



Back-to-Work from Home

Presented by
Karen O'Connor, Melissa Healy & John Dudrey
December 10, 2020



Presenters



Karen O'Connor
503.294.9291
karen.oconnor@stoel.com



Melissa Healy
503.294.9263
melissa.healy@stoel.com



John Dudrey
503.294.9227
john.dudrey@stoel.com

Today's Topics

- Current COVID-19 Restrictions
- Leave Issues
- Workers' Compensation Claim Issues
- Wage and Hour Issues
- ADA Accommodation Issues
- Tax Issues
- Your Questions

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Current COVID-19 Restrictions

- OHA Face Covering Requirements
 - Required virtually everywhere except home/personal office
 - Employers must make available to employees for free
 - Helpful link: <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2288K.pdf>
- OR OSHA Safety Rules
 - Deadlines have passed for postings, risk assessment, and infection control plan
 - Complete employee training **by** Dec. 21, ventilation updates **by** Jan. 6
 - Helpful link: <https://osha.oregon.gov/covid19/Pages/default.aspx>

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Current COVID-19 Restrictions (Cont'd)

- Portland Metro Area Counties = “Extreme Risk” Category
 - Exec Order 20-66 (Dec. 2, 2020): “When a county is at **Extreme Risk**: All businesses and non-profit entities with offices in that county **shall facilitate telework and work-at-home** by employees, to the maximum extent possible. Work in offices is prohibited whenever telework and work-at-home options are available, in light of position duties, availability of teleworking equipment, and network adequacy.”
 - Helpful link: https://www.oregon.gov/gov/Documents/executive_orders/eo_20-66.pdf
 - Helpful link: <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2342c.pdf>

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Current COVID-19 Restrictions (Cont'd)

- Our employees are technically capable of working from home. However, several of them are doing a poor job lately. Can we require them to work from the office for performance reasons? **Probably not.**
 - Work-from-home aspect of executive order is not absolute (“to the maximum extent possible”)
 - But: text suggest that exceptions are for “objective” issues related to the nature of the work, not “subjective” issues like quality of performance
 - Follow your normal performance management guidelines
 - Identify key tasks/deliverables
 - Identify deadlines
 - Hold people accountable

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- Can employees take FFCRA paid family leave to watch their children because their school or day care provider is closed during winter break? **Probably not.**
 - Key phrase: “leave is necessary because the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19”
 - Possible exception: employee can show that their children have attended the same winter break camp previously and would have this year but for COVID-19 closure

- Can employees bring workers' compensation claims for injuries suffered at home? **Maybe.**
- General standard: injury occurs “in the course of employment.” When working from home:
 - Was the worker **performing a work-related task** or something reasonably incidental to work at the time of the injury?
 - Did the injury occur **during** a rest/meal break?
 - **Where did the injury occur** in the home (e.g., home office vs. kitchen or bathroom)

Workers' Compensation Claim Issues (Cont'd)

- Case Study:
 - Interior decorator kept sales samples in her van and home garage to show customers, at employer's instruction
 - Decorator trips over her dog while walking to home garage on a weekend to swap out samples from her van
 - Held to be a work-related injury covered by workers' comp
- SAIF Guidance
 - <https://www.saif.com/employer-guide/injuries-while-telecommuting-whats-the-law.html>
 - <https://www.saif.com/employer-guide/coverage-details/telecommuters.html>

Wage and Hour Issues

- Do we have to provide meal and rest periods for non-exempt employees working from home? **Yes.**
- Normal meal and rest period rules apply: 30-minute uninterrupted meal period for shifts of 6+ hours, 10-minute rest period for every 4 hours worked (Oregon)
- Compliance Tips:
 - Reiterate meal/rest period policies to employees
 - Require employees to specify on time sheet or other document fact and time of breaks
 - OK for employer to conduct random "audit" of employee email or computer usage during meal and rest period times

Wage and Hour Issues (Cont'd)

- Do we still have to track working time for non-exempt employees working from home? **Yes.**
- Compliance Tips:
 - Reiterate timekeeping policies to employees
 - Establish work schedules during which employee will be available
 - Respect times that the employee will not be available
 - Daily/weekly certifications of time
 - OK for employer to conduct random “audit” comparing employee email or computer usage to time sheets

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ADA Accommodation Issues

- Post-COVID 19, will we have to allow employees to telecommute whenever they want? **No.**
 - Employers retain authority to determine essential functions, including where work is performed
 - Working from home, while necessary the past several months, is clearly not ideal for every workplace
 - What has likely changed is deference employers may receive about the importance of working from a common location
- Helpful link: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

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ADA Accommodation Issues (Cont'd)

- Are we required to make modifications to employees' home workspaces because of their disabilities? **Maybe.**
- The usual rules on reasonable accommodations apply; there is no special "work from home" version
- Potential accommodations
 - Ergonomic chairs and keyboards
 - Adaptive listening or screen-enhancer devices
- Helpful link: <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

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Tax Issues

- Employees WFH in a different state from their employer's location may have new tax issues!
- Every state tax system is different, and generally considers how long the employee is within the state's borders, what income is earned, and where the employee's home/domicile is
- 14 states have announced that they will not tax people working there remotely due to COVID-19
- Employees need to obtain their own tax advice!

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Your Questions

The last 15 minutes of this presentation will be an open question and answer session. Feel free to submit questions through the Q&A and we will attempt to address as many questions as we can in the time remaining.



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