



Bryan Benard

Partner
801.799.5833
Salt Lake City
bbenard@hollandhart.com

COVID-19: Work From Home

Insight — March 15, 2020

Last updated 3.15.2020

As required and self-imposed quarantine issues arise, as well as government directions to limit gatherings and shut down schools continue, employers are considering (or are being forced to consider) allowing or requiring portions of their workforce to work from home.

Employers have significant discretion to structure these programs, from deciding which employees may be eligible, setting expectations related to work productivity, establishing different or revised work schedules, and maintaining system security.

No policy is a one-size-fits-all, but below are highlights of the issues employers should consider and implement:

Eligibility Considerations

- Employers should consider what types of work positions are conducive to working remotely, considering job duties, access to systems or files, and ability to complete tasks by email or telephone.
- Generally, only employees in good standing based on prior performance, attendance records, and ability to work without significant direct supervision are good candidates. Employees working remotely should be trustworthy and self-starters.
- Employers can set a minimum tenure requirement, such as working for the employer for 90-days, in order to be eligible to work from home (otherwise, the employees who do not meet such a tenure requirement may be subject to other types of leaves or reductions in force).
- Employees who do not maintain sufficient performance or comply with the work from home policy or requirements, may not remain eligible to work from home.
- All eligibility decisions are made at the full discretion of the employer.

Home-based Working Conditions

- Be clear that employees are expected to maintain the work performance requirements listed in their job descriptions or as outlined by their manager.
- Set expectations (even if temporarily lowered to account for a shorter workday, lower production level, or the reality that if schools are shut down, there will be other distractions for the employee).

- Be clear that employees are expected to dedicate a quiet, secluded, and disturbance free home-work “office” to the extent possible. Distractions from children, animals, or other disturbances should be minimized during the work from home-work schedule.

IT and Security Concerns

- Employers should consider whether they will provide all necessary equipment; if they do, then employers can ensure that all required security, firewall, and other IT considerations are in place. A process for returning equipment when employment ends should be defined.
- Consider whether employees will be required to have high-speed Internet or a dedicated land-line (if requiring a land-line on an emergency basis such as a COVID-19 shutdown, it may not be a realistic requirement depending on the relevant phone company's availability).
- If employees are allowed to use their own equipment and computer, the employer should set out specifically the data security requirements and programs that the employee must utilize, download, etc.
- Determine what company systems the employees can and should be allowed access to while working remotely.
- Implement increased security measures, if possible, to lock down the most mission-critical employer data from being accessed by any unauthorized individuals remotely.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.