Making Remote Work Work: Policies & Pitfalls

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Agenda

- Why Have a Remote Work Policy?
- How to Use CAPLAW’s Sample Policy
- What Does the Sample Policy Cover?
- Questions?
Why Have a Remote Work Policy?

Why have a remote work policy?

• Sets employee expectations
• Facilitates compliance with employment/tax laws
  • Ex. Consistent timekeeping under FLSA
• Streamlines and simplifies HR operations
• Protects organizational interests
Why have a remote work policy?
NSCA Hypothetical

North South Community Action, Inc. (NSCA) tells all staff to work from home due to the danger posed by COVID-19. The agency does not have a remote work policy in place and does not provide any equipment to the staff.

What are NSCA's obligations to its employees? Recourse for the organization or employees if something goes wrong?

How to Use CAPLAW’s Sample Policy
How to Use CAPLAW’s Sample Policy

• Includes sample language & annotations

• Annotations highlighted in blue

• Text in [brackets]/yellow = info specific to your CAA

CAA’s Policies Remain in Effect

Employees permitted to work remotely must continue to follow CAA policies, as set forth in the employee handbook and all other applicable employee policies, including remote work arrangements. Failure to follow CAA policies may result in termination of employment.

Remote Work Arrangement

Employees are prohibited from engaging in work for third parties and all other unauthorized work during their remote work arrangement.

Exempt status and pay will remain in effect.

Remote work arrangements that involve employees working from a state other than the one where their employer is physically located may affect how state and federal tax laws apply to both the employee and the employer. CAs considering such an arrangement are advised to consult with legal professionals to fully understand the tax implications and the impact on payroll and income tax laws – before committing to the arrangement.

Provisions may already be addressed in your organization’s existing employee handbook/personnel policy. You should confirm that this provision is consistent with other employee policies addressing outside employment and/or include language referencing those policies, if they exist.
What Does the Sample Policy Cover?

Three Main “Sections”

• Introduction + Prearrangement Process
• Remote Work Arrangement
• Administration/Miscellaneous

This sample remote work policy was developed by Community Action Program Legal Services, Inc. (CAPLAW) and has not been approved by any outside authority, such as the U.S. Department of Health and Human Services, Office of Community Services (OCS). When using this sample to develop, review or update a remote work policy, CAPLAW strongly recommends you consult with legal counsel.

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The contents of this publication are intended to convey general information only and do not constitute legal advice. This publication does not constitute or create an attorney-client relationship. If you need legal advice, please contact CAPLAW or another attorney directly.
Introduction + Prearrangement Process

- Defines policy
- Sets eligibility
- Establishes process for implementing arrangement

Remote Work Arrangement

- Bulk of the policy – and this presentation
- Establishes employer and employee:
  - Conditions
  - Duties
  - Obligations
  - Expectations
- Highly variable/situational
Administration + Miscellaneous

- Designates responsibility for administering policy
- Clarifies how the policy fits into CAA's policy framework
  - What changes, and what doesn't change?
- Anything else specific to your CAA?
Introduction + Prearrangement Process

• Introduction
  • Explains what the policy is for – as well as what it is not for
    • Does NOT cover requests for reasonable accommodation

• Eligibility for Remote Work Arrangement
  • When is an employee eligible for remote work?
    • Largely depends on organizational discretion
    • Key consideration: can employee's essential job functions be performed remotely with legal risk to organization?

Introduction + Prearrangement Process

• Eligibility for Remote Work Arrangement
  • Other considerations:
    • Employee Suitability
    • Job Responsibilities
    • Equipment Needs, Workplace Design, Scheduling Issues
    • Tax and other Legal Implications
      • See previous webinar for more information
  • Again, eligibility ultimately at employer's discretion*
    • *Barring unlawful discrimination/against, excluding legally-required accommodation
Introduction + Prearrangement Process

- May Approve Requests for a Trial Period
  - Process is largely up to the employer

- Policies Remain In Effect
  - Clarifies that all other CAA employment policies that may normally apply continue to apply
    - Ex. Employee Handbook

Remote Work Arrangement
Remote Work Arrangement

- Availability & Communications
  - Confirm expectations for schedule and availability

- Timekeeping
  - Keep accurate record of exempt and non-exempt employees
    - Non-exempt: not working off the clock/padding hours
    - Exempt: clarity, time and effort reporting, record retention

- Workspace

Remote Work Arrangement

- Who is responsible for equipment and technology?

Reasons to Provide
- Greater control
- Data security
- Productivity

Reasons to Not Provide
- Cost
- Tax implications
- Logistics
Remote Work Arrangement

Equipment and Technology: [The Employee shall provide all furniture and equipment necessary for their remote work arrangement. CAA is not responsible for any damage to Employee’s furniture or equipment suffered in connection with Employee’s remote work arrangement.]

