

The future of remote work: practical considerations for employers

A home office doesn't eliminate compliance, safety obligations



By Natalie Nicholson

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As employers navigate the future of remote work, there are many practical and legal considerations. To maintain sufficient flexibility to manage the workplace, comply with legal requirements, and

mitigate associated risks, it is important to know the legal considerations and liabilities:

An often overlooked but important step is to create a written policy for remote work. A well-written policy will set out and manage expectations and mitigate the risk an employee may later successfully claim that a change to their work arrangement constitutes a constructive dismissal.

And whether an employee is working on-site or remotely, an employer must comply with applicable employment standards legislation. This includes standards related to rates of pay, hours of work, meal breaks, rest periods, and overtime, among others.

Who can work remotely and when?

A remote work arrangement may be suitable for some, but not all, employees, depending on the nature of an employee's duties or even individual attributes, such as the ability to work independently and manage a workload efficiently.

In many cases, an employer should reserve the right to direct an employee to attend the workplace as needed – for example, to attend a team meeting or to address the needs of a client or colleague.

An employer may also want to reserve its right to revoke the remote work arrangement altogether if there are concerns with the employee's performance or if the employer determines operational needs necessitate the employee return to the physical workplace.

Read more: [Remote work can introduce new and complicated aspects to the employment contract](#)

Set parameters around where an employee can work

Legal standards differ across Canadian jurisdictions – and outside of Canada – exposing an employer to unexpected risk if an employee relocates outside the “home” jurisdiction. If an employee moves to another jurisdiction, whether at the employer’s request or on their own, the employer may find itself bound to law of the jurisdiction where the employee now resides.

There may also be circumstances in which the laws of both jurisdictions apply. As these laws relate to employment standards, human rights, health and safety, tax, and workers’ compensation, the implications can be significant.

To protect your business, consider including a provision to address each of the following:

- permitted work jurisdiction(s)
- the right of the employer to unilaterally change an employee’s jurisdiction of work (including any remote work arrangement)
- the type and frequency of work that can be done off-site

Monitoring employee performance

An employee working remotely may be out of sight, but they need not be out of mind. An employer is entitled to monitor and manage an employee’s performance while they work remotely. Some employers may use software to monitor compliance with workplace policies and keep track of efficiency and productivity.

In Ontario, for example, an employer that uses any form of electronic monitoring should be aware of the requirement under the Ontario Employment Standards Act, 2000 (ESA) for certain employers with more than 25 employees to implement a written policy on electronic monitoring by Oct. 11, 2022. Among other things, this policy must include a description of how, and in what circumstances, the employer may electronically monitor an employee. It must also inform an employee of the purposes for which the information obtained through electronic monitoring may be used.

Even if an employer is not required to have a policy on electronic monitoring in place, an employer may still want to inform an employee about how they are being electronically monitored and if the employer is collecting personal information through its monitoring processes.

Read more: [Changes to an Ontario worker's remote work arrangement and bonus were constructive dismissal](#)

This is particularly true in jurisdictions where private sector privacy legislation exists. For example, in British Columbia and Quebec, privacy legislation restricts the collection of an employee's personal information and monitoring employees through surveillance is limited to what is reasonably necessary in the context.

Ensure safe work

In Ontario, an employer has a duty under the province's Occupational Health and Safety Act (OHSA) to "take every precaution reasonable in the circumstance for the protection of the worker." However, the OHSA explicitly states it does not apply to work performed in a private residence. Given that 'workplace' is broadly defined in the OHSA and not all remote work is performed in a private residence, some, but not all, work performed remotely may be excluded from the scope of the OHSA.

By contrast, in Ontario, Quebec and British Columbia, the respective workers' compensation regimes apply even if an employee is working remotely.

In any event, an employer should ensure an employee working remotely is aware of their obligation to comply with the employer's health and safety policy during working hours, including reporting a workplace injury.

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