

Remote Employees



Where everything checks out.

REMOTE WORKERS

It has become increasingly common for employers to have employees work remotely, particularly in light of technological advances and the coronavirus pandemic. With the COVID-19 pandemic, working from home has become the norm for many more people. Also referred to as telecommuting, remote work includes any work performed from a location away from the employer's central workplace, often the employee's home. While some employees may participate in a formal telecommuting arrangement with their employers, other employees work some hours at home each week or work from home intermittently.

Before COVID-19 stay-at-home mandates required individuals to work from home, many employers and employees chose telecommuting arrangements for the many benefits remote work provided, including:

- Reduced overhead and operational costs, such as office space rental.
- Use as a recruiting tool to attract new employees.
- Nationwide hiring opportunities (and the ability to pay lower market rates).
- Reduced commuting costs and stress.
- Increased retention, productivity, loyalty, and morale.
- Improved work/life balance.
- Societal benefits, such as reductions in traffic congestion and pollution.

The DOL has stated that it “strongly supports telecommuting and telework,” and that “[f]amily-friendly, flexible and fair work arrangements, including telecommuting, can benefit individual employees and their families, employers, and society as a whole.” However, telecommuting also creates potential challenges and risks for the employer, such as:

- Difficulties with onboarding and training remote employees, including immigration compliance under the Immigration Reform and Control Act (IRCA).
- Wage and hour compliance under the [Fair Labor Standards Act](#) (FLSA), including ensuring employees' hours are accurately tracked and compensated.
- Questions on whether telecommuting qualifies as a [reasonable accommodation](#) under the [Americans with Disabilities Act](#) (ADA).

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- Less control over where a remote employee stores confidential information and [trade secrets](#) and other information security issues.
 - Workplace health and safety issues, including recording and providing [workers' compensation](#) for on-the-job injuries and occupational illnesses.
 - Potential [discrimination](#) claims if employers do not treat all employees' telecommuting requests the same.
 - Determining which state laws apply when the employee and employer are located in different states.
 - General challenges associated with remotely managing employee performance and other aspects of the employment relationship, including productivity level.

TELECOMMUTING POLICIES

Having a written telecommuting policy in place is a critical first step in addressing the challenges of employing a remote workforce. A well-drafted telecommuting policy serves several important purposes, including:

- Defining eligibility to telecommute
- Providing a specific procedure for requesting approval to telecommute
- Directing employees to the employer's reasonable accommodation procedures
- Explaining the conditions of an authorized telecommuting arrangement
- Detailing employee responsibilities and expectations, such as work hours, how hours are recorded, accessibility during work hours, frequency of communications with the employee's manager
- Safeguarding company equipment and confidential information
- Workspace setup, including ergonomics, furniture and equipment the employee is responsible for providing, and using secure remote access procedures (for example, a VPN)

- Setting out employer responsibilities, such as any technical support provided to the employee, work expenses the employer reimburses, and equipment the employer provides and repairs (for example, computers, cellphones, teleconferencing equipment, facsimile equipment, antivirus software, and office supplies)
- Designating the employee's specific job duties, work area, and break times to avoid liability for injuries that are not work-related.
- Reminding employees that they are expected to comply with all employer policies, including electronic communications policies.

REMOTE HIRING

Employers face specific challenges regarding employees working remotely from the onset of the employment relationship (as opposed to employees beginning to work remotely at some point after the employment relationship has already commenced). These include issues with the online application process and background checks, providing new hire information, conducting orientation and training, obtaining acknowledgments and signatures, and immigration compliance.

For remote work, the application process likely takes place exclusively online. Common issues that arise in the context of online employment applications include issues with electronic signatures, and ADA accessibility. It is important to ensure the remote employee actually returns an employment application that is signed, electronically or otherwise, and that the employer maintains a copy of the signed application in the employee's personnel file. To the extent confidential and personal employee information is stored on a shared or cloud-based drive, employers must ensure that such data is secure, pursuant to various federal and state privacy laws.

