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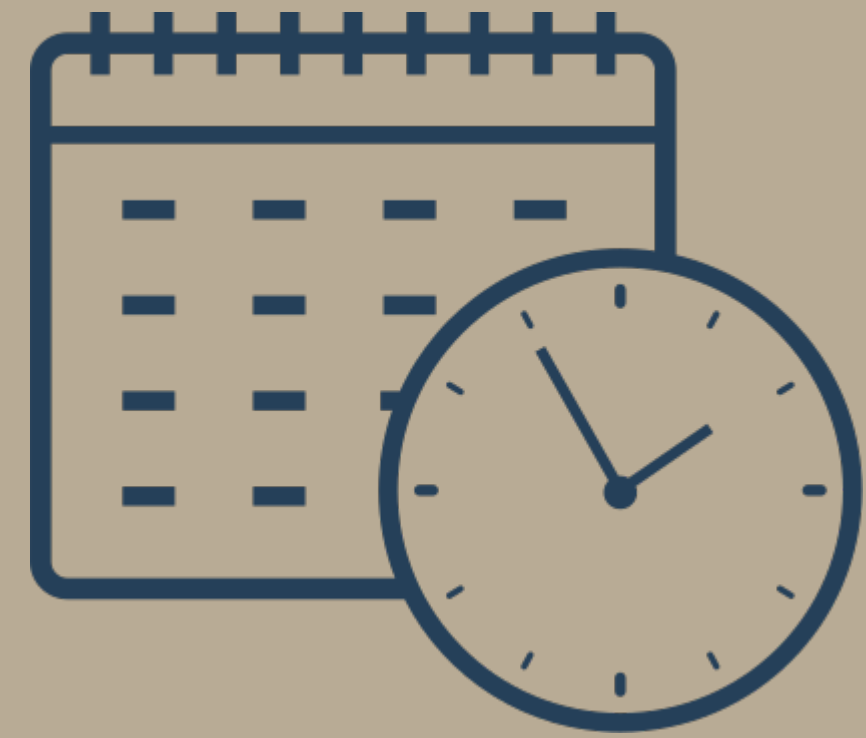
# Teleworking

# Remote work is here to stay.....

- Prior to the pandemic, approximately 3.6% of the U.S. workforce (5 million employees) worked from home half or more of the time
- As of April 2020, 97% of North American office workers worked from home at least 1 day per week.
- 82% of U.S. employees say they would like to continue to work from home at least weekly after the pandemic is over
  - Only 19% of US employees want to work remotely full time, however
  - Most would prefer a mix of home and remote work ~ about 50/50
- Source: *GlobalWorkplaceAnalytics.com*

# Pros and cons of remote work

- Pros:
  - Community advantages include slowing global warming, reducing dependence on foreign oil, reduction in traffic, reducing pressure on and wear/tear of crumbling infrastructure, and significant increases in national productivity.
  - Company/employee advantages include increased employee satisfaction, increased productivity, decrease in absenteeism, significant cost savings for employer and employee, increased collaboration, reductions in stress, illness and injury.
- Obstacles :
  - Certain level of management distrust; not ideal for all employees (who require greater supervision or direction); security and IT infrastructure challenges; employment law and OSHA concerns.
- *Source: Globalworkplaceanalytics.com*



# Wage and Hour Issues

# Legal Issues Employers Should Monitor – Business Expenses

- Expenses and minimum wage
  - Business expenses could include office supplies, internet connections, cell phone expenses, particular software/computer hardware needed for data security
  - FLSA requires reimbursement of home office expenses to the extent the unreimbursed business expenses would bring compensation below the applicable minimum wage (29 CFR § 531.35).
  - State and local laws which may require reimbursement too
    - WA and ID don't have state laws requiring reimbursement;
    - City of Seattle does have a local law requiring reimbursement

# Legal Issues, cont. – Recording and paying for all hours worked

- Compensate for all hours worked
  - Procedure for reporting all hours worked
    - Employer should ensure there are policies in place regarding meal and rest breaks for non-exempt employees
    - Advise employees that employer pays for all hours worked, that employees are required to record all hours worked, and there can be no off the clock work (and managers cannot direct otherwise)
  - DOL WHD Field Assistance Bulletin 2020-5 (employer obligation to track telework hours)  
[https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab\\_2020\\_5.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_5.pdf)
  - Travel to and from office may be compensable for teleworking employee
- If employee is working remotely from a different state than office location, employer should be aware of any differences in state law regarding minimum wage, overtime, expense reimbursement, etc.

# Legal Issues Employers Should Monitor – Tax/benefit implications

- Employer should be aware of any payroll tax implications, unemployment contributions or other such issues that may arise from remote work arrangement
  - Implications for Washington Paid Family and Medical leave coverage and contributions for employees working remotely outside of WA
  - Implications for Washington Paid Sick and Safe Leave
- Employer may need to consider income tax implications – how will employer allocate income tax withholding between or among jurisdictions if required (employee work location tracking)
  - May be a significant issue for employees who are working remotely from several different states throughout the year

# ADA & Accommodations





# Requests for accommodation while teleworking

- Teleworking employee still has rights under ADA
- If an employee was already receiving accommodation, may be entitled to continued or new accommodation
- Disabled employees may need accommodation at home that was not needed in the office
- Employer hardship considerations may differ
- Providing telework as a temporary accommodation in response to COVID-19 does not require the employer to continue to offer telework as accommodation
- Excusable delays in the interactive process

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

# Confidentiality while teleworking

- Supervisors continue to have obligations related to confidentiality
  - Medical records must be separate from personnel files
  - If possible, continue to use existing confidentiality protocols
  - Otherwise, if receiving and/or keeping medical information while teleworking, must preserve confidentiality (e.g. locked drawers, password protected computer files, etc.)
  - EEOC suggests using employee initials or code to ensure confidentiality

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

# Worker's Compensation

# Premiums and Safety

- Where is the employee teleworking?
  - Premium payments
  - WA and ID reciprocity
- Safe workspace (inspect?)
  - OSHA is not investigating home workspaces
- Basic ergonomic education to employees
- Injury reporting procedure



# Remote Work Policy Considerations

# Review current policy

- Has employer reviewed and updated its remote work policy?
  - May need tweaking (or an overhaul) - initial policy may have been drafted to address the urgent and immediate needs of the pandemic and shutdowns
  - As workplaces (eventually) return to some semblance of normal, employer may need to revise the policy to make it more narrow and selective in which positions qualify for continued remote work OR employer may decide to retain a broad, more encompassing policy
- Is employer going to continue to allow remote work after the pandemic?
  - If so, what are the terms and conditions? (conditional upon satisfaction of work requirements; employer reserves the right to terminate a remote work arrangement at any time; remote employees continue to be subject to all applicable rights and responsibilities)
  - Does the policy need to be updated (again) to reflect these changes?

# Parameters for continued remote work

- Does employer want to establish parameters re who/which positions will qualify for continued remote work?
  - Service requirements (i.e. only open to employees who have worked for employer for a year or more; or open to all employees regardless?)
  - Performance requirements (i.e., must meet minimum objective performance ratings to be considered for remote work?)
  - Position requirements (does employer want to establish that some positions are not eligible for remote work?)

# Factors to consider when evaluating employee request for remote work

- Whether essential functions of a position can be performed outside the traditional workplace
- Whether adequate supervision can be provided;
- Whether the employee needs special equipment or tools for the job that can't be replicated at home
- Whether position requires collaboration; face to face interaction with coworkers/clients
- Whether the position requires immediate access to documents or records that can't be stored off premises





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THANK YOU!

QUESTIONS/COMMENTS?