



5 Things Employers Should Consider When Maintaining Telework During COVID-19 And Beyond

Insights

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The COVID-19 pandemic has had an unprecedented impact on the workforce, shuttering businesses, prompting mass layoffs, and compelling speedy transitions to remote work. If your company has rushed to implement a temporary remote work practice to accommodate the sudden need for social distancing, or if you have seen the benefits of telework and now choose to maintain what was initially intended as a temporary remote work plan, this article will provide you guidance on the long-term maintenance of remote work plans. Specifically, this article discusses whether work can be performed remotely, the value of up-to-date remote work policies, hours worked considerations, and how to effectively manage remote employee performance and remote worksites.

1. Which Positions Are Appropriate For Remote Work?

You can measure the viability of remote work in a position by evaluating the feasibility of (a) performing all job functions remotely; (b) modifying the position to exclude non-remote job functions; or (c) modifying the position to be partially remote. In making this determination, and in addition to weighing the health and safety of employees and the community in the current circumstances, you may consider:

- The need to interact in-person with others to perform the job;
- Whether upfront technological costs are outweighed by long-term remote work benefits;
- Security needs and the ability to maintain security remotely;
- How a position becoming remote affects other employees; and
- Predictability of job needs.

Once you decide whether remote work is appropriate and for what period, you should clearly articulate the type of telework arrangement that is acceptable (long-term, short-term, or partial). In partial telework-eligible positions, you should clearly define which job duties may be performed remotely and which require an employee to report in person. Maintaining clear rules and expectations is essential to managing remote workers for pay, leave, and discipline purposes, discussed in more detail below.

2. Do You Need To Institute Or Update Your Remote Work Policy?

You would be well-served to have an up-to-date remote work policy. A clear, written policy is a great way to set remote work expectations for your employees and keep them up to date on your

a great way to set remote work expectations for your employees and keep them up to date on your company's official policies and procedures established in response to the COVID-19 pandemic. If you instituted a remote work policy specifically for COVID-19 and intended it for short-term use, or if you utilized an existing telework policy that did not specifically contemplate COVID-19, your policy may need tweaking.

A remote work policy should specify required work hours, meal/rest periods, time and attendance records, and whether employees must obtain permission prior to working outside of work hours (or working overtime), and how that permission should be obtained. It is important to fully consider all your needs and options when instituting a remote policy, so you should contact legal counsel before drafting or updating yours.

3. How Should You Track Time Of Remote Workers?

In order to track the working time of your remote workers, it is key to have a defined process to ensure accurate records. For example, you may require that employees have an established schedule, keep track of their own hours, and request from management permission to deviate from the established schedule for any reason. Such flexible work schedules may be difficult to manage and require a detailed analysis of the employee's time and the employee's leave to determine an employer's obligations on any given day. Thus, it is important to emphasize to employees that they should be diligent with adhering to established schedules, but there should be an open dialogue for addressing deviations.

You should also properly determine what kind of time is compensable. It is not always obvious when an employee's time must be included as hours worked. The following examples represent a few scenarios where the answer could require a more fact-specific analysis:

- **On-call time:** Is the employee waiting to be engaged or engaged to wait? This oftentimes depends on the extent to which the employee cannot use the time for their benefit.
- **Unauthorized time:** Do you have a policy prohibiting unauthorized time, and does it apply to "overtime" in the legal sense, or "extra hours"? The time must be included as hours worked, but the employee may still be disciplined for working without permission.
- **Commuting:** Though generally commute to work time is not compensable, a non-exempt employee who might telework but must come to the office *before* or *after* teleworking for some portion of the day may need to have the intervening travel included as hours worked.
- **Salaries:** Exempt employees who must be paid on a salary basis and work any portion of a week are generally entitled to pay for the entire week. However, there are some exceptions to this rule. Similar, but different, exceptions may apply to other employees with salaries or guarantees.

You should choose one method for tracking time and apply it uniformly across employees to the extent possible. Inevitably though, because there is no one best method for tracking employee time in all situations, the process will vary by employer, and even by position. Additionally, there might be some flexibility with respect to teleworking employees interrupted for COVID-19 reasons.

Accordingly, you should consult with counsel if you have specific questions regarding what constitutes compensable time or the best methods to track compensable time in a given situation.

4. How Do You Manage Employee Performance Remotely?

Successful managers are consistent in applying policies and maintaining open communication with their employees. Specifically, you should ensure that you regularly:

- Meet with remote workers by phone or video conference to establish measurable goals for employee performance, review employee performance, and listen to and address any employee concerns. After these meetings, you should document the conversation in a follow-up email to the employee.
- Maintain up-to-date written policies, including remote work, confidentiality, and security policies. Employees who have a written guide to your expectations will be better prepared to work productively in the home environment and meet management's expectations.
- Check in with employees regarding time tracking, contemporaneously document any time policy deviations, and notify the employee of violations through the timekeeping system or by email.
- Provide support to employees, including working technology and IT services.
- Discipline employees who fail to follow established policies. However, when imposing discipline, be careful to consider whether doing so would be discriminatory or retaliatory depending on the reason for the policy violation.

You should diligently document any departures from established policy, timekeeping or otherwise, at the time the violation occurs or is discovered. You should also not fear pursuing discipline just because an employee is remote – you discourage misconduct by consistently disciplining employees who abuse telework and deviate from established policies. Conversely, employees who request accommodations in their work schedules for COVID-19 related or other protected reasons should be accommodated to the extent possible.

5. How Do You Maintain Remote Worksites?

You may be liable for injuries on the job even if they occur at a remote worksite. It is therefore important to ensure that teleworkers' remote worksites are safe and suitable for a productive workday. Employees who are responsible for setting up their own worksites may fail to anticipate safety hazards or may not be concerned about safety risks. This could result in worksite arrangements that are prone to injury, including wire tripping hazards and non-ergonomic workstations.

Accordingly, it is prudent to establish remote worksite guidelines in your remote work policies that indicate your expectations of employee worksite set up and maintenance. You may also ask your managers to conduct periodic checks on an employee's remote workspace by phone or video conference to ascertain whether they are complying with your expectations. These checks are also useful in discerning whether employees need any technological assistance or tools that would allow

them to perform their job functions more efficiently, and whether any business expenses call for reimbursement. If you discover policy violations, you can correct the violations and, if necessary, impose discipline to deter future infractions.

Conclusion

Not every position is perfect for remote work. However, with careful consideration of work needs and position functions, you can take advantage of the many technological tools available and maintain a productive remote workforce. By diligently maintaining two-way discourse with remote employees and educating employees with clear, written, and up-to-date policies, you can ensure that your company is using remote work to its full potential.

As the COVID-19 situation continues to develop, we will continue to monitor the developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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