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Some Hotelers Allowed Home Duty Stations

Change affects those within 50-mile radius

Hoteling employees living within a 50-mile radius of the Alexandria, Va., USPTO headquarters may elect to change their duty stations to their home offices, thereby negating the requirement to report to headquarters for two days per biweek, according to an agreement recently signed by POPA and the USPTO.

In exchange for the big reduction in travel time and expense, the 50 Mile Radius Agreement, signed in March 2010, states that hoteling employees who voluntarily agree to change their official duty stations to their homes:

- Are not eligible for relocation expenses, either to their home offices or back to headquarters.
- Must report to headquarters to meet all hoteling program and performance plan requirements, to attend training and meetings, to receive supplies and equipment, to repair or exchange equipment, and as otherwise required by the agency.
- Are not eligible for travel expenses, whether travel to or from headquarters is mandatory or voluntary.
- Must notify and request of the agency any changes in duty station, including a move to a new home or change back to headquarters, eight weeks in advance.
- Must meet all other requirements of the hoteling program.

Hoteling employees who are not examiners or

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An approximation of the 50-mile radius for hoteling examiners' use. To learn if your home is within the accepted area, go to *www.gpsvisualizer.com/ calculators#distance_address*

Examination Time Study Underway

We asked for it—we got it.

Examiners for years sought a reassessment of the production goal and count system. Facing pressure from Congress and stakeholders, the USPTO has now agreed and has contracted for a major study of production expectancy goals. To show what patent examination is really like, it's time for examiners to step up and accurately report their experiences through the examination time study.

The contractor, Manhattan Strategy Group, invited 850-950 randomly selected examiners from across grade levels and technologies to participate in the six-week study, which began Feb. 28. The goal, as described in the participant training materials, "is to capture the total amount of time you are spending on examining cases, overtime inclusive (whether compensated or voluntary)."

With the data collected, the group will:

- Determine the average amount of time examiners across the office spend on an examination (including paid and unpaid overtime);
- Compare the average amount of time by technology areas that examiners spend to complete an examination;
- Calculate the average amount of time by examination steps that examiners spend reviewing applications.

The participating examiners received training on how to properly complete special biweekly timesheets for the study and got "other" time for the training and for completing the additional timesheets.

POPA supports the study and anticipates that the data will steer the USPTO in creating a production goal system that more fairly allots the time necessary for a quality examination. POPA representatives are members of the union-management group overseeing the contractor and helping to guide the effort.

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Home Duty Stations

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otherwise not on the examiner special rate pay schedule who wish to change their duty station to their home may inadvertently be changing to a lower locality pay rate. Before changing, these employees should consult Appendix A of the agreement to see if their home duty station sits in a different pay area. The full agreement is available at *www.popa.org*, click on Useful Information, then Agreements.

For all interested hoteling employees, some duty stations may be outside of their current health insurance coverage area, most often affecting health maintenance organization (HMO) insurance plans. Concerned employees should check the Office of Personnel Management Web site (*www.opm.gov*) to see if their health insurance coverage would be affected. If so, and employees change duty stations, they will have up to 60 days to select from plans available in the area of their new duty station.

Changes in Performance-related Requirements

Under the original Patents Hoteling Program (PHP) and the Patents Telework Program (PTP), employees were removed from telework entirely if they received a written warning of unacceptable performance.

The recently signed agreement changes that situation. An employee's performance will no longer affect his or her continued participation in hoteling or the Increased Flexitime Program (IFP). Employees participating in the Patents Telework Program who receive a written warning may continue to telework one day per week (up to ten hours). If the number of telework hours for participants is generally increased, employees on written warnings will remain limited to telework one day per week (up to ten hours), unless the parties agree otherwise. Teleworking employees who successfully complete the written warning period will be permitted to work up to the agreed upon program limits.

POPA and the USPTO agreed that employees should consider relocating to the USPTO if they think that teleworking is contributing to their performance issues. "Supervisors and employees are encouraged to discuss this option," states the new agreement.

Hotelers Beyond the 50-mile Radius

The 50-mile radius represents the largest area allowed under current statute and regulation to be considered a "local commuting area" for employees at a federal agency. Within the local commuting area, an agency is not required to compensate employees for travel time and expenses. Outside that 50-mile radius, however, the situation changes significantly.

POPA has long advocated enabling hotelers who live outside of the 50-mile radius to change to a home duty station. However, the USPTO maintains that to do this under current statutes and regulations would require the agency to pay for those employees' travel expenses, including travel time, travel costs, hotel stays and *per diem* expenses, whenever they are needed at headquarters. At this time, the USPTO has determined that such costs are prohibitive and has refused to change the duty station of employees living outside the 50-mile local commuting area. Consequently, these employees must continue to report to the USPTO headquarters in Alexandria at least two times per pay period.

