



WEBINAR OVERVIEW

Managing Flexible Work Arrangements – The Future of Work

June 21, 2023

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- What are the Most Important Culture Benefits for Workers and Employers?
- Current Trend – Flexible Work Arrangements are in the Spotlight

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WEBINAR OUTLINE

I. INTRO/SETTING THE STAGE

A. What Are the Most Important Culture Benefits for Workers and Employers?

1. Work-life balance: This is the most valued element of company culture by a wide margin for both employees and employers: 51% of employees and 47% of employers named work-life balance as the top priority in company culture.

- Flexible hours: Given that work-life balance is a top priority for both employees and employers, it makes sense that this benefit rises to the top for both, as well: 34% of employees and 40% of employers named flexible hours a top benefit for workers.

B. Current Trend – Flexible Work Arrangements are in the Spotlight

- Flexible work arrangements can improve recruitment and retention efforts, augment organizational diversity efforts, encourage ethical behavior, and help the organization's efforts to be socially responsible.
- Employers can experience cost savings, improved attendance and productivity, and an increase in employee engagement.

See [Leveraging Workplace Flexibility for Engagement and Productivity](#).

Note: The COVID-19 pandemic placed flexible work arrangements, especially remote work, in the spotlight. With many states issuing stay-at-home orders and allowing only essential businesses to keep their physical locations open, unprepared employers were forced to implement flexible work options on the fly. See [Coronavirus Makes Work from Home the New Normal](#) and [Full Poll Results: Telework in the Time of COVID-19](#). As social distancing orders were lifted, and businesses reopened, employee requests for flexible hours and remote-work arrangements will be part of the new normal. Now that many employers have experienced how successful telecommuting can be for their organization or how work hours that differ from the normal 9-to-5 can be adopted without injury to productivity, offering flexible work arrangements have become more commonplace.

Source:<https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/managingflexibleworkarrangements.aspx>

II. WEIGHING THE OPPORTUNITIES AND CHALLENGES

A. Opportunities

Flexible work arrangements offer numerous benefits to both employers and employees. Such benefits include:

- Assisting in recruiting efforts.
- Enhancing worker morale.
- Managing employee attendance and reducing absenteeism.
- Improving retention of good workers.
- Boosting productivity.
- Creating a better work/life balance for workers.
- Minimizing harmful impact on global ecology. Certain flexible work arrangements can contribute to sustainability efforts by reducing carbon emissions and workplace "footprints" in terms of creation of new office buildings.
- Allowing for business continuity during emergency circumstances such as a weather disaster or pandemic.

See [Workplace Flexibility Necessary for Business, Speaker Says](#).

Notes: For more than a decade, Unilever, a consumer goods company, has been offering employees the opportunity to work anytime, anywhere, as long as they meet business needs. Leaders at Unilever identified the following benefits when making the business case for the policy:

- **Travel.** Conferencing technology like Skype would reduce travel expenses.
- **Technology.** Upgrading technology would help the company stay competitive and build Unilever's brand as a best place to work. Costs would be offset by other savings.

- **Real estate.** Cubicles and offices would be converted to communal facilities, thereby reducing space requirements by 30 percent. Sites would be converted gradually as leases expired.
- **Work/life balance.** Empowering workers would enhance work/life balance. Satisfaction ratings would rise, and recruitment would become easier.
- **Sustainability.** Reducing travel, office energy costs and paperwork would decrease the environmental footprint.
- **Retention and engagement.** Flexibility would enhance the employer value proposition, improving retention and supporting diversity.

B. Challenges

Managers tasked with implementing strategic goals related to flexible work arrangements need to keep many things in mind:

- Keeping programs relevant to workers' real needs/wants.
- Focusing on the unique needs of workers without engaging in unlawful disparate treatment or disparate impact discrimination.
- Allowing workers some choice and freedom while also knowing when and where the work is being performed to ensure legal compliance.

In addition, managing the change from a traditional work environment to one with more flexible work arrangements can create or throw a spotlight on various managerial trouble spots, such as:

- Upper management's resistance to change.
- Control issues, especially in terms of supervision of work.
- Proximity bias.
- Working as a team with far-flung members and highly variant schedules.
- Maintaining safety and security of personnel and data.

See [Preventing Proximity Bias in a Hybrid Workplace](#) and [How to Collaborate with a Hybrid Workforce](#).

III. LOCATION FLEXIBILITY

A. Remote Work

Companies that give their workers the option of remote work report its benefits in greater productivity, lower costs, more options for finding and retaining qualified staff, and improved employee health.

However, despite its utility in a variety of situations, telecommuting does present challenges to both employers and employees. Among the possible negatives for employees are:

- Being out of the day-to-day flow of information.
- Being away from the hub of activity in terms of office politics, management and intellectual ferment.
- A negative impact on career advancement and perception that employees working remotely are not as available as those working at the company location.
- Distractions by the employee's spouse, children, pets and others in the workspace.
- An expectation to be available outside of "normal" business hours.

From the employer's standpoint, downsides or extra effort associated with remote work might include:

- Establishing set expectations, trust and unique methods of evaluation to lead from a distance.
- The need to adopt strategies and procedures attuned to management of telecommuting workers.
- Increased technology costs and potential security vulnerability.
- Dealing with workers disgruntled because they are not permitted to telecommute.

