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## Remote Work Policies and Protocols to Review

BY GEORGE N. SALIBA, CONTRIBUTING WRITER

**WHILE THE CORONAVIRUS PANDEMIC HAS** moved remote and hybrid work to the forefront, some employers remain unaware of key employment law and other considerations.

Against the backdrop of Gallup reporting that approximately 80% of remote-capable American employees now work either exclusively remotely or in a hybrid-work configuration, legal pitfalls are arising for employers who do not have solid remote work policies and procedures in place. Case in point: One employment law attorney interviewed by *New Jersey Business Magazine* reveals that a company casually permitted an employee to work from another state without first considering the payroll tax requirements for that other state, and that this afterwards created a surprise.

### 1 Out-Of-State Employment Laws

Michael A. Shadiack, partner and chair, labor and employment group at the law firm of Connell Foley, explains that companies need to learn whether they must withhold payroll taxes for another state, or if there is a reciprocal agreement whereby the other state agrees that only New Jersey taxes must be withheld. Shadiack adds, "It's a hot issue [and requires] very technical analysis. We always recommend that employers contact their business accountants to discuss the issue because [accountants] have the best working knowledge of the tax laws in various states." Other attorneys note that another state's various employment laws (paid sick leave, accommodations laws, etc.) will apply to New Jersey's workers operating remotely from that state.



**2 Preventive Policies** A prerequisite for such scenarios is that employers should consider creating a policy whereby employees must first seek permission from management before working out of state, Shadiack says. Such information may be contained in an employee handbook, a document that should also stipulate that all of the handbook's policies/procedures are applicable even in remote work scenarios; some employees erroneously believe that handbook policies only apply when they are physically at workplaces.

Shadiack stresses, "Some may say that that is a silly reading [of the law] by an employee, but we're advising our employer clients they have to make it clear in their handbooks that the policies and procedures apply even when remote work is directed or otherwise authorized." He adds that employees should sign a handbook Acknowledgment of Receipt Page.

**3 Overtime Pay** Of note, Kelly Ann Bird, director, employment and labor law, administrative director of the Red Bank office for Gibbons, P.C., says overtime laws apply to nonexempt remote employees, so "we have to continuously remind [employees] of their work hours, of their obligation to clock in and clock out, and to record their time when they are working remotely. Those are the kinds of things that we should be repeatedly talking about. [It is also our obligation] to pay [employees] for a full day of work if they're working that, or more, if they're working more."



**4 Employee Accessibility** Employee accessibility is another remote-work issue. Policies should ensure that employees are accessible to managers and co-workers, and that employees understand that remote work is not designed to provide time for child-care or caregiver responsibilities. In fact, the employees' work hours, obligations, responsiveness and accessibility must be the same as if they were working in the office. Employees should likewise understand that they must be willing to report to in-person workplace meetings.

Bird says, "[Working remotely] is also not a substitute for an accommodation that might be afforded for a religious, disability or pregnancy-related reason."



## CHANGING OF THE GUARD

On-site

60%

Worked fully on-site in 2019

20%

↓ Worked fully on-site in 2023

Remote

8%

Exclusively worked remotely in 2019

29%

↑ Exclusively worked remotely in 2023

Hybrid

40%

Shifted from working entirely onsite to either a hybrid or exclusively remote work arrangement.

Source: Gallup - 'The Future of the Office Has Arrived: It's Hybrid'





**5 Health & Safety** Striving to avoid workers' compensation claims is yet another remote-work consideration. A worker's home environment should be free from trip hazards such as extension cords and exposed wires, for example, and attorneys say employ-

ers should consider having workers sign agreements stipulating that they will make their home-work environment hazard-free via a 15 to 20 item checklist.

Connell Foley's Shadiack notes that employers should have employees agree to the right of an on-site

audit that would not only evaluate health and safety considerations, but would additionally ensure employees are leveraging proper safety protocols to preserve and protect confidential business information.

He explains, "Is their [computer] software up to date? Do they have the appropriate antiviral software running on the computer? Is their internet connection secure? Without being on site, the company may have no way to know."

On the topic of confidentiality, Gibbon's Bird adds, "If you have a spouse, a significant other, or another family member walking through your living room when you're taking a Zoom meeting and they're hearing all kinds of confidential company information ... or, if you're printing things out and leaving them on your kitchen counter, you're potentially sharing propriety, confidential information with people who don't have a restriction on their right to use and disclose it, and [you] are setting the company up for dissemination of that information." She explains that employees' responsibilities in these matters should be the same as if they were in the office.

Employers should meanwhile address employees' operating costs. A traditional office environment affords access to an internet connection, a printer, paper and other supplies. Will an at-home employee need to supply these and related items for themselves, or will the employer reimburse them?

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**6 Anti-Harassment** Also important to consider in the work-from-home environment are anti-harassment laws. “What happens when you have an employee working from their personal space and there are things visible to others [such as salacious photographs, or, say, a Confederate flag]?” asks Mariya Gonor, member of the firm in the labor and employment department at Norris McLaughlin, P.A. She adds, “The things we do in our personal lives – especially now in a digital era – could easily carry into the employment arena and expose the employer to liability if things the employee has around create a harassing environment for others who might be on the Zoom call, and see things that they shouldn’t be seeing.” The Equal Employment Opportu-

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—Kelly Ann Bird, Gibbons, P.C.

nity Commission (EEOC) issued proposed guidelines in 2023 addressing issues including, but not limited to, cyber and online harassment.

**Conclusion**

If any aspect of a remote-work policy is an actual agreement as opposed to policy, it should not be included in the employee handbook, but rather exist as a stand-alone agreement, Connell Foley’s Shadiack explains. Overall, Norris McLaughlin’s Bird concludes, “We’ve been dealing with [remote work] for three years. Now that it’s not an ad hoc, there’s no reason not to get a firm, robust, all-encompassing policy in place, and to train our managers [to

understand that] supervising remote employees might be a bit different from supervising people who are directly in your line of sight every day.

“In terms of culture, if opportunity

arises to get people together – whether it’s for innovation or collaboration or celebration – we should be doing that. [Remote work] doesn’t mean we never see each other.”

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