

EmPower HR Remote Work Guide



Compliance Requirements

This guide can help you navigate the compliance risks, logistical issues and strategic questions that come with managing a remote workforce.

According to Gallup, the number of days employees worked remotely doubled during the COVID-19 pandemic. Some companies have even considered making a remote work arrangement permanent.

While there are no laws that exclusively apply to remote workplaces, remote work does come with additional compliance risks. Below is a general guidance for employers:

Logging Hours And Preparing Paychecks

Make sure that employees are logging all of their time. Keep in mind that when working from home, the boundaries between work and home life are easy to blur. Employees may be racking up “off the clock” work, and even overtime, that they aren’t being paid for. While this may seem harmless enough in the moment, particularly if the employee isn’t complaining, unpaid wages can become an issue when the employee is on their way out the door.



Minimum Wage

Employees should be paid at least the minimum wage of the state where they physically work, whether this is a satellite office or their own home. Beyond that, it’s important to be aware that some cities and counties have even higher minimum wages than the state they are located in. In general, with most employment laws, you should follow the law that is most beneficial to the employee.

Breaks

Remote employees must take all break and rest periods required by law, as if they were in the workplace.

Harassment Prevention

Remote work also comes with additional opportunities for harassment (even if it doesn't rise to the level of illegal harassment), such as employees wearing clothing that crosses the line or violates your business' dress code, roommates in the background unaware that they are on camera, or visible objects that other employees may consider offensive.

You can prevent these sorts of incidents by having clear, documented expectations about remote meetings, communicating those expectations to your employees, and holding everyone accountable to them.

It also wouldn't hurt to occasionally remind everyone to be mindful that they and what's behind them are visible to coworkers when they're on video. That said, going overboard with standards that you're applying to employees' private homes can cause anxiety and morale issues, so make sure your restrictions have some logical business-related explanation.

Also, if you've started hiring new remote workers, you'll want to check to see if there are any sexual harassment-prevention training requirements in the state where they are located.

Workplace Posters

Many of the laws related to workplace posters were written decades before the internet, so their requirements don't always make sense given today's technology. The safest option to ensure you're complying with all posting requirements in one fell swoop is to mail hard copies of any applicable workplace posters to remote employees and let them do what they like with the posters at their home office. If you have employees in multiple states, you should send each employee the required federal posters, plus any that are applicable to the state in which they work.

Alternatively, more risk-tolerant employers often provide these required notices and posters on a company website or intranet that employees can access. A number of newer posting laws expressly allow for electronic posting, but this option is not necessarily compliant with every posting law in existence.

FMLA Eligibility

Remote employees who otherwise qualify will be eligible for leave under the federal Family and Medical Leave Act (FMLA) if they report to or receive work assignments from a location that has 50 or more employees within a 75-mile radius. According to FMLA regulations, the worksite for remote employees is "the site to which they are assigned as their home base, from which their work is assigned, or to which they report."

For example, if a remote employee working in Frisco, TX, reports to their company's headquarters in Portland, OR, and that site in Portland has 65 employees working within a 75-mile radius, then the employee in Frisco may be eligible for FMLA. However, if the site in Portland has only 42 employees, then the remote employee would not be eligible for FMLA. The distance of the remote employee from the company's headquarters is immaterial.

Verifying I-9s

In normal circumstances, the physical presence requirement of the Employment Eligibility Verification, Form I-9, requires that employers, or an authorized representative, physically examine, in the employee's physical presence, the unexpired document(s) the employee presents from the Lists of Acceptable Documents to complete the Documents fields in Form I-9's Section 2.

However, in March of 2020, the Department of Homeland Security (DHS) temporarily suspended the physical presence requirement for employers and workplaces that are operating remotely due to COVID-19 related precautions. In other words, employers with employees taking physical proximity precautions due to COVID-19 (and operating remotely) are not required to review the employee's identity and employment authorization documents in the employee's physical presence. Inspection should instead be done remotely.

Because this change was temporary, you'll want to check to ensure this rule is still in effect.

Equipment

You'll want to specify how expenses related to working from home will be dealt with. If you don't expect there to be any additional expenses involved, communicate this. If there is a list of items your business is willing to pay for or reimburse employees for, provide your team with that list. You should also consider whether employees will incur reasonable and necessary expenses while working from home. Some states mandate reimbursement for these kinds of expenses, but it's a good practice to cover such costs even if it's not required by law.

