

cupa·hr™ Webinar

How to Navigate State and Local Employment Laws for Remote Faculty

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KNOWLEDGE | RESOURCES | ADVOCACY | CONNECTIONS

cupa·hr™ Webinar

Presenter



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Poll Question

- What Is Your Role On Campus?
- a) Human Resources Professionals
 - b) General Counsel, In-house Attorneys
 - c) Other Administrators
 - d) Faculty
 - e) Other



Agenda

- Background
- Privacy, Security, And Confidentiality
- Health And Safety
- Wage And Hour Issues
- State Law Considerations
- Work From Home As An Accommodation
- Developing A Work From Home Policy
- Questions



Traditional Workforce	Remote Workforce
<ul style="list-style-type: none">• On-Site	<ul style="list-style-type: none">• Workers Work From Anywhere In The World
<ul style="list-style-type: none">• One Set Of Laws	<ul style="list-style-type: none">• Multiple Sets Of Laws May Apply
<ul style="list-style-type: none">• Communication, Information Security, Work Hours, Are Typically Uniform And Predictable	<ul style="list-style-type: none">• Policies Are Undefined And Should Be Reevaluated
<ul style="list-style-type: none">• Work Arrangements Are Relatively Inflexible	<ul style="list-style-type: none">• Potential For Greater Flexibility

Proliferation Of Remote Work

- Technology Has Created Greater Opportunities For Flexible Work Arrangements
- Employers Must Confront New Paradigm With Broad Implications
 - Pedagogical
 - Relational
 - Legal



Poll Question

Before We Get Started, ...

- Does Your Institution Encourage Remote Work?
 - a) Never
 - b) Under Special Circumstances
 - c) For Certain Employees
 - d) Liberal Work-From-Home Policy

Stacey

Stacey is a TA in Professor Cabrera's Introductory Biology class. One of Stacey's responsibilities is to grade and offer comments on students' lab reports. Typically, she does so by editing Word documents on her laptop at a local coffee shop and recording grades in an Excel sheet. One day, Stacey mistakenly leaves her computer at the coffee shop.

Do you have any legal concerns?

Privacy, Security, And Confidentiality

- College And University Employees Have Access To Confidential Information Including:
 - Student Records
 - Student Medical Information
 - Sensitive Employee Information
 - Grading Information
 - Financial Information Of Students, Employees, Donors, And Third Parties
- Remote Work Can Create Increased Risk Of Disclosure Of Confidential Information



Duty To Protect Confidential Information

- Duty To Protect Confidential Can Be Contractual, Legal, And/Or Moral
- Remote Work Can Increase Risk Of Inadvertent Disclosure Through:
 - Employee Carelessness
 - Active Theft
 - Physical
 - Virtual



Protecting Confidential Information

- Colleges And Universities Should Take Steps To Safeguard Confidential And Sensitive Information Through:
 - Adopting A Written Information Security Plan
 - Informing Employees Of Their Responsibilities To Keep Sensitive Information Confidential
 - Handbook Policies (e.g., Code of Conduct, Confidential And Proprietary Information Policy, Electronic Communications Policy)
 - Employee Contracts/Confidentiality Agreements
 - Encryption
 - Secure Networks

Health & Safety

- OSHA's Reporting Requirements Apply To "Home Worksites"
- OSHA Will Conduct Inspections Of Home-Based Worksites In The Event Of A Report Of A Violation



Health And Safety Precautions

- Understand Whether OSHA Or The State Law Equivalent Applies To Your Institution
- Employees Who Work From Home Should Be Advised Of Their Obligation To Report Any Work-Related Injuries Even While Working Remotely
- Regardless Of Whether OSHA Applies, Determine Whether Institution Has Proper Insurance Relative To Home Workers



Wayne

Wayne works as a non-exempt employee in the IT department at State University. He works eight-hour days –Tuesday through Friday in his office at the University, and Saturday from home. During weekday evenings and on weekends Wayne also handles “emergency” calls from faculty members who are experiencing various computer problems.

What Wage & Hour issues are implicated here?

