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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To amend the Employee Retirement Income Security Act of 1974 to include a voluntary option for qualified flexible workplace arrangements.

IN THE HOUSE OF REPRESENTATIVES

Mr. MILLER-MEEKS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Employee Retirement Income Security Act of 1974 to include a voluntary option for qualified flexible workplace arrangements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Workflex in the 21st
5 Century Act”.

1 **SEC. 2. QUALIFIED FLEXIBLE WORKPLACE ARRANGEMENT**
2 **PLAN TREATED AS WELFARE PLAN.**

3 Section 3(1) of the Employee Retirement Income Se-
4 curity Act of 1974 (29 U.S.C. 1002(1)) is amended—

5 (1) by striking “or (B)” and inserting “(B)”;

6 and

7 (2) by inserting before the period at the end the
8 following: “, or (C) any qualified flexible workplace
9 arrangement plan described in part 8 of subtitle B”.

10 **SEC. 3. RELATIONSHIP TO OTHER LAWS.**

11 Section 514 of the Employee Retirement Income Se-
12 curity Act of 1974 (29 U.S.C. 1144) is amended by adding
13 at the end the following:

14 “(f)(1) Subsection (a) shall apply with respect to any
15 and all State laws insofar as they may now or hereafter
16 relate to any qualified flexible workplace arrangement plan
17 described in part 8, except that in the case of workflex
18 options offered under such a plan—

19 “(A) except as provided in subparagraph (B), if
20 only certain employees are eligible to enroll in a par-
21 ticular workflex option under the plan, such sub-
22 section shall apply with respect to any and all State
23 laws insofar as they may now or hereafter relate to
24 the particular workflex option solely with respect to
25 those employees who are so eligible; and

1 **“PART 8—QUALIFIED FLEXIBLE WORKPLACE**

2 **ARRANGEMENT PLANS**

3 **“SEC. 801. DEFINITION OF QUALIFIED FLEXIBLE WORK-**
4 **PLACE ARRANGEMENT PLAN.**

5 “(a) IN GENERAL.—A qualified flexible workplace ar-
6 rangement plan is a plan that—

7 “(1) subject to the requirements of this title, an
8 employer administers in accordance with a written
9 plan document, in accordance with section
10 402(a)(1), which shall—

11 “(A) establish the requirements of the plan
12 (which shall include requirements with respect
13 to accrual of compensable leave, request and
14 use of such leave, withdrawal from or termi-
15 nation of such a plan, determination of an em-
16 ployee’s service, and workflex options); and

17 “(B) as appropriate, incorporate the rights
18 of employees to compensable leave and workflex
19 options pursuant to one or more collective bar-
20 gaining agreements between the employer and
21 the labor organization that has been certified or
22 recognized as the representative of the employ-
23 ees under applicable law; and

24 “(2) provides—

25 “(A) compensable leave in accordance with
26 section 802; and

1 “(B) workflex options in accordance with
2 the requirements of section 803.

3 “(b) RELATIONSHIP TO EXECUTIVE ORDER
4 13706.—A qualified flexible workplace arrangement plan
5 meeting all the requirements of this part shall be deemed
6 to satisfy the requirements established by Executive Order
7 13706.

8 “(c) SUBSTANTIAL COMPLIANCE.—A plan shall not
9 fail to be treated as a qualified flexible workplace arrange-
10 ment plan under this title so long as the plan substantially
11 complies with the requirements of this part.

12 “(d) RULE OF CONSTRUCTION.—Nothing in this part
13 shall be construed—

14 “(1) to relieve an employer that offers a quali-
15 fied flexible workplace arrangement plan from the
16 requirements of this title that are otherwise applica-
17 ble to an employee welfare benefit plan, including
18 the reporting and disclosure, fiduciary responsibility,
19 and enforcement provisions of parts 1, 4, and 5 of
20 this title;

21 “(2) to require an employer to adopt or main-
22 tain a qualified flexible workplace arrangement plan;
23 or

24 “(3) in the case of an employer that has not
25 adopted or is not maintaining such a plan, to require

1 the employer to comply with any requirement under
2 this part with respect to such a plan.

