

Work-From-Home Legal Issues Checklist

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Working from home may not be practical in many work environments, for example, where company tools, machinery or equipment may be required to accomplish a job. Where a company must suspend work or close a work location, the employer must consider leave, notice and compensation obligations for affected employees. Our [COVID-19 Employer FAQs](#) provide some helpful guidance in these situations. For those situations where an employer is able to continue operations with employees working from home or other remote locations, below is a list of issues for employers to consider in implementing such arrangements on short notice.

Nondiscriminatory Application of Work-From-Home Policies

- Ensure that flexible workplace policies are administered in a nondiscriminatory manner.
- Ensure there are legitimate, nondiscriminatory reasons if some employees are not allowed to work from home.
- If employees are allowed or required to work from home because of the unique challenges posed by COVID-19, where remote work otherwise would not be allowed or required, then employers should make clear that the telework is being allowed or required due to the extraordinary circumstances posed by current public health circumstances.

Monitoring of Productivity and Communications

- Before monitoring employees' communication (e.g., for productivity), ensure that doing so is consistent with the company's established policies.
- Employer monitoring of work email systems is generally permitted, provided there is a valid business purpose for doing so and employees do not have a reasonable expectation of privacy in using the employer's system.
- Employers can require employees—both exempt and nonexempt—to report their working time. As outlined below, employers must require that nonexempt employees accurately record their working time.
- If employees are not performing work for all or part of the day, then the employer, in certain instances, may be able to deduct full or partial days from their compensation or leave banks.

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- Because schools may be closed and employees may face challenges with childcare due to COVID-19, employers likely will need to remain flexible in their expectations. Employees may not have dedicated work areas in their homes and may face distractions in terms of timeliness of execution of regular tasks and other disruptions of ordinary work functions (e.g., children interrupting parents during telephone calls).
- Employers should inquire about state and local laws that may require employers to provide paid or unpaid leave to employees with children in the event of an unexpected school closure.

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Timekeeping

- Ensure that all nonexempt employees accurately record all of their remote work time to ensure payment for all time worked. Time worked includes responding to phone calls and emails, no matter the time of day. Nonexempt employees are required to be paid only for time worked.
- If hardware or software that is normally used to track time is unavailable to an employee working from home, then any method that allows the employee to self-report his or her working time (e.g., an Excel spreadsheet) is acceptable.
- Clearly communicate to employees how to track their time and ensure that the time is entered into the company's timekeeping system on a regular basis.

Overtime Hours and Compensation

- Nonexempt employees must be paid for all time worked when working from home, including overtime, the same as if they were working at the office.
- An employer may restrict at-home employees from working overtime, but must pay all overtime that is worked.

Meal and Rest Breaks

- Continue to adhere to and enforce applicable meal and rest break requirements for nonexempt employees when they are working from home, including the recording of unpaid meal breaks.
- State laws in some states (e.g. California) may require that employees be relieved of all duty during meal and rest breaks when working from home, including responding to emails and taking calls. Consider reminding employees of their right to take off-duty meal and rest breaks when working from home.

Work-From-Home Infrastructure and Expense Reimbursement

- Employers should attempt to provide the resources employees need to work from home effectively using company-provided equipment, like computers and telephones. Where that is not possible, employers should evaluate the personal tools and equipment the employee is required to use on the employer's behalf and determine whether and to what extent reimbursement for associated expenses may be necessary.
- Employees in some states (e.g. California) who are required to work from home may be entitled to reimbursement for a pro rata portion of their cell phone and internet service bills that is attributable to work use. Some employers may also

choose for employee relations reasons to reimburse cell phone and internet costs attributable to work use when employees are required to work from home.

Reporting Time Pay and Split Shift Requirements

- State and local laws for reporting time pay and split shift pay may remain in effect for nonexempt employees working from home. Employers should consider consulting with counsel about how these laws may apply when employees work from home.

Sick Pay

- Employers should ensure their paid sick leave policies are up to date. Many states and localities have laws requiring employers to provide paid sick leave, and this landscape is rapidly evolving. These laws remain in effect for employees who work from home.

Occupational Safety and Health

- The Occupational Safety and Health Act and similar state occupational safety and health laws obligate employers to provide a workplace that is free from recognized hazards likely to cause harm, even when working from home.
- Employers should encourage employees to review their work area and ensure that it is free from tripping, electrical or other hazards that might pose a danger to employees.

Disability Accommodation

- Employers have an obligation to provide accommodations for disabilities to employees who work from home. Such accommodations may include, for example, providing ergonomic computer equipment and accessories, to employees who would otherwise be provided such accommodations in an office setting.

Working “From Home” vs. “Remotely”

- If an employer requires employees to work from home in response to a health crisis like the COVID-19 outbreak, then it may choose to prohibit employees from working at other remote locations other than home (i.e., locations where they may be at greater risk of being exposed).
- Employers can make reasonable requests in response to a health crisis. While employers generally cannot control what people do off-duty, they can prohibit employees from coming to the workplace, and can recommend that certain employees self-quarantine in their homes (such as employees who are sick or who have traveled to a high risk area).

Employee Personnel Records

- Employers should remind employees to update their home address and contact information in the company’s human resources system.
- Employers should also consider setting up an internal website and team- and/or company-wide distribution lists for information sharing.

Insurance Coverage Issues

- Check with workers' compensation and general liability coverage brokers or carriers to ensure that all applicable coverages will apply when employees work from home.

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