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Time to Review Your Temporary Work-From-Home Policies & Agreements

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COVID-19 has required many companies to transition their workforce to telework. Due to the quick shift to working remotely in March, many employers quickly instituted temporary work-from-home policies, failed to implement a written policy, or neglected to update their existing telework policy for current circumstances.

Now is the time to review and update telework policies. With increasing COVID-19 cases and uncertainty about how schools will operate this fall, work-from-home arrangements and requests are in the foreseeable future. Having a detailed, well-thought-out telecommuting policy or arrangement can go a long way toward setting expectations and mitigating potential risks. Key considerations include the following:

1. Purpose

It is critically important for employers to distinguish between telework arrangements being offered as a matter of standing internal policy versus a temporary measure in response to a government mandate caused by the pandemic versus an arrangement being offered as a reasonable accommodation under the Americans with Disabilities Act (ADA) or state disability law. If a telecommuting policy is in direct response to COVID-19, it should say so. The policy should begin by stating that it is a *temporary* change made to comply with social distancing and other federal and state health guidance. This helps ensure that employees do not have an expectation that this policy will be in place forever, and that the company can change or alter the policy at their discretion. The policy should clearly state that telecommuting is not an entitlement and does not change any terms of employment, including the at-will nature of employment.

2. Who is Eligible?

It's important to state that telecommuting may be appropriate for some roles, but not others. The reality is that some people cannot perform the essential functions of their job remotely. Employers should make an objective determination of which positions can be performed remotely based on job category and function to avoid inconsistencies that could lead to claims of discrimination. Similarly, there should be a defined approval process to ensure uniformity and compliance with legal protections.

3. Requirements

The policy should outline the requirements for working remotely including the following:

- Set the work schedule. Remember that non-exempt employees are still required to comply with meal periods, rest breaks, and all applicable wage and hour laws, including overtime policies.
- Explain how employees will be supervised and evaluated while working from home.
- Define how productivity will be measured.
- State which job responsibilities and duties remain in place while working remotely, and clearly state any that do not.
- Include clear expectations to maintain the same security and confidentiality standards that apply in the office.
- Address how employees are expected to balance caregiving responsibilities while working at home.

4. Office Space & Workers' Compensation

Workers' compensation laws still apply while employees are working from home. Accordingly, employees should be required to have a safe and suitable space prior to beginning remote work. This space should be defined, and employees should be required to maintain the space in a safe condition. The policy should specify that liability is limited to injuries resulting directly from work and injuries that occur in the designated workspace during scheduled work hours.

5. Signed Agreements & Acknowledgments

In addition to a detailed written policy, employers should consider having employees sign individual telework agreements, especially if arrangements differ amongst employees. At minimum, any employee who is working remotely should review, acknowledge, and sign the written policy.

For more information on preparing telework policies and agreements, contact Amy Angel at 503-276-2195 or aangel@barran.com.

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