

Is it Time to Implement a Telework Policy & Remote Work Agreement?

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As more individuals are vaccinated against COVID-19, we can see the light at the end of the stay-at-home tunnel. With that said, it is still important for employers to proceed with caution. Recent guidance from the Centers of Disease Control (CDC) suggests that even fully vaccinated people should continue to wear masks and follow prior guidance.



In the meantime, many workers will continue teleworking from home. As we pass the year mark of trading “clocking in” at work for “logging in” from home, remote work has proven to be a viable option in meeting business needs. As an employer, you face the question of whether to allow continued remote work once it is no longer mandated by the state. If you decide to continue allowing remote work, you must determine: to what extent, for which employees and how to navigate compliance issues. Next, it is time to develop appropriate telework policies and agreements to address this unique work environment.

Your remote policy can be included in your company handbook or it can be a standalone document. Like all policies, it must be applied equally to all employees, and in this case, to those employees who seek to work remotely. The policy should:

- Indicate what factors determine the decision to approve a telecommuting arrangement.
 - Factors may include: position, cost, job duties, performance history, related work skills, interrelationship with duties of other persons and the impact on the company.
 - Include language that makes clear that the company retains full discretion to permit an employee to telecommute.
- Indicate that work rules, policies and applicable laws continue to be enforced at the home office.
- Require approval before an employee may begin teleworking in another state.

Before an employee begins, or shifts to a more permanent, remote work arrangement, you should implement a telework agreement to govern the arrangement with each teleworking employee. Use the agreement to set expectations with regards to level of productivity, working hours and home workspace. The agreement should address:

- Work conditions — most likely these stay the same as in the office. Let employees know they can expect the same:
 - Work duties and responsibilities;
 - Compensation and benefits package;
 - Work status, including seniority; and
 - Working hours and the amount of time the employee is expected to work each day or each week, including, for non-exempt employees, when they will take mandatory breaks.
- Equipment — cover what will be provided, and the employee’s responsibility to make every effort to protect company equipment from damage or theft.

- Confidentiality — address extra precautions the employee will need to take in the home office context to maintain client and company confidentiality.
- Workplace policies and laws
 - Leave laws, workers’ compensation and wage and hour laws apply and still need to be followed from home, including meal and rest breaks, minimum wage and overtime.
 - Include a plan to manage compliance remotely.
- Attire and etiquette — you may want to include rules for virtual video conferences.

Liability is another matter to consider when deciding whether to grant telework requests.

Workers’ Compensation: You will likely be liable under workers’ compensation for injury to your employee while working from their home office. Mitigate risk by having a firm policy on remote work hours and location, and by reminding employees to follow company safety guidelines from their home offices. To alleviate risk of injury due to ergonomics issues at the remote employee’s home office, you may want to inspect the home worksite, require employees to complete and sign a checklist or supply necessary equipment.

Discrimination Claim Risks: You risk a discrimination suit if your teleworking policy is not applied in a consistent manner. If an employee who would like to telework believes they have been unfairly denied the opportunity, while it appears that similarly situated employees are allowed to work remotely, the situation could open you up to a claim of unfair treatment or discrimination based on a protected characteristic. Be sure to document the business reasons you weighed in making your decision regarding whether to allow each employee to telework. Allowing telework for some also makes it more likely that you may need to consider telework as a viable option for a reasonable accommodation request for certain employees under the ADA.

Third-Party Liability: If your remote employee sees clients at their home office, you could face potential liability for injury to third parties. Make clear that employees are not to meet with clients from their home offices, and that you assume no responsibility for injuries occurring to persons aside from your remote employee, or outside the agreed-upon remote work hours or workspace.

Confidentiality: It may be more difficult to ensure that trade secrets remain protected. It will also take more precautions to ensure that confidential client information remains protected at remote employees’ home offices. The telework agreement should address how this information should be safeguarded.

Get in touch with employment counsel for help crafting a telework policy that makes sense for your company and telework agreements that fit your business needs.

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