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# Employees Working from Home – How Should Companies React?

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Practices: Employment, Labor & Benefits


**EXECUTIVE SUMMARY**

With the country reopening due to the lessening of COVID-related restrictions, companies and employees are returning to a new "normal." Remote working has become a recruiting tool for some companies. For other companies which have required employees to return to the office, the failure to continue to allow some form of remote working ("hybrid model") has been frustrating for many employees. Although many managers have been surprised to see that employees' productivity has not suffered when they have worked from home, many companies still firmly believe that they should require employees to work at the company's office(s). Regardless of a company's philosophy regarding remote work, companies that provide some form of remote work should draft and distribute appropriate policies and have employees sign telecommuting agreements to establish the company's expectations and working rules.


Below is a checklist of provisions these policies and agreements should include:

- **Purpose of the Policy**, including the company's goals, the employees' needs and desires, which positions are permanent telecommuting positions, that telecommuting may be temporary or a reasonable accommodation to a disability in compliance with federal and state anti-discrimination laws, and that telecommuting must not have a negative impact on an employee's productivity or adversely affect the efficient operations of the company or other employees.
- **Management's Discretion**, including management's right to create and approve telecommuting arrangements and require an employee to work at the company's office(s).
- **Eligibility**, including, for example, the existence of adequate and suitable work available for the employee to perform at home, that the work involves the completion of measurable tasks, whether the employee has maintained a work record consistent with the ability to work independently, and that telecommuting is not for child or elder care.
- **Procedures**, including requiring employees to sign a telecommuting agreement that lists the requirements to continue the telecommuting arrangement, a trial period, a re-evaluation of the arrangement, the ways in which the employee will be held accountable, and management's right to terminate the arrangement.
- **Workspace**, including the requirement of a dedicated workspace with a list of equipment and supplies necessary to perform the employee's responsibilities and duties, all in compliance with federal and state health and safety regulations.


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- **Equipment and Supplies**, including a list of the equipment and supplies the company will provide to the employee and the equipment and supplies for which the employee is responsible, whether the company or employee is responsible for damage to equipment, and that the company-provided equipment remains the company's property and must be returned to the company at the end of the telecommuting arrangement.
- **Security**, including procedures and rules to secure and prevent the hacking of computer and other electronic systems, and that employees should not have any expectation of privacy in the use of the company's electronic communication systems, the company retaining its right to monitor the employee's use of such systems.
- **Expense Reimbursement**, including whether the employee or company is financially responsible for the initial set-up of the home office, its remodeling, maintenance, cleaning or repair, and the company's compliance with those state laws requiring the reimbursement of necessary expenses incurred by the employee.
- **Working Hours**, including a list the employee's working hours, that non-exempt employees must record their working hours in compliance with federal and state wage and hour laws, and that the employee should be available during the company's core business hours and by telephone and electronically to other employees and their managers.
- **Accountability**, including the role of managers and the methods of ensuring communications and productivity.
- **Compliance with Work Rules**, including compliance with the company's anti-harassment and anti-bullying policies and the use of sick, vacation and other leaves.
- **Protection of Intellectual Property**, including the employee's obligation to protect the company's proprietary and confidential information, trade secrets, and policies and agreements regarding inventions, works for hire, non-competition and non-solicitation.
- **Taxes and Insurance**, including who is and is not responsible for the tax consequences of telecommuting and whether workers' compensation, homeowners' and other insurance policies are impacted.

By planning, creating, and implementing sound policies and an enforceable telecommuting agreement, companies will be better able to manage telecommuting arrangements that are in the best interests of both the employees and the company.

For additional information, please contact Alan Kaplan or any other member of Masuda Funai's Employment, Labor & Benefits Practice Group.

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