Seyfarth

The Future Starts Now: Future of Work for New England Employers

Part 4 – Monitoring Remote/Hybrid Employees' Performance and Productivity

Anthony S. Califano

Emily J. Miller

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Seyfarth Shaw LLP

Speakers

Anthony S. Califano
Partner
BOSTON
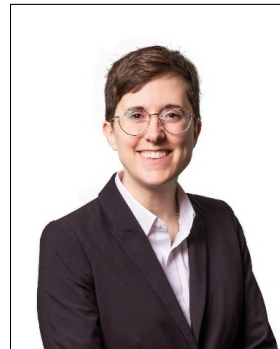
Emily J. Miller
Associate
BOSTON

Agenda

01   The Future of Remote Work

02   Worktime & Schedules in a Remote/Hybrid Environment

03   Identifying & Addressing Performance Issues

04   Accommodations Issues

The Future of Remote Work
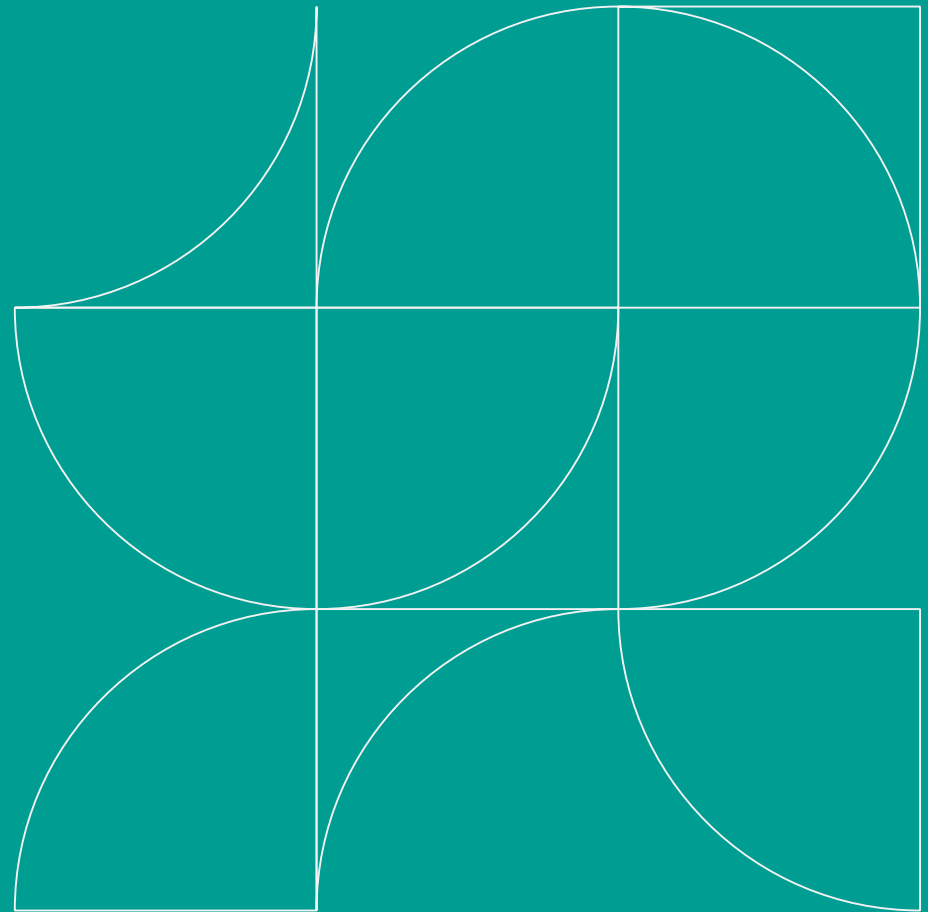
Is Remote Work Here to Stay?

- COVID-19 accelerated a trend of employees working from home.

- In 2020, Twitter and Square announced that employees may elect to work from home "forever."

- As of June 2022, 35% of U.S. workers (55 million) report that they are permitted to work from home on a full-time basis, with another 23% (36 million) reporting that they are permitted to work from home at least part of the time.

- When given the option to work remotely, 87% of workers do so at least some of the time, with most choosing to work remotely ~3 days per week.

- U.S. workers report that flexible work is one of the top 3 reasons for seeking a new job.

