹⁹

⁸⁹ *Id.* at 619-20.

⁹⁰ *Id.* at 624.

⁹¹ *Id.* at 625-27.

⁹² Answer Brief on the Merits at 26, *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017).

⁹³ *Bertoli v. City of Sebastopol*, 233 Cal. App. 4th 353, 374-75 (2015) (finding that emails sent from private computers using official email accounts fell within the plain meaning of CRPA).

⁹⁴ *San Jose*, 2 Cal. 5th at 625.

⁹⁵ 5 U.S.C. §§ 552 *et seq.*

⁹⁶ *San Jose*, 2 Cal. 5th at 616 n.3 (citing *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762, 772 (1983)).

⁹⁷ 827 F.3d 145, 149 (D.C. Cir. 2016).

⁹⁸ *Id.*

⁹⁹ *Id.*

Public Records Can Be Used in Litigation Against SCO

Documents obtained under a CPRA request can be used in litigation against SCO, should it come to that. While the California Supreme Court does not appear to have weighed in on this issue, a California Court of Appeal held that CPRA can be used to obtain public records for the purposes of litigation.¹⁰⁰ In that case, the plaintiffs sued a Los Angeles County agency and requested various government documents under the normal California civil discovery process.¹⁰¹ After the court denied the requests, the plaintiffs filed a CPRA request, and the court found that the plaintiffs' litigious purpose was largely irrelevant and that the County had to disclose the requested documents to the extent that they were otherwise disclosable under CPRA.¹⁰² In other words, members of the public can request public records from SCO with the express purpose of using them in litigation against SCO. Once obtained, public records can be admitted in California court under the public records exception to the hearsay rule.¹⁰³ The Federal Rules of Evidence provide for a similar exception.¹⁰⁴

Recommendations

San Jose left agencies with substantial discretion in choosing how to implement CPRA. SCO already has policies in place to deal with CPRA and private devices and accounts. We believe SCO's current policy discourages employees to conduct state business on personal property. Upon receipt of a request pursuant to the CPRA, employees are notified of the request and advised that they are required to search his/her personal property. Finally, the agency relies on the search conducted by the employee.

SCO could further develop these policies to suit an expanded telework program, where it is more likely that employees might use private devices or accounts.

First, SCO should highlight SCO's existing responsible use policy and reiterate to its employees that they should avoid using private devices and that any work done on private devices is subject to disclosure. This ensures that SCO can comply with CPRA efficiently and protects employee privacy rights.

SCO should also flesh out its guidance to employees about the process to search for public records on private devices and accounts. *San Jose* provides some guidance here: SCO need not perform an "extraordinarily extensive or intrusive" search for records, just something that is "reasonably calculated."¹⁰⁵ Out of respect for employees' individual rights to privacy, the court

¹⁰⁰ County of Los Angeles v. Superior Court (Axelrad), 82 Cal. App. 4th 819, 826 (2000).

¹⁰¹ *Id.* at 823.

¹⁰² *Id.* at 823, 826.

¹⁰³ Cal. Evid. Code § 1280.

¹⁰⁴ Fed. R. Ev. 803(8). For a discussion of the differences between the federal and California public records exception, see Miguel A. Méndez, *Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351, 376-82 (2003).

¹⁰⁵ *San Jose*, 2 Cal. 5th at 627.

held that agencies can ask employees to search for their own devices and may reasonably rely on such searches to fulfill CPRA obligations.¹⁰⁶

Still, it is important to note that *San Jose* limited reliance on employee-conducted searches to *reasonable* reliance. *San Jose* cited cases from outside California to provide some guidance as to what constitutes reasonable reliance. Referring to cases from New York and Washington State, the court said that agencies could rely on employee affidavits to conduct CPRA searches.¹⁰⁷ Under this approach, employees search their own devices for records and then execute an affidavit explaining how they searched for them and explaining why certain potentially responsive records need not be turned over.¹⁰⁸ Affidavits must provide enough information to provide a sufficient factual basis for a judge to determine whether a record should be disclosed.¹⁰⁹ As the court noted, this approach strikes an appropriate balance between employees' privacy rights and the public's right of access.

The *San Jose* Court cautioned that employees must be properly trained on how to distinguish between public and private records.¹¹⁰ Should SCO choose to adopt this approach to fulfilling its CPRA obligations, then it should include public records training as part of its remote work guidance and resources. It could also draft a comprehensive guide or flowchart for employees to follow when searching their own devices.

F. Teleworkspace

For employees to work effectively from their homes, a number of issues must be addressed to ensure that they do so safely and within the parameters of the law. While we did not research and do not address issues related to occupational safety and health requirements, there are some practical, ergonomics issues that SCO should be concerned about as part of its policy development.

OSHA recommends providing management support, using a participatory ergonomic approach, providing training, identifying problems, encouraging early reporting of musculoskeletal disorder symptoms, implementing solutions to control hazards, and evaluating progress.¹¹¹ It is important to keep employees informed about best ergonomic practices, using tools provided by OSHA and other resources. The SCO may also consider investing in digital solutions to walk employees through the process of setting up an ergonomic workstation. These tools can also help the employer identify the most at-risk employees for follow-up.¹¹²

¹⁰⁶ *Id.* at 628.

¹⁰⁷ *San Jose*, 2 Cal. 5th at 628 (citing *Grand Cent. P'ship, Inc. v. Cuomo* (2d Cir. 1999) 166 F.3d 473, 481 (2d Cir. 1999); *Nissen v. Pierce Cty.* 183 Wash. 2d 863, 885 (2015)).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (citing *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1247 (4th Cir. 1994)).

¹¹¹ "Ergonomics: Overview," *United States Department of Labor: OSHA*, accessed June 4, 2020, <https://www.osha.gov/SLTC/ergonomics/>.

¹¹² Sean Baldry, "Working from Home Doesn't Have to be a Pain," *Cority*, March 24, 2020, <https://ehsq.cority.com/blog/working-from-home-doesnt-have-to-be-a-pain>.

When developing telework guidelines, an agency should provide employees with guidelines on (1) what is necessary for a workspace suitable for performing agency business and (2) what technological requirements must be met for performing agency business.

Examples of approaches to this issue from local governments include:

In the City of Los Angeles, department leadership is charged with deciding whether an employee's own technology can be used for teleworking. This stipulation is included in the City's Telecommuting Application.¹¹³

In the City of San Jose, a teleworking employee's workspace is subject to inspections, upon request, to ensure that safe work conditions exist.¹¹⁴ If the City finds that the employee requires a modified workstation in her main place of work, her home workstation will be similarly modified.¹¹⁵ However, the employee will be responsible for any cost related to remodeling and setup of the designated workspace.¹¹⁶

In the City and County of San Francisco, managers are charged with identifying needs from employees to ensure that work can be completed from the employee's workspace (e.g., does the employee have high speed internet access and an operating system supported by the department?).¹¹⁷

In regard to the employee's workspace, the City and County of San Francisco requires that the telecommuting employee designate a work area suitable for performing official business. Employees are responsible for ensuring their work areas comply with the health and safety requirements covered in eLearning module. However, the City may request photographs of the employee's designated work area to determine compliance with health and safety rules.¹¹⁸

G. Employee Eligibility

Constructing a Framework for Determining Eligibility

We recommend that SCO include the following information in their Telework Policy as well as in training materials for their Telework Program: (1) a clear framework for eligibility determination; (2) designated decision makers for eligibility determinations; and (3) information about if and how eligibility determinations can be challenged.¹¹⁹ Particularly during times of

¹¹³ "Emergency COVID-19 Telecommuting Process," *City of Los Angeles*, 2020.

¹¹⁴ "Flexible Workplace Policy."

¹¹⁵ "Flexible Workplace Policy."

¹¹⁶ "Flexible Workplace Policy."

¹¹⁷ "Telecommute Policy and Program," City & County of San Francisco, accessed June 25, 2020, <https://sfdhr.org/telecommute>.

¹¹⁸ "Telecommute Policy and Program."

¹¹⁹ "Employers," *Commute San Diego Association of Governments*, accessed June 5, 2020, <https://icommutesd.com/telework/employers>.

crisis, agency operations require that eligibility determinations for telework allow for flexibility and management discretion. However, positive labor-management relations and equity require that decisions about eligibility be made transparently and be subject to some form of accountability.¹²⁰ As such, it would be helpful for SCO to discuss the construction of their determination framework with both labor and direct employee representatives.

