

Legal and Tax Considerations for Remote Work

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Topics to Cover

- General Legal and Tax Considerations for Remote Work
- Specific Considerations for:
 - Fully Remote Work
 - Hybrid Remote Work
 - Mix Approach
- General COVID-19 Considerations

Legal Landscape for Remote Work

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General Legal Considerations

- Common legal issues that arise with remote work include:
 - Employment nondiscrimination laws
 - Timekeeping for non-exempt employees and other wage and hour issues
 - Data security
 - Employee equipment and materials
 - Occupational safety
 - Application of state and local law

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Consistent and Non-Discriminatory Application

- When employers create remote work policies, they must ensure they are administered in a non-discriminatory manner.
- This includes having solid justifications for why some employees are permitted to work from home while others are not.
 - *EEOC v. ISS Facility Services, Inc.* 1:21-cv-03708 (N.D. Ga. 2021): EEOC sued employer after it denied an employee request to work remotely due to enhanced risk of COVID-19 infection, but permitted others to work remotely.
- Disability accommodations also create unique issues. If you would be obligated to provide an accommodation to a person in a physical workspace (e.g., equipment), you may be required to provide the same in a remote workspace.

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Wage and Hour Concerns

- Employers must continue to comply with wage and hour laws when employees work remotely, this includes continuing to track hours worked and overtime for non-exempt employees.
- Employers should develop systems in advance for monitoring and tracking hours worked, such as having electronic time sheets or another formal system for employees to “clock in and out” each day.
- Reimbursement laws also continue to apply. In certain states employers may need to reimburse employees for expenses incurred while working remotely, including phone and internet bills and cost of certain devices.

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39th Annual Nonprofit Organizations Institute session
"(10:50 a.m.) Employment Issues and the Pandemic "