

When the Home Place Becomes the Workplace: Legal Considerations for Employers

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As many businesses approach the 30-day mark for “remote working” by the vast majority of their workforces, and debate rages on about how long sheltering in place might be required to effectively combat the community spread of coronavirus, employers should give thought to several employment law concerns relating to remote working.

- Confirm for the workforce that working from home is an extraordinary and temporary response to the pandemic, not a precedent that employees should rely upon or seek as a reasonable accommodation in the future merely because employees are being permitted to work remotely at this time. In short, this type of policy statement, or reminder included in a simple email to all employees about “remote working in light of the status of current events at ABC Corporation,” might be helpful in the event a request for accommodation under the ADA is received in the future.
- Employees working from home remain covered by workers' compensation and should timely report any injuries sustained during working time.
- Employees should be required to maintain (and record) their work schedule, and employers should pay all non-exempt employees according to the hours they report. Importantly, employers should encourage all non-exempt employees to record and report all time worked. At the same time, employers should inform hourly employees that they should work their regularly scheduled hours and that they are not expected (or permitted) to work “after hours” merely because they temporarily have access to the company’s electronic systems. In short, while employers should make certain that employees report all time actually worked and that they try to maintain their regular schedule, overtime should be managed and avoided where possible (but always paid when worked).

- Employees should be reminded to maintain confidentiality regarding company business. This means that employees' home workspaces should be as private as possible. Other household members should not be permitted to overhear business conversations, to use an employee's computer-issued computer, or to have access to company information on the employee's own computer.
- Employers should maintain regular contact with all employees, not only the leadership group or the most successful within the company. Many employees will experience isolation and detachment and feel uninformed about the continued viability of the company and their ability to remain employed. Managers at all levels within the company and across departments, if possible, should schedule collaboration sessions via telephone and video conference whenever possible to combat the loss of connection all remote workers experience at some point in time.

While not exhaustive, the foregoing list of issues highlights the need for employers to actively manage their remote workforces to avoid potential ADA, FLSA, and workers' compensation issues and to keep all employees connected, engaged, and looking forward to returning to the physical workplace and interacting with their coworkers in person once again.

If you have questions or concerns or want to discuss any of these issues further, please contact Rachel Gebaide, Morey Raiskin, or the attorney with whom you regularly consult at Lowndes.

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