



## A Perspective on Telecommuting & Legal Compliance

In recent years, allowing employees to work remotely – at home, the coffee shop, the airport, the beach or a soccer field – has become more common. Different permutations of this remote work concept are commonly referred to as telecommuting, tele-work, agile work or flexible work arrangement. A study by the Consumer Electronics Association found that 37% of U.S. employees worked from home at least one day per month. In large part, the prominence of telecommuting has been facilitated by technological advancements that allow employees access to information from remote locations. Perhaps surprisingly, a study conducted by Stanford University found that employees who work remotely are often more productive and work longer hours than those who are physically present at the job site. For millennials, who have adopted work styles and preferences that reflect their tech-savviness, a telecommuting option is an attractive recruiting tool.

Telecommuting may not be feasible in every work setting. In some instances, it is difficult to offer an enterprise-wide telecommuting program. Oftentimes, an employer will tailor its telecommuting program based on functional area or department. Adopting a policy that varies by function and/or department – and even by specific job – is not without fallout. Employees who are unable to participate in such programs may perceive them as unfair and even discriminatory. Thus, when designing a telecommuting policy, a prudent employer will fully vet the advantages, disadvantages and implement creative solutions to diffuse misperception and the prospect of lowered morale.

Telecommuting policies may also be implicated in legal claims. For example, an employee with a medical condition may request an accommodation to work from home. While the Americans with Disabilities Act (ADA) does not require employers to offer telecommuting policies, in instances where the employer does, the law contemplates that a disabled employee be given the same opportunity to work from home as similarly situated non-disabled employees receive under the telecommuting policy.



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Also, a court might expect an employer to relax certain eligibility standards pertaining to a telecommuting policy when a request for reasonable accommodation is made by an employee with a disability. For example, if the Company's telecommuting policy requires a year of service prior to eligibility and a newly hired disabled employee requests to work from home as reasonable accommodation, the employer should consider the request and engage in the interactive dialogue without regard to the one year of service eligibility requirement.

If the employer refuses the request, the employee may pursue a claim for failure to provide a reasonable accommodation under the ADA. To prevail in such a claim, the employee must show that: (1) the employer knew about his/her disability, (2) the employee requested an accommodation, (3) the employer did not make a good faith effort to assist the employee seeking accommodation and (4) the employee could have been reasonably accommodated but for the employer's lack of a good faith effort.

In addition to the ADA, other legal considerations must be taken into account when designing a telecommuting policy, such as, Title VII, Workers' Compensation and even the FMLA. While telecommuting policies are quickly becoming a "must-have" for employers of choice, it is important to design and apply the policy in a manner that does not increase legal risk.