POPA supports allowing these long-distance hotelers to make the duty station choice as long as POPA has the opportunity to negotiate protections for those employees. Without agreed-upon safeguards in place, managers could require hotelers to fly in and stay at hotels at their own expense without valid reasons.

POPA hopes such an agreement is the next step in building an effective nationwide USPTO workforce.

How are you doing?

The basics of mid-year review

Every year in April, supervisors and employees meet to discuss employees' progress for the first two quarters of the fiscal year. Unlike the end-of-year performance rating, the mid-year review is only a progress review, not an official performance rating. See Section B of your Performance Appraisal Plan (PAP), on the page titled "Instructions for Completing the Performance Management Record."

During mid-year progress reviews for examiners, your supervisor will review a random sampling of your cases. The meetings are usually short and, for the vast majority of people, not memorable. For most, a short, simple comment—such as "meets expectations" or "your progress in this element, to date, is good" or "progress is up to expectations"—will be noted under each performance element. You may get a copy of notes summarizing work that was reviewed. You will be asked to initial a paper noting that you were given your mid-year review. Initialing does not mean you agree with the review, it means the review meeting was held, so go ahead and initial the paper after the review.

However, the mid-year review can signal employees that their performance is not going well. If the supervisor notes that a performance element "needs improvement" or "has deficiencies," your situation is potentially serious. Ask your supervisor how you can improve, how you can address deficiencies and/or modify your work to avoid deficiencies. Ask questions until you understand where you need to, and how you can, improve your performance.

For examiners, your performance may have deficiencies serious enough to justify a performance-based warning at mid-year. Even if you don't receive a performance warning, you should heed any indications of performance problems. Your supervisor is obligated to assist you to improve in areas of noted deficient performance. [See Section B, Step 1(c), as mentioned in the first paragraph above.]

If your supervisor identifies cases with problems, ask for

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How are you doing?

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clarification on whether or not these problems rise to the level of being considered clear errors in your PAP. Clear error/deficient performance is defined in the Examiner PAP as "where a reasonable SPE [supervisor] could not have permitted the performance of the examiner. If the performance of the examiner is reasonable and that proposed by the SPE is reasonable, this would represent an honest and legitimate difference of opinion and does not constitute a deficient performance."

If you disagree with the error(s), your first step is to discuss the case(s) with your supervisor and request reconsideration. If your supervisor refuses to discuss or meet with you, or stands by the error call, then let your supervisor know that you plan to follow up with your technology center director. You won't know whether or not errors identified at mid-year will affect your year-end rating, but if you believe errors called are not proper, it is worth trying to reverse them.

If your supervisor communicates a significant number of clear errors at mid-year and you want to know how they may affect your year-end rating, contact a POPA representative to discuss your situation.

Leave Without Pay: Entitlement or Privilege?

Leave without pay (LWOP) can be either an entitlement or a privilege. It all depends on what type of LWOP an employee requests. Some incorrectly think all they have to do is ask their supervisor to get the time off. LWOP is a lot more complicated.

So what's the difference between requesting leave without pay and requesting such leave under the Family and Medical Leave Act (FMLA)?

Leave Under the Family and Medical Leave Act

The FMLA is an entitlement under federal law. If an employee meets the requirements, the unpaid FMLA leave must be granted. The law provides federal employees with up to 12 weeks (480 hours) of unpaid leave during any 12-month period for:

- the birth of a child of the employee and the care of that child;
- the placement of a child with the employee for adoption or foster care;
- the care of a spouse, son, daughter or parent of the employee who has a serious health condition; or
- a serious health condition of the employee.

The employee seeking FMLA leave must provide notice at least 30 days in advance or as soon as practicable. Medical certification may be required—if it is required and not produced within 30 calendar days from when the agency makes the request, the employer can charge the employee as absent without leave (AWOL) or the employee can request paid leave or LWOP.

FMLA leave can be taken intermittently or all at once and is in addition to other paid time off. Employees can substitute paid leave (annual or sick) for unpaid leave.

An employee can choose to use FMLA unpaid leave while still carrying a balance of paid leave. The employer may not demand that paid leave be exhausted before FMLA leave is taken, and the employer may not force an employee to use FMLA leave, though regular LWOP may not be granted.

"Military family leave" provides for 26 weeks of LWOP in a single 12-month period, including the "regular" FMLA leave, for an employee to provide care for a service member with a serious illness or injury. The service member must be a spouse, son, daughter, parent or next of kin. This leave can only be used once.

