

## **Work at Home — Proceed With Caution**

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by Matt Chandler

Many people like working from home, and more employers seem to be embracing the concept. But what are the legal pitfalls of having employees work remotely?

We spoke with two area employment attorneys – Liz Carlson of Hodgson Russ LLP and Kimberly Georger of Rupp Baase Pfalzgraf Cunningham and Coppola – to find out. What must companies be aware of? And how can they avoid ending up on the wrong end of an employment litigation case because of a work-from-home policy?

- Have strong policies in place

Carlson says it's important for all companies to have updated usage policies for the computer as well as social media, especially when it comes to employees working from home.

"The majority of employers, I am hoping by now, have an acceptable computer usage policy," she says. "They need to have the rules and the consequences spelled out for everyone. And make sure each employee understands those policies and they are reviewed at least annually."

- Avoid discrimination claims

Georger says another area of concern is potential claims of discrimination, based on how companies decide who gets to work from home and who doesn't.

"If one class of employees (is) allowed to work from home and others are not," she says. "Or if an employee is allowed to work from home for a while and then the employer puts the kibosh on the policy, the employee might say this was done for some sort of discriminatory reason."

- Keep accurate records

"I would be concerned about seeing if they are non-exempt employees under the FLSA (Fair Labor Standards Act)," Carlson says, referring to potential telecommuters. "The employer needs to know if the employee is one that is entitled to overtime pay, because a non-exempt employee is entitled to overtime pay. And the employer needs to have a system in place to have accurate timekeeping records for employees."

- Guard client information

"Anytime you let your confidential information out of the office or allow employees to access that information from remote locations, you are taking the risk that someone other than the employee might see it," Georger says. "And the more lenient your policies are toward employee access outside of the office, the less protection you are entitled to in court. The employer has an affirmative duty to keep that information close to the vest, and if they don't, they are exposing themselves to risk down the road."