

California: What wage-and-hour issues come into play when an employee telecommutes?

Q. We recently started permitting one of our employees to telecommute on certain days of the week. We are concerned about tracking this employee's hours. What wage-and-hour concerns should we consider for telecommuting employees?

A. Telecommuting has exploded in popularity: Last year, 37% of U.S. workers reported having telecommuted—up from just 9% in 1995. The state of California officially encourages telecommuting.

Telecommuting employees often work from home but may also work from other locations as approved by their employer.

While telecommuting may appear to be a terrific option for employers from an economic standpoint, because of the decreased overhead, allowing employees to telecommute is not without risk under the federal Fair Labor Standards Act.

Surprisingly, California does not yet have laws specifically for telecommuting, but the state's myriad of employment laws can still pose problems for telecommuting arrangements.

Of particular concern are the issues that home-based workers complain about, including working through breaks and meal periods, time spent traveling to attend meetings (which may be compensable), after-hours phone calls, emails, and general waiting time.

In order to limit the potential liability associated with telecommuting, employers may want to do the following:

1. Not all jobs are appropriate for telecommuting. Identify jobs and employees best suited for telecommuting arrangements.
2. Do not reclassify a nonexempt employee to exempt or reclassify the employee as an independent contractor simply because the employee is choosing to work outside the office.
3. Require strict recordkeeping of hours worked, breaks and all overtime.
4. Ensure that nonexempt employees comply with California meal and rest break requirements.
5. Consider setting up a direct deposit system for telecommuting employees in order to comply with California's payday and final pay rules.
6. Develop a policy to ensure the security of computer files and other company-related materials.
7. Require a written agreement or written terms of employment that set specific work hour restrictions and require that overtime be approved in advance.

In short, it is important to remember that nonexempt telecommuting employees must be paid for all of the same "hours worked" as every other employee who works in the office.

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