Further, because employers seeking to hire remote employees are likely to use an online employment application process, they must ensure their applications are ADA accessible. The ADA's accommodation requirements may apply to applicants that are blind or visually impaired, deaf or hearing impaired, or who have physical disabilities affecting manual dexterity (such as limited ability to use a mouse). Online applications that fail to meet accessibility requirements have been challenged by applicants in court. Further, the US Department of Justice has also investigated and entered into settlement agreements with a number of public employers using an online employment opportunities website or job applications that were not fully accessible to

people with disabilities. Thus, employers who intend to use online job applications must ensure that their websites and the applications are ADA accessible.

Employers must provide and obtain from remote employees the same information they provide and obtain from other newly hired employees. Employers may choose to exchange this information electronically or, if practical, have remote employees visit an office location to handle new hire paperwork and orientation. This includes tax and immigration forms, confidentiality and restrictive covenant agreements, employee handbooks, and any mandatory notices, such as the Notice and Acknowledgement of Pay Rate.

IMMIGRATION COMPLIANCE

Completing required immigration documents can be more complicated for employers with a remote workforce. Within three days after an employee begins working for the employer, IRCA requires employers to review new employees' original documents proving identity and employment authorization and complete Section 2 of Form I-9.

The Form I-9 process is typically completed at the employer's worksite during the employee's first three days after starting work. However, if an employer hires a remote employee located far from any of the employer's worksites, the employer needs to use an alternative method. IRCA allows an employer to deputize an agent to review documents and sign the Form I-9 for the employer. Because the employer remains liable, the agent must be trustworthy and someone with whom the employer feels comfortable.

Although employers commonly seek licensed individuals like notaries public, attorneys, or certified public accountants to act as their agent, there is no rule under IRCA specifying what the agent must be.

WAGE AND HOUR

When an employee works from home, the line between working time and nonworking time is not always clear. However, if an employer knows or has a reasonable belief work is being performed by a nonexempt employee, including overtime, the employer must count the time as hours worked and compensate the employee appropriately. It is the employer's responsibility to ensure that the employee does not perform any work the employer does not want to be performed.

The FLSA also requires employers to keep records for nonexempt employees, including records of hours worked each workday and workweek. While employers must maintain accurate time records for all nonexempt employees, this is especially important for remote employees because their physical presence at work is not monitored.

On August 24, 2020, the US DOL issued a Field Assistance Bulletin providing guidance on employers' obligations under the FLSA to exercise reasonable diligence when tracking compensable time worked by employees who telework or otherwise work remotely. Although the DOL's guidance directly responds to compensable time issues associated with COVID-19-related remote work arrangements, it applies to other remote and telework scenarios. The guidance clarifies that:

- Employers must pay for all work they know or have reason to believe is being performed, including unauthorized work.
- Employers can satisfy their obligation to exercise reasonable diligence to track working time by providing a reasonable procedure for reporting unscheduled work.
- Reporting procedures are not reasonable if an employer:
 - prevents or discourages employees from reporting working time;
 - does not provide proper training on the procedure; or
 - requires employees to waive their right to compensation for hours worked.

Employers are not required to take impractical steps to identify unreported work if employees do not use the available reporting procedure and the employer is not otherwise notified of the additional work time.

The DOL has also published additional guidance for employers on FLSA issues during the COVID-19 pandemic, including wage and hour issues relating to telecommuting. In this guidance, the DOL clarifies that:

- An employer may encourage or require employees to telework as an infection control or prevention strategy (but may not single out employees either to telework or to continue reporting to the workplace on a basis prohibited by anti-discrimination laws).
- Employers must pay employees their same hourly rate or salary if they work from home if the teleworking arrangement is a reasonable accommodation for a

qualified individual with a disability or required by a union or employment contract. If not, the FLSA requires employers to pay employees only for the hours they actually work whether at home or at the employer's office, with caveats that employers must pay nonexempt workers at least the minimum wage for all hours worked and at least time and one-half the regular rate of pay for hours worked in excess of 40 in a workweek; and salaried exempt employees their full salary in any week in which they perform any work subject to certain limited exceptions.