The framework for eligibility determinations, generally includes three major categories of criteria, as follows.

a) Work-related criteria

This category includes factors that make a *job classification* eligible or ineligible to be conducted from home (e.g., the need for specialized equipment or the need for client interactions or the ability to conduct most business electronically or by phone).¹²¹

b) Employee-related criteria

This category includes factors which make a *specific employee* eligible (e.g., permanent status, previous job performance, and communication skills).¹²² It is important to ensure that application of these criteria are generally objective and uniform, while taking into account equity issues that could arise from implicit bias or inequitable other policies.

c) Agency-related criteria

This category includes other considerations that must be addressed when allowing an employee to telework so as to ensure agency operations are being effectively performed (e.g., whether departments must maintain a minimum complement of employees on site in order to deliver essential services).¹²³

Examples from local government approaches include:

In the City of San Jose, current employees must meet the following criteria in order to be considered eligible for their telework program, unless otherwise granted an exception: (1) permanent status; (2) at least six months of employment with the City of San Jose; and (3) receipt of “standard” performance on most recent employee evaluation.¹²⁴ Approval and

¹²⁰ Sarah Zimmerman (Deputy Chief of Staff, SEIU Local 1000), interview with the authors, May 22, 2020.

¹²¹ “Supervisor eLearning Module,” Interactive video, *City & County of San Francisco Department of Human Resources*, accessed June 5, 2020, https://sfdhr.org/sites/default/files/Telecommuting_Supervisor_PORTAL/index.html.

¹²² “Supervisor eLearning Module.”

¹²³ “Employers” (see n. 119).

¹²⁴ “Flexible Workplace Policy.”

participation in the City of San Jose’s telework program can be suspended or canceled by either the employee or the City.¹²⁵

The telework program constructed by the City and County of San Francisco defines eligibility using (1) job criteria; and (2) employee criteria.¹²⁶ The former factors include, for example, whether the position is independent in nature, whether deliverables associated with the duties, and whether the position is knowledge or skill based. The City provides the following examples of jobs which may be deemed eligible: policy development, research, investigations, analysis, program design, constituent/community work.¹²⁷ Employee criteria, on the other hand, include assessments of whether an employee is dependable, knowledgeable, self-motivated, an effective communicator and whether they produce high quality work in a timely manner. San Francisco provides that departmental heads have final say on eligibility determinations. Eligibility determinations are not grievable.¹²⁸

H. Create Training and Other Resources for Both Employees, Supervisors and Managers

1. Training

Prior to deployment of an official, long-term telework program, it is recommended to have in place trainings for employees, supervisors, and managers, which are mandatory and should be included in the telework agreement.

One way to address employee concerns during the development of the telework program is to prepare meaningful training and support resources for both teleworking employees and the managerial employees that supervise them. Employees could be asked about topics they would like to have included in a training program.

a) Audience

Training materials should be prepared for employees interested in teleworking, employees approved for telework, and managers supervising teleworking employees. Some agencies require that both the employee and the supervisor complete telework training in order for an employee to be approved for telework.¹²⁹

b) Potential Format

Research by Visawanath Venkatesh and Cheri Speir suggests that interactive, game-based training methods may help remote work employees feel more comfortable with one another and the new technology.¹³⁰ Venkatesh and Speir conducted a field experiment with a game-based training method that allows employees to interact with their work technology and their

¹²⁵ “Flexible Workplace Policy.”

¹²⁶ “Supervisor eLearning Module.”

¹²⁷ “Supervisor eLearning Module.”

¹²⁸ “Telecommute Policy and Program.”

¹²⁹ “Supervisor eLearning Module.”

¹³⁰ Visawanath Venkatesh and Cheri Speir, “Creating an Effective Training Environment for Enhancing Telework,” *International Journal of Human-Computer Studies* 52, no. 6 (2000): <https://doi.org/10.1006/ijhc.1999.0367>.

coworkers in a non-work-oriented setting. They also found that using a “game-based training method” can increase employee’s intention to use the technology moving forward.¹³¹ In practice, an agency could create a training experience where employees interact with each other in a non-work-oriented setting such as a virtual scavenger hunt that requires coordinating schedules and collaborating on joint documents. However, the agency could also try a simpler approach (e.g., an interactive module where employees learn to set up an ergonomic workspace).¹³²

2. Dedicated Access Point for Resources

The SCO should include all videos, presentations, supplemental resources, example agreements, and required forms in one easy-to-access location. Noteworthy examples of this setup include the teleworking web portal created by the City and County of San Francisco¹³³ or the resource tool kit created by the County of San Mateo.¹³⁴

This access point should minimally include:

An Overview of the Telework Program

SCO should provide information about the steps included in its telework application process as well as highlighting key parts of its policy and Standardized Agreement (e.g., eligibility determination processes and the goals of the program). Required forms can be located in the same place for such items as reimbursement for business related costs while teleworking.

Resources for the Employee and their Supervisor to Develop a Telework Arrangement

Trainings should also provide employees and supervisors with information about how they can modify their telework arrangement to fit their needs. For example, the agency can provide information about communication methods that comply with the agency’s technological requirements so that employees and managers can choose what works best for them. In addition, the agency can provide information about the types of telework arrangements that are available to the employee (e.g., Is the employee going to be on a complete or partial teleworking schedule? Will the teleworking schedule be fixed or flexible?). Finally, the agency should provide information about performance evaluation processes that comply with personnel guidelines and promote positive telework relationships.

¹³¹ Venkatesh and Speier, “Creating an Effective Training Environment for Enhancing Telework.”

¹³² “Supervisor eLearning Module.”

¹³³ “Telecommute Policy and Program.”

¹³⁴ San Mateo County Office of Sustainability, *Telework & Flex-Schedules Toolkit*, accessed June 5, 2020, https://www.commute.org/files/programs/SMC_Telework_Toolkit.pdf.

Supplemental Guidance

The agency should also provide more general resources to provide supplemental guidance on concerns that are likely to arise for all teleworking employees (e.g., stress management and ergonomic concerns). In addition, agencies should provide supplemental trainings that allow employees to develop job skills that promote upward mobility.¹³⁵ Opportunities for the promotion of remote workers is critical, given that extensive telecommuting is associated with fewer promotions and lower salary growth.¹³⁶

I. Develop the Telework Policy, Standardized Agreement, and Supplemental Agreements

Our research suggests that SCO should use three general documents to set out the terms of the teleworking employee-employer relationship. Each of these documents, as well as ways to engage employee input in their creation, are described below.

a) Telework Policy

The Telework Policy should contain a broad view of the agency's goals for its telework program. The Policy should also include general information about the program, including, for example, the agency's approach to eligibility determinations, the kinds of telework schedules available to employees, and information about the Coordinator and their support team.¹³⁷

b) Standardized Agreement

The Standardized Telework Agreement should provide more specific information about how teleworking affects day-to-day operations for all agency employees. The Standardized Agreement may include, for example, information about which personnel rules still apply to teleworking employees and whether an employee's personal technology can be used.¹³⁸ A Standardized Agreement is typically a separate document from the Policy.¹³⁹

¹³⁵ Sarah Zimmerman (Deputy Chief of Staff, SEIU Local 1000) interview with the authors, May 22, 2020.

¹³⁶ Ted Knutson, "Telecommuting Surge Likely to Last Past COVID-19 Crisis, Predicts Brookings Report," *Forbes*, April 8, 2020, <https://www.forbes.com/sites/tedknutson/2020/04/08/telecommuting-surge-likely-to-last-past-covid-19-crisis-says-brookings-report/#50d81a9974ca>.

¹³⁷ "Sample Telework Program Policy," *San Diego Association of Governments*, PDF File, accessed June 5, 2020, <https://www.icommutesd.com/docs/default-source/telework/telework-sample-policy.pdf?sfvrsn=2>.

¹³⁸ "Telework & Flex-Schedules Toolkit."

¹³⁹ Please note, some agencies do not have separate Policies and Agreements. Rather, they append a signature page to the Policy so as to confirm employee receipt. That signature page operates as the Standardized Agreement.

c) Supplemental Agreement

In addition to standard remote work agreements, some agencies require that the telework agreement be tailored to departmental needs, job-specific needs, and employee-specific needs. Either modifications to the Standardized Agreement or a separate, Supplemental Telework Agreement can address these needs. The Supplemental Agreement provides specific information about a particular supervisor's expectations for a particular teleworking employee. Employees and their direct supervisors should construct the terms of the Supplemental Agreement together. Elements may include, for example, the employee's expected work schedule, how and when they will check in and communicate with their supervisor, as well as information about their specific workspace and work equipment.¹⁴⁰ Ideally, employees and their direct supervisors will revisit the terms of the Supplemental Agreement routinely and not just annually to revise it as needed.

