

# Four Legal Pitfalls of Employees Working from Home Due to Coronavirus

**By Nathan Pangrace**

Companies are increasingly asking employees to work from home to mitigate the spread of the coronavirus, or COVID-19. Among these are the country's largest corporations, such as Amazon, Facebook, Microsoft and Google. Working remotely can help prevent the spread of disease; however, it also comes with legal risks of which all employers should be aware. Below are four potential legal pitfalls of employees working from home due to the coronavirus.

## 1. Cybersecurity

Employers need a telecommuting policy that addresses use of technology, regardless of whether employees are using their own devices or company equipment. Working remotely creates a higher risk of data breach. A telecommuting policy should therefore establish protocols for accessing confidential business information. Ideally, the employer should provide secure access to the internet and company resources through a virtual private network (VPN). A VPN creates an encrypted network connection that makes it safe for employees to access business resources on the internet. Technology used for business purposes should also have standardized security tools such as password protection, antivirus software, firewalls, encryption, and software that remotely wipes data from a stolen device.

Allowing employees to work remotely also opens the possibility that they will use their work devices to communicate via unsecured public Wi-Fi networks. A telecommuting policy should therefore address circumstances when public Wi-Fi can be used and provide employees with a protocol follow if confidential information has been compromised. Paper documents in the employee's possession must also be protected. Home offices should be locked when the employee is not working. Others living in the employee's house should be prohibited from accessing or using office equipment when the employee is not home. Confidential papers should be protected in a filing cabinet or safe.

## 2. FLSA Violations

Telecommuting also creates a higher risk of an employer violating the Fair Labor Standards Act (FLSA). Salaried exempt employees will be paid the same regardless of how many hours they work out of the office. But FLSA violations could result if employees are paid by the hour because non-exempt employees must be paid overtime. It difficult to know how many hours employees are working while out of the office. It is therefore important for employers to keep track of what employees will be work on, with whom, and what hours of the day they are active.

It is equally important for employers set forth expectations regarding the time of day in which employees need to be reachable by email or phone, the work they are expected to produce, the

deadline by which their work must be done, the frequency and method by which they should communicate, and how long they may telecommute. Employers should establish communication standards, a work schedule, and regular meetings. Remind employees that telecommuting privileges are rights that can be revoked if expectations are not met.

### **3. Discrimination**

Working remotely also raises issues of unequal treatment and discrimination. A telecommunicating policy should establish eligibility to work remotely based on neutral factors such as the employee's past performance, ability to work independently, history of accountability, and years on the job. Employers should apply these eligibility criteria consistently for all employees. Remote employees must receive the same support and opportunities as in-office workers and meet the same deadlines and job requirements as other employees.

Remote employees' primary communication vehicles are email and text, which can promote informality. Employers should therefore remind employees that electronic communications sent and received as part of doing business will be treated as official business documents, and they should not to use sexual innuendos or make discriminatory or off-color comments.

### **4. Health and Safety**

Finally, employers should set expectations regarding the health and safety of the employee's workspace. OSHA requires that all employers provide employees with a safe and place to work. An employer can also be held liable for injuries sustained by employees working at home. Remote employees' environments must be suitable for performing their job and not a safety risk. The workplace should be clean, safe and quiet with easy access to technology. Consider requiring employees to complete a home safety survey prior to approving their ability to work remotely.

In sum, it is essential for employers to develop a comprehensive telecommuting policy to mitigate potential liabilities. A successful telecommunicating policy can not only help stop the spread of the coronavirus, it can also help employees become less stressed, more productive, and more satisfied with their work.

For additional questions regarding a company's response to the coronavirus or for assistance in developing a remote working policy, please contact one of the listed Roetzel attorneys.

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