Dispersed Workforce

Common Legal Issues

State Bar of Texas Labor and Employment Law Institute August 25-26, 2017 San Antonio, Texas

Presented by:

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What IS a "Dispersed Workforce"?

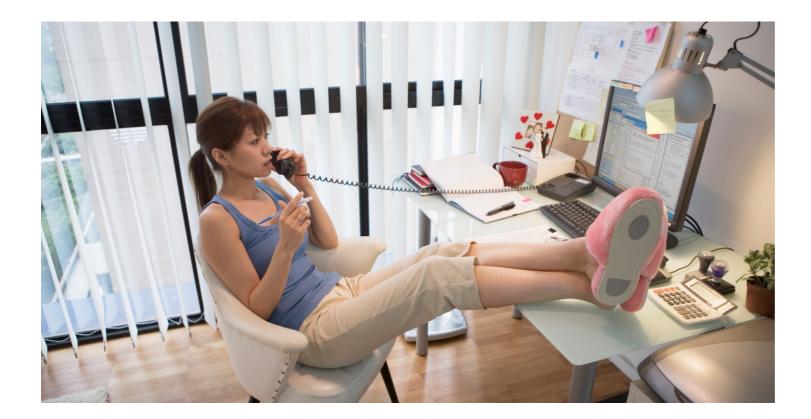
"A distributed workforce is a workforce that reaches beyond the restrictions of a traditional office environment. A distributed workforce is dispersed geographically over a wide area – domestically or internationally."

- Wikipedia, 2017

Remote Worker Policies



Remote Workers



Remote Access



Remote Office



Remote Teams



International workforce



Legal issues with multistate/international workers

- Compliance with local laws that may be different from the law in the company's primary place of business
 - U.S. State and Local: for example, California
 - Differing legal standards in other countries
 - at-will employment concept not recognized in many countries
 - labor organizations
 - vacation time
 - "redundancy" requirements for layoffs

Legal issues with multistate/international workers

- Actual conflict between HQ law and local laws (more of an issue with international)
- Immigration/work visa
- Taxes
 - Common ex-pat issue
 - Also can impact remote workers, or even workers who temporarily spend time in another location (example: employee lives in state with no income tax, spends 3 months in a state with income tax)

Legal issues for US based remote workers

- Paying What You Owe Wage and Hour
- Fair Labor Standards Act
 - Applies to essentially all employers and all employees
 - Governs overtime as well as other pay issues
 - What are "hours worked"?
 - "de minimis"
 - break time and meal time
 - preliminary and post-liminary activity

Legal issues for US based remote workers

- Additional considerations:
 - OSHA/security
 - How to count for FMLA? WARN?
 - Precedent-setting and ADA compliance (e.g., "you let her do it, why not me?")
 - Workplace harassment at what point does the company know (or "should know")?
 - Practical concerns performance management, supervision, etc

Keeping Secrets

- Mobility = Confidentiality Risk
- Control/accessibility of cloud data
- Human error (e.g. "I left my laptop on the train")
- Visibility (e.g. working on airplanes)
- End of relationship data return issues with both remote and HQbased employees
- Personal privacy

Keeping Secrets

- Consider:
 - WHICH information needs to be protected?
 - WHO needs access to that information?
 - WHAT steps should be taken within the mobile workforce context to protect both inadvertent and intentional disclosures

Policy/Practice

- Own your devices, have rules about content
- Address sensitive/public workspaces
- "Tech solutions, not law solutions"
- Limiting personal transfer capability (thumb drives, personal cloud file transfers, access from home computer, etc.)
- Training!

Example of the complexities of dispersed workforce compliance:

Posting requirements (a common question!)

- Opening Question: How do we display employment law posters for remote workers?
- Complexities Inherent in Sub-Issues:
 - For employees who work at a remote job site, may we photocopy and shrink our employment law posters for their use? Is that still legal?
 - Do we need to send a copy of all our employment law posters to employees who work from home?
 - My employees report to a client site. Do posters need to be posted there?
 - I have sales employees who travel. Where should I display labor law posters?
 - May I only use electronic versions of the notices to meet posting requirements??
 - If my employees work in short term daily shared work space or at clients' facilities how do I post the posters?
 - Can I post electronic versions of the posters on a tablet computer to meet posting requirements?

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