3 **“SEC. 802. COMPENSABLE LEAVE REQUIREMENTS.**

4 **“(a) AMOUNT OF COMPENSABLE LEAVE.—**

5 **“(1) IN GENERAL.—**The minimum amount of
6 compensable leave that shall be provided to an em-
7 ployee for each plan year under a qualified flexible
8 workplace arrangement plan shall depend upon the
9 size of the employer and an employee’s years of serv-
10 ice with the employer, and shall be not fewer than
11 the minimum number of days as follows:

“Number of employees employed by an employer	Minimum number of compensable days of leave per plan year	
	Employees with 5 or more years of service with the employer as of the beginning of the plan year:	Employees with fewer than 5 years of service with the employer as of the beginning of the plan year:
1000 or more	20 days	16 days
250 to 999	18 days	14 days
50 to 249	15 days	13 days
less than 50	14 days	12 days.

12 **“(2) MINIMUM REQUIREMENTS.—**

13 **“(A) IN GENERAL.—**An employer that pro-
14 vides an unlimited number of compensable leave
15 days per year to employees under a qualified
16 flexible workplace arrangement plan shall be
17 deemed to satisfy the amount of compensable

1 leave required under paragraph (1), and noth-
2 ing in this section shall prohibit a qualified
3 flexible workplace arrangement plan from pro-
4 viding more than such minimum amount of
5 compensable leave.

6 “(B) TREATMENT OF HOLIDAYS.—An em-
7 ployer that provides paid time off to employees
8 for holidays recognized under Federal or State
9 law may include up to 6 such paid holidays to-
10 wards satisfying the amount of compensable
11 leave required under paragraph (1).

12 “(3) ACCRUAL PERMITTED.—A qualified flexi-
13 ble workplace arrangement plan of an employer
14 shall—

15 “(A) provide all the compensable days of
16 leave available to an employee for the plan year
17 at the beginning of the plan year; or

18 “(B) provide that an employee’s compen-
19 sable leave for a plan year accrue during the
20 plan year on a proportional basis in relation to
21 the number of compensable days provided to
22 such employee, and except as otherwise pro-
23 vided in subsection (b)(4), is available to an em-
24 ployee as the compensable leave accrues.

25 “(4) DETERMINING NUMBER OF EMPLOYEES.—

1 “(A) IN GENERAL.—The number of em-
2 ployees of an employer for a plan year shall be
3 determined by calculating the average monthly
4 number of employees for the preceding plan
5 year in accordance with subparagraph (B).

6 “(B) CALCULATION.—The average month-
7 ly number of employees for a plan year shall be
8 calculated by adding the total number of
9 monthly employees for each month of such pre-
10 ceding plan year and dividing by 12.

11 “(C) SERVICE REQUIREMENT.—An indi-
12 vidual shall be considered an employee for a
13 month if such individual is an employee on at
14 least the first day and last day of the month.

15 “(5) YEARS OF SERVICE.—The determination
16 of an employee’s years of service shall be made by
17 the employer in a manner consistent with section
18 203(b)(2), except that, upon adoption of a qualified
19 flexible workplace arrangement plan, all employees’
20 prior years of service with the employer maintaining
21 the plan shall be taken into account when calcu-
22 lating the employee’s years of service for the purpose
23 of this subsection.

1 “(6) CARRYOVER.—An employer may permit
2 employees to carry over unused compensable leave
3 from one plan year to the subsequent plan year.

4 “(7) CASHOUT.—An employer may permit em-
5 ployees to cash out unused compensable leave after
6 or in connection with the termination of employ-
7 ment.

8 “(b) FULL-TIME, PART-TIME, AND NEW EMPLOY-
9 EES, AND PRO-RATED CALCULATIONS.—

10 “(1) FULL-TIME EMPLOYEES.—

11 “(A) IN GENERAL.—For any plan year,
12 the requirements described in subsection (a)(1)
13 shall only apply to employees who are full-time
14 employees.

15 “(B) DEFINITION.—The employer, in its
16 qualified flexible workplace arrangement plan,
17 shall reasonably define ‘full-time’, when used
18 with respect to an employee, for purposes of
19 such plan.

