

# Mitigating Legal Risks of Working from Home

By [Keith Markel](#) and [Theresa D'Andrea](#), *Risk Management Magazine* – June 1, 2020.

As many companies continue to operate remotely, it is important for employers to remain mindful of potential liability that can result from employees working from home. With the explosion of videoconferencing and remote collaboration tools like Zoom and Slack, employers must ensure that everyone still behaves appropriately and follows company policies and employment laws, even if business attire and surroundings are relaxed. Employers may not be able to completely avoid all legal risks associated with employees working from home, but the following suggestions can help:

## **Remind employees that company policies still apply when participating in video social events.**

More employers are using videoconferencing platforms to host employee social events and happy hours to boost morale and stay connected. However, as with any happy hour, employers must realize that drinking can lead to inappropriate behavior. This is particularly a risk when employees are interacting from the comfort of their own homes, where they may forget it is a work event. Remind employees that employment laws and policies apply at all times, including when using videoconferencing.

Management must remain vigilant as well, as they are held to a higher standard and may be individually liable for engaging in or encouraging inappropriate behavior. Employers should remind employees of the company's anti-discrimination and anti-harassment policies and reiterate that any violation may lead to legal liability and disciplinary measures including termination.

**Take prompt action if an issue arises.** Managers and supervisors must not ignore any misconduct during online interactions that may violate employment laws or company policies. Remind management staff that they face mandatory reporting requirements for harassment under state laws and/or most company policies. Thus, they must report any harassment or inappropriate behavior witnessed via videoconferencing or messaging platforms.

If employers become aware of any misconduct, they must make sure that a prompt, thorough and confidential investigation is conducted, that appropriate remedial action is taken where necessary, and employees are protected from retaliation.

**Properly address accommodation requests.** Employers are legally obligated to provide accommodations for employees with perceived or known disabilities who work from home. For example, accommodation could include purchasing and mailing ergonomic computer equipment and accessories to an employee's home if medically necessary. Employers must engage in an interactive dialogue with employees about whether an impairment is a disability, why an accommodation is needed, and whether the accommodation request creates an undue hardship for the business. Employers should transmit a final written determination of whether they can

grant the accommodation request (and if not, perhaps offering a temporary or alternative accommodation) to the requesting employee in a timely manner.

**Reinforce wage and hour laws.** It is difficult for employers to monitor employees' work hours when they are working remotely, which in turn leaves companies vulnerable to wage and hour violations. The burden remains on employers, however, to properly maintain wage and hour records. This is especially important for non-exempt employees, who must be paid overtime for more than 40 hours worked in a week. This includes hours spent working late at night or over the weekend, which has become more common as work schedules have become more flexible.

Employers should consider implementing time tracking policies, such as a recording system that shows when an employee remotely accesses company services, or having employees self report their time daily. These measures can help employers avoid any subsequent claims that employees are owed unpaid wages. Employers also need to be mindful that all time spent on videoconferencing meetings—even work happy hours—can be considered compensable time under wage and hour laws, so a best practice would be to pay employees for all of their time related to company objectives.

**Prevent privacy breaches.** Employees are now accessing sensitive company or customer information through third-party software and home Wi-Fi, increasing the risk of exposing confidential data. With the advent of “Zoombombing,” in which uninvited attendees intrude into video conference calls, and the uptick in other hacking and phishing scams, employers must work with their IT department or outside vendors to ensure that employees working remotely have the appropriate security measures in place. This includes VPNs, firewalls and antivirus software. Employees should be trained on best practices such as using unique passwords, ensuring that only the host or a limited number of employees can share the screen when videoconferencing, and limiting access to e-meeting invites to only trusted contacts. In addition, make employees aware of their obligations to safeguard any confidential information belonging to the company, especially when outside of the workplace.

While certainly not exhaustive, these guidelines should help minimize the legal risks associated with working remotely. It is more important than ever for employers to implement and reinforce clear remote work policies and ensure they are carefully monitored and applied in a uniform and non-discriminatory manner.