



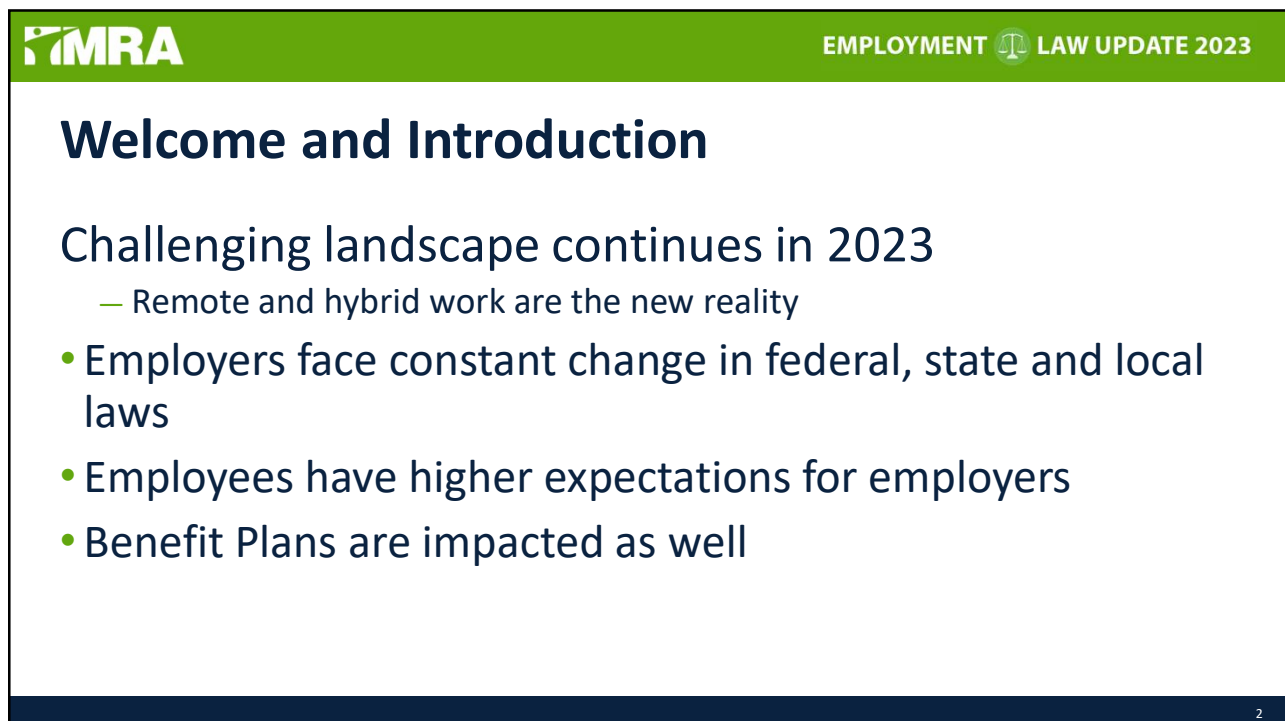
MRA


**EMPLOYMENT  LAW UPDATE
2023**

Remote Work is Here to Stay

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MRA **EMPLOYMENT  LAW UPDATE 2023**

Welcome and Introduction

Challenging landscape continues in 2023

- Remote and hybrid work are the new reality
- Employers face constant change in federal, state and local laws
- Employees have higher expectations for employers
- Benefit Plans are impacted as well

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What percentage of your workforce currently works remotely at least one day per week?

10%
 30%
 50%
 More than 50%

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Current Remote Work Statistics

Bureau of Labor Statistics 2021

- 38.1 percent of employed people did some or all of their work at home.
- 59.8 percent of those with a Bachelor's degree or higher performed some work at home.

([BLS, US DOL: The Economic News Release \(June 23, 2022\).](#))

American Staffing Association Workforce Monitor Study

- Less than half (48%) of workers surveyed report they are working completely in person.
- 28% are working hybrid
- 24% are fully remote

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Gallup Poll - December of 2022

- Splitters – those who prefer to “split” work and home
- Blenders – those who prefer to “blend” work and home
 - Dead even split of employee preference

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In your role, what do you see as the biggest upside of remote work?

Flexibility (including for working parents)

Productivity – Reduced commuting time

Productivity – Reduced commuting time

Cost savings to employer

Other

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In your role, what do you see as the biggest downside of remote work?

- Timekeeping challenges
- Reduced productivity (Distractions, children at home, pets, etc)
- Lower morale and sense of team
- Risk to confidentiality and security of data
- Day-to-day management of employees

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Perceived Disadvantages of Remote Work

American Staffing Association Workforce Monitor Study (cited above)

- **56% of employees believe that those who work exclusively in the office have a competitive advantage over their fully remote counterparts (when it comes to raises, bonuses and promotions).**

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Deciding Who Works Remotely

- How do you decide which positions work remotely?
- Policy/Process
 - Who decides?
 - What are criteria?
 - By position
 - Based on legitimate business reasons
 - Performance rating
 - Level of experience/need for training
- Fair/Non-discriminatory

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Guarding Against “Proximity” Bias

- What steps has your Company taken to ensure all workers have same access to?
 - Training
 - Mentoring
 - Advancement opportunities

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Legal Requirements

- Federal, state and local laws apply to employees and contractors working remotely
 - Employment
 - Tax
 - Business
- Employers must know
 - Primary work location of employees and contractors
 - Where else they work even if occasional or while on vacation
 - What laws apply

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Remote Work Policy/Remote Work Agreement