Our survey suggests that direct supervisors are already likely to engage employee input when constructing Supplemental Agreements or deciding on modifications to remote work agreements for particular employees. However, it is also important to engage such feedback when constructing the terms of the Policy and the Standardized Agreement. In practice, inviting labor and direct employee representatives to meet and confer regarding the terms of the Policy, the Standardized Agreement, and the template Supplemental Agreement can be a helpful way for an agency to hear employee feedback. For example, the Department of General Services will be entering into meet and confer sessions with the SEIU in regard to the terms of both their example Telework Policy and their Standardized Agreement.¹⁴¹ In addition, the telework program in the City of San Jose is also subject to future meet and confer sessions according to their current collective bargaining agreements.¹⁴²

J. Identified Challenges

The SCO should also be aware of the following challenges related to telework:¹⁴³

1. Onboarding

It can be quite challenging to manage new employees during this current, or any other, emergency situation. Consider different options to deliver parts of your normal orientation by using technology as well as new approaches.

¹⁴⁰ "Telecommute Policy and Program."

¹⁴¹ City of San Jose, *Memorandum of Agreement Between the City of San José and the Association of Legal Professionals of San José*, July 1, 2018 - June 30, 2021, <https://www.sanjoseca.gov/home/showdocument?id=40496>.

¹⁴² Andrew Sturmfels (Deputy Director of Administration Division, California Department of General Services), interview with the authors, May 12, 2020.

¹⁴³ The risks and associated best practices in this section are taken directly from Deloitte's Remote Working Webinar: https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Consulting/Deloitte_Remote_Working_Webinar_Slides.pdf

- Managers should amplify communications and frequency to ensure that the employee remains engaged. Set up virtual coffees for the employee with other team members to ensure that they start to feel connected to the rest of the team.
- Managers should set expectations for the new hire and to discuss what will be possible during this time from a work perspective
- Managers should assign a buddy to the individual to assist them throughout this period. The buddy can interact with the employee on a social level while also helping with some of the on-the-job training to take pressure off the manager.

2. Burnout

As noted above, burnout is a risk, especially for those who are new to remote working. Workers may experience lower levels of work-life balance, as the boundary between work and home life can become completely blurred.

- Leaders can help team members be more productive by giving them the right tools and setting clear expectations upfront. If they are clear on expectations, workers will focus their attention where needed and not waste time on tasks which don't add value.
- Employees tend to spend their working hours on calls and have to then catch up on their work after hours. This is a challenge faced by new remote workers and those who have been working remotely in the past.
- Encourage your team to structure their day to include healthy habits and to set boundaries that will allow them to focus while working.
- Also encourage them to switch off at the end of the day and respect that boundary by not contacting them after-hours. Try to understand their unique situation and have an open discussion about what is possible.

3. Transition

When staff return from remote working, there will be a period of adjustment

- Leaders and managers will have to be clear on their expectations in terms of attendance, ways of working and objectives.
- There is also a possibility that the content of some roles may have changed following the experience COVID-19. It is important to collaborate with employees and discuss how this role will be performed when back to business as usual.
- Some employees may want to make use of remote working arrangements and have more flexibility upon their return. It is important to think about the level of flexibility you will have with regards to this and how this will enable your talent strategy going forward

VI. ENSURING EFFECTIVE IMPLEMENTATION OF TELEWORK

A. Racial Justice, Gender Justice, Disability Justice, and LGBTQ+ Justice

The equity analysis and frameworks provided earlier in this report engage issues of racial justice and our research has specifically focused on centering the tools, analyses, and desired outcomes

of Black researchers and academics. We are uniquely concerned with anti-Black racism because of the persistent, observable effects of anti-Black racism in the United States.¹⁴⁴

Kimberlé Crenshaw, a Black feminist scholar and law professor at UCLA, argues that a singular focus on race fails to account for how other structures of power subordinate Black women in ways that neither focusing on race or gender alone accomplish.¹⁴⁵ Thus, to ensure that the SCO does not replicate disparities for women, LGBTQ+ people, and people with disabilities within racial groups, we have compiled specific considerations for each group. However, these considerations should be understood within the broader context of racial justice, with a specific lens towards anti-Black racism.

1. Gender

COVID-19 presents a unique challenge for many working parents and caretakers, especially unmarried and/or single parents, and especially women.¹⁴⁶ Concerning telework policies, the SCO should consider:

- Permitting flexible time schedules so employees who are also parents and/or caretakers can ensure that their childcare and elder care responsibilities are met, especially if the schools are closed or if nursing homes present a unique risk;
 - The SCO should also recognize that many caretaking and childcare responsibilities during this time are not limited to a worker's immediate family, as required by the Family and Medical Leave Act of 1993; for example, many friends and families care for each other's children, and these obligations should be recognized as valid forms of care.

¹⁴⁴ Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (Durham: University of North Carolina Press 2019); Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Random House LLC, 2d ed. 2017); Angela J. Davis, *Policing the Black Man: Arrest, Prosecution, and Imprisonment* (New York: Vintage, 2018); Michelle Alexander, *The New Jim Crow: Incarceration in the Age of Colorblindness* (New York: The New Press, 2010); Beth E. Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (New York: New York University Press, 2012); Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007).

¹⁴⁵ Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Form*, 139-167 (1989).

¹⁴⁶ Titan Alon et al., "The Impact of COVID-19 on Gender Equality," Unpublished draft, Mar. 2020, https://faculty.wcas.northwestern.edu/~mdo738/research/COVID19_Gender_March_2020.pdf.

- Communicate about sexual harassment policies clearly and consistently; ensure that processes to report, disrupt, stop, and prevent sexual harassment¹⁴⁷ are survivor-centered and promote safety; specifically, ensure that the SCO policy includes prohibitions against cyberviolence,¹⁴⁸ including, e.g., sending unwanted, offensive and sexually explicit emails or SMS messages, or offensive, inappropriate advances on social networking sites or other digital platforms;
- Communicate available pathways for potential survivors of domestic violence and intimate partner violence, especially because rates of abuse and intimate partner violence have increased during COVID-19 and because often the only non-controlled access to the outside world survivors have is during work hours;¹⁴⁹
- Minimize the requirement that women appear on video, particularly because women are socially expected to meet conventional beauty standards, which take time, money, and often technicians, especially for Black women and women of color;
- Work with employees to understand their digital and home realities;
 - For example, in some families, the child or children may have to use technology for school or may have to use video and thus much of the internet connection, and the parent cannot use the device or internet while the child is attending school.
 - Another example is asking individual employees what hours are not preferable for meetings because they have to feed or care for children or others or because they have to breastfeed or pump; the SCO should consider normalizing permitting those workers to “block” off those hours as unavailable.
- Ensure that workers know the full scope of available time off, including, but not limited to, ATO, FMLA, ADA, and others;
- Normalize the practice of putting pronouns in email signatures, in introductions, and in video conferencing name titles;
 - Gender expression is often communicated through style of dress and affect, but given the realities of telework, which often only provide the sound of someone’s voice, the SCO should consider instituting pronouns as a normal part of introductions. Just as we cannot rely on what someone wears or someone’s name for their gender, we also cannot rely on how we interpret someone’s vocal pitch, especially over Zoom or the phone, to assume someone’s gender.

2. Sexual Orientation

Given the recent Supreme Court ruling that Title VII of the Civil Rights Act of 1964’s prohibition of discrimination “because of sex” includes discrimination on the basis of sexual orientation and gender identity, the SCO is well-positioned to go beyond the federal floor and

¹⁴⁷ For additional nuance about the failures and limitations of sexual harassment programs, see Frank Dobbin and Alexandra Kalev, “Why Sexual Harassment Programs Backfire,” *Harvard Business Review*, May-June 2020, <https://hbr.org/2020/05/confronting-sexual-harassment>.

¹⁴⁸ UN Women, “COVID-19 and Ending Violence Against Women and Girls,” 2020, <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>.

¹⁴⁹ UN Women, “COVID-19 and Ending Violence Against Women and Girls.”

ensure that LGBTQ+ workers are protected. Unlike race and gender, it is unclear if the SCO tracks sexuality-related information. While we have not recommended that the SCO track such information, it is worth pointing out that stereotypical portrayals of the LGBTQ+ community are limited and unrepresentative. Nearly a third of the LGBTQ+ community in Northern California makes less than \$24,000 annually.¹⁵⁰ Only a third of the LGBTQ+ community has completed college, and only 28% of LGBTQ people living in Central/Southern Farm region of California have completed college.¹⁵¹ LGBTQ+ women and people of color are more likely to make under \$24,000 annually, with the most disparately impacted group being Latinx people.¹⁵² Trans people are much more likely to be unemployed (19% versus 7% of the general population), to earn under \$10,000 annually (19% of trans people versus 4% of the general population), and to lack employment-based insurance (74% of trans people lack insurance versus 40% of general population).¹⁵³

We could not identify COVID-specific recommendations for employers to ensure equity for LGBTQ+ workers specific to their LGBTQ+ identity. However, there are a number of broader issues that the SCO could tackle to ensure LGBTQ equity for its workers:

- Ensure that SCO’s health insurance policy covers transition-related medical care for employees and dependents;¹⁵⁴ ensure that it permits domestic partners, in addition to spouses; and ensure that it covers sexual health-related medical care, including pregnancy and family-planning services;
- Assess how to remove barriers to hiring, including, e.g., criminal records;
 - Trans people face high rates of criminalization¹⁵⁵ and are often shut out of traditional employment opportunities; SCO should remove barriers to hiring that disparately impact trans people, especially Black trans women and femmes.
- Ensure that work spaces including all-gender or gender-neutral bathroom options; ensure that bathrooms specify that they are based on gender identity; train front-line staff and managers on providing directions to bathrooms that don’t rely on them assuming someone’s gender;
- Recruit from LGBTQ+ community centers, student groups, and professional associations;
- Support workers in creating affinity groups, including an LGBTQ+ worker group;
- Ensure that SCO’s Human Resources unit has informed, professional allies for the LGBTQ+ community; communicate that employees may confidentially speak with HR about gender-related work issues if they have questions about potential outcomes of transitioning on the job; and

¹⁵⁰ “The LGBT Divide in California,” Williams Institute, Jan. 2016, <https://williamsinstitute.law.ucla.edu/publications/lgbt-divide-socioeconomic-ca/>.

