

# Dispersed Workforce

## **Common Legal Issues**

State Bar of Texas Labor and Employment Law Institute

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*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 HQ-based 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

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- 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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