

Employment Issues Around a Work from Home Workforce

Fred Gaona III | September 29, 2022

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Issues Relating to Location:

- Differing state employment laws.
 - Meal and rest times.
 - Overtime.
 - Discrimination/Harassment Training.
 - Wage Payment.
 - Tax Issues.
- Cities/municipalities
- Notice posting.
- Restrictive Covenant enforceability.



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Best practices for workers in different locations

- State Survey.
- Have robust WFH Policy. Should include, in part:
 - Authorization required to work outside of state of hire.
 - Must report exact location of all work performed remotely.
 - Cannot work in another state or country for more than fifteen (15) days without written approval.
- Post required notices electronically.
- Consider adding forum and choice of law provisions to employment agreements.
- Update employee handbook and policies to include addendums for various states and ensure current policies encompass remote work.

Wage and Hour Concerns:

- Overtime for non-exempt employees.
- Tracking hours can be challenging.
- Can lead to claims of wage-and-hour violations for unpaid overtime.
- Claims can result in liquidated damages and attorney fees.



Wage and Hour Concerns:

- Travel time
- Pay for all hours worked:
 - Overtime.
 - Work not requested but suffered or permitted.
- Real risk with "off the clock" tasks that can add up:
 - Unpaid work for after-hours emails, phone calls, etc.
 - Recent disputes of computer start-up time.



Wage and Hour Concerns:

- DOL: obligation to exercise reasonable diligence in tracking hours for remote employees.
- Due diligence:
 1. Reasonable reporting procedure; and
 2. Compensate for all reported hours of work.
- Impractical efforts to investigate unreported hours not required.
- Reporting procedures are not "reasonable" if:
 - prevents or discourages from reporting working time;
 - does not provide proper training on the procedure; or
 - requires waiver of right to compensation for hours worked.

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