20 “(2) PART-TIME EMPLOYEES.—

21 “(A) IN GENERAL.—For any plan year, if
22 an employee was employed by the employer in
23 the preceding plan year, but was not a full-time
24 employee in the preceding plan year, and is not
25 a full-time employee of the employer in the cur-

1 rent plan year, subsection (a)(1) shall apply, in
2 a pro-rated manner to such employee by multi-
3 plying—

4 “(i) the number of days of compen-
5 sable leave required under such subsection,
6 by

7 “(ii) the part-time employee factor de-
8 scribed in subparagraph (B).

9 “(B) PART-TIME EMPLOYEE FACTOR.—For
10 purposes of this paragraph, the part-time factor
11 shall be equal to the result obtained by divid-
12 ing—

13 “(i) the number of hours of service
14 that the employer reasonably estimates the
15 employee had in the preceding plan year,
16 by

17 “(ii) the number of hours that the
18 employer reasonably determines the em-
19 ployee would have had if such employee
20 had been a full-time employee.

21 “(C) HOURS OF SERVICE DETERMINA-
22 TION.—For purposes of this subsection, the de-
23 termination of an employee’s hours of service
24 shall be made in a manner consistent with sec-

1 tion 202(a)(3)(C), except that an estimation of
2 such hours is permitted.

3 “(3) NEW PART-TIME EMPLOYEES.—

4 “(A) IN GENERAL.—For any plan year, if
5 a part-time employee was employed as a full-
6 time employee by the employer in the preceding
7 plan year or was not employed by the employer
8 in the preceding plan year, then subsection
9 (a)(1) shall apply, in a pro-rated manner to
10 such employee by multiplying—

11 “(i) the number of days of compen-
12 sable leave required under such subsection,
13 by

14 “(ii) the new part-time employee fac-
15 tor described in subparagraph (B).

16 “(B) NEW PART-TIME EMPLOYEE FAC-
17 TOR.—For purposes of this paragraph, the new
18 part-time employee factor shall be equal to the
19 result obtained by dividing—

20 “(i) the hours of service that the em-
21 ployer reasonably estimates that the em-
22 ployee will have during the current plan
23 year, by

24 “(ii) the hours of service that the em-
25 ployer reasonably estimates that a full-time

1 employee would have during such plan
2 year.

3 “(4) RESTRICTIONS REGARDING NEW EMPLOY-
4 EES PERMITTED.—In the case of a new employee,
5 the employer may restrict the employee’s right to
6 use compensable leave during the first 90 days of
7 employment with the employer.

8 “(c) USE OF COMPENSABLE LEAVE.—In a qualified
9 flexible workplace arrangement plan the employer may—

10 “(1) determine whether the use of compensable
11 leave at the time requested by an employee would
12 unduly disrupt the operations of the employer; and

13 “(2) determine whether an employee may use
14 compensable leave in full-day or partial-day incre-
15 ments.

16 **“SEC. 803. WORKFLEX OPTIONS.**

17 “(a) WORKFLEX OPTIONS.—

18 “(1) IN GENERAL.—Under a qualified flexible
19 workplace arrangement plan, an employer shall offer
20 each employee meeting the requirements of para-
21 graph (2) at least one of the following workflex op-
22 tions:

23 “(A) A biweekly work program that meets
24 the requirements of section 804.

1 “(B) A compressed work schedule program
2 that meets the requirements of section 805.

3 “(C) A telework program.

4 “(D) A job sharing program.

5 “(E) Flexible scheduling.

6 “(F) Predictable scheduling.

7 “(2) SERVICE REQUIREMENT.—

8 “(A) IN GENERAL.—For purposes of this
9 section, an employee is eligible to participate in
10 a workflex option if such employee—

11 “(i) has been employed for at least 12
12 months by the employer and for at least
13 1,000 hours of service with such employer
14 during such 12-month period, determined
15 by the employer to mean—

16 “(I) the calendar year; or

17 “(II) any fixed 12-month plan
18 year; or

19 “(ii) meets eligibility requirements of
20 the plan that otherwise permit participa-
21 tion prior to the date described in clause
22 (i).

23 “(B) HOURS OF SERVICE.—For the pur-
24 poses of this paragraph, the determination of
25 an employee’s hours of service shall be made in

1 a manner consistent with section 202(a)(3)(C),
2 except that the number of such hours may be
3 estimated by the employer.

4 “(3) EMPLOYMENT POSITIONS.—A qualified
5 flexible workplace arrangement plan may specify
6 which employment position or positions are offered
7 participation in a particular workflex option de-
8 scribed in paragraph (1).

