

The Law of Telecommuting

*What Employers Must Know
to Make it Work*

Scott P. Horton
Horton Law PLLC

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Overview

- » What is Telecommuting?
- » Legal Concerns
- » Telecommuting Policies and Agreements

Telecommuting:

**the substitution of technology for
commuter travel**

Rather than commuting, employees use phones, laptops, or other technology to work offsite, usually at home or a coffee shop.

Telecommuting Statistics

- More common among employees over 35 years old
- Has grown steadily in the past decade
- Telecommuters earn \$4,000 more annually than non-telecommuters on average (for workers earning under \$100,000)
- Men and women are equally likely to work remotely
- Workers with Bachelor's degree (or beyond) are more likely to work from home (than those with only HS diploma or Associate's degree)
- Most telecommuters work more than 40 hours a week

Telecommuting Reality



» Right Job?

» Right Employee?



Legal Concerns



Timekeeping

- **Employers must keep accurate time records for employees**
- **Especially true for employees eligible for overtime**
- **Can you trust telecommuters to report time accurately?**
- **Can you provide a reliable mechanism for timekeeping?**

Meal Periods

- **State laws impose mandatory meal period breaks**
- **Same requirements usually apply to telecommuters**
- **How can you ensure employees working from home take the required time off during the day?**

Overtime



- **Most employers restrict overtime to contain costs**
- **Employers must pay overtime to non-exempt telecommuters**
- **It is more difficult to control for out-of-sight employees**
- **Risk of working or reporting too much time worked**

Time Off

- **More difficult to monitor time “off” when employees do not report to workplace**
- **Supervisors won’t always know when an employee is actually working, especially if the employee is not being honest**
- **Employees who take a day off for vacation or sick leave might still feel compelled to perform some work**
- **How do you accurately track benefit time and hours worked?**
- **Can you require employees on FMLA to work from home?**

Disability Accommodations

- **The Americans with Disabilities Act and similar state laws require employers to provide reasonable accommodations to qualified employees with disabilities**
- **Reasonable accommodations could extend to the home workplace under some circumstances**
- **Is telecommuting a reasonable accommodation?**

Discrimination



- **Must be consistent in permitting employees to telecommute**
- **Inconsistent treatment, even if inadvertent or well-intended, could lead to discrimination claims**
- **For example, a company that only allows women with young children to work from home might be discriminating against male employees**

Confidentiality

- **Telecommuters often have remote access to company information**
- **Less direct supervision over their use of company data and property**
- **What measures do you take to prevent employees from intentionally or accidentally taking or transferring proprietary information to unauthorized third parties?**

Security

- **Nefarious third parties seek to misuse business information**
- **Remote data transfer between telecommuting employees and a company's electronic systems may not be as secure as on-site access**
- **Additional concerns when employees use public or home wi-fi connections**
- **Don't forget physical (e.g., break-in) security risks**

Safety

- **Under OSHA, employers must keep their employees' workplace reasonably safe**
- **Companies can become responsible, through workers' compensation insurance, for telecommuting employees' injuries occurring in their own home**
- **Should you inspect employees' home workspaces?**
- **Is the employer liable for injuries to third parties occurring in the employee's home workspace?**

Unions

- **Employees who work from home can still be represented by unions**
- **Unions vary in their approach to this concept**
- **Some unions would object to an employer allowing employees to telecommute, while others might push for the option**

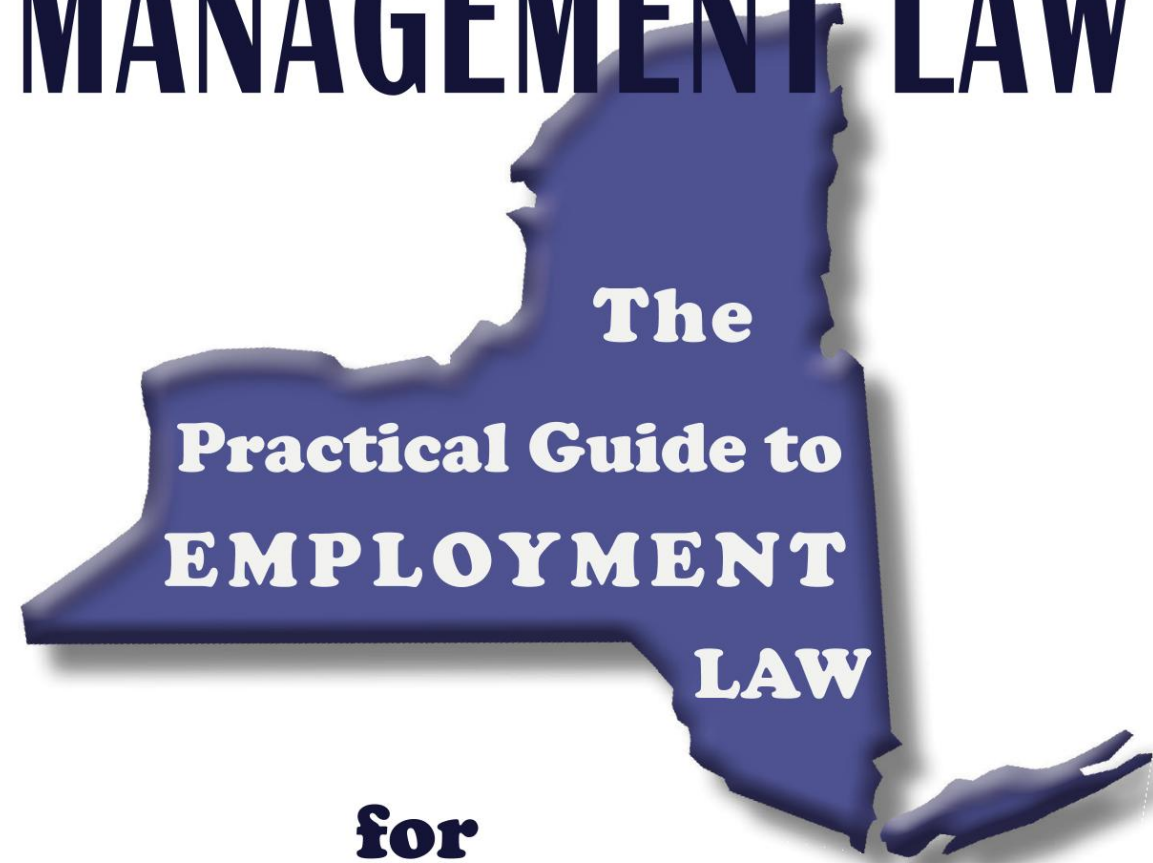
Telecommuting Policy

- What does telecommuting mean in your organization?
- Who is eligible to telecommute?
- Procedure for approving telecommuting arrangements
- Privilege, not right
- Hold telecommuters to same performance standards
- Right to monitor and inspect

Telecommuting Agreement

- Restate aspects of Telecommuting Policy
- Employee's responsibilities as telecommuter
- Supervisors' responsibilities
- Communication expectations
- Schedule and reporting requirements
- Equipment provided, required, expectations

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Thanks for your time!

Questions?

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Scott P. Horton, Esq.
Horton Law PLLC
4955 Chestnut Ridge Rd., Suite 203
Orchard Park, New York 14127

scott@hortonpllc.com
(716) 508-7748
HortonPLLC.com

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Management Law