# Remote Hiring: Legal & HR Best Practices

March 10, 2021

Presented by Brian Shekell & Michele Hanson







### Agenda

- Introduction
- How We Got Here and Current Status
- Recruiting
- Interviewing
- Onboarding
- Remote Work Set Up
- Managing Productivity
- Questions?

#### **How We Got Here and Current Status**

- The pandemic forced us all into the largest work from home pilot!
- 71% of workers are doing their job from home all or most of the time
- More than half would want to keep working from home even after the pandemic

Source: Pew Research Center







# Remote Will Continue for the Foreseeable Future

- Many states still require work that can be done remote to still be done remotely
  - For example, Michigan prohibits in-person work for employees to the extent that their work activities can *feasibly* be completed remotely
  - This type of restriction is expected to stay in place despite opposition from the Michigan Chamber of Commerce and other business groups





# **Many Companies Expect to Incorporate Remote as Part** of their Future Plans

- Some employers are reducing or even eliminating office space altogether
  - Remote through summer/fall:

- Google - American Express

- Uber

- Airbnb

- REI

- Permanently allowing remote:
  - Twitter
  - Facebook Square

CLARK HILL



#### **Recruiting Remote Workers**

- Expands the talent pool
  - Supports diversity efforts
  - -Speeds up the process
  - Reduces costs for employer and employee
- Candidate experience still important

#### **Poll Question**

#### Our recruiting strategy is:

- a) Recruit only from the local market (or talent must relocate)
- b) For <u>some</u> positions, we are expanding our search to new geographies
- c) We are open to hiring talent from anywhere for most or all positions





#### **Recruiting Remote Workers**

- Know the applicable state laws
  - -State, local tax laws
  - -Ban the box
  - Wage and hour
  - -EEO





#### Remote Interviewing

- Pre-COVID: Video Interviewing
  - As needed or specific roles
  - Navigating technology issues
  - On demand interviewing for high volume roles
- Now: Necessity for some or all of the interview process

82% of hiring managers say they will continue interviewing candidates by video





#### **Poll Question**

We now use video interviewing:

- a) For select positions but final interviews are still <u>all</u> done in person
- b) For select positions that will be 100% remote
- c) For most or all first interviews
- d) For most or all first AND second/final interviews
- e) We do not use video interviewing





### **Remote Interviewing**

- Planning to record the interview?
  - Know your state's recording laws, as well as the laws of the state where the individual you are interviewing is located (one-party or two-party consent?)
  - Notify the applicant that the interview is being recorded
- Provide reasonable accommodations to those with disabilities





CLARK HILL



- Still critical function
- More intentional to establish culture and expectations
- Coordinate delivery of technology and tools
- Deliberate communication approach

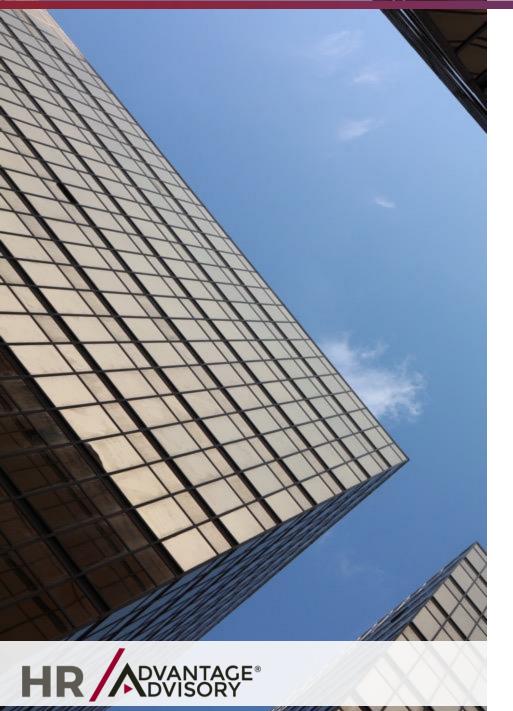
35% of recently hired remote workers said they wanted their onboarding manager to contact them via video at least once a day



- Paperwork didn't go away with the pandemic
- Not all employees have access to technology
- Payroll or benefit administration provider may have resources