Minimum Wage/Overtime Considerations

- Non-Exempt Employees Must Be Paid At Least Minimum Wage And Must Be Paid Overtime For All Hours Worked Over A Certain Threshold
- Working From Home Can Complicate Time Records
- Consider Limiting Hours When Non-Exempt Employees Should Respond To Emails/Work Calls



Best Practices For Non-Exempt Employees

- Determine Whether Any Non-Exempt Employees Work Remotely
- Consider A Policy Requiring Manager Approval To Work Overtime
- Implement Organization-Wide Electronic Timekeeping That Is Accessible Remotely
- Consider Limiting Hours When Non-Exempt Employees Should Respond To Emails/Work Calls

Wayne Revisited

Wayne just informed the IT Director at State University that he is intending to move to California. Wayne and the IT Director have come up with a plan whereby Wayne would work full-time remotely from his new home, and they have approached you, the HR Director to discuss the arrangement.

What issues should you be considering?

State And Local Law

- The Employment Relationship Is Governed By A Patchwork Of Federal, State, And Local Laws
- In The Case Of Overlapping Law (e.g., Federal, State Where Institution Is Located, State Where Work Is Done), The Most Employee-Friendly Law Usually Prevails



Wage And Hour - Federal v. State

Federal Fair Labor Standards Act ("FLSA") Typically Governs

- Minimum Wage
- Overtime
- Equal Pay
- Recordkeeping
- Definition Of Independent Contractor
- Child Labor
- State And Local Government

State Law Generally Addresses The Same Issues And May Also Address

- Vacation
- Sick Time
- Holidays
- Meal Period
- Timing Of Pay
- Final Pay

The Multi-State Workforce

- A Multi-State Workforce Necessitates Consideration Of A Number Of Issues Including:

- Employee Classification
 - Exempt v. Non-Exempt
 - Independent Contractors
- Minimum Wage
- Overtime
- Unemployment Insurance
- Leave Laws
- Recordkeeping Requirements



The Paycheck

- Institutions Must Ensure That Paychecks (Or Paystubs) Comply With All Applicable Laws Including Those Related To:

- Confirming That Employee Is Being Paid At Least The Minimum Wage Or Qualifies For An Exemption
- Pay Frequency
- Payment Method
- Required Information Included On Paystub
- Proper Deductions Made



- Institutions Who Employ Remote, Out-Of-State Workers May Require Consultation With Tax And/Or Legal Professionals

Notices

- Many State And Federal Laws Require That Employers Post Notices – Or That Employees Receive Notices Regarding Their Rights Under Various Laws
- Employers Should Ensure That Remote Employees Receive All Relevant Notices
 - Again, Be Aware That Out-Of-State Remote Workers May Require Additional Notices



Work From Home As A Reasonable Accommodation

- Whether Or Not An Employer Has A Work From Home Policy, Allowing An Employee To Work From Home Might Be Considered A Reasonable Accommodation Under the ADA Or Under Similar State Laws
- Should Be A Part Of The Interactive Process
- Avoid *Requiring* An Employee To Work From Home As An Accommodation If Other Accommodations Are Possible



Poll Question

- Do You Currently Have A Work From Home Policy?
 - a) Yes
 - b) No



Poll Question

➤ For Those Who Have A Work From Home Policy, Please Answer The Following Question:



Our Work From Home Policy Is Available Only To Remote Faculty?

- a) Yes
- b) No

Poll Question (Continued)

➤ For Those Who Have A Work From Home Policy, Please Answer The Following Question:

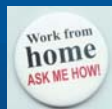


The Major Challenge Of Having Remote Employees (Check All That Apply):

- a) Confidentiality
- b) Safety
- c) Wage & Hour
- d) Student Frustrations
- e) Workplace Culture
- f) Other?

Developing A Work From Home Policy

- Consider Your Workforce
 - Exempt/Non-Exempt
 - Hourly/Salaried
 - Teaching/Non-Teaching
 - Out-Of-State? International?
- Address Network Security Issues
- Address Any Timekeeping Concerns
- Verify That Procedures Address Any And All State-Specific Issues



Developing A Work From Home Policy (Continued)

- Consider Addressing The Issue Of Remote Work As An Accommodation Separately
- Make Sure That Policy Is Not Discriminatory (e.g., New Mothers Allowed To Work Remotely But New Fathers Are Not)
 - As Written
 - As Applied
- Require Employees Who Work Remotely To Sign Work From Home Policy And/Or Telecommuting Agreement



The Telecommuting Agreement

- Consider Having Employees Sign A Telecommuting Agreement Outlining The Understanding Between The Parties Including:
 - Telecommuting Relationship
 - Hours, Time Recording, Workspace
 - Equipment And Related Expenses
 - Health And Safety Reporting
 - Security And Confidentiality



Questions?



- Submit your questions to our presenter.
- **How?** Click on the chat tab on the left.



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Webinar

Thank You!

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