- Employers may not require employees to pay or reimburse the employer for business expenses incurred while teleworking (for example, internet access, computer, additional phone line, or increased use of electricity) if doing so reduces the employee's earnings below the minimum wage or required overtime compensation; or telework is being provided to a qualified individual with a disability as a reasonable accommodation under the ADA.
- Work performed at the employee's home is treated the same as work performed at the primary worksite for purposes of compensability.
- An employer that allows employees to telework with flexible hours during the COVID-19 pandemic (for example, taking several hours in the middle of the workday to care for children whose schools have closed) does not need to count as hours worked all the time between an employee's first and last principal activities in a workday. Although this is contrary to the DOL's general position, the DOL does not want to discourage needed flexibility during the COVID-19 pandemic. However, New York employers should be wary of breaking apart such work time during a single workday due to spread of hours or split shift obligations that may arise.

EMPLOYER POLICIES AND PROCEDURES

Employers should take certain steps to keep accurate time records and properly pay remote nonexempt employees for all hours worked, such as:

- Incorporate a timekeeping policy in the employer's payroll practices and compensation policy that:
 - requires all employees, including remote employees, to record all working time accurately;

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- prohibits off-the-clock work;
 - provides a reasonable procedure for reporting unscheduled work;
 - makes falsification of time records or fraudulent timekeeping practices subject to discipline and termination of employment;
 - requires managers or supervisors to review and verify the time records of their direct reports on a regular basis, such as daily or weekly; and
 - requires remote employees to verify the accuracy of their time records on a regular basis, such as daily or weekly.
- Reach an agreement and understanding about the remote employee’s work hours that complies with the FLSA. For example, the DOL accepts any reasonable agreement between an employer and an “on call” employee for determining the amount of hours worked, where the employee performs services for the employer at home but has long periods of uninterrupted leisure during which the employee can engage in normal activities of living.
 - Promulgate a rule that prohibits work outside designated working hours and have managers exercise their control to see that work is not performed at home if the employer does not want it to be performed. As the DOL regulations remind employers, “management has the power to enforce the rule and must make every effort to do so.” However, employers must compensate employees for unauthorized work and should have a procedures for employees to report unscheduled work.
 - Explain to remote employees what time is compensable and what time is not. Activities such as meal periods, preparation time and waiting time is not work time.
 - Customize the employer’s payroll procedures and compensation policy to comply with applicable state and local law regarding meal and rest periods where the remote employee works and ensure that remote employees take (and that nonexempt remote employees properly record) their meal breaks.
 - Reference the employer’s timekeeping policy in its telecommuting policy or telecommuting agreement with the remote employee.

ACCOMMODATION REQUESTS

Under the ADA, covered employers must provide a reasonable accommodation to a qualified individual with a disability unless doing so causes an undue hardship. Employers are often faced with telecommuting and related arrangements as requests for accommodations. Employers must understand how to respond to these requests and when they are deemed reasonable to avoid an ADA violation.

The EEOC has recognized that telecommuting is a form of reasonable accommodation and has provided guidance for employers. According to the EEOC, the ADA does not require an employer to offer a telecommuting program to all employees, but employers that do must allow employees with disabilities an equal opportunity to participate. Further, changing the location where work is performed may fall under the ADA's reasonable accommodation requirement of modifying workplace policies, even if the employer does not allow other employees to telecommute. Employers may be required to modify workplace policies (for example, by waiving a one-year eligibility requirement) for a new employee with a disability seeking to work at home, where the job can be performed at home. An employer should determine whether working at home is a reasonable accommodation by engaging in an interactive process with the employee, considering things like limitations of the disability that make it difficult to do the job in the workplace, how the job can be performed from the employee's home, and other types of accommodations that allow the person to remain full-time in the workplace.