- Protects employer by setting forth requirements/rules
 - Pandemic work conditions have changed
- Clearly sets forth expectations
- Signed by employee
- Kept in personnel file
- Key Terms
 - At-will employment
 - Employer's sole discretion
 - Modified at any time
 - Time keeping requirements – record all time worked

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Remote Work Policy/Remote Work Agreement

- Other Important Terms

- Identify employee location
- Require notice of changes to location
- Applicable policies
 - protection/non-disclosure of confidential information
 - Use of Company devices
- Employer owns equipment
- Electronic monitoring
- Must report injuries
- Return of information and equipment upon termination

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Wage and Hour compliance

Timekeeping and Pay

- Record all hours worked
- Pay for all hours worked
- Non-exempts work hours as scheduled
- Hour available for exempts
- Meal Breaks
- Rest Breaks

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Wage and Hour Laws – DOL FAB

- February 9, 2023, Department of Labor Field Assistance Bulletin

Compensable time under FLSA

- Pay for all hours worked BUT vague
- Pay for breaks of 20 minutes or less

Worksite for FMLA

assigned work site or worksite from which work is assigned
not employee's home

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Remote Work and Tax Withholding

- Tax Withholding:

- Like wage and hour laws, tax withholding is determined on local level, not employer location.
 - COVID-19 Relief on these issues has generally expired.
- Need payroll system that can account for location of work.
- Failure to properly withhold exposes employer to penalties
- Failure to properly withhold also complicates income tax compliance for employees.

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Major Benefits and Remote Work

- Your Group Health Plan
 - Many insured arrangements have restricted networks that might only provide adequate in-network coverage within an individual state or small region.
 - Self-funded Health Insurance might also be subject to network limitations.
 - Any group health insurer/administrator bids need to be evaluated to ensure that adequate network coverage is provided.
 - Failure to do so can increase the incurred costs of your health plan.

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Major Benefits and Remote Work

- Retirement Plans
 - No major legal differences for 401(k) plan (or other qualified plans), but....
 - Utilization changes in the remote environment. Remote workers tend:
 - To utilize default investments less (i.e. fewer use target date funds etc.)
 - Utilize personalized investment advice more (whether actual individuals or robo-advisers)
 - Savings rates were higher in the pandemic, but not clear that this will continue.
 - This change requires greater engagement in new ways.
 - Large remote workforce requires remote-friendly education

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Major Benefits and Remote Work

- Workers' Compensation:
 - The state where work is performed will determine the statutory minimums for workers' compensation insurance
 - Generally, only covers injuries that "arise out of" or occur "in the course of" work performance.
 - Revisit your policy to ensure coverage in states where remote work is performed.
 - Make certain you have a method for reporting injuries available.
 - Some insurers suggest home safety guidelines to help manage at-home workspace.
 - Telecommuting/Remote Work policies

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Fringe Benefits and Remote Work

- Remote Office/Work Equipment
 - Stipends for home office furniture, printers, etc. that are normally in the office, not necessarily at home.
 - Generally, nontaxable.
 - Don't let them use it to buy deck furniture!
 - Payment for Coworking Spaces, particularly if there isn't reliable internet.
 - Ship office supplies to employees. Avoids reimbursement questions and substantiation.
 - Stipends/Reimbursement for Internet Access. Generally, nontaxable (assuming high speed access if necessary for the job).
 - Home office décor? Some companies do it, but likely taxable.

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Fringe Benefits and Remote Work

- Mental Health and Wellness

- Subscriptions for online fitness activities (or reimbursement) (a good example would be a Peloton® class). Unless offered through a health plan, likely taxable.
- Flexible working hours
- Online therapy/counseling. (Utilize EAP or Group Health Plan to avoid taxation).
- Reimbursements for exercise equipment (likely taxable, unless it can fit within a doctor prescribed health need).
- Financial Counseling
- Identify Theft/Fraud Protection

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Fringe Benefits and Remote Work

- Family Benefits

- Partial or full reimbursement for childcare costs. Taxable outside of dependent care FSAs.
- Pet insurance (taxable).
- Home services (yard care/cleaning), taxable.

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Fringe Benefits and Remote Work

- Employee Appreciation
 - Subscription services/boxes
 - Credits for home delivery services
 - Credits with travel agencies
 - Paid lunch delivered to home
 - Online learning opportunities for career and/or personal development.

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Entitlement to Safe and Sick Time

- Minneapolis
- St. Paul
 - Changes went into effect on February 24, 2023
 - Hours worked in geographic boundary of St. Paul
 - No employer facility necessary
- Duluth
- Bloomington – effective July 1, 2023

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Independent Contractor v. Employee

- Workers in remote location has resulted in greater use of independent contractors
- Classification defines the company's legal relationship with the worker

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Independent Contractor v. Employee

Work location

- Federal and state laws apply
- Know the rules/test for the location
 - Must meet the tests
 - Changing title of former employee can raise a red flag

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Use of Independent Contractors

- Contractor/Employee Status Impacts:
 - Eligibility for unemployment/workers' compensation
 - IRCA compliance - Form I-9
 - Worker protections under laws: wage and hour, EEO, FMLA, labor law, leave laws
 - Taxation of earnings
 - Benefits eligibility
 - Level of control over worker

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Use of Independent Contractors

- Different tests applied for different purposes
 - May be employee under one test and independent contractor under others
 - Employment implications
 - Tax implications
- DOL has proposed new rule – six factors

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Conclusion/QA

Remote work will continue to evolve

Questions?