

## Employment Issues Around a Work from Home Workforce

Fred Gaona III | September 29, 2022

1

### 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.



2



## 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.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Employment Issues Around a Work From Home Work Force

Also available as part of the eCourse

[2022 William W. Gibson, Jr. Mortgage Lending and Servicing eConference](#)

First appeared as part of the conference materials for the  
56<sup>th</sup> Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session  
"Employment Issues Around a Work From Home Work Force"