An employer and employee should determine whether a particular job can be performed at home by identifying and reviewing all of the essential job functions (meaning those tasks that are fundamental to performing a specific job); and determining whether some or all of the functions can be performed at home (recognizing that for some jobs, the essential duties can only be performed in the workplace).

Employees in certain positions cannot perform their essential duties from home, such as food servers, cashiers, and truck drivers, but many others can (for example, telemarketers and proofreaders). When considering the feasibility of working at home, employers should take into account the employer's ability to supervise the employee adequately, whether any duties require the use of certain equipment or tools that cannot be replicated at home, whether there is a need for face-to-face interaction and coordination of work with other employees, whether in-person interaction with outside colleagues, clients, or customers is necessary, and whether the position requires the employee to have immediate access to documents or other information located only in the workplace.

An employer should not deny a request to work at home as a reasonable accommodation solely because a job involves some contact and coordination with other employees if meetings can be conducted effectively by telephone and information can be exchanged quickly using email.

If the employer determines that some job duties must be performed in the workplace, the employer and employee should consider whether working part-time at home and part-time in the workplace is feasible and develop a schedule that meets both of their needs.

An employer does not have to remove any essential job duties to permit an employee to work at home, but the employer may need to reassign some minor job duties or marginal functions if they cannot be performed outside the workplace and they are the only obstacle to permitting an employee to work at home.

And, of course, an employer may make accommodations that enable an employee to work full-time in the workplace rather than granting a request to work at home.

Most courts have held that working from home was not a reasonable accommodation under the facts and circumstances presented. For example, telecommuting was not a reasonable accommodation for an attorney where attorneys were required to work in teams, collaborate, and cross-train each other; employee was unreasonable in demanding to telecommute three or more days a week with no medical requirement to do so. In another case, a telecommuting employee with MS was no longer a qualified individual when she was terminated for refusing to relocate to Texas when job duties changed after a corporate merger and she was now required to work face-to-face with team members; although she has telecommuted for years, she was no longer qualified for the position because her essential functions changed.

However, some cases have held that working from home was a reasonable accommodation. For example, a request to work from home from a parts lister with multiple sclerosis was reasonable because the employee was able to perform the essential functions of her job from home, including meeting tight deadlines, having close interaction with coworkers, and working from her computer seven hours a day with breaks every two hours. In another case, out of New York State, a customer service representative's request to work from home to accommodate a leg injury was reasonable where the employee demonstrated that he had satisfactorily performed his job from home during a previous accommodation. Further, a court found that telecommuting was a reasonable accommodation for an insurance underwriter's Crohn's disease.

While courts largely focus on the nature of the work performed rather than an employer's preference for having workers physically on site, employers may still use job descriptions to

determine whether on-site attendance is an essential function of a particular position or if telecommuting is permitted.

Employers also should be mindful that if employees without disabilities are permitted to telecommute (for whatever reason), it is much more difficult for an employer to argue that a particular employee with a disability with the same job should not receive a similar option as an accommodation.

OTHER ACCOMMODATION REQUESTS

Remote employees sometimes seek accommodations related to their telecommuting requests, such as the technology and equipment enabling them to perform the job from home. Reasonable accommodations under the ADA may include adjustments or changes to the workplace, such as providing devices or modifying equipment and making workplaces accessible. However, when the “workplace” is the employee’s home, it is not always clear how far an employer must go to accommodate a remote employee beyond the telecommuting accommodation itself. For example, courts have rejected employee “accommodation” requests for a \$4,000 annual home office stipend to cover living expenses, such as electricity and home cleaning expenses. In another case, a court rejected an employee’s request for a new computer for the employee’s home office. For any request that accompanies a telecommuting request, employers always should engage in the interactive process to determine the reasonableness of the request and whether it enables the remote employee to perform the essential functions of the job and, separately, whether the proposed accommodation creates an undue hardship for the employer. As a reminder, employers must engage in the interactive process even if the employee is not forthright about the specific condition that is necessitating the request for an accommodation.

Employers should treat accommodation requests, including requests to work from home as an accommodation, consistently to avoid discrimination claims.

