How to Manage Telecommuters

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Telecommuting programs have numerous advantages for both employees and employers. They combat absenteeism, boost productivity and morale, and increase employee retention. By implementing telecommuting work programs, job sharing and other workplace flexibility programs, employers can:

- Retain valuable employees or reemploy trained employees, which can lower employee recruitment and training costs;
- Reduce workers' compensation expenses in some cases;
- Respond to particular employees' medical or family situations, which serves to keep morale high and retain loyalty;
- Fill positions for which recruitment has been difficult or in which turnover has been high, such as evening shift jobs, part-time positions, or jobs that are in high crime areas; and
- Comply with trip reduction and air quality regulations in certain metropolitan areas.

Step 1: Develop and Implement a Written Policy

Employers should develop and implement a written policy governing telecommuting. They should include a specific section in the employee policy manual detailing what is expected or allowed with regard to telecommuting.

Equipment

The employee policy manual should include a detailed policy stating what equipment will be provided to a telecommuting employee by the employer.

Employers should decide who pays for the business expenses of telecommuting workers, such as mileage driven in the course of the workday, telephone expenses, supplies and shipping costs. Purchase of office furniture, computers, modems and similar resources is another major concern, as well as their regular upkeep and maintenance.

Some employers elect to provide and pay the expenses of equipment required at a telecommuting work site. Expenses may include online services if needed to perform work. However, employers are not required to provide the latest or most advanced

versions of specialized hardware or software. These details must be explicitly stated in the telecommuting agreement.

Business Vehicles

Telecommuting also cuts down on employer liability with regard to work vehicles. If it is the employer's practice to provide a vehicle to certain employees due to the nature of their job, and the employee's position subsequently evolves into a telecommuting position where all work can be done at home, there is no need for the employee to have a vehicle.

This can alleviate liability assumed by employers who provide employees with vehicles. However, if it is the employer's practice to provide certain employees with work vehicles, the employee policy manual should specifically state that telecommuting employees may not be eligible for work vehicles.

Eligible Positions

The policy should state which positions allow telecommuting. It should also explain any requirements regarding time that must be spent in the office.

Step 2: Ascertain Which Positions Are Eligible for Telecommuting

Telecommuting can be a viable option for a variety of positions and circumstances.

Americans with Disabilities Act (ADA)

If an employee with a qualified disability under the Americans with Disabilities Act argues that telecommuting is a reasonable accommodation, the employer may have to permit the employee to work from home.

Under the Americans with Disabilities Act (ADA), employers may have to permit an employee to work from home and telecommute as a reasonable accommodation. Specifically, an employer should reasonably accommodate an otherwise qualified individual under the ADA, if the accommodation does not result in undue hardship for the employer.

To keep the employee requesting a telecommuting accommodation working on business premises, the employer would have to show that the employee's physical presence at the work site is an essential component of the job. On-site attendance is usually essential to a highly interactive or team-based job. However, an employer should ensure that its documents and practices support its business judgment that on-site presence is an essential job function.

Even if the right to telecommute is generally reserved as a benefit for high-performing or long-tenured employees, an employer may also extend the benefit to workers with disabilities as an accommodation.

Occupational Safety and Health Administration (OSHA) Requirements

The Occupational Safety and Health Administration (OSHA) requires employers to exercise reasonable diligence to determine any hazards that could be associated with employees working in home-based work sites. Employers should then provide the necessary training. Employers that must maintain records of injuries and illnesses must do so for home-based employees as well as those at the work site.

Family and Medical Leave Act (FMLA)

Under the Family and Medical Leave Act (FMLA), eligible employees are entitled to up to 12 weeks of unpaid, job-protected leave in any 12-month period to care for their own or a family member's serious health condition, or for the birth or placement of a child. If an employee chooses to take all 12 weeks of leave unpaid, the employer must allow it according to the law.

However, the employer may choose to offer employees on FMLA leave the option of telecommuting and receiving a partial-wage reimbursement if it is practical to do so given the employee's job duties. If the employer offers this, it should be detailed in the employee policy manual. Telecommuting makes it possible for employees to continue to work and receive income even if only on a part-time basis, while caring for a family member with a serious health condition or caring for a new child in the home.

There are numerous ways to combine unpaid FMLA leave with paid, part-time telecommuting for temporary periods of time in compliance with the FMLA. Employers should decide on a uniform policy for telecommuting while on FMLA leave and include that policy in the employee policy manual.