The Benefits of Remote Work

- Research shows that telecommuting makes many workers more productive.

  – They are more satisfied and less likely to quit.

  – They have more time to work because they do not spend time commuting.

  – U.S. workers increased their average workday by almost 40%, the largest jump worldwide.

- Telework can be balanced with on-site work.

- Many knowledge workers need spurts of unstructured interaction, followed by hours of quiet time to execute – time that's often more productive done away from the office.

The Challenges of Remote Work

- Engaging Remote Workers

- Fostering Community at Work

- Workplace Compliance Issues

- Tax and Benefit Issues

- **Monitoring and Managing Performance and Productivity for Remote Workers**

Worktime & Schedules in a Remote/Hybrid Environment
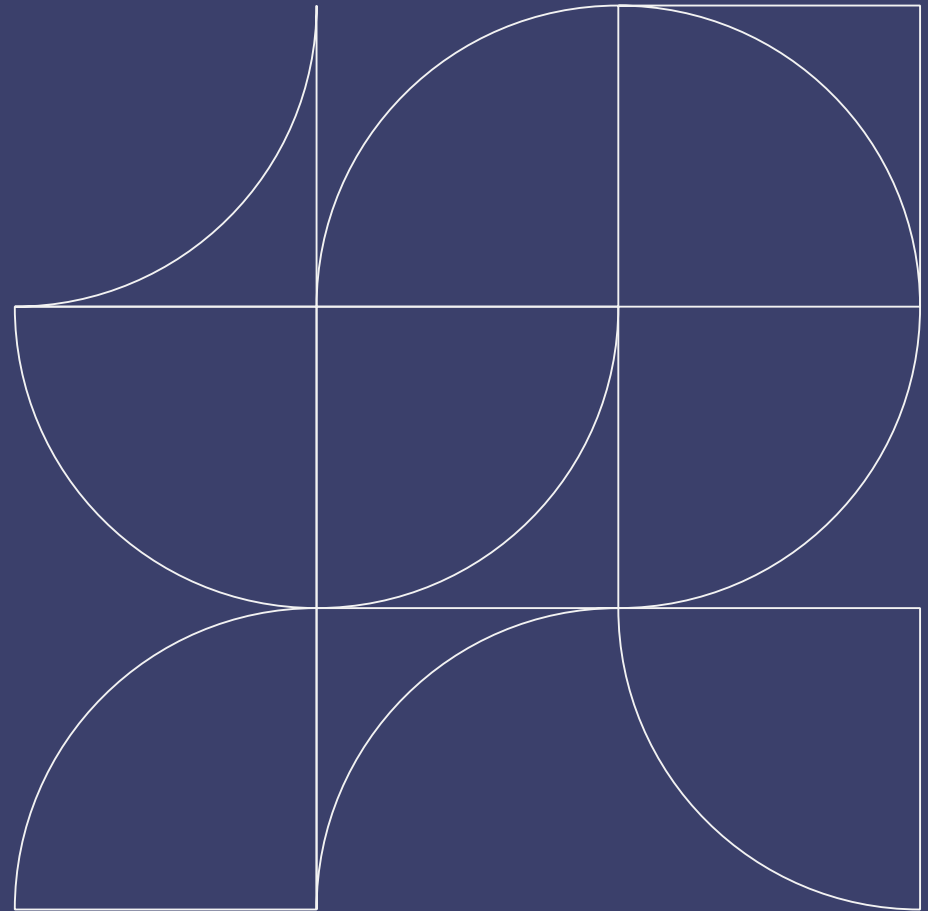
Worktime & Schedules

- The law requires that employees be paid for all "working time" – this includes not only hours spent actively engaged in work, but also the time during which employees are required to be on the employer's premises **or in service of the employer off-premises**.

- Meal break requirements

  – Meal break deduction issues

Worktime & Schedules

- Work from home creates opportunities and risks for employees to work without the employer's knowledge:

  – Does the company have knowledge? Can knowledge be imputed? How?

  – **Set clear expectations** for when an employee will work and be available by phone and email (i.e., what are the employee's core hours).

- And how should the time be tracked?

  – Punch time clock, ask employees to self-report time, use technology to monitor productivity?

