

The Evolving E-Workplace

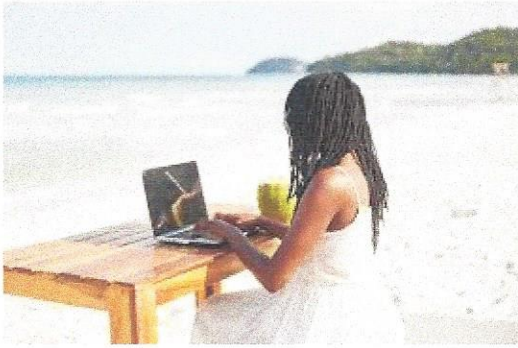
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Remote Work

- Telecommuting and remote work is being completely redefined right now.
- The future of how this will be implemented and shape the workplace is undeniable.

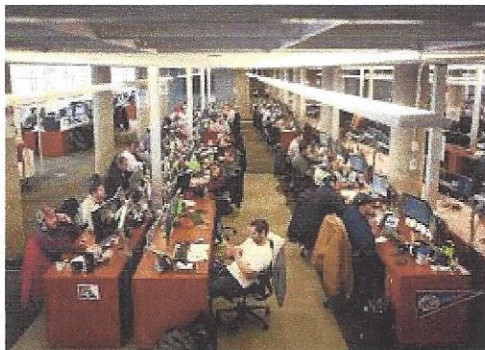
Remote Work



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Remote Work



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Who's Taking Vacation?

- Airbnb loves remote workers!
- Beautiful cities in remote areas are calling people with great Wi-Fi opportunities.



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Who's Taking Vacation?

- Carnival Cruise Line is marketing new satellite Internet services.

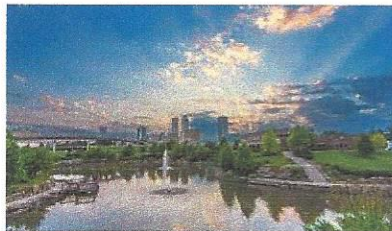


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Who's Taking Vacation?

- Tulsa is offering \$10,000 to move to the city and work remotely.



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Who's Taking Vacation?

- How do you know where your employees are?
- Do you care?
- Should you care?

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TAXES!

- Approximately 4.3 million people work remotely in the US.
- In 2020, The Stanford Institute for Economic Policy Research found that 42% of the workforce was telecommuting.
- 30% said they were working in a different state.
- That could be a problem for the employee when they file taxes.

TAXES!

- Importantly, depending on what state the employee is working remotely in, the employer may have to register there.
- Some states have reciprocity, some say you do not have to tax up to x days long, but it depends on the state.
- If you live in California and work for a Michigan employer, the employer needs to withhold California taxes and review California's requirements to ensure you are following their state labor and unemployment agencies' procedures.
- You also may need to contribute unemployment taxes in the other state.
- Some states do not even have income tax.
- The rules are complicated and should not be glossed over.

Local Protections

- Many cities, counties, and states have special protections for individuals who work in their area that you have to review and comply.
- Failure to comply with a local ordinance or law could result in a fine or other serious penalty.

Remote Work

- Remote work policy? What should be in it?
 - Eligibility;
 - Rules/Expectations/Handbook;
 - Time keeping;
 - Expectations;
 - Safe work environment/work comp and notice;
 - Equipment/use of computers/protection of information and data;
 - Professionalism;
 - Right to change.

Remote Work

- Remote work policy? What should be in it?
 - What happens when employees aren't meeting the expectations/break rules?
 - How do you call employees back to work?
 - Does this set you up for an accommodation in the future?
 - How do you deal with an ADA accommodation request from home?

Remote Work

- Beware of the Fair Labor Standards Act!
 - Remember if your employees are working when they want and how they want and you are receiving the benefit, you have to pay them.
 - While managers may be exempt, if they start to feel they can simply email or call whenever they want for work, there is a consequence.

