

Is Telecommuting Post-COVID for the Public Sector?

Legal & Practical Considerations for Employers



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Session Overview



- Making the Decision
- Actions if You Decide Against Telecommuting
- Actions if You Decide to Offer Telecommuting

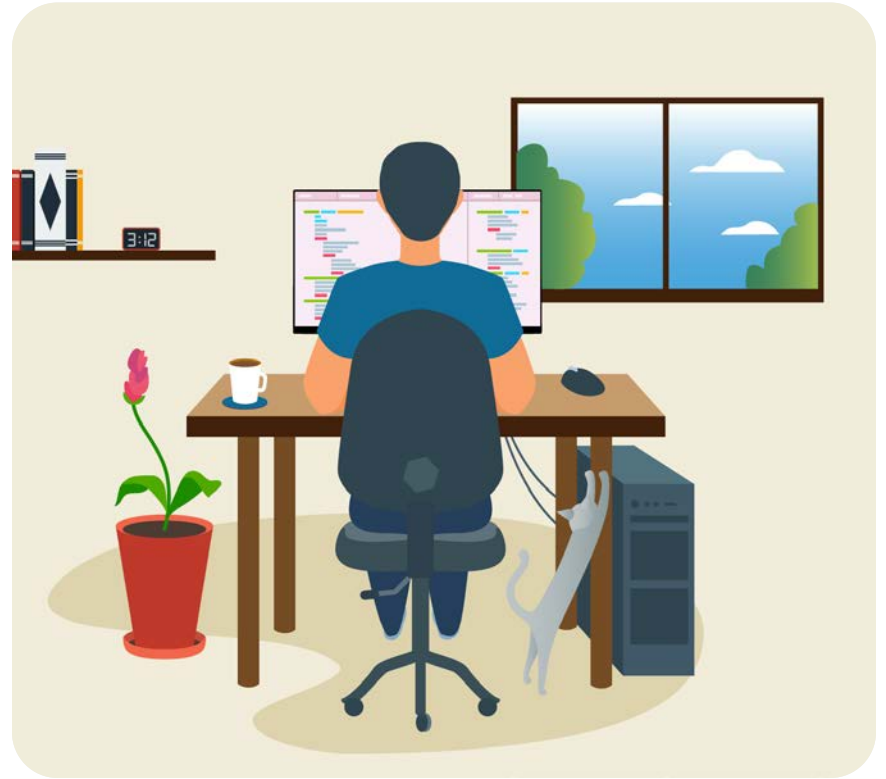
Lawyers Love a Disclaimer

Nothing in this presentation should be interpreted as legal advice. This discussion is intended to help a person understand the area of law to help ask the right questions with the attorney of their choice. This presentation is not intended to substitute for professional legal advice and does not create an attorney-client relationship.



Making the Decision

Some Important Considerations



There are Lots of Options to Consider



- There are several flexible working arrangements. The most common ones include:
 - Complete telework
 - Hybrid telework
 - Emergency-related telework
 - Flex time
 - Reduced hours/part-time



Talk to Your Stakeholders to Determine Organizational Readiness



- Employees
- Managers
- Officials
- Unions
- The Public



Important Considerations



- What was your experience during COVID?
 - Productivity
 - Supervisors' ability to manage remotely or supervise remotely
 - Employees' effectiveness at working
 - Organizational cohesiveness and comradery
- What is the cost and benefit to the City?



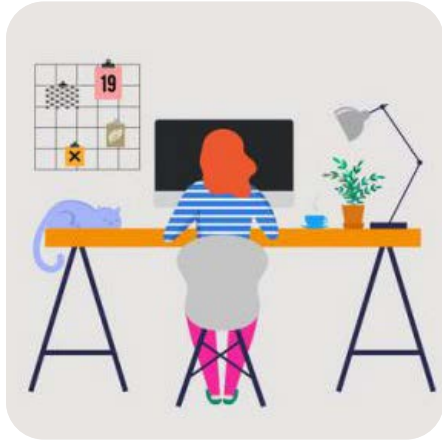
Identify Which Jobs Could Be Performed Remotely



- Employers need to know which positions can potentially be performed remotely
 - Full-time
 - Part-time
 - Emergency basis
- Some positions could be performed remotely in the crisis of the pandemic, but it does not mean they can always be performed remotely – a critical evaluation of all positions is necessary



Job Descriptions



- Consider updating job descriptions to highlight which portions of the job (or if the entire job) can be performed off-site or through some other flexible arrangement
 - This can be helpful even if you don't implement flexible work plans



How “Remote” are You Willing to Consider?



- Only those within a “reasonable” commuting time?
- Anywhere in California?
- Anywhere?