9 “(4) CLARIFICATION.—A qualified flexible
10 workplace arrangement plan shall not be required to
11 offer an employee more than one workflex option
12 without regard to whether another employee is of-
13 fered more than one workflex option.

14 “(b) CONDITIONS.—A qualified flexible workplace ar-
15 rangement plan shall offer a workflex option under sub-
16 section (a) to employees pursuant to the following:

17 “(1) VOLUNTARY PARTICIPATION.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B)(i), an employee’s participa-
20 tion in any workflex option offered under a
21 qualified flexible workplace arrangement plan
22 shall be voluntary and the acceptance of a
23 workflex option may not be a condition of em-
24 ployment.

1 “(B) AGREEMENT OR UNDERSTANDING.—

2 A workflex option shall be carried out pursuant

3 to—

4 “(i) applicable provisions of one or

5 more agreements described in section

6 801(a)(1)(B); or

7 “(ii) in the case of an employee who

8 is not subject to an agreement referred to

9 in clause (i), a written agreement—

10 “(I) setting forth the employee’s

11 work schedule;

12 “(II) including a description of

13 the workflex option in which the em-

14 ployee is participating;

15 “(III) executed before the em-

16 ployee begins to participate in such

17 workflex option; and

18 “(IV) entered into knowingly and

19 voluntarily by such employee.

20 “(2) TERMINATION, MODIFICATION, OR WITH-

21 DRAWAL.—

22 “(A) TERMINATION OR MODIFICATION.—

23 Subject to section 803(a)(1), an employer may

24 amend a qualified flexible workplace arrange-

25 ment to eliminate—

1 “(i) any workflex option described in
2 subsection (a)(1); or

3 “(ii) the eligibility of an employee or
4 group of employees to participate in a
5 workflex option after the employer has pro-
6 vided 30-day written notice.

7 “(B) WITHDRAWAL.—An employee may
8 withdraw from a workflex option offered under
9 a qualified flexible workplace arrangement plan
10 at any time, except as otherwise specified for a
11 biweekly work program under section 804(e)(2)
12 or a compressed work schedule program under
13 section 805(d)(2).

14 “(3) RECORDKEEPING REQUIREMENT.—The
15 employer shall maintain—

16 “(A) written descriptions of workflex op-
17 tion offerings made available to employees; and

18 “(B) written agreements described in para-
19 graph (1)(B)(ii).

20 **“SEC. 804. BIWEEKLY WORK PROGRAM.**

21 “(a) IN GENERAL.—Notwithstanding any other pro-
22 vision of law, as part of a qualified flexible workplace ar-
23 rangement plan, an employer may establish a biweekly
24 work program as a workflex option for eligible employees
25 that allows the use of a biweekly work schedule—

1 “(1) that consists of a basic work requirement
2 of not more than 80 hours, over one 2-week period;
3 and

4 “(2) in which more than 40 hours but not more
5 than 60 hours of the work requirement may occur
6 in a week of the 2-week period.

7 “(b) CONDITIONS.—A biweekly work program shall
8 meet the conditions described in section 803(b).

9 “(c) ELIGIBLE EMPLOYEE.—For purposes of this
10 section, an ‘eligible employee’ means an employee who is
11 subject to the minimum wage and overtime requirements
12 of sections 6 and 7 of the Fair Labor Standards Act of
13 1938 (29 U.S.C. 206; 207).

14 “(d) COMPENSATION FOR HOURS IN SCHEDULE.—
15 In the case of an eligible employee participating in a bi-
16 weekly work program—

17 “(1) the eligible employee shall be compensated
18 for each hour in such biweekly work schedule at a
19 rate not less than the regular rate at which the eligi-
20 ble employee is employed;

21 “(2) any hour worked in excess of such a bi-
22 weekly work schedule for a week of the 2-week pe-
23 riod, or in excess of 80 hours in the 2-week period,
24 shall be overtime hours; and

1 “(3) the eligible employee shall be compensated
2 for each such overtime hour at a rate not less than
3 one and one-half times the regular rate at which the
4 eligible employee is employed, in accordance with
5 section 7(a)(1) of the Fair Labor Standards Act of
6 1938 (29 U.S.C. 207(a)(1)).

