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Work-From-Home Regulations Are Coming. Companies Aren't Ready.

The growing compliance costs of remote work could push more employers to bring workers back to the office.

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Debates over the trade-offs of remote work arrangements have tended to focus on challenges related to maintaining worker productivity, building company culture, and upholding boundaries between

work and home. Now, employers are faced with an additional challenge: complying with a growing set of regulatory frameworks governing remote work.

For most workers, working from home was once a seasonal perk or a special arrangement their employer offered. Now, what started as an emergency response to the COVID-19 pandemic has become routine. Between 2019 and 2021, the number of people working primarily from home increased from 5.7% to 17.95% of all workers in the United States and from 14.6% to 24.4% in Europe.

With new data showing that remote work could save companies up to \$10,600 per employee annually, and major employers such as 3M, SAP, and Spotify committing to making remote work programs permanent, the trend looks like it's here to stay.

But the increased flexibility and cost savings of remote work also mean that employers no longer have the kind of control over the safety and stability of their employees' work environments that they used to.

Employees also might find it harder to separate their work and personal lives. These issues have prompted a surge in new regulatory developments aimed at making sure remote workers, home workers, and teleworkers are protected under existing environmental, health, and safety legislation and guidelines and that employers are not running afoul of labor laws.

Flexible Working Modalities: One Concept, Many Dimensions

The growing web of regulatory minutiae governing flexible working arrangements around the world poses an acute challenge for multinationals. These companies must now contend with different compliance requirements in different jurisdictions, depending on how governments define and interpret terms like *remote work*, *teleworking*, and *work from home*. For example, in Spain, remote work is defined as a work activity that is performed either at the worker's home or at another place of their choice at least 30% of the time over a period of three months. Teleworking is a subcategory of remote work that requires the job to be carried out through telecommunications systems. All of this is mapped out in detail in Spain's Law 10/2021 on remote work. Among employer requirements is a written agreement for all teleworking employees that includes the worker's detailed schedule, place of work, and how the company will monitor their work-related activities. Fines for noncompliance can run from 70 euros for minor infractions to upward of 225,000 euros for major lapses in compliance.

Similarly, Germany introduced draft legislation in January 2021 that makes clear distinctions between mobile work, which is any work that uses information technology that is performed outside of the business

premises, and telework, which is defined as work that is exclusively and permanently performed at the employee's home. Details of the pending [Mobile Work Act](#) that are still being finalized include an extension of work accident insurance to cover the home offices of employees, and the implementation of a recording system to ensure that employees don't work beyond a maximum number of hours.

The phenomenon is truly global in nature. It's playing out in Latin America with three distinct regulations for [teleworking](#), [working from home](#), and [remote work](#) in Colombia, and a [new law on teleworking](#) in Peru. In the Asia-Pacific region, the Philippines [introduced revisions](#) to its Telecommuting Act that include specific requirements for businesses working in the IT sector and in certain economic zones.

Even in the U.S.,

which has not
seen any direct
legislation

governing
flexible working
arrangements
since the

[Telework Enhancement Act of 2010](#), a number of local laws affecting practices such as interstate taxation and expense reimbursement have emerged, creating complicated compliance challenges. For example, laws referred to as the [convenience of the employer rule](#) that

are currently on the books in just five states — Connecticut, Delaware, Nebraska, New York, and Pennsylvania — allow state tax authorities to impose an income tax on wages earned for an employer based in that state, even if the employee is based outside the state. Likewise, several states require companies to pay for expenses that employees incur while working from home.

The Right to Disconnect

On top of the growing list of local laws affecting work occurring outside a traditional office, the remote work phenomenon has also given birth to new legislative proposals limiting work hours. This right to disconnect has become a big issue in the European Union, which is seeking to formalize employees' rights to disengage from work and refrain from work-related electronic communications during nonwork hours.

Some EU states have laws setting such limits, such as in France, where the labor code requires all companies with 50 employees or more to reach an agreement with workers' representatives that regulates the use of digital devices during rest and leave periods. There are similar laws in Italy and Spain, but the idea of an EU-wide directive aimed at formally limiting the always-on culture of the contemporary workplace introduces a host of new complexities for employers. Among them: the need to be able to monitor and measure the working time of remote

employees, the development of written contracts outlining workers' rights, and the alignment of compensation for any work done outside prescribed working hours.

In Latin America, the right to disconnect has been evolving alongside regulations on flexible working. For instance, Uruguay's teleworking law requires employers and teleworkers to agree on a disconnection schedule that must be included in the working contract. Similarly, Argentina, Chile, and Peru guarantee teleworkers' right to disconnect. In 2022, Colombia adopted [a law on the right to disconnect](#) that applies to all working modalities. And in Canada, the province of Ontario requires employers to have a written policy on employee disconnection.

Companies Face Pressure

Most companies are not set up for this level of remote work management, and many are starting to face legal challenges. [A class-action lawsuit](#) introduced in 2021 in California alleges that a multinational bank failed to reimburse business expenses incurred by customer service employees working from home during the COVID-19 pandemic and misclassified the individuals as exempt from overtime wages and meal and rest breaks. In Europe, a Dutch court recently [ruled](#) that an employee was wrongfully terminated for refusing to keep his webcam turned on for several hours a day. This past

December, in a potentially precedent-setting case in Germany, a court ruled that when a remote-working employee slipped on his way from his bed to his home office, it qualified as a workplace accident.

All of this means that allowing large numbers of employees to work from anywhere is starting to get a lot more complicated. Employers may need to keep closer track of individual work hours and stay on top of the detailed definitions of remote work, work from home, or teleworking in every jurisdiction where employees are located, and to cross-reference applicable federal, state, and local tax laws.

Employers that embraced the remote work revolution understood how it could help them stay resilient, nurture their top talent, and save some money on commercial real estate. Unfortunately, mistakes in how they manage remote employees could undo a lot of that goodwill, creating bad optics and exposing them to significant financial penalties along the way.

Will these increased risks and potential liabilities offset the advantages of remote work in the eyes of large corporations? That will depend on the employer.

Recently, as the economy has begun to slow and public health measures have been lifted, many employers have started to reverse course on their remote work policies, citing improved productivity and collaboration in an in-office environment. Employers that want to get their employees back into the office could start pointing to the growing costs of complying with remote work

regulations as another reason to go back to the old way of doing things. Meanwhile, many other employers have doubled down on remote work, insisting that it is the way of the future and using flexible work structures as a strategic recruiting tool.

No matter where your company falls on the remote work debate, the devil is in the details when it comes to achieving the desired outcome. If you're going to have employees working outside the office, you'll need to scrutinize the jurisdictional nuances in every market. As the boundaries continue to blur between work and home life, employers that offer flexible working arrangements as a perk need to take proactive measures to ensure that they are indeed creating a safe and healthy environment for employees — and that they have the concrete evidence of those measures when potential problems arise.

Topics

[Workplace, Teams, & Culture](#)[Remote Work](#)

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