

Texas A&M University Guidelines for International Temporary Work Location (ITWL) Requests

1. Purpose

International mobility is paramount to the conduct of business and therefore, it is important to provide flexibility to our faculty members that may need to temporarily work remotely from abroad to satisfy a critical business need resulting from their faculty responsibilities.

The purpose of these guidelines is to provide a consistent and uniform approach and understanding to the requests of international temporary work locations (ITWL). In addition, these guidelines layout the criteria for this type of requests, the maximum authorized duration, the process for obtaining the approval of the request, and the terms and conditions of the ITWL.

These guidelines, however, do not apply to faculty members on Faculty Development Leave, study abroad, travel to international conferences, international assignments funded by external grants, long term assignments of 60 days or more, or faculty on leave without pay.

2. Reason for the guidelines

Having employees work from foreign jurisdictions brings about an array of potential legal liabilities, tax risks, and foreign local obligations for which the university could be responsible. Accordingly, departments heads and academic units must not transfer to or employ employees in foreign jurisdictions without first contacting the Dean of Faculties to understand the potential foreign legal risks, taxation obligations, and compliance responsibilities surrounding an ITWL.

All ITWL requests should be submitted to the Dean of Faculties with ample time ahead of the intended start date of the ITWL.

3. Eligibility

Unlike regular Alternate Work Locations requests within the United States, requests for ITWL are an exception and only granted for a limited time.

Texas A&M University tenured, tenure-track, and non-tenured track faculty, from any Texas A&M University college, school, library, or branch campus, are eligible to request an ITWL provided the requests are based on a “critical business need” as outlined below, and the faculty member fulfills the following faculty eligibility requirements

- a. Faculty member must be a part time or full time employee,
- b. Faculty member must not be subject to current formal disciplinary action,
- c. Faculty member must be able to perform the assigned duties of their job description while working at the ITWL.

The request for an ITWL exception does not apply to faculty on visiting appointments (excluding full time visiting professors), graduate students, and faculty appointments where salary is externally funded. These positions are ineligible for an ITWL.

4. Request Procedures

ITWL requests are in essence business trip requests in which the faculty member is intending to temporarily work remotely from a foreign jurisdiction outside the United States due to a critical business

need for which the faculty member will perform the duties and responsibilities outlined by the department head in the ITWL agreement, for a short-term duration not to exceed 60 days.

4.1 Justification

ITWL requests require the justification of a "critical business need" which must be detailed and documented by the department head via memorandum through the college Dean, through the Dean of Faculties, to the Provost.

"Critical business need" is generally defined as one in which the individual's work contribution is a must for the completion of a research or essential project within a prescribed deadline. That is, an action that cannot be delayed without jeopardizing the outcome.

Some common examples that do not constitute a critical business need are as follow:

- Teaching from abroad to fulfill regular faculty responsibilities is not per se a critical business need (except when teaching a study abroad course approved by the university).
- The performance of day-to-day duties and responsibilities is not per se a critical business need.
- Request for a new hired faculty to start to work from abroad due to a delay in the travel arrangements is not per se a critical business need.
- The assignment of summer teaching to be conducted from abroad is not a critical business need.
- Leaving the United States to nurse a sick relative located abroad is not a critical business need.
- The need for the faculty member to leave the United States due to the fulfillment of the maximum period of stay in a non-immigrant visa is not per se a critical business.
- ITWL requests that are petitioned for the convenience of the faculty member are not considered to be a critical business need.

4.2 Duration

ITWL are intended to be a business trip of short-term duration due to a critical business need and not a mechanism to shift remotely to a foreign jurisdiction the performance of the day-to-day work of the faculty member. Consequently, ITWL will only be approved for a short duration of time not to exceed 60 days with no possibility of extensions of time thereof.

Requests for conducting research abroad due to the subject matter of the project, unless on an approved Faculty Development Leave, require the submission of an ITWL subject to further review as per section 4.3 below.

An ITWL request is not necessary to travel to international conferences or meetings provided the total duration of the intended trip does not exceed two weeks and as long as the faculty member does not intend to stay beyond the approved two (2) weeks with the intent to work remotely from that foreign location or other foreign jurisdiction.

Furthermore, an ITWL is not needed if the faculty member is required to fulfill an ongoing remote teaching engagement during the two weeks stay at an international conference or meeting.

Similarly, teaching an approved study abroad course or research during an approved for Faculty Development Leave do not require an ITWL.

Faculty members with an approved ITWL are expected to return to work to their primary duty location in the United States or Qatar at the end of the approved period in the ITWL. Failure to return on a timely basis may result in the university placing the faculty member of a leave without pay status.