DISCRIMINATION CLAIMS

As with any employment decision, employers may face claims from employees that they were unfairly denied a request to telecommute. Employers should ensure that they handle all requests to telecommute consistently and can minimize the risk of discrimination claims by:

- Defining the employees eligible to request a telecommuting arrangement (for example, only full-time employees, employees in certain positions, or employees that have completed a certain length of employment).

- Consistently abiding by these limitations when granting or denying requests to telecommute (but recognizing that an accommodation under the ADA may include making an exception to a policy).
- Requiring employees to submit written requests to telecommute to both managers and the human resources department.
- Training managers on how to handle telecommuting requests.

WORKERS' COMPENSATION

As discussed in another chapter, workers' compensation benefits are compensation and other benefits provided to compensate employees for certain on-the-job injuries and occupational illnesses. Covered employees are generally eligible to receive workers' compensation for injuries or occupational illnesses that arise out of and in the course of employment. In New York, under the Workers' Compensation Law (WCL), although injuries sustained in accidents outside the workplace are generally not compensable, injuries from at-home work may qualify when the employee engages in a specific work assignment for the employer's benefit or so regular a pattern of work at home that the home achieves the status of the place of employment.

In New York, a "home office exception" has evolved to allow recovery under the WCL for work-related injuries that occur at home, although the scope of coverage for injuries to employees working from home has often been limited in recognition of the distinctive nature of the at-home work environment, and the "home office exception" has been applied cautiously by the Workers' Compensation Board and the courts.

Previously, where work from home was the exception for many employees rather than the rule, the burden has been on the employee to demonstrate that an at-home injury was work-related. But that dynamic is about to change in the COVID-19 and post-pandemic environment, where employees are being directed by their employer or by government order to work from home.

Based on pre-COVID case law, some best practices can be drawn from the Board's cases to help reduce the risk of workers' compensation liability for non-work-related injuries. Among other things, employers should specify the following details in the remote employee's job description, telecommuting agreement, or elsewhere: (a) Job duties, and what is within the employee's scope of work and what is not; (b) Location in the home where work is to be performed; (c) Work hours; (d) When breaks should be taken; and (e) Activities permitted or prohibited during work hours. Employers also should indicate in their telecommuting policy that workers' compensation

does not apply to injuries to any third parties or members of the employee's family on the employee's premises. As with other injuries, employees should be directed to report any job-related injury to their supervisor as soon as possible and direct the employee to the applicable reporting procedures.

RECORDING WORK-RELATED INJURIES AND ILLNESSES UNDER THE OSH ACT

Keeping accurate records of workplace injuries and illnesses can already be a challenging practice for employers. This obligation becomes even more challenging with remote employees. The Occupational Safety and Health Act ("OSH Act") and its corresponding safety and health regulations require covered employers to record certain work-related injuries and illnesses. Within 7 calendar days, covered employers generally must record every injury, illness, or fatality of covered employees that is work related, a new case, and is a recordable incident, per OSH Act.

A question that often arises with remote employees is whether an injury sustained at home is "work-related." The OSHA regulations directly addresses this question, stating that illnesses and injuries that occur while an employee is working at home, including work in a home office, are considered work-related if the injury or illness both (a) occurs while the employee is performing work for pay or compensation in the home and (b) is directly related to the performance of work rather than to the general home environment or setting.

The regulation provides examples of situations that are and are not considered work-related. For instance, the case is work-related where:

- An employee drops a box of work documents and injures the employee's foot.
- An employee's fingernail is punctured by a needle from a sewing machine used to perform garment work at home, becomes infected, and requires medical treatment.
- A case is not considered work-related where:
- An employee is injured because the employee trips on the family dog while rushing to answer a work phone call.
- An employee working at home is electrocuted because of faulty home wiring.

Employers must ensure that remote employees are aware of their obligation to report any work-related injuries and illness.

