

Navigating the Legal Landscape of Remote Work



A Tishkoff PLC eBook



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Introduction

The shift toward remote work represents a profound transformation in the modern workplace, driven by advancements in technology and accelerated significantly by the global health crisis of 2020. This change has transitioned remote work from an occasional benefit offered by innovative companies to a widespread operational standard. Employers and employees alike have embraced the flexibility, cost reductions, and broader talent acquisition opportunities provided by remote work. However, this evolution introduces a complex array of legal and regulatory challenges. Ensuring compliance with diverse and evolving laws at federal, state, and local levels has become essential for businesses to avoid significant risks, including costly penalties and damage to their reputations.

Remote work has shifted from being a rare benefit to a standard practice. Technological advances and the 2020 global health crisis accelerated this trend. Organizations now widely recognize its benefits, including reduced costs and greater flexibility. However, remote work introduces complex compliance requirements involving multiple regulatory levels.

Please note this eBook should be used for learning and illustrative purposes. It is not a substitute for consultation with an attorney with expertise in this area. If you have questions about a specific legal issue, we always recommend that you consult an attorney to discuss the particulars of your case.



Federal Employment Laws



At the federal level, various laws provide foundational protections that extend to employees working remotely. The Fair Labor Standards Act (FLSA) mandates minimum wage and overtime compensation standards applicable to remote employees. Employers must accurately monitor and record hours worked by non-exempt remote staff, utilizing reliable time-tracking systems to prevent off-the-clock work and ensure proper overtime pay.

The Family and Medical Leave Act (FMLA) guarantees eligible remote employees unpaid, job-protected leave for qualifying reasons such as medical conditions or family caregiving responsibilities. Importantly, the relevant worksite under FMLA is considered the employer's office location from which the remote employee receives assignments, rather than the employee's residential location.

The Americans with Disabilities Act (ADA) requires employers to offer reasonable accommodations to employees with disabilities, potentially including remote work arrangements. Employers must design remote work environments to ensure that disabled employees can effectively perform their essential job functions without undue hardship on the business.

The Occupational Safety and Health Act (OSHA) obligates employers to maintain a safe work environment for remote employees, particularly regarding any employer-supplied equipment or required procedures. Although OSHA generally refrains from conducting inspections of home offices, employers remain accountable for work-related injuries occurring due to provided equipment or processes, and they must maintain proper records for reportable incidents.



State and Local Laws

Compliance complexity increases significantly with state and local employment laws. Generally, employment laws apply based on the location where the employee performs their work, not where the company is headquartered. Consequently, businesses employing remote staff in multiple jurisdictions face varied obligations, such as state-specific minimum wage rates, mandated paid leave, and rules regarding expense reimbursements. For example, having remote employees can establish a business nexus within a state, leading to tax and regulatory obligations in that jurisdiction.



Key Compliance Areas

➔ Classification

Accurately classifying workers as employees or independent contractors is critical for remote workforce management. Misclassification can result in severe financial penalties and legal liabilities. Proper classification depends on factors like the degree of employer control, the permanence of the relationship, the worker's investment in their business, and their potential for profit and loss.

➔ Wage and Hour

Employers must rigorously track employee hours and correctly compensate non-exempt employees for overtime. Even short breaks taken by remote employees, typically 20 minutes or less, must be counted as compensable work time.

➔ Leave Entitlements

Leave entitlements require careful attention, as remote employees are entitled to the same leave protections as their in-office counterparts. Beyond federal protections like the FMLA, many states have enacted additional, often more generous, leave provisions that businesses must accommodate.

➔ Classification

➔ Wage and Hour

➔ Leave Entitlements

➔ Expenses

➔ Health and Safety

➔ Data Security

➔ Anti-Discrimination

➔ Taxes





➔ Expense Reimbursement

Expense reimbursement is regulated by both federal and specific state laws. Under federal law, employers must reimburse expenses that reduce employee wages below the minimum wage. Some states, notably California, mandate comprehensive reimbursement of work-related expenses, including internet access, phone usage, and necessary home office equipment.

