The Employer's Playbook for Managing Remote and Hybrid Workforces

Insights

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The rise of remote work has forced employers to tackle one challenge after another – and now the biggest challenge is effectively managing remote and hybrid workforces for the long term. When the pandemic hit, many employers scrambled just to get employees the necessary technology to work from home, and then struggled with basic issues like tracking hours and managing overtime. Nearly five years later, employers have largely conquered these "simpler" issues but now struggle with broader challenges, such as deciding who may work on a remote basis, how to keep employees engaged, and the best way to deliver clear and consistent messaging. This playbook will address your greatest sources of frustrations and give you the solutions you need to resolve them.

Designating Remote or Hybrid Work Status

What should you consider when designating job positions as remote or hybrid?

- **Make it clear** when you first designate a position as remote or hybrid if remote or hybrid status is **temporary or subject to change** – for example, if remote status is subject to training, adequate job performance, etc.

- **Specify in a job posting** (if applicable) that you are **hiring for a specific location** and that any physical location change may impact future employment.

Can you require an employee to work onsite if other similarly situated employees are permitted to work remotely?

- **Avoid treating an employee differently** if they are in a **protected category** or if there's a **non-performance issue fueling the supervisor's decision** to treat this employee differently.

- **Identify a legitimate business reason to support any differential treatment**. Two key factors here are the employee's experience level and performance. If performance is the issue, be direct about it and offer counseling or coaching to the employee – and document it – before requiring them to report to work onsite. If their performance improves, consider permitting them to work on a remote or hybrid basis.

What if an employee refuses your request to return to working onsite?

Unless the employee has a doctor's note supporting their need to work from home, you may consider terminating them for essentially refusing to perform their job duties.

How should you handle requests for remote working as a disability accommodation?

Let's say your employee works remotely one day per week and works onsite the other four days. One day, the employee requests to work 100% remotely as an accommodation for their anxiety disorder and submits a doctor's note to support their request. Do you have to grant their request? It depends – here's what you must consider:

- **Would granting the request create an undue hardship for you?** The Americans with Disabilities Act (and its state law equivalents) requires employers to demonstrate an undue hardship before rejecting most workplace accommodation requests. Since many employers were able to get through the pandemic with a good portion of their employees working from home, it might be difficult to show an undue hardship for any remote-work request – unless, of course, your company's work suffered during that mandatory work-from-home period.

- **Look closely at their job duties and essential functions.** If the work can, in fact, be performed from home, it might be problematic to reject the request.

Can you establish different compensation tiers for remote vs. onsite employees?

- **Determine if any added value is derived from onsite work as opposed to remote work**. If the sole distinction is "the employees are here and we can keep a close eye on them," the differential pay would be difficult to defend. Are in-person employees able to perform additional duties? Are they more readily able to enter the field? What is the substantive basis for the difference in pay?

- **Consider a disparate impact assessment before implementing any tiered pay structure.** A two-tiered pay structure based on remote status could result in a disparate impact discrimination claim. In some workplaces a certain subset of employees may have an easier time commuting to the office than others, whether due to job duties or outside the office responsibilities. If your proposed two-tiered pay structure results in one group receiving significantly better pay than a group primarily composed of employees in a specific protected category, then your workplace incentive may give rise to liability.

- **Be prepared for pushback.** Your company's position on this should be consistent and defensible.

If you need to reduce your workforce, can you lay off remote workers first?

While there's no one-size-fits-all solution, here are four key questions to consider as you create your strategic plan for these difficult decisions.

Equipment and Ergonomics

What should you consider regarding equipment and resource reimbursements for remote workers?

- **You must have reimbursement strategies for your remote workers' internet and phone expenses.** These reimbursements should be clear line items on employees' pay stubs.

- **Allocate a reasonable budget for equipment or make it clear to employees they are not required to purchase any equipment.** Your messaging on this should be detailed and repeatedly communicated to employees.

Are you required to reimburse employees who voluntarily work one day per week from home?

This is a state-specific question. Broadly speaking, if an employee is permitted to work from home occasionally while the office is available to them, no reimbursement is required.

What can you do to ensure remote employees are working safely?

A big issue you might not have considered yet – but that's a ticking timebomb – is workers' compensation claims related to remote employees' injuries or conditions (such as in their necks, wrists, or fingers) resulting from poor ergonomics in their work-from-home office. Here's what you can do to avoid those claims or improve your chances of successfully defending them:

- **Establish an ergonomics policy**. Train your employees on the policy, frequently circulate the policy to employees, and update it as needed.

- **Consider setting aside an ergonomic budget** for employees and encouraging employees to secure the equipment needed to safely perform their role.

- **Consider hiring a third-party ergonomic expert to do an initial assessment** of the employee's workspace. This could even occur over a virtual meeting to avoid invading the employee's privacy at home.