Tracking Remote Worktime and Non-worktime

Possible best practices:

1) Reiterate existing policies that no work is permitted off the clock

2) Update policies to reflect work from home scenarios that might result in off-the-clock work

3) Send reminders to employees to submit all time worked

4) Implement attestations

5) Train managers

6) Train non-management employees

Employee TimeSheet

Employee Name:

Employee #   Department:

Supervisor: Extension:

Date	Start Time	End Time	Regular Hours	Overtime Hours	Total Hours
		TOTALS:			

I certify that these hours are a true and accurate record of all time worked during the pay period.

Employee Signature: Date:

Tracking Remote Worktime and Non-worktime

Possible best practices (continued):

7) Provide employees with a mechanism to change timecard / punch entries

8) Respond to violations quickly and with documentation

9) Manage work schedules (discussed on next slide)

Employee TimeSheet

Employee Name:

Employee #   Department:

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Managing Work Schedules for Employees Working Remotely

Set Work Schedules, Perhaps Including Breaks

- Setting regular work hours reduces the risk of off-the-clock work and helps employees maintain a work-life balance.

- Reinforce meal and rest break laws by discussing expectation that employees will take breaks.

Manage Managers

- Clear overtime policies – managers should be on the lookout for non-approved overtime work

- Direct managers not to pressure employees to work off the clock – and direct employees to report any pressure

Audit Compliance

- Consider checking systems to see if employees are working outside of working hours – pros and cons

Identifying & Addressing Performance Issues
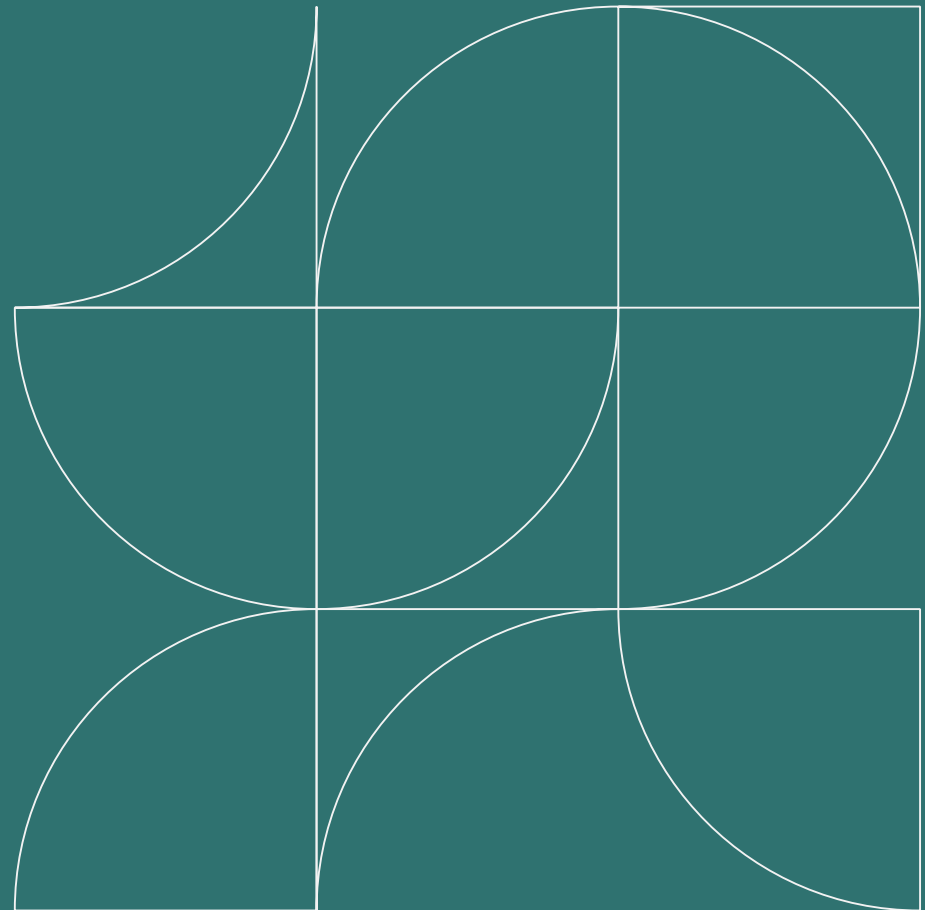
Identifying Underperformance

- Managing performance in the workplace can be tough – managing performance remotely presents additional challenges.