¹⁵¹ “The LGBT Divide in California.”

¹⁵² “The LGBT Divide in California.”

¹⁵³ “The LGBT Divide in California.”

¹⁵⁴ “Transgender-Inclusive Benefits for Employees and Dependents,” Human Rights Campaign, accessed June 25, 2020, <https://www.hrc.org/resources/transgender-inclusive-benefits-for-employees-and-dependents>.

¹⁵⁵ “Flow Chart: Disproportionate Incarceration,” Sylvia Rivera Law Project, accessed June 25, 2020, <https://srlp.org/resources/flow-chart-disproportionate-incarceration/>.

- Be clear that the SCO values LGBTQ+ employees and wants to support those employees.

3. Disability

Disability justice organizer and activist Mia Mingus has written, “Disability is not monolithic. Ableism plays out very differently for wheelchair users, deaf people or people who have mental, psychiatric and cognitive disabilities. None of these are mutually exclusive, and are all complicated by race, class, gender, immigration, sexuality, welfare status, incarceration, age and geographic location.”¹⁵⁶ Mingus’ analysis names how disability, within the category and among other vectors of difference, is a complex dynamic. This is true, of course, for questions of racial justice (e.g., racism plays out differently for Black women than for Latinx women) and for sexuality (e.g., homophobia plays out differently for bisexual women and lesbian women). But for disability, many of us lack the skills to analyze the effects and conditions of ableism for physical disabilities and especially for invisible disabilities.¹⁵⁷

a) Physical Disabilities

Physical distancing and telework offer the SCO a unique opportunity to ensure that its physical infrastructure meets everyone’s needs. To move towards equity for people with physical disabilities, the SCO should assess whether its physical space meets ADA requirements and, if possible, the SCO should consider incorporating universal design¹⁵⁸ principles.

Another important aspect of disability equity is that many people with Multiple Chemical Sensitivities (MCS) often lack information about whether the physical spaces they access are safe for them. A leader in universal design, the Ed Roberts Campus’s website provides critical information about the invisible characteristics of the built environment so that people with disabilities can be informed about their potential risk exposure. The Ed Roberts Campus’s “About” page includes information about its air quality, ventilation systems, construction materials and furniture, cleaning products, landscaping, pest control, and Electronic, Electric, and EMF.¹⁵⁹ It also has a fragrance-free workplace policy. Though many of us can see whether a building has a working elevator or curb cuts or ramps, only people with disabilities affected by MCS and other invisible factors of the built environment will know if such disabling physical characteristics are present. The SCO should consider providing transparent, easily-accessible information about its work sites and locations to employees and potential visitors. To the extent possible, the SCO should reduce the potential exposures to triggering fragrances that people with MCS may face.

¹⁵⁶ Mia Mingus, “Changing the Framework: Disability Justice, How Our Communities Can Move Beyond Access to Wholeness,” *Leaving Evidence Blog*, February 12, 2011, <https://leavingevidence.wordpress.com/2011/02/12/changing-the-framework-disability-justice/>.

¹⁵⁷ Piepzna-Samarasinha and Leah Lakshmi, “Care Work: Dreaming Disability Justice” (Arsenal Pulp Press: 2018).

¹⁵⁸ “Design,” Ed Roberts Campus, accessed June 25, 2020, <https://www.edrobertscampus.org/design/>.

¹⁵⁹ “Design” (see n. 158).

Law Students for Disability Rights at Stanford Law School developed an accessibility checklist for planning events. While this is not directly related to COVID-related accessibility, it can be helpful in prompting critical analytical skills for developing the SCO's capacity to consider disability justice and equity moving forward. The checklist asks the following questions:

- **Path of Travel:** Is there a step-free route from the parking lot (disabled parking spaces) to the building entrance? Is this pathway clear of obstructions/barriers and suitable in all weather conditions (e.g. rainy or slippery)?
- **Entrances:** Is the primary entrance wheelchair accessible?
- **Restrooms:** Are there wheelchair accessible restrooms located nearby? Are there all-gender restrooms nearby? Know the locations of these restrooms.
- **Rooms/Auditoriums:** Are meeting rooms wheelchair accessible? If not, is this communicated?
- **Chair Setup:** Are there enough wheelchair seating locations?
- **Tables/Information:** Tables used for registration, interviewing, information display or other services/goods should be between 28-34" from the floor to the top of the table. If guests will be seated at the tables, knee space should be at least 27" from the floor to the bottom of the table.
- **Materials:** Anything provided digitally should also be provided in hardcopy. Provide an agenda in advance and stick to it.
- **ASL Interpretation:** Hire a certified ASL interpreter. (Office of Accessible Education can help with funding.) Real-time captioning, or CART, is also available. At minimum, provide written transcripts of any prepared remarks.
- **Noise and Group Size:** Close meeting room doors to block out background noise. Break large events into small groups in separate rooms when possible.
- **Announcement:** The announcement should include who to contact, how people can request accommodations, and the deadline for requests. Email communications can include accessibility information re: the physical environment.¹⁶⁰

Other groups have created checklists for creating accessible documents and communications. "Dos" include adding captions to video and audio content, using good color contrasts and large font sizes, using heading styles in digital and file formats to facilitate ease of reading for people who lack vision, among other suggestions.¹⁶¹ There are also best practice guidelines, including tips such as, "when relevant, ask others what their access needs may be. Never assume!" and "Consider what accessibility features you may need to have in place for individuals who are Deaf or hard of hearing as well as those who are blind or vision impaired."¹⁶²

¹⁶⁰ A.D. Lewis, "What is Accessibility? Why Should we Care About Accessibility?," *Law Students for Disability Rights, Stanford Law School*, 2020, on file with author.

¹⁶¹ "Inclusivity & Accessibility," *Technology Enhanced Learning at York St John University*, accessed June 25, 2020, <https://tel.yorks.ac.uk/inclusivity-accessibility/>.

¹⁶² "How to Create an Inclusive & Accessible Space," *Youth Disability Advocacy Service*, accessed June 25, 2020, <https://www.yacvic.org.au/assets/Uploads/YDAS-Accessible-Inclusive-Spaces-PosterA3.pdf>.

b) Invisible Disabilities

For workers struggling with depressive symptoms or a diagnosis of Major Depressive Disorder, the SCO should support managers to adapt their supervision strategies. Harvard Business Review recommends that managers learn about the disorder, allow a flexible schedule, simplify work scope, share deadlines as needed, and focus on positive outcomes and criticize less.¹⁶³ Moreover, “supportive performance management can be the key to continued productivity.”¹⁶⁴ For neurodivergent workers, the SCO should consider adopting flexible work schedules and co-developing strategies that work for each worker. For example, for people on the autism spectrum, they may process best by standing or pacing, or they may struggle to effectively communicate.¹⁶⁵ The SCO should work with managers and workers to ensure that workers are supervised to support and build on their strengths.

Similarly, for employees who are struggling to perform at work given the current realities of anti-Black state and police violence in the United States, the SCO could consider providing reduced workloads to workers of color, particularly Black workers. Racial trauma “refers to People of Color and Indigenous individuals’ (POCI) reactions to dangerous events and real or perceived experiences of racial discrimination . . . [including] witnessing harm to other POCI due to real or perceived racism.”¹⁶⁶ Racial trauma is no less real because it is not named in various medical books, like Major Depression is, and many of its symptoms are similar to other diagnoses.

B. Develop Effective Performance Evaluation Methods

Teleworking employees express repeated concern regarding the development or modification of existing performance evaluation methods for the realities of telework. An agency should require teleworking employees and their supervisors to take training, such as described above, about a variety of skills related to effective remote supervision, time management, communication skills as well performance evaluation methods that might be suitable for telework employees. They should discuss these methods together and explicitly outline the structure for performance evaluations that they agree upon in the Supplemental Agreement.