7 “(e) DISCONTINUANCE OF PROGRAM OR WITH-
8 DRAWAL.—

9 “(1) DISCONTINUANCE OF PROGRAM.—An em-
10 ployer who has established a biweekly work program
11 under subsection (a) may discontinue the program,
12 after providing 30 days written notice to the eligible
13 employees who are subject to the employer’s agree-
14 ment or understanding described in section
15 803(b)(1)(B).

16 “(2) WITHDRAWAL.—

17 “(A) IN GENERAL.—An eligible employee
18 may withdraw from an agreement or under-
19 standing described in section 803(b)(1)(B),
20 with respect to a biweekly work program estab-
21 lished under subsection (a), by submitting a
22 written notice of withdrawal to the employer.

23 “(B) EFFECTIVE DATE.—Not later than
24 30 calendar days after receiving an eligible em-
25 ployee’s written notice of withdrawal, an em-

1 employer shall restore the employee to one of the
2 employer’s regular schedules.

3 **“SEC. 805. COMPRESSED WORK SCHEDULE PROGRAM.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-
5 vision of law, as part of a qualified flexible workplace ar-
6 rangement plan, an employer may establish a compressed
7 work schedule program as a workflex option for employees
8 that allows the employee to work the equivalent of full-
9 time employment by increasing the number of daily hours
10 worked, such as a four-day workweek.

11 “(b) CONDITIONS.—A compressed work schedule pro-
12 gram shall meet the conditions described in section
13 803(b).

14 “(c) COMPENSATION FOR HOURS IN COMPRESSED
15 WORK SCHEDULE.—In the case of an employee who is
16 participating in a compressed work schedule program and
17 who is subject to the minimum wage and overtime require-
18 ments of sections 6 and 7 of the Fair Labor Standards
19 Act of 1938 (29 U.S.C. 206; 207)—

20 “(1) the employee shall be compensated for
21 each hour in such 40-hour compressed work sched-
22 ule at a rate not less than the regular rate at which
23 the employee is employed; and

24 “(2) the employee shall be compensated for
25 each overtime hour at a rate not less than one and

1 one-half times the regular rate at which the em-
2 ployee is employed, in accordance with section
3 7(a)(1) of the Fair Labor Standards Act of 1938
4 (29 U.S.C. 207(a)(1)).

5 “(d) DISCONTINUANCE OF PROGRAM OR WITH-
6 DRAWAL.—

7 “(1) DISCONTINUANCE OF PROGRAM.—An em-
8 ployer who has established a compressed work sched-
9 ule program under subsection (a) may discontinue
10 the program after providing 30 days written notice
11 to the employees who are subject to an agreement or
12 understanding described in section 803(b)(1)(B).

13 “(2) WITHDRAWAL.—

14 “(A) IN GENERAL.—An employee may
15 withdraw from an agreement or understanding
16 described in section 803(b)(1)(B), with respect
17 to a compressed work schedule program estab-
18 lished under subsection (a), by submitting a
19 written notice of withdrawal to the employer.

20 “(B) EFFECTIVE DATE.—Not later than
21 30 calendar days after receiving a written no-
22 tice of withdrawal, an employer shall restore the
23 employee to one of the employer’s regular
24 schedules.

1 **“SEC. 806. RELATIONSHIP TO FAMILY AND MEDICAL LEAVE**
2 **ACT.**

3 “Consistent with section 102(d)(2)(A) of the Family
4 and Medical Leave Act of 1993 (29 U.S.C.
5 2612(d)(2)(A)), an employee may elect, or an employer
6 may require the employee, to substitute compensable leave
7 for leave provided under subparagraph (A), (B), (C), or
8 (E) of section 102(a)(1) of the Family and Medical Leave
9 Act (29 U.S.C. 2612(a)(1)) for any part of the 12-week
10 period of such leave under such section.

11 **“SEC. 807. REINSTATEMENT RIGHTS.**

12 “(a) IN GENERAL.—Except as provided in sub-
13 sections (b) and (c), an employee who uses compensable
14 leave under a qualified flexible workplace arrangement
15 plan shall be entitled—

16 “(1) to be restored to the position of employ-
17 ment held by the employee when the leave com-
18 menced; or

19 “(2) to be restored to an employment position
20 equivalent to the employment position described in
21 paragraph (1), with equivalent employment benefits,
22 pay, and other terms and conditions of employment.