Company Culture and Communication Challenges

What are some of the biggest cultural challenges with a remote workforce?

- **Employees are less engaged.** Gone are the days of chatting in the break room, grabbing lunch with a mentor, or popping into a colleague's office just to vent or catch up on their personal life. This can leave remote employees feeling isolated and directionless.

- **An increasing number of employees have never worked in person.** Employees just entering the workforce may have never worked a job in person and therefore lack any understanding of social niceties, cultural norms, and workplace dynamics.

- **Some leaders are resistant to remote work models** and perceive remote employees as not working as hard.

How can you help remote employees stay engaged?

- **Provide regular feedback.** Managers of remote workforces may offer less coaching to their employees – perhaps because it can feel like there are fewer natural opportunities to do so, or because remote workers can grow so accustomed to working in silos. But this can be a major disservice to your employees and lead to lower engagement and retention rates.

- **Host digital events** such as trivia, video games, or even remote wine tastings. A regular cadence behind social events is very helpful.

- **Don't forget to be human.** Behind screens, it can be easy to adopt a more robotic persona focused on productivity and efficiency. Make a point to acknowledge your employees and coworkers as people first.

How can managers and leaders rethink their reluctancy to accept the new normal?

- **Look at it as an opportunity to reimagine the workplace.** While we can't change the fact that remote workforces are here to stay, your managers and leaders can change the way jobs are performed and how they supervise their employees.

- **Consider younger generations' perspectives.** How would it feel starting your career in an increasingly remote workplace? It's difficult to build relationships remotely and managers should be sensitive to that – but again, that's not changing, so drop the "back in my day" state of mind and try stepping into those employees' shoes.

How can you avoid communication pitfalls in remote workforces?

- **Make it clear what the proper chains of communication are.** Managers should not act like lone wolves and instead must reach out to the appropriate people (such as HR) before disciplining or terminating an employee. Likewise, make sure your employees know who to contact if they have any questions or concerns.

- **Stay engaged but avoid hovering over the employee's digital shoulder.** It used to be that if an employee didn't pick up their phone, the manager might assume they are working in a coworker's office – but now we are quicker to jump to the worst possible conclusion if a remote worker does not instantly respond. This mindset becomes even more unreasonable if the manager is abusing modern technologies to message the employee after normal working hours or incessantly throughout the workday.

If a remote worker is invited to a Zoom meeting, can the employer require them to be on camera during the entire meeting?

Yes. It's no different than asking an employee in an in-person meeting to put down their phone and engage. It's perfectly reasonable to make this request and if an employee routinely declines, there's likely a broader issue. If the camera is off only occasionally, its likely not worth coaching on.

What are some tips for evaluating a remote employee's performance?

- **Pinpoint objective and attainable goals**. You might not be able to observe a remote employee working or control how they are spending their time during working hours, but you can still set clear expectations and hold employees accountable.

- If you need to deliver a tough message about the employee's performance, do so through a **phone call or virtual meeting** rather than sending it cold in an email. Be prepared with concrete examples of deficiencies and clear guidance for improvement.

- Depending on the nature of the conversation and its conclusion, **a confirming email can be useful to ensure messaging is aligned and create a clear record of events**.

Conclusion

What is the glue that can hold your remote workforce together?

- **Clear and effective policies**. These policies (including your employee handbook) should be signed (even if digitally) by your remote employees, circulated regularly, and updated often, and your managers must be trained on them and what their obligations are.

- **Consistent processes**. You will need to develop replicable workflows, checklists, and controls and balances to ensure that even unique situations are handled consistently with respect to process.

- **Multijurisdictional compliance**. If you have a geographically diverse workforce, you should work with legal counsel to keep up with ever-changing workplace laws at federal, state, and local levels. You may also consider subscribing to our fpPolicyAlert service, which, for a quarterly flat fee, provides a monthly summary of new workplace law changes and updated policy language tailored to your workplace. If you have any questions or are interested in viewing a sample alert, please contact the author of this Insight.

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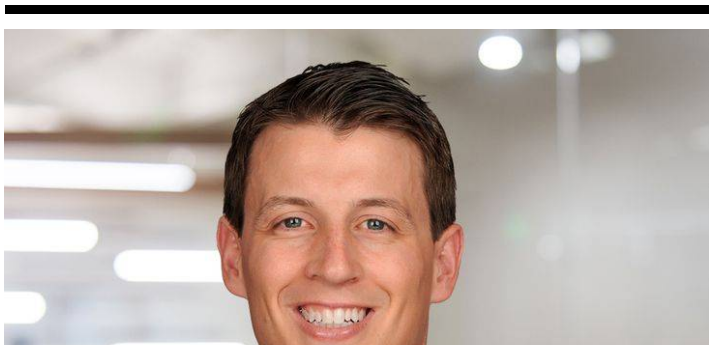
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