Below are some broad considerations for developing the framework for performance evaluation methods that supervisors can use. Please note that the following approach to performance

¹⁶³ Kristen Bell DeTienne et al., “How to Manage an Employee with Depression,” *Harvard Business Review*, January 15, 2020, <https://hbr.org/2020/01/how-to-manage-an-employee-with-depression>.

¹⁶⁴ “Supportive Performance Management,” Workplace Strategies for Mental Health, accessed June 25, 2020, <https://www.workplacestrategiesformentalhealth.com/managing-workplace-issues/supportive-performance-management>.

¹⁶⁵ Thomas Armstrong, *The Power of Neurodiversity: Unleashing the Advantages of Your Differently Wired Brain* (Da Capo Lifelong Books: 2011).

¹⁶⁶ Lillian Comas-Díaz, Gordon Nagayam Hall, & Helen A. Neville, “Racial Trauma: Theory, Research, and Healing: Introduction to the Special Issue,” *American Psychologist* 74 (2019): 1-5, <http://dx.doi.org/10.1037/amp0000442>.

evaluation was adopted from a framework developed by ICMA, the professional association for city and county managers, and, where noted as such, modified using information from our survey of best practices.¹⁶⁷

1. Substance

As previously addressed, telework can limit communication between employees and their supervisors and, as a result, can severely impact the levels of trust in the employee-employer relationship. Because face-to-face time is limited during the realities of telework, it is important for performance evaluation methods to focus on outcomes instead of activity or hours worked. In practice, template evaluation forms should require supervisors to define the scope, deadlines, and deliverables for each task or project that each team is working on.¹⁶⁸ In addition, it can be helpful to clearly establish not only the tasks but also the reasons behind them. Employees working remotely may not be able to see the “big picture” as easily as those working in person, and outlining those motivations may help your team better understand exactly what success will look like.¹⁶⁹

2. Format

The City and County of San Francisco provides for the following general approaches to performance evaluation:¹⁷⁰

- (1) Prepare an itemized list of what you expect from the employee. The list can be on a weekly, monthly, or quarterly basis. The City and County of San Francisco advises that supervisors include the employee in establishing those objectives so that the employee can provide valuable input. In addition, the City and County of San Francisco also provides that supervisors use so-called “SMART” objectives (i.e., Specific, Measurable, Attainable, Relevant, Time-based objectives).¹⁷¹
- (2) Create a document to support the agreement.
- (3) Track results in regularly scheduled meetings and progress reports.

C. Program Administration

This section provides guidance on the daily administration of teleworking programs to ensure that they continuously address employee concerns. It explains why employee input should be

¹⁶⁷ Jan Makela, “Managing Employees You Cannot See: Five Keys on How to Work Best with Staff Who Telecommute,” *ICMA*, April 27, 2018, <https://icma.org/articles/managing-employees-you-cannot-see>.

¹⁶⁸ Jason Aten, “7 Tips for Successfully Managing Remote Teams,” *Inc.*, March 16, 2020, <https://www.inc.com/jason-aten/7-tips-for-working-fsuccessfully-managing-remote-teams.html>.

¹⁶⁹ Aten, “7 Tips for Successfully Managing Remote Teams.”

¹⁷⁰ “Supervisor eLearning Module.”

¹⁷¹ The Management Center, among others, refer to “SMARTIE” goals: Strategic, Measurable, Ambitious, Realistic, Time-bound, Inclusive and Equitable. See <http://www.managementcenter.org/resources/smartie-goals-worksheet/>.

sought out during regular program modifications and how supervisors can manage teams using efficient team structures and communication channels. It emphasizes the importance of managers trusting their employees and seeking to reinforce organizational values, particularly during emergency situations.

1. Engage Employee Input in Program Modifications

The same benefits from incorporating the employee perspective during the creation of telework policies that are mentioned in the previous section (including operational efficiency and positive labor-management relations) continue to play a role as an employer administers and modifies their telework program. As the program is refined, employee perspectives should be included in the discussion.

Suggested approaches for revising teleworking policies include revisiting and renewing standard telework agreements *with employee representatives* at least annually to ensure that any issues raised by employees can be addressed in revisions.¹⁷² In addition, the telework program coordinator may themselves (or via designated departmental representatives) conduct surveys of employee satisfaction and job performance and prepare annual reports of same.¹⁷³

2. Manage Teams Effectively by Keeping Team Sizes Small and Communicating Effectively

a) Structuring teams

Due to a phenomenon known as “social loafing,” team members may reduce effort when they feel less responsible for output, which typically occurs when they are operating in large teams.¹⁷⁴ It takes only ten conversations for each person on a team of five to touch base with everyone else, but that number rises to seventy-eight for a team of thirteen. According to one study within the private sector, the ideal team size for remote work is fewer than ten people.¹⁷⁵ If making teams smaller is not an option, management may also consider a working group structure, dividing complex tasks into smaller, more manageable subtasks where each member of the team is accountable for one piece.¹⁷⁶

Management may also consider subdividing teams and making use of tools that allow separate virtual channels for work. Wade Foster of Zapier notes that at a certain size, Slack channels can become noisy. Once channels reach ten people, consider creating multiple channels (Zapier, for

¹⁷² “Employers” (see n. 119).

¹⁷³ City of San Jose, *Memorandum of Agreement*.

¹⁷⁴ Keith Ferrazzi, “Getting Virtual Teams Right,” *Harvard Business Review*, Dec. 2014, <https://hbr.org/2014/12/getting-virtual-teams-right>.

¹⁷⁵ Ferrazzi, “Getting Virtual Teams Right.”

¹⁷⁶ Mark de Rond, “Why Less is More in Teams,” *Harvard Business Review*, August 6, 2012, <https://hbr.org/2012/08/why-less-is-more-in-teams>.

example, has about a thousand channels).¹⁷⁷ It is important to section off virtual rooms for relevant work and non-work topics such as “water cooler,” “technology,” “communications,” etc.

Private Sector Model

Fundamentally, maximizing productivity occurs across three dimensions: work, workers, and workplace.¹⁷⁸ Some may frame this as the “what,” the “who,” and the “where.” Work refers to the underlying substance and mission. Workers refer to the human dimension and social connection that workers feel for themselves, with their teams, and with the organization as a whole. Workplace refers to the physical and digital space in which “workers” conduct their “work.”

At the organizational level, the SCO refers to all employees reporting to State Controller Betty Yee, through her Chief of Staff. Organizational leaders must consider the SCO’s broader mission at an enterprise level; they also set the tone and culture for working remotely. Core to their success is laying out guidelines for best practices, without setting specific policies to allow each team to define their own approach in the broad spirit of the SCO’s mission.

Chiefs or division leaders play a critical role in straddling the needs of the SCO as an organization and of their team members. These leaders could adopt a “team of teams” approach (see below) recognizing that each of their direct reports is in turn managing a team of their own.

Teams refer to working groups ranging from 5 to 100 people where regular updates and check-ins are at least feasible. At this level, leaders should seek to “overcommunicate” in this era of remote work; team leaders should seek to check-in on the mental and emotional well-being of team members, discuss pain points, and how to clear roadmaps for their team members.

Within the broader category of teams, there are three sub-groups that differ in function and form:

- **Team of teams:** Teams of teams refer to teams in which team members are leading teams of their own (either task-driven or initiative driven).^{179 180}
 - At the center is a coordinating executive team, each team member is seen as an equal partner towards achieving the organization’s objectives.
 - The model emphasizes decentralized autonomy, meritocracy, and a sense of partnership.

¹⁷⁷ Wade Foster, “How to Manage a Remote Team,” *Zapier*, last modified March 18, 2020, <https://zapier.com/learn/remote-work/how-manage-remote-team/>.

¹⁷⁸ “Increasing Organizational Resilience in the Face of COVID-19,” *Deloitte*, March 2020.

¹⁷⁹ This idea originates from General Stanley McChrystal, “Team of Teams: New Rules of Engagement for a Complex World,” (Portfolio 2015).

¹⁸⁰ See also William F. Meehan III and Kim Starkey Jonker, “Team of Teams: An Emerging Organizational Model,,” May 30, 2018, <https://www.forbes.com/sites/meehanjonker/2018/05/30/team-of-teams-an-emerging-organizational-model/#140e505e6e79>.

- **Agile Teams:** These teams are aligned against special projects and initiatives. They often consist of representatives from different divisions led by a management function.¹⁸¹
 - The team is evolving and fluid; members come and go as the nature of the problem changes.
 - The team is primarily defined by an objective that is bigger than any team could achieve single-handedly.
 - There is very little hierarchy; leadership, decision-making, and execution are decentralized but coordinated among team members.
 - Team members succeed by taking agency to enable change in any context. Successful team members are changemakers.