4.3 Review by outside counsel

ITWL may be subject to review by the Texas A&M System Office of General Counsel and authorized system outside counsel for guidance before the ITWL is approved. The Dean of Faculties will determine whether the requests need further review. If the ITWL request is subject to review, the Dean of Faculties or designee will contact the academic department. Academic departments will be responsible for the payment of the outside counsel fees and costs for the guidance issued on the ITWL request. Outside counsel review does not guarantee that the ITWL request will be ultimately approved by the administration.

4.4 Immigration/work permit

Because the ITWL are for a short-term duration and not intended to shift remotely the performance of the work on a permanent basis, Texas A&M University will not approve any ITWL unless the faculty member has the legal right to work in the host country.

5. Terms and conditions

Faculty members for which ITWL request has been approved are subject to the following terms and conditions:

5.1 Governing law and jurisdiction

- 5.1.1 An ITWL does not change the location of the employment, the payroll, or reporting thereof of the faculty member in the academic department at Texas A&M University in the United States or in Doha, Qatar, if the faculty member is employed at Texas A&M University Qatar.
- 5.1.2 An ITWL does not change, modify, or supersede the annual faculty appointment agreement between the faculty member and the academic department. As such, the faculty member remains subject to the terms and conditions of said annual appointment during the validity period of the ITWL approved request.
- 5.1.3 The employer/employee relationship between the faculty member and Texas A&M University while on the ITWL remains subject to the laws and jurisdiction of the State of Texas and to all policies, regulations, rules, standard administrative procedures, and guidelines of Texas A&M University System, Texas A&M University, and its branch campuses in Doha, Qatar, and Galveston, Texas, as applicable.

5.2 Terms of the ITWL

- 5.1.4 The work specified in the ITWL is part of the regular academic expectations of the faculty member but for the reasons approved specified in the ITWL will be performed temporarily outside the academic department at Texas A&M University in the United States or in Doha, Qatar.

- 5.1.5 The faculty member while on ITWL will exclusively adhere to performing the work which has been approved in the ITWL.
- 5.1.6 The faculty member on ITWL will not hold in-person business meetings at their temporary work location.
- 5.1.7 The faculty member on ITWL will not make representations on behalf of the university or enter into any agreements or promises with third parties.
- 5.1.8 The faculty member will not use their home address in the host country as a Texas A&M University address in any email communications, business cards, or other modes of identification.
- 5.1.9 All products, documents, reports, and data created during the ITWL as a result of work-related activities are the property of Texas A&M University and are subject to the Texas Public Information Act.
- 5.1.10 The faculty member will safeguard all work-related records and files from loss, damage, or unauthorized disclosure and will return all work-related property to the department upon request.
- 5.1.11 The ITWL terminates on the last day of the authorized period and as such, the faculty member is expected to return to the academic department at Texas A&M University in the United States, or in Doha, Qatar, and report to work timely.
- 5.1.12 The ITWL is only approved and valid for the specific country disclosed in the ITWL and approved thereof. Working from any other country is a violation of the terms and conditions of the ITWL and an immediate invalidation of the approved request.

5.3 *Conditions of the ITWL*

- 5.3.1 ITWL require an export control review by the university of the intended work and the accessibility to TAMU IT resources from abroad.
- 5.3.2 The faculty member is responsible for submitting on a timely manner the appropriate international travel request via SSO and that such request is approved for international travel.
- 5.3.3 The faculty member will maintain at all times the data security and confidentiality of all information by adhering and complying with Texas A& M System policies, regulations and university rules that pertain to use of information technology.
- 5.3.4 The faculty member will remain solely and fully responsible for his or her accommodations and for the payment of any services and costs thereof associated with the ITWL, including any rents on real estate property leased.
- 5.3.4 ITWL is governed by the provisions of Workers' Compensation during the agreed upon work hours while performing work-related duties.
- 5.3.5 The faculty member will submit appropriate documentation requesting sick leave, vacation or other types of leave, as applicable, and in accordance with established policies and procedures.

6. Liability and indemnification

The faculty member understands and agrees to indemnify and hold The Texas A&M University System (“System”), Texas A&M University, their Regents, officers, agents and employees harmless from any liability, loss or damage they may suffer as a result of claims, demands, costs, judgments or liabilities (including any related losses, costs, expenses and legal fees) in connection with any injury and damage (including death) to any person or property, caused directly or indirectly by the faculty member’s willful misconduct, negligent actions or performance of the faculty member’s duties and obligations under the ITWL, except where liability arises solely from the negligence and misconduct of the University.

7. Right to terminate the ITWL

Texas A&M University may terminate the ITWL at any time and for any reason. Nothing in these guidelines should be construed to change, modify, or supersede the annual faculty appointment agreement between the faculty member and the academic department. As such, the faculty member remains subject to the terms and conditions of said annual appointment during the validity period of the ITWL approved request. In the event the ITWL is terminated, the faculty member remains responsible for all costs associated with the travel back to Texas A&M University.

Approved: December 7, 2020

Office of Responsibility: Dean of Faculties