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Director of Administration

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Date: August 22, 2024

To: Marissa Burack
Employee Group 1871

From: Greg Brockmeyer
Director of Administration

Subject: Telecommuting Appeal – Nina Gregerson

A Telecommuting Appeal was held on July 31, 2024. Due to this being the County's first Telecommuting Appeal under the Temporary Exception, there was some misunderstanding of how to schedule the parties for this hearing. Public Health was asked to submit a written justification for their decision by August 14, 2024. The Department submitted its response by this deadline.

I have reviewed that written response and I have decided to uphold the Department's decision to deny the Employee's Telecommuting Appeal.

Summary of the Appeal

The Employee, Nina Gregerson, works for Public Health Madison Dane County (PHMDC) as a Health Education Coordinator. Public Health has a policy for all employees of the Policy, Planning, and Evaluation Division that allows each employee in that Division to work remotely up to two days a week, with the possibility of additional days based on request (e.g. a home repair). Nina requested to work remotely for five days of the week. The Department denied the employee's request, citing the policy for the Division of working remotely only two days of the week. The Employee and the Employee Group have appealed under the process allowed under the Temporary Exception to the Employee Benefit Handbook.

Appeal Decision

The Employee Group contends that by denying Nina Gregerson the ability to work remote for five full days a week, the County is not "expanding telecommuting to the extent possible." The language of the temporary exception is notable the words "encouraged" and "work towards" indicate that the County is to apply a deferential standard when evaluating telecommuting requests rather than using one that is mandatory. (See the language of the Temporary Exception: 1.2 Supervisors are encouraged to continue to work towards expanding telecommuting to the extent possible to attract and retain a diverse, highly-skilled workforce).

As a result, this section does not abrogate a manager's authority to plan or control the operation of the work force. (See EBH 1871, Management Rights, §1.) Additionally, item 1.1 of the Temporary Exception indicates that Telecommuting Decisions are management decisions that are included within the Management's ability to direct the workforce.

The Employee Group also argues that because PHMDC has a division-wide policy for telecommuting, it is not allowing individual supervisors to make decisions about staff's availability to make telecommuting decisions. However, in clarifying guidance issued by the Department of Administration, "Supervisors" and "Managers" are used interchangeably. That document writes: " 'Supervisors' is intended to broadly apply to managers, supervisors, and administrators as a group. Supervisors should follow the Direction of their Department and Division when considering to approve a Telecommuting Agreement."

The Employee Group further argues that having a division-wide policy means that PHMDC is not making a determination based on the job duties of each employee individually and that this violates the Telecommuting Temporary Exception. Public Health has reviewed the situation for all employees in this division and has determined based on all of the employees in the Division that policy of working 3 days in the office is in the best interest of the entire Division. This determination was communicated to all employees in the Division when the policy was established in September 2023. Part of the reason for that determination was that there are a number of unmet deliverables for the entire division. For Nina specifically, there are a number of unmet deliverables on projects to which she is assigned.

Finally, the Employee Group argues that PHMDC management has not made a determination that telecommuting is detrimental to the County or the Department. The language of the exception does not require such a finding. Again, the language of the exception says that these are management decisions that are included within the management's ability to direct the workforce. Beyond that, Public Health has articulated many reasons to employees in the Division for why the Division policy with respect to Telecommuting is necessary. Chief among those reasons are unmet deliverables and the need to back up certain on-site staff (Syringe Services Program). Not completing deliverables and not being able to back on-site staff would be detrimental to the County and the residents served.

If there are any questions regarding this decision, please contact me at me at 608-266-4519.

Sincerely,



Greg Brockmeyer
Director of Administration

CC: Nina Gregerson
Aurielle Smith
Janel Heinrich
Nick Bubb