➔ Health and Safety

Workplace safety and health responsibilities also extend into remote work settings. Employers must proactively mitigate potential hazards related to work-related equipment and processes provided for home use. Additionally, OSHA requires employers to record significant work-related injuries sustained by remote workers.

➔ Data Security

Data security and privacy present heightened challenges with remote operations, where employees frequently use personal devices and unsecured networks. Compliance with regulations such as GDPR, CCPA, and HIPAA necessitates robust cybersecurity measures, secure remote connections, employee training, and ongoing security audits.



➔ Anti-Discrimination

Anti-discrimination and anti-harassment policies must explicitly apply to remote work environments. Employers need to clearly outline acceptable conduct in virtual settings, provide regular training, and maintain accessible, confidential channels for reporting complaints.

➔ Taxes

Tax considerations associated with remote employment are intricate, especially regarding state and local tax obligations. Businesses must navigate different withholding requirements based on employees' physical locations, which may differ significantly from the company's base location. Employers must also be aware of special regulations like the "convenience of the employer" rule, which can affect taxation.





Industry-Specific Considerations

In the construction industry, remote work primarily impacts administrative and management roles rather than field operations. Employers must remain aware of potential state licensing requirements for remotely performed ancillary services. OSHA's distinction between home offices and hazardous home-based worksites is particularly relevant, ensuring that remote work environments comply with applicable safety standards.

The real estate industry has experienced significant impacts from the remote work trend, affecting commercial property demands, leasing practices, and property valuations. Businesses must be attentive to zoning regulations potentially governing remote work activities within residential areas, as certain activities may trigger regulatory scrutiny or require special permits.

Managing Remote Work Compliance

Organizations are advised to implement comprehensive remote work policies clearly detailing eligibility criteria, expectations regarding employee availability, communication protocols, security measures, and expense reimbursement processes. Providing formal remote work agreements can ensure clarity in individual employee arrangements.

Effective communication is critical to maintaining productivity and engagement in remote work scenarios. Businesses should define preferred communication channels, set clear expectations for response times, and conduct regular virtual meetings to maintain cohesion.

Data security practices must include secure remote access methods, stringent password policies, multi-factor authentication, data encryption, and regular training to educate employees about cybersecurity risks and appropriate responses.



Ensuring equitable treatment of remote employees is essential. Employers must guarantee equal access to opportunities for career development and advancement, irrespective of employees' physical locations. Additionally, employers must proactively address potential biases in performance evaluations or promotion decisions related to remote work status.

Termination and offboarding procedures must be meticulously planned and legally compliant. Employers should clearly document termination processes, including notice periods, final pay protocols, and the return of company-owned equipment. Professional handling of terminations through appropriate virtual channels, with proper documentation and witness presence, is strongly recommended.

Recent Legal Developments

Recent litigation has highlighted significant compliance challenges related to remote work. Cases concerning unpaid overtime, misclassification, and employee accommodation for disabilities have increased, underscoring the necessity for robust compliance mechanisms.

Intellectual property disputes and data security breaches involving remote employees further illustrate the importance of stringent protections. Additionally, contractual disputes over changes or terminations of remote work arrangements emphasize the critical need for clear, well-documented employment agreements.



Conclusion

The transition to widespread remote work presents substantial legal and compliance challenges. Businesses must proactively address federal, state, and local regulatory requirements through comprehensive policy frameworks, effective communication, robust data security protocols, equitable treatment practices, and carefully structured termination processes. Staying informed about evolving legal interpretations and adapting policies accordingly will help organizations mitigate risks and leverage remote work's considerable benefits.



Questions about business law or litigation?

Contact Tishkoff

Tishkoff PLC specializes in business law and litigation. For inquiries, contact us at www.tish.law/contact/. & check out Tishkoff PLC's Website (www.Tish.Law/), eBooks (www.Tish.Law/e-books), Blogs (www.Tish.Law/blog) and References (www.Tish.Law/resources).

Tishkoff PLC
407 North Main Street
Ann Arbor, Michigan 48104



Tish.Law



tishkoffplc@tish.law



855.TISH.LAW

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