Remember Disability Obligations



- Regardless of what your agency decides, be mindful of disability-related obligations
- Telework, flexible schedules, and reduced schedules are recognized types of potential reasonable accommodation for disability
- COVID has demonstrated that these things are possible in the workplace – it will be harder to deny them in the future as unreasonable or creating an undue hardship



Don't Forget About Discrimination



- The FEHA and related federal laws mandated non-discrimination in wages, hours, and other terms and conditions of employment
- Any telework programs must be implemented without discrimination, which can include disparate impact discrimination (unintentional discrimination that has a “disparate impact” on a protected group)



Pending Legislation



- AB 1028 – Telework Flexibility Act
- AB 230 - Workplace Flexibility Act of 2021
- AB 513
- SB 657



If You Decide Against Telework

**What Should You Be
Doing?**



Communicate



- A segment of employees are going to want to telecommute
 - You may get union proposals on telecommuting
 - You must be prepared to respond to them
 - Data-based responses are always best
- Determine how you will return employees back to the workforce
- Provide employees with time to adjust to a return to the workplace, and discuss any challenges they may have in returning



Be Prepared for Consequences



- You may lose employees to a telework arrangement
- You may not be as competitive in the job market
- You may want to evaluate other incentives in case recruitment and retention become an issue



Don't Forget About Reasonable Accommodations



- You still must consider telecommuting as a reasonable accommodation, even if you adopt a policy against it and revoke all current teleworking assignments
- Accommodation may be request for COVID-related issues or for other disability-related issues

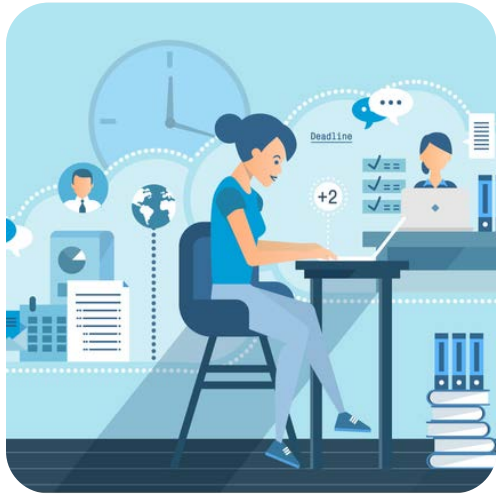


If You Decide to Offer Telework

What Should You Be Doing?



Obtain Buy In from Officials and the Public



- Make sure you are prepared to respond positively and with data to criticisms about the telework program
- Make sure your officials are on board and also prepared to respond to criticism
- Work with your PIO and PR staff/consultants about how to best roll out the program and proactively address the public's concerns



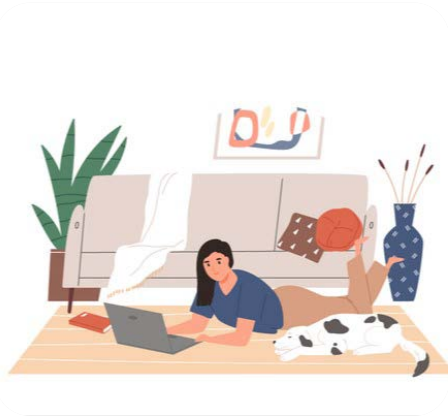
Services to the Public



- Are any changes necessary to how services are delivered or communicated to the public that need to change in light of a remote or partially remote workforce?
- Be sure that staff are trained to not make a distinction between on-site and remote when delivering services to the public



Adopt a Policy and Program

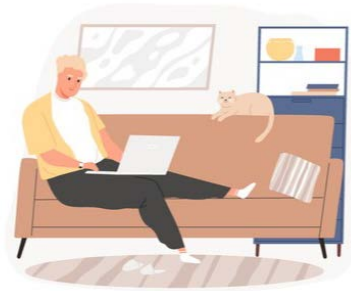


- A non-emergency telework policy and program must be adopted
- Identify the positions that are eligible for telework consideration
- Create an application and approval process, which should include a provision on the schedule and expectations of the teleworking employee
- Consider requiring a telework agreement



Key Components of a Policy/Program

- Approval is made and withdrawn in the sole discretion of the department head (with HR approval)
- All City rules and policies apply when telecommuting
- Identify the factors that will be considered in evaluating a request to telecommute, which could include:
 - employee's past performance
 - success at telecommuting in the past
 - technological independence
 - ability to successfully work independently
 - nature of the work
 - impact on service to the public
 - impact on other employees