[CAA shall loan the following equipment, as needed, to employees approved for remote work arrangements:

- Computer/laptop]

7 A minority of states require employers to provide or reimburse employees for all equipment and supplies necessary to perform their job duties. Where such requirements do not apply, the decision of whether to provide equipment and technology to a remote employee, or to reimburse the employee for purchasing work-related equipment and technology, is entirely within the employer’s discretion. However, relying on employees to supply their own laptops and other technology can introduce security-related inconsistencies and liabilities with regard to employers’ sensitive data and information. As such, many employers opt to provide employees with laptops and other equipment in the interest of making sure such information is retained and transmitted in a secure fashion. At the same time, while giving remote employees the equipment necessary to perform their essential job functions can promote informational security and have a positive effect on the employee’s remote productivity, doing so may have tax implications for both the employer and employee. For instance, employer-provided equipment may qualify as taxable income to the employee, depending on whether the equipment was provided for “non-compensatory business reasons”; that is, there must be a substantial reason relating to the CAA’s business for providing the employee with the equipment. CAA’s considering providing equipment or reimbursing employees for equipment purchases should consult a local attorney and/or tax professional to fully understand the federal and state tax implications and potential security concerns of doing so.
Remote Work Arrangement
NSCA Hypothetical

• Harry the HR Director has been working for NSCA remotely during the pandemic and storing sensitive organization documents and information on their personal computer.
• In July 2020, Harry downloads a file from a scam email, giving a hacker remote access to the computer.
  • Could NSCA have prevented this via a remote work policy?

Remote Work Arrangement
NSCA Hypothetical

• Anti-virus software
• Shared drive/VPN access
• Limitation on personal internet activity
• Still may not have been an option
  • Can the organization afford it? Are the logistics feasible?
Remote Work Arrangement

• Other expenses
  • Again, situational
• Federal and State Law Considerations
  • Ex., federal FLSA prohibits employers from requiring employees to pay for business expenses if doing so causes employee’s wage rate to fall below minimum wage

Expenses: CAA will reimburse the following costs incurred in connection with performing duties for CAA at the written request of the Employee and after production of documentation verifying such costs:
  • [Cellphone/long distance telephone charges ]
  • [Internet access ]
  • [Electric bill ]
  • [Other Expenses ]

CAA will not reimburse any additional expenses without advance notice/approval.

[CAA will not be responsible for any of the following costs:
  • [Cellphone/long distance telephone charges ]
  • [Internet access ]
  • [Electric bill ]
  • OTHER EXPENSES ]
**Remote Work Arrangement**

- Expenses – personal device use
  - Some states require reimbursement of business expenses
  - In states that do not, up to the discretion of the employer
    - FLSA sets the floor, though
  - **Option:** consider reimbursement or stipend for use of personal devices for business purposes

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**Remote Work Arrangement**

**NSCA Hypothetical**

- During the pandemic, NSCA’s Head Start teachers developed an online curriculum for their students in lieu of in-classroom learning and hosted via third-party social media platforms.
  - In October 2020, the teachers demand reimbursement for their use of personal property and social media accounts.
    - How could a remote work policy address this situation?
Remote Work Arrangement
NSCA Hypothetical

• Probably not obligated to reimburse
  • Keeping FLSA, state law in mind

• **Morale Consideration**: Just because we don’t have to
doesn’t mean we shouldn’t do it . . .

• Other potential issues?

Remote Work Arrangement

• Security
  • Protect information and property
  • Existing policies likely applicable, helpful

• **NSCA Hypo**: Harry the HR Director
  • If Harry still uses their personal computer (cost), NSCA should
    make sure security procedures are clear and understood
Remote Work Arrangement

• Injuries and Worker’s Compensation
  • For more context, see prior webinar’s discussion of OSHA
    • Key takeaways: define and document work activity and workspaces
    • Worker’s Comp: talk to insurance carrier for clarity

Remote Work Arrangement

NSCA Hypothetical

• Amy, an Administrative Assistant with NSCA, is working from their home office, again due to the pandemic.
  • In January 2021, Amy trips over an extension cord in the hallway outside their home office running to answer the work phone set up in the office, breaking their hip.
    • To what extent is NSCA responsible for Amy’s hip injury?
Remote Work Arrangement
NSCA Hypothetical

• Define work activities and workspace
• Ensure policies includes necessary updates
• Work with WC carrier
• Review interaction between WC and other leave policies

Remote Work Arrangement

• Employee Tax Implications
  • Employee's responsibility to understand tax implications of remote work arrangement
  • Examples of Employee Tax Considerations:
    • Employer-Provided Equipment = Taxable Income?
    • Stipends/Reimbursement = Taxable Income?
Administration + Miscellaneous

- Administration
  - Establishes facilitation, oversight and enforcement
- Collective Bargaining Agreement (CBA)
  - Policy does not supersede CBA w/ unionized workforce
- Employee Rights Disclaimer
  - Policy does not preclude exercise of employee rights under NLRA
- Additional Terms
Questions?