Potential Legal Implications of Remote Work Policies

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During the COVID-19 pandemic, many employers required their employees to work remotely to comply with state mandates and ensure their employees’ and customers’ health and safety. That resulted in a shift in attitudes about work-from-home policies.

What began as a necessity has shifted to a preference. A majority of employees believe that significant portions of their job functions can be performed remotely. Furthermore, most employees wish to continue to work from home at least part of the time. Market factors and employers’ desires to retain their talented, trained employees have resulted in employers implementing remote work policies.

This shift will create legal issues that employers should consider.

Jurisdictional Issues

By allowing your employees to work remotely, you are potentially opening up your company to be sued in foreign jurisdictions where your company’s employees are working.

In order to confer jurisdiction against your company, a Court must conclude that there is either general or specific jurisdiction over it. Specific jurisdiction refers to the court exercising personal jurisdiction over a party arising over that party’s specific contacts with a forum state. For example, a California business with offices only located in that state may get sued in New Jersey if one of its employees was involved in a motor vehicle accident in New Jersey while making a sales call in the Garden State. Although the employee is a resident of California working for a California company, both may be sued in New Jersey because the employee was working there when the accident occurred.

Conversely, under general jurisdiction, a court may assert jurisdiction over a foreign defendant to hear any and all claims against it when their affiliations with the forum State are so continuous and systematic. Hence, if a California corporation has a remote employee who works full time in New Jersey, depending on the facts and circumstances of the particular legal dispute, it is possible that the corporation could be sued in New Jersey.

Wage and Hour Laws
Allowing your employees to work remotely could subject your company to the wage and hour laws in the jurisdiction where the employee performs their work. Many jurisdictions have differing laws relating to when and how employees are paid. For example, overtime, minimum wage, withholding taxes, timing of pay periods and paycheck disclosure requirements are governed by the jurisdiction where the employee is performing the services for the company. Hence, it is extremely important that companies pay their employees in compliance with local and state wage and hour laws. Failure to do so, could expose the employer to wage and hour claims. Often these claims are “fee shifting” in favor of the employee. That creates incentives for lawyers to assert those claims on behalf of their clients.

**Anti-Discrimination Laws**

Likewise, anti-discrimination laws can differ greatly. Allowing your employees to work remotely could subject your company to the application of anti-discrimination laws in the states where they are working. For example, the requirements to accommodate an employee with a medical issue may differ depending on where the employee is working. Likewise, the requirements associated with holding a job open for an employee who cannot work due to a medical issue or a medical issue relating to a close family member may differ. Hence, employers must know what laws they are potentially exposed to and understand the laws, regulations, and application of the law in each jurisdiction where its employees are working remotely.

**Restrictive Covenants**

Some employers utilize contractual agreements called restrictive covenants to retain their customers and business relationships from resigning employees who go to work for competitors. Like wage and hours laws and anti-discrimination laws, the rules relating to restrictive covenants may differ depending on the state law governing the dispute. For example, in New Jersey, a restrictive covenant is generally enforceable provided it is reasonable to scope and duration and protects a legitimate interest of the employer.

On the other hand, restrictive covenants are illegal in California. Hence, allowing an employee to work remotely in California for a New Jersey company could nullify the protections afforded by the restrictive covenant. One way to deal with this issue is to have an enforceable “choice of law” provision in the contract. Another way is to prohibit employees from working remotely in jurisdictions that do not offer the protections necessary to continue their business.

**Taxes**

Allowing employees to work remotely could result in the company having to pay taxes in accordance with the jurisdictions where the remote employees are working. Hence, I strongly encourage employers to speak with their tax professionals to ensure compliance with local and state tax laws.

Remote work policies may have significant legal ramifications. This is why it is essential that employers understand and adhere to these often significant differences in the laws.