



Navigating Remote Work Challenges: Top Five Issues for California Employers

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During and since the pandemic, the traditional office commute rapidly evolved from the familiar dystopia of So. California freeways, to the more comfortable morning sweatpants shuffle down the hall to a desk or couch. As remote work appears to be lingering, and for some, may be here to stay, employers – especially in California (infamous for its complex and ever-changing labor and employment laws), face unique challenges and concerns. In this article, we will explore the top five issues facing California employers regarding remote work and offer strategies for compliance.

1. Wage and Hour Compliance

One of the foremost concerns for California employers with all employees, but especially with remote workers, is ensuring compliance with wage and hour laws. California has a complex web of regulations governing overtime, meal and rest breaks, and record-keeping. If an employee performs services in California (remote workers in other states cannot take advantage of California law), employers must track the hours worked by remote employees accurately, regardless of their location, and pay them in accordance with California's labor laws.



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Compliance Strategies

- Implement time-tracking software to monitor remote employees' work hours.
- Train managers and employees on timekeeping best practices and the importance of accurate record-keeping.
- Develop clear remote work policies (preferably that remote workers sign), that outline expectations regarding work hours and reporting time worked.
 - These policies should clearly state that all off-the-clock work is strictly prohibited.
 - Have employees confirm in writing that they have accurately reported all of their time worked.
 - Prohibit texting, e-mailing, and phone calls when employees are not clocked-in and educate and restrict managers from contacting hourly employees after hours.
- Develop and enforce meal and rest break policies.
 - Consider developing a break schedule that is circulated to managers and remote workers, which will mitigate potential unintended meal interruptions.
 - Meal and rest break policies should clearly state that employees are prohibited from performing work while on break.
 - Employees should inform remote employees to report missed meal or rest breaks, and to have employees regularly certify (quarterly or monthly) that they have been provided the opportunity to take their meal and rest breaks.

These strategies will go a long way toward mitigating expensive, distracting, and infuriating lawsuits - particularly class and PAGA actions.

2. Expense Reimbursement

California Labor Code Section 2802 requires employers to reimburse employees for "all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." For remote workers, this may include internet usage, home electricity, computer equipment, and cell phone usage. Employers should provide employees with the necessary supplies and equipment needed to perform their job remotely, and either (1) make employees aware of the procedure for expensing incidental expenses, or (2) provide a monthly stipend for incidental expenses like cell phone, electricity and internet at home (\$25 is a good amount). Make sure you do not have any antiquated policies that say home expenses are not reimbursable. If an employee chooses to work from home, they may not have the same rights to reimbursement as an employee whose home is their assigned workspace.

Compliance Strategies

- Establish a comprehensive expense reimbursement policy that outlines eligible expenses and the reimbursement process.

- Maintain clear communication with remote employees about the reimbursement policy and procedures.
- Keep detailed records of reimbursed expenses and any accommodation related correspondence.

3. Data Security and Privacy

Remote work can pose significant challenges regarding data security and privacy. California has strong data protection laws, such as the California Consumer Privacy Act (CCPA) and the California Privacy Rights Act (CPRA). Employers must safeguard sensitive information and comply with these regulations, which apply regardless of where the employee works.



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Compliance Strategies

- Ensure that remote employees have access to secure technology and resources to protect company data.
- Implement strict data security policies, including encryption, secure file sharing, and regular cybersecurity training.
- Implement policies regarding the destruction and return of company data and property following separation of employment.
- Seek legal counsel to navigate California's complex and evolving data privacy landscape.

4. Workers' Compensation and Workplace Safety

Ensuring the safety and well-being of remote workers is a significant concern for California employers. While traditional workplace safety regulations primarily apply to physical office spaces, employers are still responsible for providing a safe work environment for remote employees.

Compliance Strategies

- Advise workers' compensation insurance carriers that the company has remote employees to ensure coverage is not jeopardized when an injury occurs to a remote worker.
- Develop a remote work safety policy that outlines best practices for maintaining a safe remote work environment.
- Understand the nuances of workers' compensation laws as they relate to remote work and ensure appropriate coverage.

5. Performance Management and Evaluation

Evaluating and managing the performance of remote employees can be more challenging than for in-office employees. Employers must find effective ways to assess productivity, provide feedback, and conduct performance evaluations, all while adhering to California labor laws.

Compliance Strategies

- Set clear performance expectations and key performance indicators (KPIs) for remote employees.
- Implement regular performance reviews and feedback sessions, even if they are conducted virtually.
- Use performance management software and tools to track and measure remote employees' contributions and achievements.

Conclusion

By addressing these five issues and implementing the associated compliance strategies, California employers can successfully manage their remote workforce, mitigate legal risks, and create a legally-compliant remote work environment that benefits both the employer and the remote workers. Continually adapting and refining remote work policies and practices is the key to staying in compliance with California's labor and employment laws and to meeting the evolving needs of the workforce.

For questions regarding complying with California employment-related remote work laws, please contact either author - Alessandra Whipple at awhipple@cdfllaborlaw.com or Todd Wulffson at twulffson@cdfllaborlaw.com.