




# Retrofitting a Workforce in the COVID Age: Tips For Managing A Remote Workplace



**2020 Employment Law Seminar**  
Day 1: COVID-19 Workplace Issues



## Speaker Introduction



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## Managing a Remote Workforce

- Performance Management
- Wage and Hour
- Data Security
- Workplace Safety
- Nondiscrimination
- Disability Accommodations
- Leaves

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## Translating Jobs to E-Work

- Review /edit job description with employee and agree how to implement in telework setting
- Changes to duties? (Explain why)
- Equipment?
- Training?
- Self-motivation requirement?

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## Telecommuting Agreement

- Hours of availability
- How to document availability
- Response times
- Behavior and professional dress
- Work setting
- Data / information privacy
- Communication norms

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## Wage and Hour Challenges: Exempt v. Nonexempt

- **Exempt:** Exempt from overtime and minimum wage requirements as an executive, professional, administrative, or outside sales employee. Certain computer professionals may also be exempt.
- **Nonexempt:** Not exempt from minimum wage and overtime and entitled to overtime pay.

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## Wage and Hour Challenges: Tracking Nonexempt Employee Time

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- Nonexempt employees must be paid overtime if they work more than 40 hours in a work week
- Nonexempt employees must receive meal and rest breaks
- Employers cannot require an employee to pay for the employer's business expenses if doing so would reduce the employee's earnings below minimum wage

## Wage and Hour Challenges: Potential Liability

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- Unpaid wages for missed breaks (calculated at overtime rate if employee worked more than 40 hours per week)
- Double damages for willful withholding of wages
- Attorneys' fees and costs
- Toll on organization
- Not typically insured
- Substantial uncertainty about documentation

## Data Security Considerations

- Create and communicate data security policies
- Company property may not be used by anyone other than employee
- No expectation of privacy
- Lost / damaged company property must be reported immediately
- Consider providing shredder / privacy screen for home workspace

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## Occupational Health and Safety COVID-19

- Maintain a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm”
- Consider Employer Liability Law
- Oregon requirement of telework; social distancing policy

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## Occupational Health and Safety COVID-19

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- Establish protocols for occasional in-person work
- No retaliation
- Recordkeeping of work-related injury and illness

## Occupational Health and Safety Remote Workplace Considerations

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- Hazards of the home workplace
  - Ergonomics
  - Slip and fall
  - Other
- No inspections for now . . .
- Equipment - what will you provide and how?
- Establish guidelines for healthy work

## Nondiscrimination

- Actively combat COVID-19 related stereotypes
- Avoid stereotyping certain classes inadvertently, even for benign purposes (e.g., older or pregnant workers)
- Remind employees of nondiscrimination policy
- Continue to watch for discrimination / harassment in telework settings
- Consider nondiscrimination in all workplace decisions

## Nondiscriminatory Application of Work From Home Policies

- Administer remote workplace policies in a nondiscriminatory way
- Legitimate, nondiscriminatory reasons for in-person vs. remote work requirements
- Standardize the process for administering flexible work arrangements
- Remember that flexible work arrangements / work from home can be a reasonable accommodation

## Americans with Disabilities Act

- No new laws, but new applications
- COVID-19 Qs are allowable medical examinations
- Don't if employee has "family" with COVID-19

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## Americans with Disabilities Act

- COVID-19 may be a disability, depending on symptoms, but employee may be excluded
- Continue to store medical information in separate confidential files
- Consider need for new / updated accommodations as workers enter new work spaces

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## Employee Leaves

- Families First Coronavirus Response Act (through Dec. 31, 2020)
- State Paid Sick Leave
- Federal and State Family Medical Leave
- Disability Leave
- Other?
- Keep ears to the ground; after all, it's 2020...

## Thank You!



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