

RETROFITTING A WORKFORCE IN THE COVID AGE

Tips For Managing A Remote Workplace



PERFORMANCE MANAGEMENT

With so many employees working from home, it can be easy to fall into the trap of “out of sight, out of mind.” There are a few things that employers can do to help avoid this trap and to ensure that employees are effectively managed when working remotely.

Translating Jobs to E-Work

Employers should review job descriptions and revise them for remote work. Employers should meet with employees to review the revised job descriptions and discuss any changes to job duties. They should also provide any additional resources (e.g., training, equipment) that might be required to perform the revised duties.

Telecommuting Agreement

Telecommuting agreements can set clear performance expectations for remote workers. Telecommuting agreements can address a variety of expectations related to remote work, including:

- The hours of the day that an employee is expected to be “on duty.”
- How the employee should communicate their availability each day.
- General response time expectations (e.g., employee should normally respond to e mails within 30 minutes of receipt).
- Expectations for professional dress and conduct during video conferences.
- Work environment expectations.
- Data/information privacy.
- Communication norms (e.g., telephone/ teleconference/e mail/text/chat).
- Employer-covered expenses.

If the telecommuting arrangement is temporary, the agreement should say so, and explain that

it will be revisited regularly to determine whether the arrangement continues to be effective.

Regular Check-Ins

Employers should check in with their remote employees regularly. This may include establishing daily or weekly “one-on-ones” or group meetings where the employee can discuss work assignments or workplace issues. Employers may also consider creating a virtual group chat where employees can check in with colleagues and supervisors throughout the day.

Employers should also monitor employee performance regularly in order to address workplace issues as they arise. This may include setting predefined performance goals to track productivity and objectives.

When checking in with employees, it is important to understand and recognize the unusual demands being placed on remote workers at this time, which may include providing childcare or elderly-parent care in addition to standard workplace obligations. These competing obligations can have a real impact on job performance. To the extent possible, employers should consider permitting flexible working arrangements to maximize job performance. For example, certain employees may be more productive earlier in the morning or later at night due to childcare obligations.



WRITTEN BY:
Katie Loberstein
P.K. Runkles-Pearson

KEY TAKEAWAY: Employers can avoid performance-management issues by setting clear expectations and keeping communication channels open.

WAGE AND HOUR CHALLENGES

Employers must adhere to the Fair Labor Standards Act and related state and local laws even when employees work from home. This means that nonexempt employees must be compensated for all hours worked, earn overtime pay when applicable, and take meal and rest breaks in accordance with state law. Employers can ensure that these requirements are met by implementing—and enforcing—certain workplace policies.

Timekeeping Policy

An effective timekeeping policy sets clear expectations for how nonexempt employees track and report their time. This can be a stand-alone policy or it can be combined with a telecommuting agreement (described above). A timekeeping policy may include the following requirements and/or expectations:

- Require nonexempt employees to e mail at the beginning and end of each workday to indicate when they are “on the clock.”
- Designate hours when nonexempt employees are “off the clock” and prohibited from checking e mail and/or performing job duties.
- Require nonexempt employees to track and timely submit all hours worked each week.
- Require nonexempt employees to take meal and rest breaks each day and to inform their supervisor immediately if breaks are missed.
- Require supervisors to provide weekly certifications that they did not call, text, or e mail a nonexempt employee outside of regular business hours.
- Require all employees to report any paycheck errors immediately.

Overtime Policy

Employers should implement an overtime policy that requires nonexempt employees to seek preapproval before working overtime. However, even if an employee works overtime without preapproval, the employee must still be compensated for all hours worked.

KEY TAKEAWAY: Employers must ensure that nonexempt employees are accurately tracking their time and taking required meal and rest breaks.

DATA SECURITY

Employees may use their own devices or those provided by their employers to conduct business at home. For those employers new to remote work, it is a good time to ensure that data-security guidelines and policies are in place.

Company data breaches can have disastrous consequences: revealing trade secrets, breaching nondisclosure agreements, and sending client data into the wrong hands. Employers can reduce the risk of these occurrences by implementing certain data-security policies.

- Devices used to conduct business should not be used by anyone other than the employee.
- Lost or damaged company property must be reported immediately.
- Employees may only use secured internet connections and virtual private networks to conduct business.

We also recommend that employers inform their employees of any known phishing scams and malware attempts, and provide training on how best to avoid these. Employers may also want to consider providing employees with supplies and equipment to assist employees in keeping employer information confidential in the nonelectronic environment, including shredders and privacy screens.

KEY TAKEAWAY: Implement data-security policies to keep confidential information safe and secure.

OCCUPATIONAL HEALTH AND SAFETY

Employers should also consider the safety of an employee’s workspace, even when that employee is working at home. Under the Occupational Safety and Health Act’s General Duty Clause, all employers have a duty to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” Although the Occupational Safety and Health Administration has indicated that it does not plan to inspect home workspaces for office workers, employers may still be legally responsible for injuries arising at home workspaces under workers’ compensation law. Accordingly, employers should take steps to ensure that employee home workspaces are safe. Example of such steps could include:

- Establish guidelines for a safe home office, such as requiring that employees set up a dedicated workspace free from encumbrances.
- Provide employees with training and written material regarding workplace safety, including information about ergonomics.
- Require employees to periodically certify that their workspaces meet the standards set under applicable workplace policies.
- Ensure that employees know who to contact if there is a safety issue in their home workspace, and ensure that any reports of workspace safety issues are promptly addressed.
- Keep in regular contact with employees and ensure they are aware of company complaint procedures. This helps ensure that employers are aware of employee concerns as soon as they arise.
- Remember that a flexible working arrangement can constitute a reasonable accommodation under the Americans with Disabilities Act and related state law.
- Employees with no previous accommodations may require accommodations in the new work environment. Employees with existing accommodations may require revisions.

KEY TAKEAWAY: Assist employees with creating safe and healthy home offices

KEY TAKEAWAY: Employers should ensure that their workplace policies are administered in a nondiscriminatory way.

DISCRIMINATION AND ACCOMMODATION ISSUES

Although employers should administer all workplace policies in a nondiscriminatory way, employers with remote workers face unique challenges when it comes to the implementation of COVID-19-related work-from-home policies. The very flexibility of nonstandard work arrangements may lead to variations that employees perceive as unfair. Other systemic issues may occur. For example, an employer's remote workforce may consist primarily of mothers caring for children or high-risk employees who choose to self-quarantine. If employers do not offer these individuals the same support and opportunities for advancement as in-office employees, they could be faced with gender, disability, or age-discrimination claims. Employers can reduce their risk of such complaints by doing the following:

- Document all legitimate, nondiscriminatory reasons for in-person versus remote-work requirements.
- Standardize the process for administering flexible workplace arrangements.
- Ensure that company-wide training and other opportunities are available to all employees, whether remote or not. Post these opportunities on the company intranet or somewhere that is accessible to everyone.