WORKPLACE INSPECTIONS

As part of its responsibility to promote healthful and safe working conditions, OSHA is authorized to conduct workplace inspections. For remote employees, questions often arise regarding the extent to which OSHA conducts inspections of home offices or other remote worksites. OSHA has provided guidance about its inspection policies and procedures concerning worksites in an employee's home. In this guidance, OSHA defines home-based worksites as areas of an employee's personal residence where the employee performs work of the employer. OSHA further defines home offices as office work activities in a home-based worksite, including filing, keyboarding, computer research, reading, writing, and the use of office equipment.

Regarding home offices, OSHA states that:

- OSHA does not conduct inspections of employees' home offices.
- OSHA does not hold employers liable for employees' home offices and does not expect employers to inspect the home offices of their employees.

If OSHA receives a complaint about a home office, OSHA advises the complainant of its policy. If an employee makes a specific request, OSHA may informally let employers know of complaints about home office conditions, but OSHA does not follow up with the employer or employee.

Regarding other home-based offices (such as home manufacturing operations), OSHA states that:

- OSHA only conducts inspections of other home-based worksites when OSHA receives a complaint or referral indicating that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists, including reports of a work-related fatality.
- The scope of the inspection in an employee's home is limited to the employee's work activities. The OSH Act does not apply to an employee's house or furnishings.

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- Employers are responsible in home worksites for hazards caused by materials, equipment, or work processes which the employer provides or requires to be used in an employee's home.

Although OSHA respects the privacy of the home and has never conducted inspections of home offices, OSHA still reminds employers that:

- Certain types of work at home can be dangerous and hazardous.
- Employers' other health and safety obligations to employees remain regarding remote employees.
- Employers required to keep records of work-related injuries and illnesses must continue to keep these records regardless of whether the injuries occur in a factory, home office, or elsewhere if they are work-related and meet the other recordability criteria under the OSH Act.

Because of employers' general health and safety obligations under the OSH Act and because employers are responsible for hazards caused by materials, equipment, or work processes the employer provides or requires to be used in an employee's home, employers should:

- Where feasible, although not required or expected by OSHA, consider conducting and documenting an on-site visit to remote employees' homes to ensure there are no safety hazards that may lead to a work injury.
- Ensure any materials and equipment provided by the employer meet safety standards and that remote employees are properly trained on how to use them.
- Encourage remote employees to report workplace injuries and unsafe working conditions and notify them of the procedures to do so.

WORKPLACE POSTINGS

Employers must notify employees of their rights under certain federal employment statutes, many of which require notice by displaying posters in the workplace. Several of these poster rules were developed before the internet became so widely used and telecommuting became so common. Employers often wonder how to provide these notices to remote employees without running afoul of posting requirements.

Some remote workers visit central offices regularly, in which case it is common for employers simply to post in that central office. For example, OSHA regulations provide that where employees do not usually work at or report to a single establishment, the required workplace safety poster should be posted at the location from which the employees “operate to carry out their activities.” This may include, for example, an office location the remote employee visits on a regular basis. For those employees not visiting central offices, some rules permit alternative notification for applicants and employees using electronic posting, direct mail, or email. For example, the federal Family and Medical Leave Act (FMLA) permits electronic posting of the required FMLA poster if all other requirements are met. However, many posting rules do not specify alternatives to an actual workplace poster. For that reason, employers should provide an email or other electronic notice when permitted, mail paper notices that must be physically posted to individual employees working from their home or another remote site, or post the notices on a commonly visited internal (e.g., intranet) website.

MANAGING REMOTE EMPLOYEES’ PERFORMANCE AND CONDUCT

Employee Policies.

Employers should inform remote employees in the applicable telecommuting policy or agreement that remote employees are obligated to comply with the employer’s policies and that a failure to follow policies can result in discipline, termination of the telecommuting arrangement, or termination of employment. Employers may choose to mention specifically certain policies of particular importance or significance to remote employees, such as anti-harassment, payroll practices, electronic communications, standards of conduct, outside employment, and reimbursement of expenses. Remote employees should be disciplined for failure to follow the employer’s policies or other misconduct, just like any other employee is disciplined.

