

LEGAL

Will brands incur admin, financial burdens of work-from-home trend?

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By **Rania V. Sedhom**

It seems like almost every company is discussing the new reality of working from home or hybrid work environments. The impetus for the pivot is understandable.

However, as the pandemic begins to appear in the rearview mirror and our conversations change to a new topic, will fashion companies continue to service their customers as they have done since 2020?

I have no crystal ball, but the challenges of hybrid and at-home work environments will likely replace the current conversation paradigm.

There are several legal intricacies related to an employer's workplace flexibility.

Some open questions to consider are: one, will you allow or continue to allow an employee to work in another state and, two, will you limit working remotely to the state(s) in which the company is located?

Several employers focus on whether the employee can perform essential job functions by working remotely, but may not yet have examined other critical financial components of a remote or hybrid workforce.

Here are a handful of issues that should be analyzed.

Business and payroll taxes

When an employee is working outside of the state where the employer operates, the employer may be responsible for that state's taxes, including income taxes.

Each state's income tax and withholding requirements vary based on the employee's residence or work location.

In addition, states have different thresholds for when an individual working remotely in that state triggers tax implications.

In New York, for example, tax liability is triggered in as little as 14 days. Illinois is 30 and Arizona is 60.

By virtue of creating a tax nexus with a new state, the company may also be liable for gross receipts taxes, franchise tax, and sales and use taxes.

Workers compensation

Employers must cover each employee in the state where the employee performs services.

In other words, if a California fashion company with multiple locations in New York, Florida and Texas allows employee A to work from Hawaii and employee B to work from Illinois, the company must purchase workers compensation in Hawaii and Illinois to cover their remote employees.

How can employers manage risk so that they are not paying claims for unrelated injuries occurring in the home?

At a minimum, clearly articulate working hours, including "on-call" hours, if any. Injuries occurring outside those designated hours may not be the employer's responsibility.

When told of an injury, obtain as much detail as possible.

For example, if the injury occurred during the designated work or on-call hours, where exactly did the injury occur and how did it occur? Did the employee trip while exiting the tub or shower, fall out of bed after napping, or accidentally staple a finger? Did the employee get injured after work and while getting ready to socialize?

Unemployment insurance

Like workers compensation, coverage by the employer is mandatory and dependent on the location where services are performed.

Using the previous example, the California fashion brand would be obligated to register with and purchase unemployment insurance in Hawaii and Illinois.

Work from home employee reimbursement

A further complication for employers is what is considered a reimbursable business expense for employees working from home.

For example, do employers believe that the cost of Internet and telephone services, or the cost of heating and air conditioning while employees work from home is their responsibility?

Even reimbursing day-to-day office supplies can prove to be a headache.

For employers with remote or hybrid workers in California and Illinois, for example, in California you are required to reimburse employees for "necessary business expenses" that they incur. Such expenses include but are not limited to physical supplies such as paper and pens, as well as phone, Internet and other utility bills, or a portion thereof.

How will an employer determine the appropriate reimbursement and the portion of the Internet, phone, and electricity and utility bills for which they are responsible?

Perhaps providing personal hotspots is less expensive than determining the percentage of Internet use dedicated to job performance.

THE DECISION TO allow or continue to allow remote or hybrid work will be determined by the facts and circumstances of each employment situation and each individual company.

Will brands value flexibility over cost? Can they attract the employees that they are looking for with an in-office-only work culture?

The employer's decision is complicated.

A cautionary note is to ensure that whatever policy is created, it is properly applied. Remember, facially neutral policies can lead to a disparate impact discrimination claim.

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