- **Task-Driven Teams:** Task-driven teams refer to those teams (both external and internal facing) that must execute a series of tasks driven by a manager. A manager must plan time to direct the team’s efforts.¹⁸²
 - A key element that works well with task-driven individuals is to do a daily morning check-in of 15 minutes.
 - In this session, you can ask the team member to give a quick update on what has been completed the day before and share your expectations for the day ahead.
 - Consider also a push and pull model. Assign tasks in the morning session, it might be a good idea to ask these individuals to propose what they think they could do outside of the assigned tasks and how they could further add value. They can then provide feedback on how they went the extra mile in the afternoon check-in.

b) Select Consistent Modes of Communication

It is important for an agency to use the same modes of communication (e.g., Zoom or Microsoft Teams, but not both) due to the retention and disclosure requirements for public agencies.¹⁸³ In choosing the appropriate means for communication, consult with the IT team and Program Coordinator to ensure cross-agency consistency.

In general, managers should opt for richer media (such as video chatting) whenever possible. In general, “email and richer communication media assist teleworkers in maintaining the frequency of interactions and the feeling of social support,” and “rich media helps to create telepresence, which refers to the sense of being physically present in a remote or simulated environment.”¹⁸⁴ Making regular use of video chatting can also help reduce feelings of isolation.

¹⁸¹ See generally the McChrystal group <https://www.mcchrystalgroup.com/about>.

¹⁸² “Keep Your Team Connected and Healthy When Working Remotely,” *Deloitte*, March 31, 2020.

https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Consulting/Deloitte_Remote_Working_Webinar_Slides.pdf.

¹⁸³ Sturmfels, interview, May 12, 2020.

¹⁸⁴ Mohalik, “Increasing the Adoption of Teleworking in the Public Sector.”

It is particularly useful for complex or sensitive conversations, as it feels more personal than written or audio-only communication and gives participants many of the visual cues that they would have if they were face-to-face.¹⁸⁵

To reduce the impact of teleworking on professional isolation, managers may use higher leader-member exchange (LMX), a management style based on adopting an appropriate stance when working with a particular subordinate. Rather than viewing the supervisor-subordinate relationship as contractual and one-size-fits-all, this framework recognizes it as a partnership. Studies have shown that higher LMX reduces the negative effects of telework.¹⁸⁶

c) Set Guidelines for Team-based Interactions

There are three kinds of distance in remote collaboration: physical (place and time), operational (team size, bandwidth and skill levels), and affinity (values, trust, and interdependency).¹⁸⁷

According to Dhawan and Chamorro-Premuzic, the best way for managers to drive team performance is by focusing on reducing affinity distance. This may involve switching most remote communication to regular video calls, which are a richer form of communication and a better vehicle for establishing rapport and creating empathy than e-mails or voice calls.¹⁸⁸

Structured daily check-ins are used by many successful remote managers and may take the form of a series of one-on-one calls, if the employees work more independently, or a team call, if their work is highly collaborative.¹⁸⁹ It is important that the calls are regular and predictable, and that they create an environment in which employees know that they can consult with their managers and their concerns will be heard.¹⁹⁰

Managers should also establish communication norms within their teams, much as they would within a physical office environment. For example, Merck created acronyms for their digital communications like “Four Hour Response (4HR)” and “No Need to Respond (NNTR).”¹⁹¹ Clarify rules of engagement (e.g., “We use videoconferencing for daily check-in meetings, but we use IM when something is urgent.”), and ensure that employees know when team members are available through updates or signals, such as the “available,” “away,” and “do not disturb” functions on many communication applications.¹⁹²

¹⁸⁵ Barbara Z. Larson, Susan R. Vroman, and Erin E. Makarius, “A Guide to Managing Your (Newly) Remote Workers,” *Harvard Business Review*, March 18, 2020, <https://hbr.org/2020/03/a-guide-to-managing-your-newly-remote-workers>.

¹⁸⁶ de Vries, Tummers, and Bekkers, “The Benefits of Teleworking in the Public Sector: Reality or Rhetoric?,” 570.

¹⁸⁷ Erica Dhawan and Thomas Chamorro-Premuzic, “How to Collaborate Effectively If Your Team is Remote,” *Harvard Business Review*, February 27, 2018, <https://hbr.org/2018/02/how-to-collaborate-effectively-if-your-team-is-remote?registration=success>.

¹⁸⁸ Dhawan and Chamorro-Premuzic, “How to Collaborate Effectively if Your Team is Remote.”

¹⁸⁹ Larson, Vroman, and Makarius, “A Guide to Managing Your (Newly) Remote Workers.”

¹⁹⁰ Larson, Vroman, and Makarius, “A Guide to Managing Your (Newly) Remote Workers.”

¹⁹¹ Dhawan and Chamorro-Premuzic, “How to Collaborate Effectively if Your Team is Remote.”

¹⁹² Larson, Vroman, and Makarius, “A Guide to Managing Your (Newly) Remote Workers.”

Finally, managers should keep an eye on communication among team members (to the extent appropriate), to ensure that information is being shared as needed.¹⁹³ As teams continue to work remotely, individual norms may form, such as people's preferred response time, writing style, and tone.¹⁹⁴

Research suggests that decreased work visibility can lead to both less work engagement and lower job satisfaction. Large teams, as discussed previously, increase this lack of visibility. The adoption of distance meetings changes how work activities are made visible to several different audiences, such as clients and co-workers.¹⁹⁵ As a result, workers may increase their levels of impression management due to fear that their performance will otherwise not be seen or acknowledged.¹⁹⁶ Managers can take steps to facilitate work visibility amongst coworkers by developing new ways of making work by employees visible to supervisors and co-workers. For example, an internal newsletter, periodic updates on Slack, or recognition emails can ensure that workers are recognized for their contributions.

d) Trust Employees

Managers who supervise remote employees often worry about the lack of visibility into the workflows and routines of their direct reports when they work remotely. According to a Gartner's snap poll, 76% of HR leaders reported the top employee complaint during the coronavirus outbreak as "concerns from managers about the productivity or engagement of their teams when remote."¹⁹⁷ However, these worries are often overblown. Employees who work from home often manage their time so as to leverage the time of day when they feel most productive, and they do not suffer unnecessary interruptions to the degree they do in the office.¹⁹⁸ Remote workers record an average of four more hours per week than their on-site equivalents, according to data from Gallup's 2013 State of the American Workplace report.¹⁹⁹ Similarly, Stanford economist Nicholas Bloom found in a study comparing traditional and

¹⁹³ Larson, Vroman, and Makarius, "A Guide to Managing Your (Newly) Remote Workers."

¹⁹⁴ Larson, Vroman, and Makarius, "A Guide to Managing Your (Newly) Remote Workers."

¹⁹⁵ Hanna Timonen and Johanna Vuori, "Visibility of Work: How Digitalization Changes the Workplace," in *Proceedings of the 51st Hawaii International Conference on System Sciences, Hilton Waikoloa Village, HI, Jan. 3-6, 2018*: 5075 DOI: 10.24251/HICSS.2018.634.

¹⁹⁶ Zoe Barsness, Kristina Diekmann, and Marc-David Seidel, "Motivation and Opportunity: The Role of Remote Work, Demographic Dissimilarity, and Social Network Centrality in Impression Management," *Academy of Management Journal* 48, no. 3 (2005): 414, DOI: 10.5465/AMJ.2005.17407906.

¹⁹⁷ Jackie Wiles, "With Coronavirus in Mind, Is Your Organization Ready for Remote Work?," *Gartner*, March 3, 2020, <https://www.gartner.com/smarterwithgartner/with-coronavirus-in-mind-are-you-ready-for-remote-work/>.

¹⁹⁸ Wiles, "With Coronavirus in Mind, Is Your Organization Ready for Remote Work?"

¹⁹⁹ "Remote Workers Log More Hours and Are Slightly More Engaged," *Gallup* (blog), July 12, 2013, <https://www.gallup.com/workplace/>.

remote employees that the remote workers performed thirteen percent more work overall than their in-office counterparts.²⁰⁰

A critical factor when thinking about trust in the employee-employer relationship is how effective a manager is at handling conflict, which may not be as readily apparent in a virtual environment. Managers should address perceived discontent as early as it is noticed, as unchecked emotions in the virtual environment can erupt into sequences of negative comments, which are difficult to resolve asynchronously. In addressing conflicts, managers should limit input to only the concerned individual and avoid sending messages dealing with the potential conflict to the entire team.²⁰¹

e) Reinforce Organizational Values

During periods of uncertainty, employee misconduct increases by as much as thirty-three percent.²⁰² Managers must continue to model the correct behaviors and encourage employees to call out unethical conduct. According to Sejal Thakkar, an employment law attorney with TrainXtra, new issues will likely come up during this pandemic, including disability complaints and discrimination complaints. Harassment and diversity and inclusion trainings are very important now, as microaggressions and unconscious bias as a result of the pandemic are increasing in frequency. Therefore, the employer should provide training to managers to ensure that they have a complete understanding of the complaint process. Thakkar also suggests that organizations designate an individual to handle and investigate COVID-19 related complaints, which may need to be handled differently.²⁰³

3. Effective Management

For telework to be successful, managers must be effective in their new roles and in new modes of communication, especially regarding giving feedback and support.