An employee also might request a device or some form of furniture as a reasonable accommodation under the Americans with Disabilities Act (ADA) so they can perform the essential functions of their job. In such cases, you would consider it like any other ADA request. Allowing them to take home their ergonomic office chair, for example, would probably not be an undue hardship.

Deciding Who Can Work From Home

You may offer different benefits or terms of employment to different groups of employees as long as the distinction is based on non-discriminatory criteria. For instance, a telecommuting option or requirement can be based on the type of work performed, employee classification (exempt v. non-exempt) or location of the office or the employee. You should be able to support the business justification for allowing or requiring certain groups to telecommute.

Logistical Considerations

Creating A Remote Work Policy

Although some employers will be comfortable sending everyone home with their laptop and saying, “go forth and be productive,” most will want to be a little more specific. A good telecommuting policy will generally address employee eligibility for remote work, the process for submitting requests to work from home, productivity standards, security expectations, hours of work, how and when employees should be in contact with their manager or subordinates, office expenses and alcohol and drug use.

For instance, your policy might require that employees are available by phone and messaging app during their regular in-office hours, that they meet all deadlines and maintain client contacts per usual, and that they check in with their manager at the close of each workday to report what they have accomplished. Be sure to let employees know whom to contact if they run into technical difficulties at home.

Using Video Conferencing, Messaging And Other Communication Apps

The more apps employees have to use to collaborate on projects, communicate with coworkers and receive important information from the company, the more likely things are to be missed. Limit the number of apps people need to use and standardize practices around them.

While requiring employees to have their cameras on will almost certainly improve engagement and attentiveness in meetings, it can also cause computer performance issues, so you’ll want to be willing to make exceptions to maximize efficiency. Also keep in mind that “Zoom fatigue” is real. Having to make eye contact with a computer screen full of faces and trying to monitor body language from 2” x 2” boxes can be a serious drain. We recommend giving employees the option to be audio-only for at least some meetings or to cover their camera when they are feeling “Zoomed out” for the day.

Making Meetings Effective

Test any systems ahead of time so that they’re working for everyone when the meeting starts. Email the agenda so everyone knows what to expect and assign someone in the meeting room to be the contact person if others have issues using the technology.

After the meeting, check in with employees and ask them to be candid about their experience. What worked well and what could be improved? See what you can do to better accommodate them in the next meeting.

Terminating Employees Remotely

For organizations that are not used to a remote set-up, terminations can be especially challenging. Terminating someone over the computer screen can seem impersonal, almost disrespectful. Extra care should therefore be given to ensure that the termination meeting goes as smoothly as possible. You wouldn't, for example, want to tell an employee they no longer have a job when there are (or may be) other people in the room where the employee is working.



Culture Matters

Translating Culture To A Remote Environment

How do you translate company culture rituals to a remote environment? Many businesses quickly figured out how to adapt their “work” processes to virtual collaboration. But adapting and evolving the rituals that nurture and cultivate a culture can be more challenging.

Here are a few tips:

- 1** While the days of running into someone in the kitchen may be gone, you can recreate this experience virtually by creating a video conferencing room or messaging channel for people to pop in when they have some down time.
- 2** Use a software program that randomly pairs employees for short, virtual chats where they can get to know each other.
- 3** Reimagine your company rituals. Whether it be monthly happy hours, company milestone events, birthday celebrations, or listening sessions with the CEO, challenge yourself to adapt your company’s culture rituals to a remote setting, or even invent new ones.

Rethinking Your Future Workplace

Survey your employees to see whether they like working from home and what kind of arrangement they’d like to see going forward. Ask them how many days per week they would generally like to work remotely and what kinds of work they would like to do in the company office as opposed to their home office.

Some companies are looking to change their physical corporate workspace into a collaborative space designed more for group work and large discussions than housing individual workstations. An arrangement like this might be something to consider if most of your employees want to work from home most of the time. Another option that your company might consider is to implement staggered in-office schedules.



How EmPower HR Can Help

EmPower HR offers a variety of human resource services tailored to your business needs. Let us handle the HR administrative tasks so you can focus on your business and employees.

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