Additional FMLA Policies

Separate from the 12 weeks of FMLA discussed above, an employee may use 24 hours of LWOP in a 12-month period for:

- School and early childhood educational activities, including parent-teacher conferences, childcare facility interviews and volunteer activities. "School" includes elementary, secondary, Head Start and childcare facilities.
- Routine family medical purposes (medical and dental appointments—not covered by FMLA). This is for when no sick leave is available.
- Elderly relatives' health care needs (medical or dental appointments or other professional services).

To read the full regulations, go to *www.opm.gov/oca/leave/html/fmlafact.htm*

Discretionary Leave Without Pay

Discretionary leave without pay is generally available to USPTO employees, but this type of LWOP is a privilege and is granted at management's discretion. In other words, your boss can say no. Discretionary LWOP may be granted for any cause your boss agrees to, not just medical reasons.

Other Considerations When Requesting LWOP

The following applies to both discretionary LWOP and leave under the FMLA:

- For every 80 hours of LWOP accumulated, the employee does not earn leave in that pay period;
- 22 workdays of LWOP is creditable service for completion of probation;
- Two to six weeks is creditable service for within-grade increases, depending on the step;
- All LWOP is creditable service for time-in-grade for promotions, but there is still a qualifying experience requirement;
- Health benefits continue as does the employer's contribution. Employees can pay their share on return to work.

Know Your Rights

Follow Security Rules for Visitors or Risk Trespassing Charges

Many employees may not be aware of the security procedures for admitting visitors to the buildings after working hours and on weekends and holidays. Not being mindful of the security protocol can get employees into big trouble. For some, it already has.

Security procedures are easy during normal working hours. Security guards won't admit visitors unless a USPTO employee vouches for them and they surrender a valid photo ID—generated by a federal, state, or local government entity, e.g., driver's license or military ID—to the guard in exchange for a visitor's pass.

On weekends and holidays and weekdays after 10 p.m., the same security procedures apply, but one must go to the security desk in the main lobby of the Madison Building to receive a visitor's pass for any of the USPTO buildings. The agency is still considering identification procedures for minor children who likely won't possess photo ID.

The failure to follow these procedures can cause major headaches for employees and their visitors, as two employees recently learned the hard way.

In one instance, an employee asked a family member to enter the building after hours with the employee's badge to pick up some papers while the employee, who was sick, sat in the car. The employee felt even sicker when the family member was seen being escorted by a security guard to the Madison Building.

When the family member had entered the gate, the guard on duty saw one person entering the gate while the photo of a person of the opposite sex came up on the guard's computer screen. He reacted by stopping the visitor and contacting the supervisory guard for instruction. The employee's family member was charged with trespassing and the employee was in hot water for breaching security protocol.

The employee subsequently was investigated for disciplinary action and solicited help from POPA, which provided a representative to accompany the employee to the investigatory meeting. The employee received a written reprimand from USPTO management.

In a second instance, a visitor had entered the building during the weekend to visit an employee friend. The employee had allowed the visitor into the building and office without following any security procedures. When the visitor was exiting the building, one of the roving guards was present and noted the person exiting through the metal detector. When the guard stopped the visitor to ask why, the visitor stated that they had no badge to go through the gates (one must use a badge to exit after regular business hours). The guard's supervisor then questioned the visitor and called in the Federal Protective Service.

By this time the visitor contacted the employee friend, who showed up at the lobby guard desk. The visitor was charged with trespassing, led away in handcuffs and had to appear in court. The employee was escorted by a security guard to gather their belongings, instructed to turn in their badge and leave. The employee wanted to help the friend, but was told to leave the premises at once or risk arrest for interfering with federal police. The employee had to contact their supervisor on Monday and secure a temporary badge until the employee's badge was returned by an investigator on Tuesday.

So if you don't want to ruin your weekend or wind up in court defending a friend or family member, then follow the security procedures for after-hours, weekends and holidays by presenting yourself and your visitor at the main security desk in the Madison main lobby to have your friend or family member, including children, properly admitted to the building.

The USPTO Security Office is consulting with POPA to disseminate clear, updated visitor instructions to all employees as soon as possible.

Examination Time Study

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"I am willing to participate because I feel like I have to put my money where my mouth is," said study participant Melanie Tung, who is also a POPA delegate. "If I don't think the current production system fairly reflects how long it takes me to do a decent job, without cutting corners, I now have an opportunity, though not perfect, to do just that."

For more information on the study, including frequently asked questions, go to *www.manhattanstrategy.com/pto.*

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