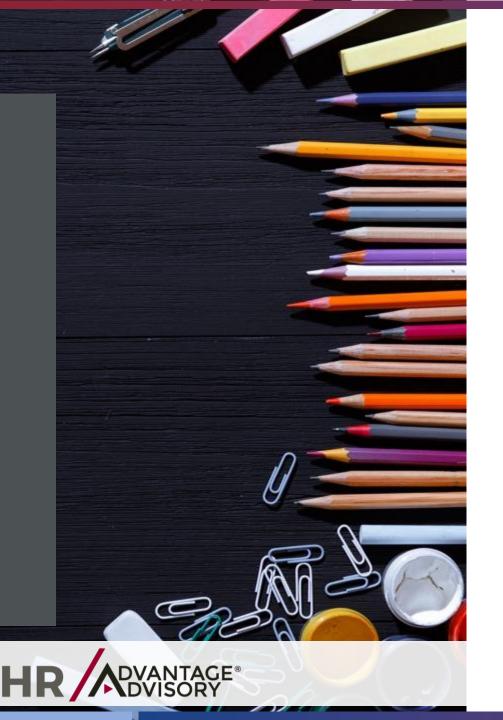
- I-9s
  - In person review temporarily extended through the end of March
- Electronic Signatures
  - Consider using a DocuSign type program
  - Save emails attaching signed documents, if applicable



- Personnel Files
  - Don't lose track of legal requirements for properly maintaining personnel files
  - Typically no requirement that there be hard copies of personnel files
- Document Management
  - Review and update where necessary any policies about maintaining certain documents on cell phones, computers, etc.







#### Remote Work Set Up

- As part of onboarding, determine equipment needs
- Determine how office supplies/expenses will be handled
- Provide internet and other technology requirements
- Provide work from home guidelines/policy that includes:
  - Work hours
  - Communication expectations
  - Work attire, video expectations
  - Performance expectations
  - In office, training attendance requirements



#### **Poll Question**

What remote office expenses are you assisting employees with? (Choose all that apply)

- a) Office supplies
- b) Phone/cell phone
- c) Internet
- d) Office technology (printers, scanners, additional screens, etc.)
- e) Office furniture (chairs, standing desks, etc.)
- f) Stipend to be used for any office needs





#### **Remote Work Set Up**

- Who pays the cost for business-related expenses outside the office?
  - Varies state-to-state
  - Even in the absence of legal requirements, always consider best practices
- Document and Information Security
  - Does your company have sufficient policies and practices in place to protect confidential and proprietary information?







#### **Remote Work Set Up**

- Check to see if there are any other requirements unique to states where employees are performing work remotely:
  - Workers' Compensation
  - Unemployment Insurance
  - Payroll Taxes
  - Business Registrations



### **Employee Productivity**

- Early in 2020, 64 % of leaders were concerned about a loss of productivity.
- A few months later only 26% were concerned.
- Employees say:
  - 77% report greater productivity
  - 24% willing to work longer hours
  - 30% accomplished more in less time
- Survey your own employees!







#### **Managing Productivity**

- Be clear about expectations
- Measure productivity on results not activity
- Assessment tools to gage which workers will be successful and which will need more support
- Beyond logistics and legalities, emotional wellness is now a factor





#### **Managing Productivity**

- Hourly and non-exempt workers
  - Ensure policies and tools in place to monitor actual time worked
  - Address policy violations through disciplinary process, as opposed to not paying employees for time worked but improperly recorded
- Exempt employees
  - Establish and communicate any expectations for timekeeping and work hours





#### **Managing Productivity**

- Bill Ford: "The problem with working from home is that everyone knows you're home, everyone knows you're in front of your computer."
  - -Try to avoid employee burnout
  - Be mindful of employees working in different time zones
  - Be aware of Zoom fatigue



# **Managing Behavior**

• Employer policies and expectations should extend to work from home arrangements, where applicable

 Consider dress and appearance requirements for employees who use cameras

- Internal meetings
- Client-facing meetings







#### **Managing Employees**

- Try to keep little problems from becoming big problems
- Managing a remote workforce requires supervisors to be vigilant and involved
- Use disciplinary process where necessary





#### **Final Thoughts**

- Understand your legal obligations and considerations
- Update or create a policy/guidelines leave room for adjustments as needed
- Consider the needs of the team and the company's culture





#### Wrap Up

- Remote work practices today will shape company's future best practices
- "The World's Largest Work-From-Home Experiment"
- Set expectations about how remote work will work but let them know things will evolve
- Get feedback from the team and course correct



#### **Brian Shekell**

(313) 965-8803

bshekell@clarkhill.com

#### Michele Hanson

(248) 767-9258

mhanson@hr-aa.com

To help provide perspective and education on COVID-19, Clark Hill attorneys have produced several pieces of thought leadership to assist clients and colleagues through this difficult and rapidly-changing time.

Please visit <a href="www.clarkhill.com/pages/covid-19">www.clarkhill.com/pages/covid-19</a>
for access a wide range of resources related to coronavirus.

#### Thank You





#### Legal Disclaimer

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.



