

3 overlooked basics of a telecommuting agreement

Ideally, all employers would have had telecommuting agreements drafted long before the coronavirus came along and forced us into a new way of thinking about where and how work must get done. But who had that kind of foresight?

If you don't have such an agreement on the books, here's how to structure one:

Include these 3 overlooked basics

1. A disclaimer explaining that this is not a contractual agreement that obligates the employer to continue offering work-from-home as an option.
2. Specification about exactly where the employee will work—either from their own home or an alternative location. Your workers' comp carrier is going to want that information to set their rates.
3. An agreement that the worker will immediately send you any injury reports due to accidents at home or the alternative location. "You don't want a surprise workers' comp case a year from now," Davenport told her audience, "where your employee suddenly tells you that a bad desk chair caused him lower back pain, and now surgery is necessary."

✘ Where and when, and at what cost?

While it's assumed that remote workers will hunker down in home offices, some employers are considering paying for their employees to go to co-working spaces like those offered by WeWork (some are surprised to discover that many such spaces remain open for business). The strategy here is that it ideally removes problematic variables like injuries at home; a workers' comp carrier may be happier with an arrangement that moves a worker into a more structured environment. Less desirable areas for you to encourage in a teleworking arrangement would be libraries, bookstores and cafes with their many distractions and possibilities for unforeseen problems to arise. IT should weigh on any security concerns they may have with workers connecting to networks they can't properly vet.

People still need to be managed when they're working from home, so make sure managers lay out specific goals and parameters for how they want the work done, how it's going to be reviewed and how deliverables should be sent.

You'll certainly want to spell out in the agreement itself, particularly for those who are nonexempt, the expectation that someone is not to work overtime without very specific (ideally written) permission—and that doing so can be grounds for revoking their remote work privileges. Telework is, unfortunately, absolute candy for highly driven employees who just want to keep going and going. With exempt employees, this is a problem of effective management; with nonexempts, you have a legal issue on your hands with possible FLSA violations.

Nuts, bolts and swivel chairs

Davenport recommends fixed office hours for teleworkers, and for you to specify how often the employee may be required to attend face to face meetings. Also outline your technology standards—what they’ll need in order to produce, and who will provide and pay for tech support. For example, if they use Comcast at home to get online, will you have them call Comcast directly if something goes wrong, or contact your IT department first? If they have computer problems, at what point will they be expected to get a new computer? What if they just find their personal laptop to be a little outdated and feel they could produce more effectively with a nice new one, or are unhappy with their internet bandwidth compared to the higher speed and capacity back at the office—where do you draw the line on when it’s the company’s burden to pay for new hardware and software?

The FLSA requires that employers reimburse employees for what are essentially the employer’s business costs—necessary equipment and supplies to get their jobs done, reimbursement for the use of vehicles for business purposes, uniforms, repairs, etc. Include in your agreement exactly what equipment is going to be reimbursed.

You can reimburse employees’ home internet access as a business expense, as long as:

- Employees have a business connection for accessing the internet.
- Employees substantiate their business use by submitting an accounting of their internet use—their cable or phone bill and the percentage used for business.
- Employees return any excess reimbursement within a reasonable period of time.

Furniture remains an unsettled category of reimbursement. Are you required to pay for somebody’s desk space at home? “I think the safest course,” Davenport told her audience, “is to assume that you’re going to provide some kind of an allowance for that too.”

One webinar attendee asked, “Should an employer reimburse a telecommuter’s increased electricity costs?” The answer is no—there’s no effective way anyone could substantiate the increase. No one uses the exact same amount of electricity every month. Reimbursements of business expenses must be precise; estimates won’t do.

Child care

Ordinarily, you would have as part of your telecommuting agreement that a worker won’t be tending to children during their core work hours, and that child care arrangements will be made so they can do their jobs seamlessly. But the pandemic has really thrown that model to the wind. If people are teleworking while schools or daycare facilities are closed, you must acknowledge that employees have to get creative.

Consider matching an employee’s hours to the hours of their kids’ core schooling. This new normal is a good reminder that keeping telecommuters on track should not be an exercise in micromanagement; keep the focus more than ever on what they produce, not how they produce it or when.