23 “(b) LIMITATIONS.—An employee shall be entitled to
24 such reinstatement after using compensable leave even if
25 the employee has been replaced or the employee’s employ-
26 ment position has been restructured to accommodate the

1 employee's absence, except that the reinstatement rights
2 shall not apply—

3 “(1) to an employee who uses more than 12
4 workweeks of compensable leave during a 12-month
5 period; or

6 “(2) to an affected employee, as defined under
7 section 104(b)(2) of the Family and Medical Leave
8 Act (29 U.S.C. 2614(b)(2)).

9 “(c) REINSTATEMENT OF LEAVE.—In the case of an
10 employee who is rehired following termination of employ-
11 ment, any compensable leave that has not been used prior
12 to such termination may be reinstated by the employer.

13 **“SEC. 808. RELATIONSHIP TO AMERICANS WITH DISABIL-**
14 **ITIES ACT AND THE REHABILITATION ACT OF**
15 **1973.**

16 “Nothing in this part shall be construed to modify
17 or relieve an employer from any obligation imposed by the
18 Americans with Disabilities Act (42 U.S.C. 12111 et seq.)
19 and the Rehabilitation Act of 1973 (29 U.S.C. 791 et
20 seq.).

21 **“SEC. 809. EDUCATION AND TECHNICAL ASSISTANCE; LIMI-**
22 **TATION ON RULES.**

23 “(a) EDUCATION AND TECHNICAL ASSISTANCE.—
24 The Secretary shall provide education and technical assist-
25 ance to employers and employees with regard to qualified

1 flexible workplace arrangement plans, and shall maintain
2 an electronic database available online consisting of exam-
3 ples of workflex options.

4 “(b) LIMITATION ON RULES.—

5 “(1) IN GENERAL.—No regulation or other
6 guidance issued by the Secretary to carry out this
7 part may result in new restrictions with respect to
8 the establishment or administration of a qualified
9 flexible workplace arrangement plan under section
10 801.

11 “(2) INVALIDATION.—Any rule or regulation
12 issued in contravention of paragraph (1) shall have
13 no force or effect.

14 **“SEC. 810. DEFINITIONS AND OTHER SPECIAL RULES.**

15 “For purposes of this part:

16 “(1) COMPENSABLE LEAVE.—The term ‘com-
17 pensable leave’ means paid leave to be used for—

18 “(A) paid time off, sick leave, personal
19 leave, or vacation, the use of which is subject to
20 the terms of a qualified flexible work arrange-
21 ment plan; and

22 “(B) paid holidays provided in accordance
23 with section 802(a)(2)(B).

1 “(2) WORKFLEX OPTION.—The term ‘workflex
2 option’ means any of the programs described in sec-
3 tion 803(a)(1).

4 “(3) EMPLOYER.—For purposes of determining
5 whether an employer is maintaining a qualified flexi-
6 ble workplace arrangement plan, sections 210(c) and
7 210(d) shall apply.

8 “(4) JOB SHARING PROGRAM.—The term ‘job
9 sharing program’ means an arrangement under
10 which an employer approves the sharing of one em-
11 ployment position amongst two or more employees.

12 “(5) PLAN YEAR.—The term ‘plan year’ means
13 any 365-day period designated in a qualified flexible
14 workplace arrangement plan.

15 “(6) FLEXIBLE SCHEDULING.—The term ‘flexi-
16 ble scheduling’ means an arrangement under which
17 an employee’s regular work schedule is altered.

18 “(7) PREDICTABLE SCHEDULING.—The term
19 ‘predictable scheduling’ means an arrangement
20 under which an employer provides a work schedule
21 to an employee—

22 “(A) with reasonable advanced notice; and

23 “(B) that is subject to as few alterations
24 as are reasonably possible.

1 “(8) TELEWORK PROGRAM.—The term
2 ‘telework program’ means an arrangement under
3 which an employee performs the duties and respon-
4 sibilities of such employee’s employment position,
5 and other activities authorized by the employer, from
6 a worksite approved by the employer other than the
7 location from which the employee would otherwise
8 work.”.