

BUSINESS FOCUS:

New year, new opportunity to review remote worker policies and practices

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With the start of 2021, employers have an opportunity to confirm that potential employment law issues regarding their remote workers are addressed and resolved. Those potential issues include compliance with state and federal anti-discrimination laws, wage and hour compliance, worker's compensation issues, and business privacy and confidentiality concerns.

Equal Employment Opportunity Compliance

NH and federal antidiscrimination laws require that employers apply the terms and conditions of employment (wages, hours, and benefits) equally among all employees. If remote working is offered as a benefit, then employers should take steps to ensure that all such arrangements are offered and implemented equally. Employers should look carefully at their selection criteria for remote workers and ensure that the practice and policy does not disfavor a protected group (gender, religion, disability, etc.). As with all other employment practices, clear policies, consistent decision-making and careful documentation are vital in protecting against allegations of discrimination.

Wage and Hour Compliance

Employers must be mindful of both federal and state wage and hour laws with remote workers who are non-exempt employees. Actual work hours must be accurately tracked to ensure compliance with state and federal laws and, in particular, overtime requirements. Supervisors should take particular care to monitor unauthorized off-the-clock work, unauthorized reported work and overtime expenses. Even if an employee works overtime and was unauthorized to do so, the employer must still pay the overtime due to the employee. However, the employee can be disciplined for violating company policy assuming that such a policy exists. If the remote employees work in states other than NH, the employer must comply with the wage and hour law of the state in which the remote worker is located. Wages and hour laws sometimes

differ significantly among states; therefore, it is imperative to seek legal advice with any compliance questions.

Safety and Confidentiality Issues

Worker's compensation – If a remote worker is injured while working at home, the injury is a reportable worker's compensation injury and may be compensable depending on the circumstances. Employers should check with their worker's compensation insurance carrier to find out whether the carrier will inspect the employee's workplace to ensure safety compliance and confirm that there is coverage for remote workers—including those located out of state. While injuries to remote employees can be problematic, employers should take steps to ensure that the area in which the employee is working is safe and provide any necessary equipment to rectify safety issues.

Employer privacy and confidentiality issues – Some remote employees may need to access and use confidential business information to perform their jobs. To better protect that information, employers may need to reevaluate their current policies and practices and implement new ones. For example, if the confidentiality policy does not address remote working, it should be revised and updated so that it does and should be clear about what remote employees can and cannot do with company documents. For example, the policy could state that employees are not permitted to email company documents to their personal email accounts or transfer data off the company network. Also, consider security related issues, including password protecting confidential and trade secret information and requiring multi-factor authentication to login to the company network.

Plan to prevent issues

These are a few of the employment related issues involving remote workers and, at least for the time being, should be considered carefully while some or all of the work force is working remotely.

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