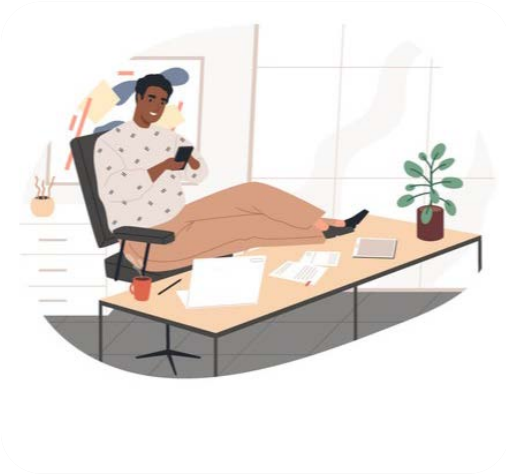
Suitability of the Remote Location



- Your obligation to provide a safe workplace extends to remote work locations
 - You need a system in place to ensure that employees have an appropriate workstation in their home
- Clearly articulate what injuries are covered by workers' compensation



Wage and Hour



- Make sure you have a workable system in place for employees, especially hourly non-exempt employees, to track their hours worked and to request leave and permission to work overtime
- Be sure that your policy and your supervisors are clear about the division between work and personal, which can be harder to establish when working from home



Evaluate Your Supervisors



- Are your supervisors capable of supervising remote workers?
- Are your supervisors capable of supervising while working remotely themselves?
- Implement a training program to boost their supervisory skills



Get Your Technology in Order



- Have IT (or a consultant) conduct an audit of your technological resources to evaluate their effectiveness for long-term remote work
- Evaluate the security you have in place to protect your systems when employees are remote and on-site
- Train employees in cybersecurity



Workplace Culture



- How will you keep remote employees engaged?
- How will you integrate remote employees with on-site employees for meetings and social events?
- Are there are events that will be mandatory for employees to attend in person?



On-Site Facility Considerations



- Most teleworking employees will physically report at least on occasion – where are they going to work?
 - Hoteling / desk sharing
 - Hot desks
 - Conference rooms



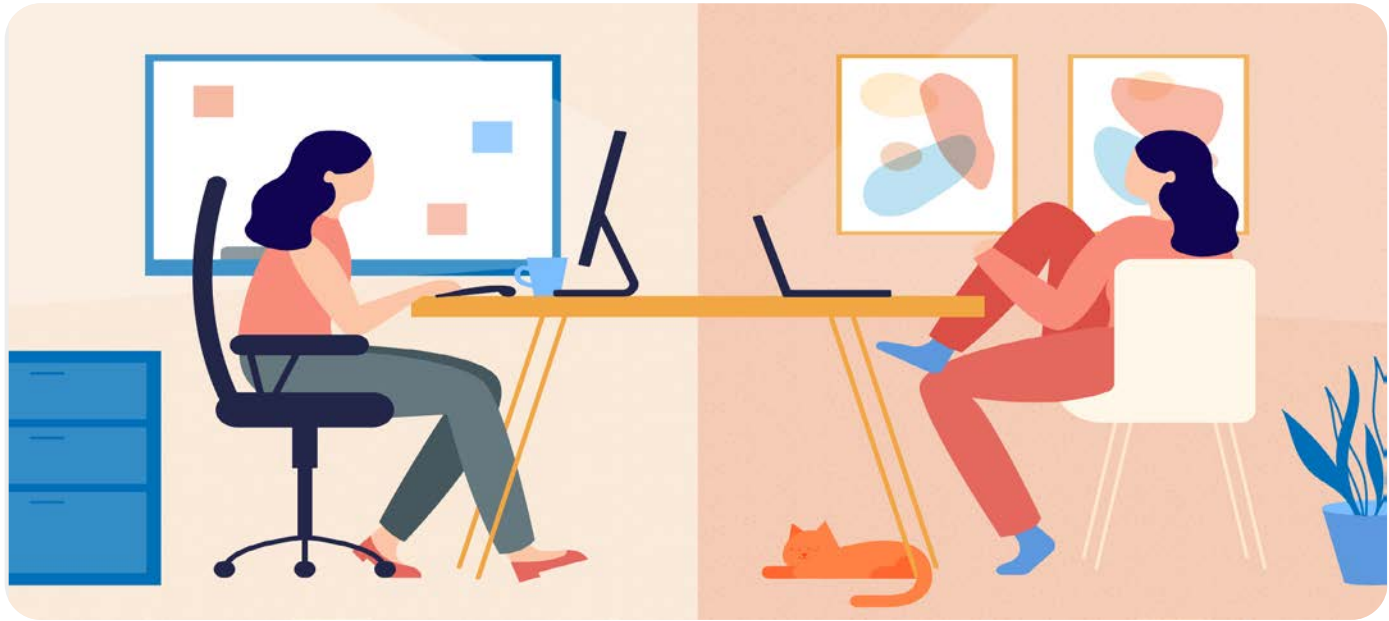
Don't Forget to Talk to Your Labor Unions



- A telework program is within the scope of meet and confer, so be sure to notice your affected labor unions and leave time to bargain over the policy and program before implementation
- Consider including labor in the discussion from the early stages



Questions?



Speaker Contact Information



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