

# How to Make Remote Work – WORK

**Kaitlin A. Brown, Esq.**

## Overview

- Understand the social and legal trends for remote work arrangements.
- Identify the statutes implicated by employee requests to work remotely.
- Discuss best practices for holding employees accountable through remote work policies and agreements.

# Where and When Are You Most Productive?

- A: Office during regular business hours
- B: Office before/after work
- C: Other location at regular business hours
- D: Other location with flexible hours



# When at Work, How Do You Contact Co-Workers?

A: In person

B: Phone

C: Instant/text message

D: E-mail



# Social and Legal Trends Statistics About Employers Providing Remote Work Opportunities

- 85% report increased productivity.
- 63% use a virtual a virtual workforce in some way.
- 56% offer remote work either through a hybrid approach of allowing/requiring it or by being fully remote.
- 25% decrease in turnovers by employers who offer remote-friendly options.



# Social and Legal Trends

## Statistics About How Employees View Remote Work Opportunities

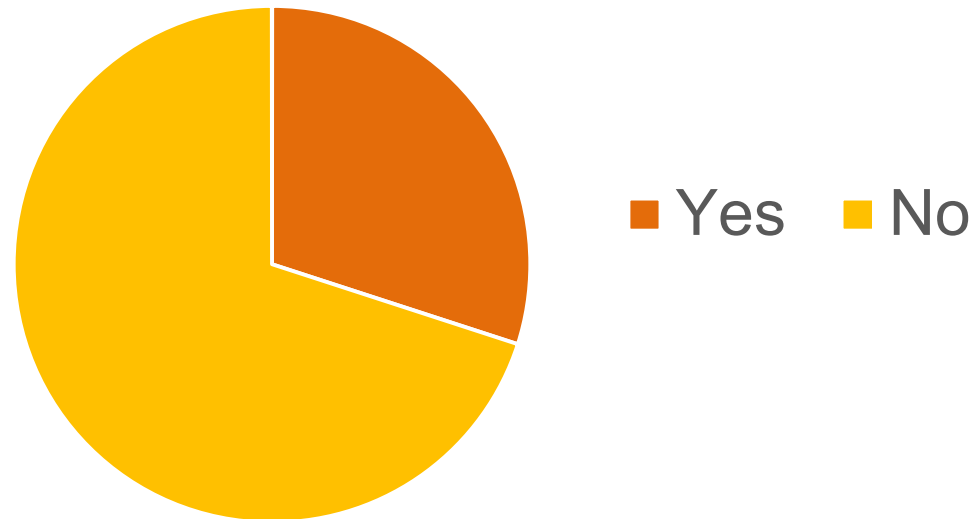


- Top 3 reasons why employees choose to work remotely: increased productivity, remove the commute, and work/life balance.
- 69% of millennials are willing to trade other work benefits for flexible workspace options.
- Employees who work from home at least once per month are 25% more likely to feel happy and productive at work.

