

# HR Daily Advisor

## HR MANAGEMENT & COMPLIANCE

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### The Virtual Work Space: What Are the Benefits and Risks?

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Remote work, virtual office, telecommute—more and more employers are permitting employees to spend their days in a nontraditional work space, including giving them the ability to work from a remote office, a home office, or even the local coffee shop.

Law firms, often very traditional in Human Resources (HR) approaches, also seem to be jumping on the telecommuting trend. Just the other day, I received a call from a headhunter. The client? A “virtual” law firm with zero physical office space where all attorneys and staff work remotely.

For years, employers have been allowing employees to telecommute or “work from home” for a variety of reasons, including medical accommodations, employee childcare issues, and cost savings. Generally, however, the decision to permit an employee to telecommute has been rare and has often been applied only temporarily.



(<https://news.blr.com/app/uploads/sites/3/2018/04/Remote-Worker-02-1.jpg>)

Source: AlexBrylov / iStock / Getty

Although telecommuting was once considered a perk, more companies are instituting a formal work-from-home policy to accommodate employees and retain talent. Given this more structured approach to establishing telecommuting in the workplace, what are some of the latest pros and cons for both employees and employers?

## What Are the Benefits?

1. **Cost.** Real estate can be expensive. An employer must also consider all the associated costs with maintaining an office, including heating and cooling, maintenance and upkeep, and staffing. Permitting employees to work remotely reduces the need for a physical office space and can result in significant cost savings. Employers should also consider the cost savings to the employee. Parking, particularly in larger cities, can be expensive. Don't forget to factor in gas, wear and tear on a car, and the time spent sitting in traffic during the morning and afternoon commutes. Thus, remote work may enable you to attract quality candidates to a position with a lower starting salary.
2. **Disability accommodations.** Both federal and state laws require employers to provide "reasonable accommodations" to individuals with disabilities to assist them in performing the essential functions of their position, as long as the accommodations do not create an undue hardship to the employer. Courts are increasingly holding that, in certain situations, working from home can be a reasonable accommodation under the Americans with Disabilities Act. Such an arrangement can give employees additional time to recover and rest, as well as eliminate potential barriers such as doorways and stairs.
3. **Work/life balance.** Although attempting to achieve a "work/life balance" has been employees' goal for decades, employers are seeing increased demands from the current workforce for benefits that will permit them to spend more time with their families, including part-time or flex-time schedules and work-from-home arrangements. The traditional 9–5 workday is making way for schedules that offer greater flexibility and can be tailored to each employee's specific needs.

## What Are the Risks?

1. **The federal Fair Labor Standards Act (FLSA).** The FLSA requires employers to pay employees for all "hours worked" unless the employees are otherwise "exempt" from the provisions of the Act. The FLSA also contains provisions regarding minimum wage and overtime. The FLSA lays out fairly specific tests for employees to be considered exempt. For nonexempt employees, employers are required to maintain detailed documentation of the employees' hours worked to ensure proper compliance with the law. Employers that permit nonexempt employees to work remotely must ensure that employees are documenting all hours worked (and are paid for all such hours). Employers that fail to properly document work time and/or permit employees to work "off the clock" can open themselves up to significant fines and penalties under the FLSA.
2. **Disability accommodations.** When accommodating employees, employers need to be consistent. Frontline supervisors should not unilaterally make decisions about providing accommodations to employee work schedules. All accommodation requests should be reviewed with HR to ensure the employee provides appropriate medical documentation and that the employer complies with federal and state legal requirements. The interactive process with the employee should be documented and show the decision is being made based on the facts of the particular employee's situation and is nonprecedential. Employers should be cautious about creating permanent "light duty" positions as accommodations and ensure that the employee is at all times able to perform the essential functions of the position (either on-site or from home).
3. **Supervisory/work monitoring.** Supervising remote workers has its unique challenges. A manager cannot simply "stop by" an employee's office or workstation to ensure work is being completed. Employers need to establish methods by which an employee's productivity can be monitored and/or measured. In some industries, this can be accomplished by comparing productivity numbers between on-site and remote workers. In other industries, this may be more difficult and require daily or weekly updates and regular meetings between employee and supervisor. Advancements in technology, such as monitoring keystrokes or online activity, as well as video-conference applications like Skype, should be considered.
4. **Workers' compensation risks.** Injuries that occur at home can be compensable under state workers' compensation laws. Although an employer can control common hazards in an office, it cannot control the

home work environment. Therefore, employers should consider conducting audits of the home workplace to ensure compliance with safety regulations and remove associated risks before permitting employees to regularly work remotely.

5. **Computer virus/hacking.** Employees who work remotely may be more susceptible to bad actors' gaining unauthorized access to the employer's network systems. Employers should prohibit employees from accessing sensitive and/or confidential information (client e-mails, financial documents, etc.) from unsecured hot spots. Although the free Wi-Fi at the local coffee shop may be helpful when browsing Instagram, employees should be aware of the risks when utilizing it to access the employer's network. Employers should ensure appropriate safeguards are in place on laptops or other devices to secure passwords and prevent unauthorized downloads that could be catastrophic. Employers should also install applications that will permit devices to be wiped clean if lost or stolen.

The reality is this: As the boundaries of the traditional office disappear, and as the ability to perform substantial work remotely is enhanced by technology, the office as we presently know it will, for many professions, disappear. The law will adjust to these new realities, as will employees. So, the question is: What are the best practices?

## **Best Practices**

1. Review individual job descriptions to evaluate if a work-from-home situation is appropriate. Provide the opportunity to employees on a limited/trial basis.
2. Clarify that any determination as to permitting work-from-home arrangements will be made on a case-by-case basis.
3. Establish clear policies and guidelines, including those relating to secure network access and passwords.
4. Set clear expectations and guidelines regarding job performance and productivity.
5. Establish a regular schedule for evaluating performance and providing feedback.
6. Maintain accurate time records, reporting all hours worked.

Indeed, there are many benefits to permitting employees to work remotely. However, employers should take the time to consider all of the associated risks before embarking on establishing a remote workforce.

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