Employee Data, Privacy, and Monitoring.

Monitoring remote employees’ activities, conduct, and performance can be a challenging task because they are not physically at the same worksite as their manager. Employers also sometimes have concerns that remote employees are abusing their telecommuting arrangement and not actually “working from home” to the extent they should be. Many employers struggle

with the most effective way to monitor and manage remote employees' productivity and performance.

Some managers choose to rely solely on regular emails, phone calls, video conferences, and in-person meetings where practical to keep track of remote employees reporting to them. However, many employers choose to manage aspects of employee productivity and performance by monitoring remote employees' use of the employer's electronic communication systems. This may include using task-monitoring software or other methods to:

- Review employee emails, including emails sent to or from the employer's email systems; and emails sent to or from an employee's personal email account (such as Gmail or Hotmail) accessed by the employee via the employer's computer systems.
- Monitor internet usage, including websites employees visit using the employer's computer systems, content posted by employees on the internet (for example, on blogs and social networking sites), whether at work or from home; and the amount of time employees spend on the internet while at work.
- Block employee access to inappropriate or illicit websites from the employer's computer systems.
- Track employees' keystrokes while using an employer-owned computer.
- Monitor employees using a global positioning system (GPS).
- Track employees' log-in or VPN activity.

While electronic monitoring of email, internet, and log-in activity may be particularly appropriate for remote employees, the risks of invading a remote employee's privacy can be greater because the employee is often working in the employee's home and sometimes using the employee's own equipment. Best practices for workplace monitoring of remote employees and minimizing the risk of liability include:

- Implementing and distributing a clear electronic communications systems policy
- Notifying remote employees that they have no expectation of privacy when using the employer's email or computer systems and that their electronic communications using these systems may be monitored without advance notice to the employee

- Explaining the business purpose of the monitoring policy.

Confidentiality and Trade Secrets.

Employers should take steps to protect their trade secrets and other confidential information with remote employees. This includes providing information security training to remote employees and instructing them to:

- Secure any employer property.
- Use secure remote access procedures like a VPN.
- Maintain confidentiality by using passwords and locked file cabinets, if applicable.
- Maintain regular antivirus updates and computer backup.
- Refrain from downloading company confidential information or trade secrets onto a non-secure device, including personal devices.
- Keep passwords safe and not share them with anyone and notify the employer immediately if any unauthorized access or disclosure occurs.
- Refrain from using personal devices or personal emails to conduct company business.
- Avoid keeping confidential information in a place where family members or visitors to the employee's home can view or access it.
- Be vigilant when working in any public location (for example, by never leaving the employee's computer unattended and by ensuring confidential information is not viewable by anyone in the public place).
- Dispose of sensitive documents properly.

ENGAGING AND COMMUNICATING WITH REMOTE EMPLOYEES

In addition to ensuring remote employees understand and abide by the employer's policies and are working remotely in a responsible manner, effective communication is an essential part of

managing remote employees. To ensure that remote employees are engaged and productive, managers should:

- Set out goals and expectations at the beginning of the remote relationship.
- Discuss with the remote employee how performance is measured and at what frequency.
- Maintain personal contact and strive for in-person meetings, if feasible, at reasonable intervals.
- Provide training to remote employees, both “on the job” and more formally using webinars, online learning portals, video conferencing, or in-person conferences or seminars.
- Include remote employees in employer-sponsored events, if feasible.
- Include remote employees on any communications shared with the remote employee’s peers.
- Encourage remote employees to communicate with management and other team members and be available for their questions, concerns, or feedback.
- Include remote employees in team meetings, using teleconferencing or video conferencing equipment, if available.
- Be mindful of the timing of meetings and other communications for remote employees working in different time zones (and consider time zones when setting remote employees’ work hours).
- Provide regular feedback to remote employees about their performance.
- Evaluate remote employees’ performance using annual written performance evaluations and meetings (for more information and a model form.
- Budget in advance for remote employees’ travel to meetings, seminars, or employer-sponsored events.

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