



# Rania's Business Roundtable

## LEGAL ISSUES AS IN-OFFICE VERSUS REMOTE WORK DEBATE RATCHETS UP

It seems like almost every company is discussing the new reality of working-from-home or hybrid-work environments. The impetus for the pivot is understandable. However, as the pandemic begins to appear in the rearview mirror and our conversations change to a new topic, will companies continue to service their customers as they have done since 2020?

I have no crystal ball, but the challenges of hybrid and at-home work environments will likely replace the current conversation paradigm. There are several legal intricacies related to an employer's workplace flexibility that are now gaining more serious attention.

Some open questions for management to consider are: (1) will you allow or continue to allow an employee to work in another state, or (2) will you limit working remotely to the state(s) in which the company is located?

Several employers focus on whether the employee can perform essential job functions work remotely but may not have yet examined other critical financial components of a remote or hybrid workforce.

A handful of issues should be analyzed.

**Business and Payroll Taxes** When an employee is working outside of the state where the employer operates, the employer may be responsible for that state's taxes, including income taxes. Each state's income tax and withholding requirements vary based on the employee's residence and/or work location. In addition, states have different thresholds for when an individual working remotely in that state triggers tax implications. In New York, for example, tax liability is triggered in as little as 14 days. Illinois is 30 days and Arizona is 60 days. By virtue of creating a tax nexus with a new state, the company may also be liable for gross receipts taxes, franchise tax, and sales and use taxes.

**Workers Compensation** Employers must cover each employee in the state where the employee performs services.

In other words, if a California fashion company with multiple locations in New York, Florida and Texas, allows employee A to work from Hawaii and employee B to work from Illinois, the company must purchase workers compensation in Hawaii and Illinois to cover their remote employees.

How can employers manage risk so that they are not paying claims for unrelated injuries occurring in the home?

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Rania Sedhom

*Roundtable Live!*

Join your fellow entrepreneurs for a conversation about the issues facing small businesses today, with complimentary refreshments and legal advice provided by attorneys Rania Sedhom and Matthew Scott.

Email [info@bespokelawfirm.com](mailto:info@bespokelawfirm.com) to reserve your seat!

## EMPLOYER UPDATES

The NYC Human Rights Law (NYCHRL) was amended in June to prohibit discrimination on the basis of height or weight. "Size discrimination is a social justice issue and a public health threat," declared the bill's sponsor, Councilmember Abreau.

Borrowing from existing anti-discrimination policy, exceptions are carved out for employers to consider protected factors where those factors are an essential qualification for performing a particular job. The ordinance will take effect in November. Employers in NYC should use the intervening time to review and update their anti-discrimination policies, job descriptions, and relevant employee trainings to incorporate the new regulations.

In other news, New York State has revised their model policy for sexual harassment prevention. The new guidance notes that harassment need not be "severe or pervasive" in order to constitute illegal behavior, creating a stricter standard than under federal law. New language has been added regarding bystander intervention, gender diversity, and harassment occurring when parties are working remotely. Additionally, the law recognizes that harmless intent is not a defense for harassment and discrimination, but that what matters is the impact of the behavior on the victim. Employers must incorporate this new guidance into existing anti-discrimination policies, and into their handbooks and communication with their employees.

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At a minimum, clearly articulate working hours, including "on-call" hours, if any. Injuries occurring outside those designated hours may not be the employer's responsibility.

When told of an injury, obtain as much detail as possible. For example, if the injury occurred during the designated work or on-call hours, where exactly did the injury occur and how did it occur? Did the employee trip while exiting the tub or shower, fall out of bed after napping, or accidentally staple a finger? Did the employee get injured after work and while getting ready to socialize?

**Unemployment Insurance** Like workers compensation, coverage by the employer is mandatory and dependent on the location where services are performed. Using the previous example, the California fashion brand would be obligated to register with, and purchase unemployment insurance in, Hawaii and Illinois.

**Work-from-home Employee Reimbursement** A further complication for employers is what is considered a reimbursable business expense for employees working from home.

For example, do employers believe that the cost of Internet and telephone services, or the cost of heating and air conditioning while employees work from home is their responsibility? Even reimbursing day-to-day office supplies can prove to be a headache.

Take employers with remote or hybrid workers in California and Illinois. In California, you are required to reimburse employees for "necessary business expenses" that they incur. Such expenses include but are not limited to physical supplies – paper, pens, etc. – as well as phone, Internet and other utility bills or a portion thereof.

How will an employer determine the appropriate reimbursement and the portion of the Internet, phone and electricity/utility bills for which they are responsible? Perhaps providing personal hotspots is less expensive than determining the percentage of Internet use dedicated to job performance.

ULTIMATELY, THE DECISION to allow or continue to allow remote or hybrid work will be determined by the facts and circumstances of each employment situation and each individual company. Will brands value flexibility over cost? Can they attract the employees that they are looking for with an in-office-only work culture? The employer's decision is complicated.

A cautionary note is to ensure that the whatever policy is created, it is properly applied. Remember facially neutral policies can lead to a disparate impact discrimination claim.

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