

Remote work: the practical and legal considerations of working remotely due to COVID-19

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Working Remotely: The New Normal?

- **Seven months in, it's time to reflect and adapt**
- **Plan for future, and up to another year of current status quo**
 1. Practical Considerations
 2. Legal Considerations
 3. Inter-jurisdictional Issues
 4. Ending Remote Work
 5. Key Takeaways

Practical Considerations

- **Monitoring and Tracking Employees work hours**
 - Obligations under the Ontario *Employment Standards Act, 2000* to track and record:
 - The hours worked by the employee each day and week, including overtime (if eligible)
 - Vacation time and vacation pay
 - Information related to leaves of absence
- **Flexible working schedules to accommodate family obligations**
 - Child care
 - Illness
 - Taking care of sick family members

Practical Considerations cont.

- **Employee Engagement**
- **Management/Performance Management**
- **Technology**

Legal Considerations

- **Constructive Dismissal**

- Changes to employees compensation

- For example, by virtue of not receiving in-office perks

- Changes to employees work because of market changes or business needs

- **Occupational Health and Safety**

- Ergonomic work stations

- Workplace violence

Legal Considerations cont.

- **Tax Implications**
- **Insurance Coverage**
- **Immigration Issues**
- **Jurisdictional Compatibility**
- **Temporary or Permanent status of Remote Work**

Working Remotely in Another Jurisdiction

- Does the ESA apply outside of Ontario?
 - *Employment Standards Act, 2000*: Applies to work outside Ontario if a **continuation** of the work in Ontario
 - *Shearing v James Way Construction*: Employer liable for overtime for work outside Ontario
 - *Karpowicz v Valor Inc.*: Substance of the work outside of Ontario, incidental work in Ontario
 - Employment Contract stated Ontario Law would apply

Working Remotely in Another Jurisdiction

- But must be work both **inside and outside** of Ontario
- *Zhang v IBM Canada Ltd*:
 - Working remotely for over 2 years
 - Work from home agreement did not require a return to Ontario
 - Not possible to say his work “is to be performed in Ontario”
 - Must be a back and forth
 - Arguably a continuation but no work in Ontario

Risks of Inter-Jurisdictional Remote Work

- Other employment standards laws may apply
- Employment agreements may be unenforceable
- Corporate and Tax implications
- Benefits coverage

Best Practices for Inter-Jurisdictional Work

- Establish strong and clear policies
- Communicate that this is temporary
- Clearly require a return to the Office **in Ontario**
- Understand the employee's intentions

Ending Working Remotely

- Again, clear policies are essential
- Notice should be given to employees
- Refusals to return should be dealt with carefully

Key Takeaways

- Make and keep clear policies
- Employer's legal obligations still apply to employees working remotely
- Maintain discretion over the remote relationship and be clear that this is temporary

Thank you



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