

Remote Hiring: Legal & HR Best Practices

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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
 - Permanently allowing remote:
 - Twitter - REI
 - Facebook - Square



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 some 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 all 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





Onboarding Process

- 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

Onboarding Process

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





Onboarding Process

- 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

Onboarding Process

- 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 gauge 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

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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 www.clarkhill.com/pages/covid-19 for access a wide range of resources related to coronavirus.

Thank You



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