

# Do You Have to Let Your Employees Work from Home?

## Labor & Employment Law Update

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“Do I have to let my employees work from home?” With technological advances and with market demand for flexible work arrangements constantly increasing, the question comes up all of the time.

*Generally speaking, the answer is no.* Some positions just don't translate to working remotely. For example, an auto mechanic or a doctor certainly cannot perform their job from their kitchen table. On the other hand, other positions, such as many white-collar office positions, can be well suited for remote work arrangements.

The key in allowing remote work is to communicate expectations clearly. If you're going to allow remote work, how often is it allowed? Once a week? And will you need to have a specific day of the week when everyone has to be present at the office and available for meetings, etc.? Are employees expected to have a dedicated office space when working from home? Will you set minimum requirements, such as a year of employment, before an employee can ask to work from home? Will you be able to continue to protect confidential company data and information? And of course, you need to be able to continue to monitor your employees and the quality of the work they perform. If an employee can't meet expectations in the office, you certainly shouldn't expect him or her to be able to do so while working remotely. It is also important to communicate the expectation that remote work arrangements are not synonymous with vacation days nor are they intended to be a substitute for childcare arrangements. To address all of these questions in a consistent manner, an employer may find it necessary to create a formal written policy.

*Finally, remember that even if you take a strict approach and clearly communicate parameters to your employees, the Americans with Disabilities Act may require you to make exceptions.* In years past, it was fairly reasonable for an employer to argue that physical attendance was an essential function of the job. However, as courts evolve with technology and a changing workforce, it is becoming a much weaker argument to claim that 100% physical attendance is an essential function of a position. Today, an employer may be hard-pressed to explain why it could not allow remote work on at least a temporary or part-time basis. In fact, the request to work from home as a reasonable accommodation under the ADA has become so commonplace that the EEOC has developed a FAQ devoted to the specific request.

If you find yourself dealing with remote work requests on a fairly regular basis, it may be time to consider a policy to clearly and consistently communicate parameters. With industry experts predicting a tight labor market in 2019, and with a recent indeed.com survey showing that nearly half of employees say remote work policies are an important factor in choosing a job (and that 40% of employees are willing to take a pay cut in exchange for the option), a policy may not only help you set and manage parameters for handling such requests, but may also provide you with a competitive edge in recruiting top talent.

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