

BUSINESS FOCUS: Remote work is here to stay

REVISITING EMPLOYMENT LAW ISSUES

By Beth A. Deragon, Esq., Pastori | Krans, PLLC

Two years ago, I wrote an article for this newsletter about employment law issues related to remote workers, highlighting compliance issues that many thought would be temporary in nature. The data from the past two years supports what we always knew, but what some businesses were loath to believe—employees are just as, if not more, productive working from home. Equally as important, working from home enables employees to have a modicum of work-life balance, including managing high levels of stress, resulting in higher job satisfaction and employee retention. Whether your workforce is partially remote or you have flexible work schedules for employees, remote workers are a permanent part of doing business. Businesses have an opportunity to tap into a talent pool that expands beyond our borders. However, management of remote workers located in different states presents legal issues that should be considered and assessed on an ongoing basis.

In terms of wage and hour compliance, the state in which the employee performs work will likely dictate wage and hour, unemployment compensation, worker's compensation, anti-discrimination, independent contractor, and non-competition agreement laws that apply. For example, if your business is based in

NH, and you have an employee working remotely in Mass, and you fire that employee, final wages must be paid on the date of termination (not within 72 hours, per NH law), and must include payout of unused accrued vacation or paid time off. Your employee working remotely in Texas is not protected under Texas law from harassment based on sexual orientation, however his counterpart in NH does have such protection. Will the company culture aim to offer the widest scope of protections for classes of individuals regardless of the limitations of certain jurisdictions? If you hire an employee who will work remotely in California and routinely require non-competition agreements, those will not be enforceable in California, but you could consider non-solicitation and non-disclosure agreements. Whereas, your NH based employees can be given non-competition agreements which could be enforceable. These examples illustrate the importance of taking the time to consider employment-related legal issues when hiring employees who will work remotely in a state other than NH.

There are other compliance issues that relate to employees, whether they work in the office or remotely, but might require more vigilance for remote workers. Remote employees who are paid on an hourly basis must keep accurate track of all hours worked for overtime purposes. If remote workers are answering work-related emails past normal business hours, the time spent doing so is considered time worked, and must be recorded. Having overtime policies in place, and training management to engage hourly remote employees during traditional business hours, may prove essential to keeping overtime costs in check and minimizing wage and hour violations.

Remote workers are here to stay. While there are challenges to compliance, with planning and vigilance they can be easily

overcome and worth the effort. Once the appropriate systems are in place, your business can enjoy the profits.



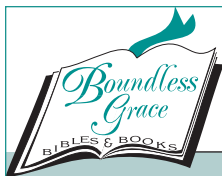
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The attorneys at Pastori | Krans, PLLC are innovative problem solvers who approach each dispute from a common sense, results-oriented objective. The firm concentrates in the areas of employment law, family law, mediation, and civil litigation (including employment law, business disputes, and personal injury).

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For I am persuaded, that neither death, nor life, nor angels, nor principalities, nor powers, nor things present, nor things to come, nor height, nor depth, nor any other creature, shall be able to separate us from the love of God, which is in Christ Jesus our Lord

Romans 8:38, 39

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