

Remote Workers – Here to Stay?

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Overview

- Welcome
- Current trends
- Legal considerations
- Practical considerations
- Questions

Current Trends: Pre-Pandemic

- In 2016, 43% of workforce worked at home some of the time
- Pre-pandemic: 80% of workers wanted to work from home at least part-time
 - 1/3 willing to take a pay cut to do so

Current Trends: Working Remotely

- 33% of U.S. workers now always work remotely (down from 51% in April)
- 25% sometimes (up from 18% in April)
- 41% never (up from 31% in April)

Current Trends: Working Onsite

- 46% of U.S. workers report all or nearly all employees are working onsite (28% in April)
- 20% report that some employees are working onsite (18% in April)
- 23% report that very few employees are working onsite (36% in April)
- 9% report that no employees are working onsite (16% in April)

Current Trends: COVID-19 Concerns

- 29% of U.S. workers “not at all” concerned about being exposed to coronavirus at work
- 26% “not too concerned” about coronavirus exposure at work
- 34% “moderately” concerned
- 11% “very” concerned

Current Trends: Worker Preferences

- Nearly 2/3 of remote workers want to continue working remotely
 - 35% simply prefer to do so
 - 30% wish to do so because of COVID-19 concern
 - 35% would like to return to work at their office

Current Trends: After COVID-19

- Attraction and retention of talent
- Cost-savings opportunities
 - Office space
 - Reduced travel
- Continuity and productivity
- Sustainability (traffic, pollution)

Legal Considerations

- Federal, state and local employment laws apply to employees working remotely
- Primary work location controls which state and local laws apply

Legal Considerations

- Who can work remotely?
 - Employee's position largely dictates
- Who decides?
 - Legally required to allow?
 - Employer decides?
 - Employee decides?

Legal Considerations

- Absent a law requiring work from home (e.g., COVID-19), the employer typically gets to decide
 - Non-discriminatory decision making (e.g., not based on gender, age, race, etc.)
 - If deny, based on legitimate, non-discriminatory business reasons

Legal Considerations

- In certain cases, the duty of reasonable accommodation of a disabled employee may require an employer to approve remote work if requested by the employee
 - Case-by-case analysis
 - Essential job duties
 - Undue burden

Legal Considerations

- Reasonable accommodation (cont.)
 - Documented interactive process
 - If decide to grant, but concerned it may not work, recommend granting for a trial/temporary basis (no set time period though)
 - Employee knows not guaranteed forever
 - Employer (1) shows it gave it a try and (2) collects data showing effective or not
 - All parties know subject to review/reconsideration

Legal Considerations

- Reasonable accommodation (cont.)
 - EEOC Q&A dated 9/8/2020
 - **Question D.15.** Assume that an employer grants telework to employees for the purpose of slowing or stopping the spread of COVID-19. When an employer reopens the workplace and recalls employees to the worksite, does the employer automatically have to grant telework as a reasonable accommodation to every employee with a disability who requests to continue this arrangement as an ADA/Rehabilitation Act accommodation?
 - **Answer.** No. (But see EEOC's full response)

Legal Considerations

- Reasonable accommodation (cont.)
 - EEOC Q&A dated 9/8/2020
 - **Question D.16.** Assume that prior to the emergence of the COVID-19 pandemic, an employee with a disability had requested telework as a reasonable accommodation. The employee had shown a disability-related need for this accommodation, but the employer denied it because of concerns that the employee would not be able to perform the essential functions remotely. In the past, the employee therefore continued to come to the workplace. However, after the COVID-19 crisis has subsided and temporary telework ends, the employee renews her request for telework as a reasonable accommodation. Can the employer again refuse the request?
 - **Answer.** It depends. (See EEOC's full response)

Legal Considerations

- Wage and hour laws
 - Non-exempt employees must:
 - Record all time worked
 - Be paid for all time worked, including overtime pay if applicable
 - Correct classification of exempt/non-exempt critical

Legal Considerations

- Wage and hour laws (cont.)
 - Complete and accurate time reporting
 - No under reporting
 - No over reporting
 - Time recording system to use?
 - Set hours of work; prohibit work outside of set hours unless pre-approved
 - Supervision and enforcement of rules

Legal Considerations

- Tax issues
 - Where will income and other taxes be owed? In state where the employee lives/works?
- Doing business in another state?
 - Registration/filing required by state law?
- New laws/litigation

Legal Considerations

- Zoning laws
 - Permit or license required to operate a home business/office?
 - Who will obtain?
 - Who will pay?