- **Identifying underperformance:**

  - Is it a skillset or aptitude issue?

  - Is it a time management issue?

  - Is it an ADA issue?

  - Is the employee being dishonest on their timecard?

  - Does the employee have other demands on their time at home?

  - Is it a home technology issue?

Identifying Underperformance

- **Strategies for addressing performance issues:**
  - Have candid conversations with employees & ask for their help identifying the issue(s)
    - Memorialize these conversations
  - Offer training to assess aptitude
  - Ask employees to provide status updates at regular intervals
  - Use chat platform for "virtual drop by"
  - Encourage managers to have video meetings with their employees
  - Ask underperformers to return to the office?

Accommodations Issues
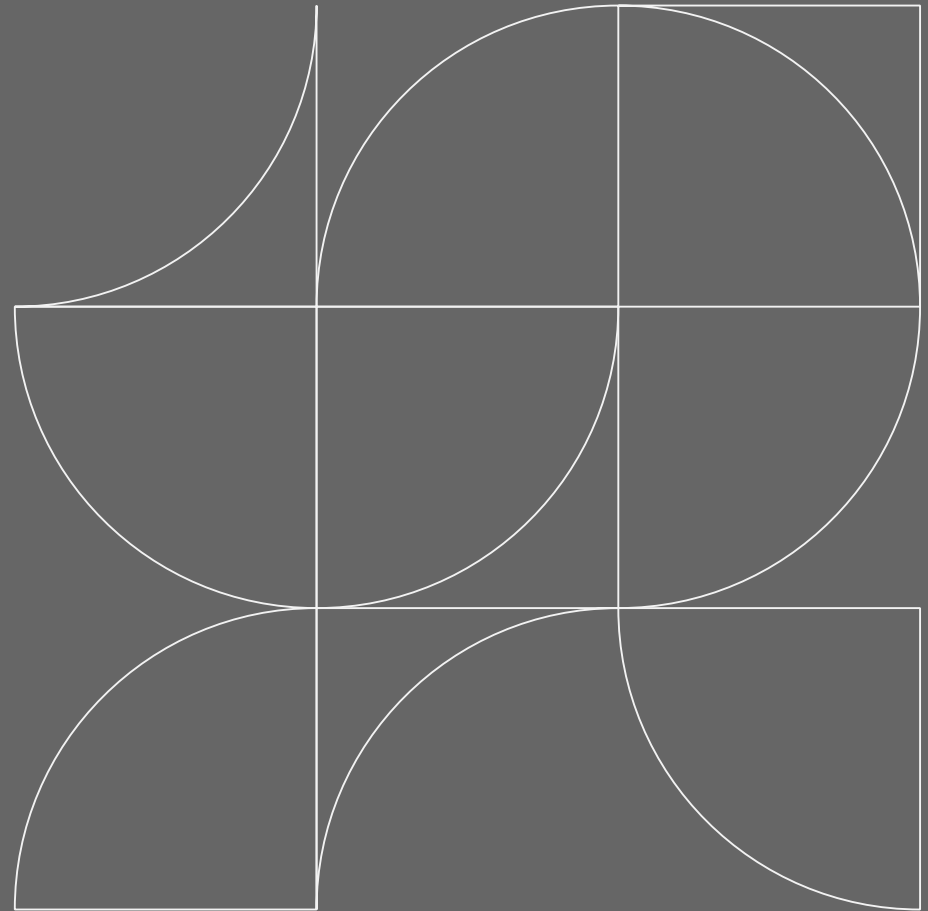
Accommodations Issues for a Remote Workforce

- Remote work has posed new challenges and questions regarding the accommodations process and whether requested accommodations are reasonable.

- **Remote work as an accommodation:**
  - Pandemic resulted in increased requests to work form home as accommodation for disabilities.

  - **Key question remains** – if the job has been performed from home for the past several years, can employer claim working from home is not reasonable?

  - **Recommendation**: Reevaluate the essential functions of positions and allow post-pandemic work-from-home as accommodations if the essential functions of the position can be performed from home.

  - **Complication**: Undue hardship is the employer's burden of proof.

Thank You

For more information please contact:

Anthony S. Califano
Email: acalifano@seyfarth.com
Phone: (617) 946-4925

Emily J. Miller
Email: emmiller@seyfarth.com
Phone: (617) 946-8322