The OPM has also provided guidance to federal agencies on how to be an effective manager of remote employees.²⁰⁴ Their recommendations include:

²⁰⁰ Nicholas Bloom et al., “Does Working from Home Work? Evidence from a Chinese Experiment,” *The Quarterly Journal of Economics* 130, no. 1 (2015): 165, <https://doi.org/10.1093/qje/qju032>.

²⁰¹ Sirkka L. Jarvenpaa and Dorothy E. Leidner, “Communication and Trust in Global Virtual Teams,” *Organization Science* 10, no. 6 (1999): 812, <https://doi.org/10.1287/orsc.10.6.791>.

²⁰² “Gartner Identifies Six Initiatives HR Can Undertake to Help Managers Maintain Employee Performance and Engagement During the Coronavirus Pandemic,” *Gartner*, March 25, 2020, <https://www.gartner.com/en/newsroom/press-releases/2020-03-25-gartner-identifies-six-initiatives-hr-can-undertake-t>.

²⁰³ “Human Resources: Balancing Urgency & Equity during COVID-19,” *Nonprofit Quarterly*, April 23, 2020, <https://nonprofitquarterly.org/human-resources-balancing-urgency-equity/>.

²⁰⁴ *Guide to Telework in the Federal Government*, United States Office of Personnel Management, April 2011, <https://www.telework.gov/guidance-legislation/telework-guidance/telework-guide/guide-to-telework-in-the-federal-government.pdf>

- (1) Lead By Example: Managers should “be committed to using telework to the fullest extent possible” because a manager’s own practice is a key driver of employee perception and “non-participation of supervisors may send a non-verbal message of disapproval.”
- (2) Understand and Assess the Needs of the Group: Rather than implementing remote work in a piecemeal fashion, it is more effective to implement it strategically “by making broader determinations on employee eligibility and notifying employees.”
- (3) Use Effective Performance Management Practices: The best agencies establish performance standards such that remote employees are held to the same standards as in-office employees. All workers should be held accountable to the results they produce and “[g]ood performance management techniques practiced by a manager will mean a smooth, easier transition to a telework environment.”
- (4) Communicate Expectations: Open transparency is a key indicator of success. A core focus should be on facilitating communication with all members of the workforce and maintaining fairness in assigning work and rewarding performance. For example, “[m]anagers should avoid distributing work based on ‘availability’ as measured by physical presence, and avoid the pitfall of assuming someone who is present and looks busy is actually accomplishing more work than someone who is off-site.”²⁰⁵

Agencies should lay out evaluation methods in their remote work agreements, employee handbooks, or wherever they keep telework resources available for employees. Agencies should ensure that performance evaluation approaches tailored to the realities of telework are provided to both teleworking employees and their supervisors during training. Finally, although the exact structure of performance evaluation should be subject to discretion by the teleworking employee and her supervisor, agencies should stress frequent communication and clear expectations.

Examples from local government approaches include:

The City of Los Angeles includes its recommended approach to employee management in their COVID-19 Telecommuting Application and Agreement.²⁰⁶ The City instructs that supervisors discuss assignments and tasks that can be done from an alternate location with employees. The City also instructs that the employee and her direct supervisor establish how frequently they will check-in– as well as their method of preferred communication.

The City and County of San Francisco has a detailed web portal for employees and managers that outlines the City’s approach to telework as well as the process by which employees can participate in the program.²⁰⁷ Program participation requires that both the teleworking employee as well as her direct supervisor must complete virtual trainings.²⁰⁸

²⁰⁵ *Guide to Telework in the Federal Government.*

²⁰⁶ “Emergency Preparedness Handbook,” edited by Emergency Management Department: City of Los Angeles, City of Los Angeles. 2017.

²⁰⁷ “Telecommute Policy and Program” (see n. 117),

²⁰⁸ City & County of San Francisco. N.D.. “Employee eLearning Module.” [Interactive video]. https://sfdhr.org/sites/default/files/Telecommuting_Employee_PORTAL/index.html.

The training modules also provide an overview of management practices that should be modified for the realities of telework processes.²⁰⁹ In particular, managers are directed to “manage by objective.”²¹⁰ A short summary of the City’s approach is included below:

- (1) The City instructs the supervisor to prepare an itemized list of what is expected from the employee. The list can be on a weekly, monthly, or quarterly basis. The City also notes that the employee should be included in establishing those objectives so that the employee can provide valuable input.
- (2) The City advises that the supervisor and employee structure objectives using the so-called “SMART” framework, where objectives should be Specific, Measurable, Attainable, Relevant, and Time-based
- (3) The City also requires that the supervisor create a document to support the agreement, track results in written records, and share those results in regularly scheduled meetings with the employee.
- (4) Finally, the City also provides that evaluation criteria should be clearly laid out in the aforementioned document.

One of the concerns we heard was about performance evaluation and management. In particular, SCO appreciates the unique challenge that remote work may create in maintaining productivity on the one hand, and ensuring fair and equitable treatment of employees on the other. Therefore, SCO is interested in more effective processes for performance evaluations and the establishment of "new norms" with employees. All of the most recent guidance around new modes of evaluation indicate that managers now must learn how to manage and evaluate performance and not presence.²¹¹

Research has echoed the concerns of SCO. The interpersonal relationship between raters and ratees is one of the most important predictors of a successful performance appraisal system.²¹² The physical distance created by remote work intensifies the tension associated with performance appraisal. Employees tend to feel it imperative to inform their employers of their efforts and performance, and spend more time and energy managing their workplace image,²¹³ and the anxiety is intensified when demographic dissimilarity is present.²¹⁴

There are three general rules for performance evaluation:²¹⁵

²⁰⁹ "Supervisor eLearning Module."

²¹⁰ "Supervisor eLearning Module."

²¹¹ Laurel Farrer, “Are Virtual Jobs the Multi-Tool of Diversity and Inclusion,” *Forbes*, March 7, 2020, <https://www.forbes.com/sites/laurelfarrer/2019/03/07/are-virtual-jobs-the-multi-tool-of-diversity-and-inclusion/#533d3ee869d4>.

²¹² Timothy A. Judge and Gerald R. Ferris, "Social Context of Performance Evaluation Decisions," *Academy of Management Journal* 36, no. 1 (1993): 80.

²¹³ Barsness, Diekmann, and Seidel, "Motivation and Opportunity," 414.

²¹⁴ Barsness, Diekmann, and Seidel, "Motivation and Opportunity," at 414.

²¹⁵ Trina Hoefling, *Working Virtually: Transforming the Mobile Workplace*, (Sterling, VA: Stylus, 2017), 143.

- (1) Relevance. Be sure the information you collect is relevant to the performance of the job or the effectiveness of the team.
- (2) Completeness. The evaluation system should not be biased by recent and unusual events.
- (3) Fairness. The managers should focus on perceived fairness of performance appraisal. A perceived fair system has the following characteristics²¹⁶:
 - transparently link employees' goals to business priorities and maintain a strong element of flexibility
 - invest in the coaching skills of managers to help them become better arbiters of day-to-day fairness
 - reward standout performance for some roles, while also managing converging performance for others.

We reviewed SCO's forms for Manager/Supervisor's Performance or Probation Report²¹⁷ and make the following observations:

- a. The form serves as a structured performance management tool for probation report and for annual performance appraisal report. Performance management is a continuous process and some organizations are moving to a much shorter evaluation circle. Patagonia, a designer and manufacturer of outdoor apparel and accessories, encourages employees to check in at least quarterly with their managers. Adobe changed its performance management approach in 2012, abolishing annual performance appraisals, ratings, and a forced distribution curve and moving to an approach they called "Check-ins," which is a continuous process. Either managers or employees can request a check-in at any point during the year.²¹⁸
- b. Besides the periodic performance appraisal, managers should also be encouraged to engage in constant communication with employees and give feedback and coaching. One bad management habit that may be exacerbated in virtual work settings is lack of feedback.
- c. The form consists of a general rating and a breakdown of job function-based rating. One potential issue is whether the form will allow for expectations to be clearly communicated to the employees and other team members. Ideally the expectations should be set collaboratively with the employees beforehand, and made transparent.
- d. The form incorporates input from both the managers and employees. SCO may also consider soliciting input from other team members. In addition, some organizations allow employees to evaluate managers.