Legal Considerations

- Liability coverage
 - Ensure that company's coverage extends to work from home
 - Require proof of homeowner's or renter's insurance

Legal Considerations

- Form I-9
 - Must complete for remote new hires
 - In-person document inspection required
 - www.uscis.gov/completing-form-i-9-for-remote-hire
 - COVID-19 exception allows for virtual inspection
 - Only if entire workforce is remote; must confirm later
 - Expires on November 19, 2020 (unless extended again)

Legal Considerations

- Notice/posting/training requirements
 - System in place to provide to remote workers
 - Acknowledgement of participation/receipt

Legal Considerations

- Workers compensation
 - Require injury reporting
 - Designated work area
 - Ergonomics review
 - Set schedule of hours
 - Prohibit others from entering work area during work time
 - Reserve right to inspect

Legal Considerations

- OSHA
 - No duty to inspect home office
 - But employer should reserve right to inspect
 - Duty to record work-related injuries

Legal Considerations

- FCCRA leave
- Unemployment compensation account/taxes
- Break and rest period laws
- Paid and unpaid leave laws (e.g., paid sick)
- Vacation/PTO payout laws
- Final pay laws

Legal Considerations

- Non-compete/non-solicit enforcement
 - Law of state where employee lives/works typically controls
 - Some states ban or significantly restrict
- Independent contractor classification laws
- H-1B temporary workers
 - New LCA/prevaling wage if new MSA

Practical Considerations

- Confidential information and data security
 - Confidentiality agreement
 - Need-to-know access
 - Expressly apply IT and confidentiality policies to remote workers
 - Apply network security to home computers, laptops, smart phones

Practical Considerations

- Company property
 - Detailed accounting of company property issued to remote worker
 - Agreement regarding good care, reporting damage, loss, destruction
 - Agreement and process for prompt return upon end of employment or earlier request

Practical Considerations

- Remote working agreement with employee
 - Location of work
 - Work hours
 - Work area
 - Protection and return of company data and property
 - Company provided resources and equipment (e.g., internet, computer, etc.)

Practical Considerations

- Remote working agreement with employee (cont.)
 - Expenses (who pays for what)
 - Productivity/accessibility expectations
 - Report for in person duty/meetings if needed

Practical Considerations

- Remote working agreement with employee (cont.)
 - No care of others in home during work hours
 - Reporting absences, use of vacation/PTO
 - Application of other company policies
 - Duration of agreement – company can revoke

Practical Considerations

- Integrating and managing a remote workforce
 - Co-workers not knowing each other as well
 - Lack of social time with co-workers
 - Feeling isolated
 - Work is always there – lack of “off” time

Practical Considerations

- Integrating and managing a remote workforce (cont.)
 - Distractions at home
 - Poor communication
 - Difficult to supervise/manage
 - Skipping performance management/reviews

Practical Considerations

- Integrating and managing a remote workforce (cont.)
 - Recommendations:
 - Formal orientation and onboarding
 - Formal introduction to manager and team
 - Train managers to supervise remote workers
 - Open and on-going communication regarding job duties and expectations

Practical Considerations

- Integrating and managing a remote workforce (cont.)
 - Recommendations:
 - Regular and on-going performance feedback – positive and constructive
 - Regular and scheduled check-ins with manager and team
 - All company meetings/updates

Practical Considerations

- Integrating and managing a remote workforce (cont.)
 - Recommendations:
 - Consider virtual social opportunities
 - Meet and greets
 - Happy hours
 - Coffee chats
 - Games, trivia, etc.

Questions

- Questions?
- Thank you for attending today!

Presenters



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