Remote Work

- Beware of the Fair Labor Standards Act!
 - Even before COVID, we already saw the move to remote work and issues with tracking and properly paying time.
 - That is only one side of the dynamic field of wage issues..
 - Are your employees properly classified?
 - We can look to the previous Obama administration for some guidance on how classification, overtime, and other issues may be changing soon.
 - **This is a big issue with serious consequences if you are wrong.**

Remote Work

BYOD (Bring Your Own Device)

- Consider how many employees have work email on their phone, answer emails or calls after work hours
- Do you have employees that can, and do, complete work assignments remotely (i.e. from home on laptop/desktop, tablet, etc.)

Do you have to pay them for this time?

How would you track these hours?

Remote Work

- Covered non-exempt employees must receive one and one-half times (1.5x) the regular rate of pay for all hours worked in excess of forty hours in a work week

■ Overtime



Off The Clock Time

Working a little unpaid break here or there can
cost you

\$62.3 Million



What Do You Do When Employees Work Too Much

- Whether working from home or at work, you have to pay them for ALL time worked.
- The FLSA does not make an exception for approved or unapproved time.
- If the employee works, they get paid. It is that simple.

What Do You Do When Employees Work Too Much

- You can put a policy in place requiring employees to receive permission to perform overtime. But that does not excuse non-payment.
- You can always discipline an employee for working overtime that is not approved, but you have to pay them.

Controls For Time

- You have to have a control system in place for time.
- It needs to be written and accurate.
- Handbooks should have a system for employees to review and report errors.
- The FLSA places the burden of proving hours worked on the employer not the employee.
- You **CANNOT** waive an FLSA claim, even with an ironclad separation agreement. So beware.

Controls For Time

- Travel time?
- Do you pay for employees to travel from their homes to the office?
- Do you pay to and from their home?
 - You must pay for all time worked, including travel time between worksites.
 - That could include from the home office.
 - But that does not generally include hours when employee is completely relieved of their duties for periods they can effectively complete personal tasks.

Controls For Time

- Example from the DOL:
- Employee has a doctor's appointment from 8:30 to 9:15 a.m. The drive from her home to the doctor's office is 45 minutes; the drive from the doctor's office to the employer's office is 15 minutes. The employee has received permission to work from home before driving to her appointment and will work the rest of the day after the appointment at her regular office location. The employee works at home from 5:00 to 6:00 a.m., is free to perform personal activities between 6:00 and 8:00 a.m., leaves for her appointment at 8:00 a.m., finishes her appointment at 9:15 a.m., and arrives (and begins working) at her office at 9:30 a.m. At the end of the day, the employee commutes home from her office as usual, and performs no work either during the commute or after she arrives home.

Controls For Time

- The DOL found the hour the employee spends performing the principal duties from 5:00 a.m. is compensable, just as it would be if it was at an office. But at 6:00 a.m. she is off duty. Here, time remains non-compensable until she reaches the office and resumes working at 9:30 a.m.
- Her commute home from the office to her home following the end of the day is not compensable.

Controls For Time

The DOL also stated:

- The work time between the first and last principal activities will generally be compensable. But when an employee is completely relieved from duty such that they can use their time effectively for their own purposes, that time is not compensable.
- When an employee arranges for her workday to be divided into a block worked at home and a block worked at the office, separated by a block reserved for the employee to use for her own purposes, the reserved time is not compensable, even if the employee uses some of that time to travel between home and the office.

Controls For Time

- Be careful though, there is a fine line and you want to pay employees for all time they are required to perform work because those decisions were based on the fact that the employee **was not required to perform their work at any particular time.**
- If the employee is required to perform the work at a particular time, then the DOL has found to the contrary.
- The DOL cited a 2015 court case in which the court looked at a situation where they stated if an employee woke at 4:00 a.m. did some work, and went back to sleep, they are not entitled to pay until the wake up at 6:00 a.m. and left for the day.
- So it is a very fact specific inquiry.

Penalties

- Penalties



Work Environment



Work Environment



Work Environment

- Remote and Telecommuting workers are typically covered under Workers' Compensation.
- Make sure employees know to have a safe work environment.
- Report injuries.
- Put a right to inspect the work area in your policy.

Work Environment

- As discussed above, the ADA process and requirements still apply to working remotely.
- So the ergonomic chair, the frequent breaks, and other reasonable accommodations are required.

Remote Work

- Still want to offer Remote Work?

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