

Telework Tips: Your Remote Workforce and Legal Compliance

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The one-year mark of Covid-19-related quarantine has arrived, and many businesses that shifted to work-from-home policies are faced with the fact that the pandemic has fundamentally changed the workforce landscape. Even post-Covid, it is likely that many companies will shift to a completely remote workforce or will consider a hybrid model, where employees are intermittently able to telework. Both employees and employers are recognizing the benefits that come with teleworking capabilities, but what is the impact on an employers' compliance with relevant employment laws?

Establish a Reporting Policy for Hours Worked

In response to the uptick in remote work, in August of 2020, the Department of Labor ("DOL") issued guidance related to employers' obligations under the Fair Labor Standards Act ("FLSA") to exercise reasonable diligence in tracking teleworking employees' hours of work ("[Guidance](#)"). The FLSA provides that an employer is required to pay its hourly employees for all hours worked, including work "not requested but suffered or permitted." (See 29 C.F.R. § 785.11-12). This includes work performed at home. The Guidance reminds employers that if the employer knows or has reason to believe that work is being performed, the time must be counted as hours worked (and thus paid out). For example, a simple email notification from the employee at a late evening or unusual hour can trigger the employer's actual or constructive knowledge of that employee's unscheduled time at work. The Guidance puts the responsibility on employers to know about any unscheduled hours through "reasonable diligence." Although telework has opened more flexibility for employees to get their work done within their own timeline, tracking those hours has consequently become more difficult. Therefore, employers should establish adequate reporting policies to track time that might not be scheduled.

Implement Digital Labor Law Postings

Labor law postings are the state and federal employment law notices regarding employees' statutory rights that employers must conspicuously post in the workplace. With the "workplace" dissipated from one physical location, employers must find alternative ways to convey notices to employees. The DOL posted a bulletin in December of 2020 ("[Bulletin](#)") addressing the issue of alternative labor law notices. First, the DOL concluded that a one-time mailing or other single-notice method of providing labor law postings is insufficient, as most federal labor laws require employers to "post and keep posted" or require the posting "at all times."

However, digital notice will meet federal obligations under the following circumstances: (1) all of the employer's employees exclusively work remotely, (2) all employees customarily receive information from the employer via electronic means, and (3) all employees have readily available access to the electronic posting at all times. As people begin to feel more comfortable returning to the workplace, an employer might find itself in a position with a partial remote and partial in-person workforce. In scenarios like these, the DOL encourages that an employer use both methods of posting (i.e. hard-copy postings in the physical workplace as well as a readily accessible digital notice).

Know Your FMLA Radius

The Family and Medical Leave Act ("FMLA") is a federal law that allows employees to take unpaid, job-protected leave for specified family and/or medical reasons for up to twelve (12) weeks. The FMLA applies to employers with fifty (50) or more workers in a seventy-five (75) mile radius. As employers are choosing telework over in-person workforces, work-from-home employees are moving to places that are not located within seventy-five (75) miles of their physical workplace. Employers, don't be fooled! Your employee's home or physical location will not allow you to opt-out of FMLA requirements. On the contrary, the "worksite" under the FMLA will ordinarily be the site the employee reports to or, if none, the site from which the employee's work is assigned.

The above tips are only a drop in the bucket when it comes to potential issues an employer might face while transitioning to, or indefinitely continuing with, a remote workforce. If you are an employer with questions regarding legal compliance when it comes to teleworking, Hunter Business Law can help. To arrange a consultation, visit our contact page [HERE](#).



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