²¹⁶ Bryan Hancock, Elizabeth Hioe, and Bill Schaninger, "The Fairness Factor in Performance Management," *McKinsey Quarterly* 2 (2018): 45-54.

²¹⁷ SCO-HR 009.

²¹⁸ Nathan Sloan et al., "Performance Management: Playing a Winning Hand," February 28, 2017, <https://www2.deloitte.com/us/en/insights/focus/human-capital-trends/2017/redesigning-performance-management.html>.

- e. Managers who know the most about individual employees, their capabilities, and their development needs, are the most important component of the performance management process. Investment in managers' soft skills needed to conduct meaningful performance conversations may have a huge return.

D. Tools for Broader Operationalization and Assessment of Equity

Recognizing the importance of equity and talking about it are the easy parts; determining what equitable results look like is challenging, and measuring the right results is even more difficult. We do not have all of the answers, but from our review of the literature, we have summarized key approaches below, should the SCO seek to engage in a broader effort around equity beyond a telework program.

First, the SCO should assess its baseline. This will be the quantification of SCO's status quo. Throughout this process, the SCO should consider the following questions:

- (1) Who is "measuring" (assessing employee performance, determining employee efficacy)? What are they measuring? Against what criteria are employees and processes being evaluated?
- (2) What are the benefits of this policy or management plan and who is most likely to receive them?
- (3) What are the burdens and who is most likely to bear them?
- (4) What are different options to make this policy equitable for people of color, women and trans people, people with disabilities, and LGBTQ people?

There are other aspects of SCO's baseline, too. SCO could measure demographics of participation in upward mobility programs and the success rates of those programs, the demographics of internal promotions, the demographics of mid-level management, and the demographics of executive leadership. This information could be analyzed by comparing the demographic breakdowns at different levels of the organization. For example, comparing mobility from non-management to middle-management and from middle-management to executive leadership, based on the demographics overall and for each level.

SCO could also gather qualitative feedback on employee perceptions of equity, representation, and upward mobility opportunities. For example, in our conversation with SEIU, it seemed as if SEIU was unaware of upward mobility programs for the state. Given the specific interests of unions, this makes sense, but this also suggests there are opportunities for the SCO to enhance equity.

Second, the SCO should determine what equity would look like on an organizational level—starting with broad goals (likely representation, upward mobility, worker happiness) and then drilling down to specific goals. SCO, most likely, will focus on how to enhance diversity at all levels of the organization. This would likely rely on the above analysis. The SCO could leverage the above data analysis to identify the greatest areas of need. For example, if the biggest gap between women of color representation is between middle management and executive leadership, then perhaps the SCO could target interventions for moving women of color, and in

particular, Black women or Latina women, from middle- to executive management. However, if the biggest disparity concerns people with disabilities, perhaps the SCO could determine if there were differences-in-differences. If people with physical versus invisible disabilities were more or less impacted, then perhaps the possible remedies could look different.

Throughout this process, the SCO should consider the following questions:

- (1) Where do we see disparities in the numbers? Among which groups?
- (2) What can we learn from histories and narratives to better understand these numbers?
- (3) What questions still remain? What information do we wish we had?
- (4) Is the “outlier” data based on a specific type of data (e.g., qualitative assessment of efficiency vs. quantitative measurement of output)?
- (5) Have we discussed individual issues with employees about their experiences, needs, or other issues? If so, what did we learn from those discussions?
- (6) Based on identified deficiency or outlier, what management support plan can be implemented to strengthen employee engagement and management relationship-building?
- (7) How can SCO help meet this employee's needs? If the issue is about implicit bias of a manager, SCO could meet the employee's needs by training the manager or by focusing on quantitative output, for example.

Third, related to the second point above, the SCO should develop processes to continually assess whether its goals, strategies, hiring, and policies will negatively impact specific sub-populations within the SCO. In short, SCO should develop methods to measure equity and institutionalize them.²¹⁹ Below, we spell out methods of measuring equity. But in short, the SCO should identify

²¹⁹ One potential resource is Racial Equity Tools, “What Are Some Statistical Methods for Assessing the Significance of Differences, Changes, and Trends?” 2013, https://www.racialequitytools.org/resourcefiles/What_Are_Some_Statistical_Methods_For_Assessing_the_Significance_Of_Differences_Changes_And_Trends.pdf. This four-page document describes the uses of and differences between frequency distributions, means, medians, modes, standard deviations, measures of variability, and measures of associations, among others. For middle- and upper-management, this document could be useful in understanding why data collection and analysis at team, unit, and organization-wide levels is critical. Additional resources include Racial Equity Tools, “What are Some Statistical Methods for Indicating Whether an Activity Made an Important Contribution to Change?,” 2013, https://www.racialequitytools.org/resourcefiles/What_Are_Some_Statistical_Methods_For_Indicating_Whether_An_Activity_Made_An_Important_Contribution_To_Change.pdf; Racial Equity Tools, “What Are Some Non-Statistical Methods For Indicating Whether An Activity Made An Important Contribution To Change?” 2013, https://www.racialequitytools.org/resourcefiles/What_Are_Some_Non-Statistical_Methods_For_Indicating_Whether_An_Activity_Made_An_Important_Contribution_To_Change.pdf.

choice points. Choice points “are decision-making opportunities that influence outcomes.”²²⁰ At each choice point, SCO should ask:

- (1) Where are the decision-making points that affect outcomes?
- (2) What decisions/actions may be reinforcing the status quo, implicit bias and current inequities?
- (3) Who makes those decisions and what additional information do they need to know or learn to understand the potential equity-related implications of their decision?
- (4) What alternative action options could produce different outcomes?
- (5) Which action will best advance equity and inclusion?
- (6) What reminders, supports and accountability systems can be structured into routine practices to keep equity as a high priority?

Moreover, the part of the processes should address who is responsible for corrective action. The ultimate goal of this process is to *change* how the SCO operates to ensure it is as equitable in its processes and actions as it can be. To that end, based on the process outline above, the SCO should also determine the reporting timeline for data gathering, analysis, feedback, recommendation, and implementation. Questions to consider for this process include,

- (1) Based on the data, what steps should the SCO take in the next 60, 120, and 365 days to ensure that the SCO addresses deficiencies in its process and the ensure that the SCO is supporting employees and managers in meeting its organizational mission?
- (2) Who is responsible for planning, implementing, and reporting back on those steps?
- (3) How do these changes fit with SCO's overall workflow and policy change process?
- (4) How will SCO communicate these results and changes to employees and managers?

VII. ISSUES OF NOTE OUTSIDE RESEARCH SCOPE

While outside the scope of the goals of this Policy Lab, we wanted to also bring a few issues to the SCO’s attention that could impact either the development of an effective telework program or its implementation.

We are aware that contract negotiations will need to take place both due to the regular course of time and changes to the State’s budget. Collective bargaining agreements generally seek to obtain strong worker supports that are based upon providing the same level of benefits and opportunities to all of the bargaining unit members. An equity approach to implementation of a telework program might ask instead that particular circumstances merit different benefits and resource allocation. It will also be important for the SCO to take into account that there may be

²²⁰ Terry Keleher, “An Introduction to Racial Equity Assessment Tools: Governing For Racial Equity,” *Race Forward*, 2014.

employee classifications that will not be able to benefit at all from the flexibility and positive aspects of telework. In negotiations, it will also be important for SCO to solicit and receive important information from workers about their experiences of telework within the COVID-19 context that can help inform development of effective remote work policies and programs. It should also be noted that some municipalities made explicit when creating emergency telework programs that they could not be considered a change in past practices or working conditions.

For planning purposes, the SCO should also take into account the potential use by electricity providers of public safety power shut-offs. Contingency plans should be developed for this likely occurrence, which will impact the ability of employees to effectively work from home, for lack of electrical power. The SCO's Business Continuity Plan anticipates creation of alternative, off site work places and the necessary equipment and supplies to carry out essential functions. However, if some of those supplies or some equipment have been deployed to employee homes due to telework, there needs to be a system created to ensure that they are available for use at designated locations.

In addition, SCO should consider the impact of telework on the employees who have to be on site. There will be emotional as well as substantive impacts. Emotionally, workers who are deemed ineligible for telework might experience resentment that co-workers are able to enjoy the flexibility and other benefits of being able to work from home. The employee classifications that require certain workers to be on site might also reinforce a hierarchy that has equity implications due to education levels and racial or class differences. Substantively, SCO should plan for new emergency response options, should there have been designated teams to respond to variety of on site types of emergencies or crisis situations, including experiences of an earthquake or similar natural disaster, a health emergency, or an unstable individual or partner of a domestic violence survivor gaining entry to an SCO office.

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