Step 3: Understand and Communicate Potential Tax Consequences to Employees

Generally, a state can tax the income that a nonresident telecommuter earns in that state, or that is attributable to in-state sources. All income earned by a resident telecommuter is taxable in his or her state of residence. Most states look to an individual's physical location in determining whether income is earned in the state. However, some states may apply different tests in defining nonresident telecommuter taxation.

Some states do not require an employer to withhold tax until the wages paid exceed a threshold or the employee's in-state presence exceeds a minimum number of days. States may be limited in their ability to impose an income tax withholding requirement on an employer when the employee's activities do not further the employer's presence in the state.

Most states require nonresident telecommuters to file income tax returns when they exceed a threshold level of activity or income in the state. Accordingly, telecommuting nonresidents may find that they are not subject to an income tax return filing requirement despite the fact that the employer withholds wages on income earned in

that state due to its relationship with the taxing state. Employers should make it clear to their telecommuting employees that it is their responsibility to ensure proper income tax filing on their own behalf. Encourage telecommuting employees to consult an accountant regarding tax issues.

Be advised that employers must detail state-specific income tax withholding information on Forms W-2 issued to employees. Accordingly, when a resident employee works in his or her home state for a portion of the week and the remaining days at his or her employer's corporate headquarters in another state, the employer must issue state-specific W-2s that detail the proper allocation of income among the states.

Proper withholding becomes more challenging when an employee travels extensively. Accordingly, employers should have a system in place to allow them to determine the level of taxable wages earned in a specific state by each employee. Such systems may include an electronic time-reporting system that requires an employee to disclose the location where he or she works each day.

Step 4: Communicate the Policy to Employees

Employers should distribute the policy to all employees through email notification and include the policy in all employee handbooks. Employers may also want to consider having the policy on the employer intranet so all employees with computer access may view it at all times.

Step 5: Obtain Employee Acknowledgement

It is a best practice for employers to require that employees sign a statement acknowledging that they received, read and understood the policy, and designating an employer representative to answer any questions.

All telecommuting employees should review the policy with the employer and also be required to sign a Telecommuting Agreement. This agreement should be kept on record and reflect the employer's detailed telecommuting policy as well as the employee's acknowledgment.

Step 6: Conduct Training on the Policy

Employers should conduct training to make all employees aware of the policy and its contents. Employers should incorporate this training into other preexisting training programs, such as new employee orientation and workplace training. During training, key aspects of the policy should be reinforced, including the availability of telecommuting to certain employees and the parameters that must be met.

Step 7: Monitor Telecommuting Employees' Overtime

An additional concern for employers with telecommuters is potential wage and hour issues that arise from workers in a remote location who are not under the direct supervision of a supervisor.

Employers can avoid this by limiting telecommuting to exempt employees. However, hourly workers may also perform tasks that fit into a telecommuting program. If nonexempt workers are telecommuters, employers should take steps to clearly define the workday so that wage and hour problems do not emerge. This includes establishing a beginning and an end to the workday, and requiring workers to keep records of when they started and finished their day on the clock. Workers may be provided breaks during the workday.

Be clear on what is paid time and what is not. For example, time spent waiting for assignments should be counted as time spent working. Pay policies and recordkeeping are important.

One frequently overlooked issue is how to compensate full-time telecommuters who occasionally have to come into the office. Exempt employees who are paid on a salary basis do not have to be paid overtime for this travel time, but that may not be the case for nonexempt employees.

Nonexempt employees under the Fair Labor Standards Act (FLSA) do not generally get paid for their daily commute to the office. But if an employee's work site is his or her home, the drive to the office is not a regular commute. If the issue is not dealt with in an employment manual, or in a specific agreement with the employee, the employee probably should be paid for the drive time unless he or she is at the office for the entire day.

Employers should require nonexempt employees to track their time worked and submit a weekly timesheet. Any overtime should be approved in advance.

Step 8: Enforce the Policy Uniformly

Once an employer has a telecommuting policy in place, it must be applied fairly and consistently. If it is not, the employer may be exposed to potential claims that an employee was not allowed to telecommute because of the employee's race, sex, religion or other protected characteristic. That does not mean the policy must be applied in the same fashion for all employees. It is acceptable to have separate written agreements that contain different terms for different telecommuters. However, those different terms should be based on objective factors, such as the nature of the work performed.