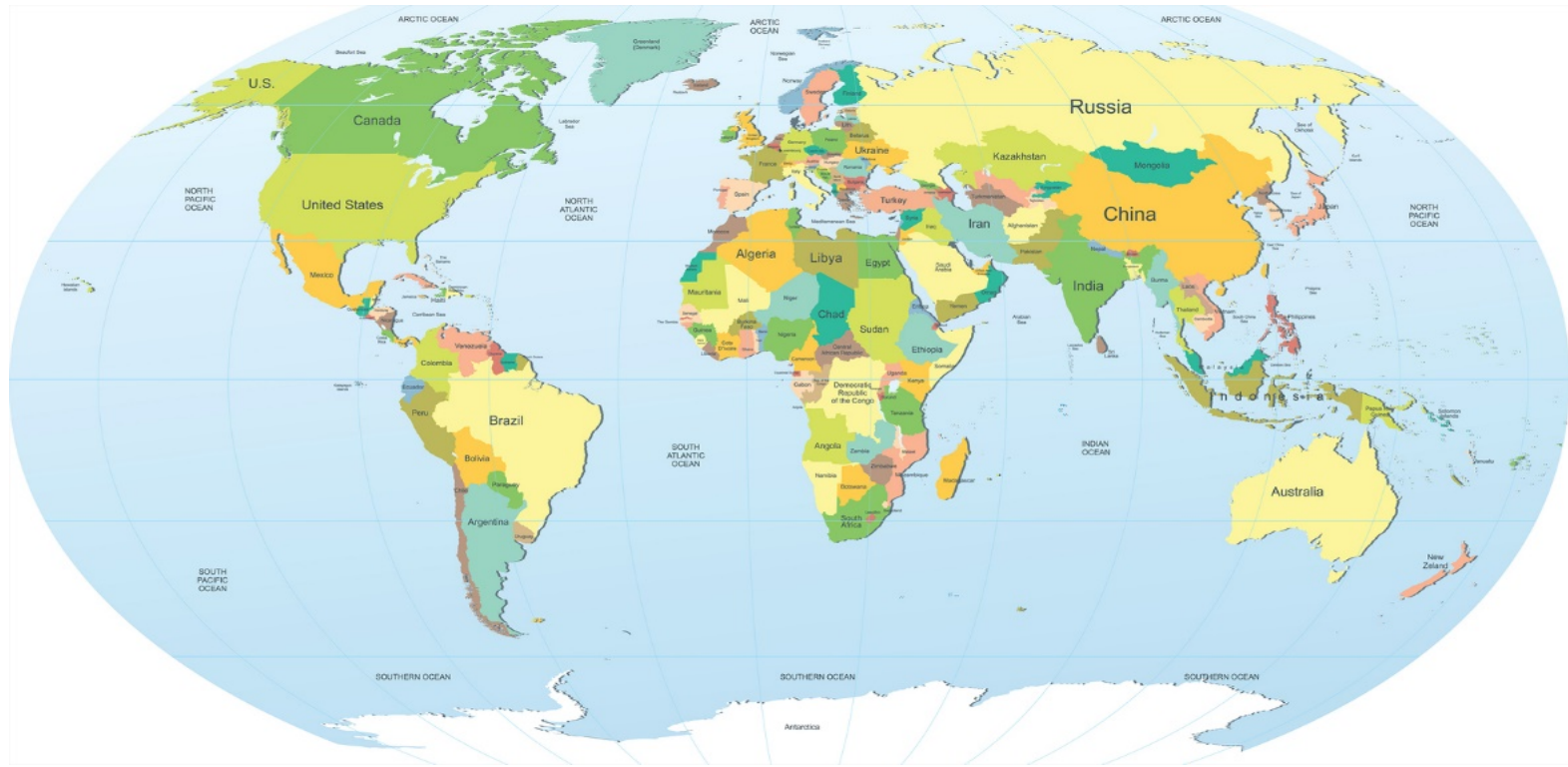
# Social and Legal Trends

## United States Case Law

Is Remote Work Required, According to Recent Court Decisions?



# Social and Legal Trends Global Context





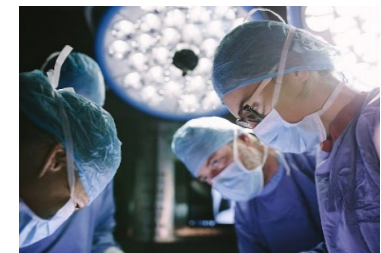
# Social and Legal Trends

## Benefits and Drawbacks to Remote Work



# Statutes Implicated Americans with Disabilities Act

- Employers with 15 or more employees must not discriminate against qualified individuals with disabilities and must provide reasonable accommodations to such individuals, provided it does not impose an undue hardship on the company.




# Statutes Implicated Family and Medical Leave Act

- Employers with 50 or more employees must provide eligible employees with 12 weeks of unpaid leave for covered reasons, which include the employee's own serious health condition, in a certain 12-month time period.
- Eligible employees must have worked for the employer for at least 12 months (not required to be consecutive), worked 1,250 hours in the 12 months prior to the leave, and work at a location where employer has at least 50 employees in a 75 mile radius.

Notice of Eligibility and Rights & Responsibilities  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



U.S. Wage and Hour Division  
OMB Control Number: 1235-0003  
Expires: 5/31/2018

In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

**[Part A – NOTICE OF ELIGIBILITY]**

TO: \_\_\_\_\_  
Employee

FROM: \_\_\_\_\_  
Employer Representative

DATE: \_\_\_\_\_

# Statutes Implicated Fair Labor Standards Act



- Exempt or non-exempt.
- Penalties for failure to pay minimum wage and overtime:
  - Pay all wages owed for the past two years, plus liquidated damages in the same amount. A willful violation may result in payment of amounts owed going back three years.

# Statutes Implicated

## Occupational and Safety Health Act

- OSHA's published instructions on Home-Based Worksites states that OSHA "will not hold employers liable for employees' home offices, and does not expect employers to inspect the home offices of their employees."
- Record keeping requirements



# Statutes Implicated Workers' Compensation

- If the remote employee is injured in the remote environment, the employee may be entitled to workers' compensation benefits. Have a conversation with your carrier prior to approving the remote work, to identify the standards required for the remote work space and to confirm whether injuries at the remote work location would be covered under the policy.



# Statutes Implicated

## Health Insurance Portability and Accountability Act



- Covered entities are obligated to maintain privacy and security of PHI.
  - Covered entities (health plans, health care clearinghouses, and any health care provider who transmits health information in electronic form)
  - Business Associates (person or entity performing certain functions or activities that involve use or disclosure of protected health information (PHI) on behalf of or providing services to a covered entity)

# Statutes Implicated Out-of-State Laws



- Foreign Qualification Requirements.
- Income, Sales and Use Tax.
- Home Occupation Permit.



# Best Practices For Accountability Questions to Consider

- Is the employee working in a position that can be successfully performed remotely?
- What resources are necessary to maintain accountability and productivity?
- How will supervisors measure and manage the productivity of the remote worker?
- Does the workplace environment meet safety standards for OSHA and workers' compensation insurance?



# Best Practices For Accountability Create Remote Work Agreement or Policy

- Establish eligibility requirements for remote work.
- Confirm the term of remote work, when it will end, and the option to extend or otherwise modify.
- Identify remote work location, free from distractions and interruptions that may interfere with work, and that is free from hazards and other dangers to employee.



# Best Practices For Accountability

## Create Remote Work Agreement or Policy



- Technology/equipment
- Security/confidentiality
- Expenses
- Accountability/monitoring
- Recording time
- Tax responsibilities
- Remedies upon breach