See [HR Resource Hub Page: Remote Work](#).

B. Hybrid Work Arrangements

- Allowing employees the flexibility to work from home while still maintaining some in-person collaboration is the future of work, according to some experts.
- A hybrid approach comes with similar opportunities and challenges to a full-remote work model.

Notes: Effective use of office space is another concern for employers who will have employees coming and going in the office on different days. Some employers are implementing technology to manage occupancy such as online platforms or cellphone apps that allow workers to book workspace when they want to be in the office. The term "hoteling" refers to having telecommuters reserve an office or workstation for their in-office days in lieu of assigning them a permanent workspace. Hoteling can cut an organization's office space requirements and reduce costs. See [Fine-Tuning the Open Office](#).

C. "Snowbird" Programs

- Snowbird programs allow employees to transfer to an organization's location in a warmer region during winter months. An organization might be able to attract a better and larger labor force if, for example, it had a program allowing employees to spend winter months working in Florida or Arizona.

Notes: Pharmacy company CVS Caremark, with 200,000 U.S. employees, offers a snowbird program that allows pharmacists to migrate south to places such as Florida for the winter.

It's important to consider which state's laws apply if implementing a snowbird program.

IV. SCHEDULE FLEXIBILITY

Notes: There are several types of schedule flexibility:

- Flextime.
- Compressed workweek.
- Shift work.
- Part-time schedules.
- Job sharing.

Not all types are manageable or worthwhile for all sizes and types of organizations, so every employer considering this arrangement should undertake an organizational assessment to determine whether and what kind of flexible scheduling will meet its needs.

A. Flextime

- Flextime is a type of alternative schedule that gives a worker greater latitude in choosing his or her particular hours of work, or freedom to change work schedules from one week to the next depending on the employee's personal needs.
- Under a flextime arrangement, an employee might be required to work a standard number of core hours within a specified period, allowing the employee greater flexibility in starting and ending times. See [How to Create and Manage an Effective Flexwork Policy](#).

B. Four-Day Work Week

- A [2022 Qualtrics survey](#) found that 92% of respondents favor working a four-day work week.
- In addition, 72% said they'd prefer a four-day week even if it meant working longer hours on the days they did work.
- Employees save time and commuting expenses by reporting for duty on fewer days. Employers that convert their entire operation to a four-day workweek may save on the cost of utilities and other overhead. See [5 Steps for Adopting a Four-Day Workweek](#).

Notes: Compressed workweek is an alternative scheduling method that allows employees to work a standard workweek of 40 hours over a period of fewer than five days in one week or 10 days in two weeks.

For example, some employers implement a four-day workweek of 10-hour days. Employers get the same number of working hours, but employees have a three-day weekend every week.

Another approach is the 9/80 schedule, in which employees work 80 hours in nine days and have one day off every other week. Among other demographics, employees whose family status involves child care or elder care responsibilities may find a compressed workweek to be of particular value.

C. Shift Work

- Shift work has traditionally been used to maximize productivity from fixed resources and costs.
- Recently, shift work has become a feature of the 24/7 service economy and a byproduct of globalization.
- Shift work poses some practical challenges for some employers.
- Employers are encouraged to provide schedules that are as predictable as business needs permit.

D. Part-time Schedules

- Part-time jobs are the most traditional of flexible scheduling options.
- This option is typically used when a job requires fewer than 40 hours of work per week.

E. Job Sharing

- Job sharing is the practice of having two different employees performing the tasks of one full-time position. Each of the job-sharing partners works a part-time schedule, but together they are accountable for the duties of one full-time position. Typically, they divide the responsibilities in a manner that meets both of their needs as well as those of the employer. The practice allows for part-time schedules in positions that the employer would not otherwise offer on a part-time basis. It requires a high degree of compatibility, communication and cooperation between the job-sharing partners and with their supervisor.

V. LEGAL ISSUES

A. Equal Employment Opportunity Compliance

- Equal employment opportunity laws mandate nondiscrimination in wages, hours, and other terms and conditions of employment. Accordingly, employers should take steps to ensure that all flexible arrangements are offered and implemented without discrimination on any prohibited basis.
- As with all other employment practices, clear policies, consistent decision-making and careful documentation are needed to fend off possible discrimination charges.

Notes: Despite an organization's best intentions and nondiscriminatory business motivations, some groups of employees may reap more of the benefits of flexible work arrangements than others, simply because their circumstances make such options more attractive to them.

B. Wage and Hour Compliance

- Employers must be mindful of both federal and state wage and hour laws in implementing flextime. For example, if nonexempt employees are allowed

flextime, it is especially important to track their actual work hours to ensure compliance with the Fair Labor Standards Act (FLSA).

- State wage and hour laws may pose challenges to the use of flexible work arrangements, such as daily overtime requirements.

Remote work can raise legal issues, including:

- Identifying compensable working time.
- Controlling unauthorized off-the-clock work.
- Controlling unauthorized reported work.
- Managing overtime pay obligations.

C. Benefits Compliance

- Employees who prefer to reduce the number of hours they work as part of their organization's flexible work options should understand that there may be an impact on benefits eligibility.
- The Affordable Care Act (ACA) requires large employers to offer employees who work 30 or more hours per week health insurance benefits to avoid employer penalties. Some employers do not offer health coverage to employees who fall below this 30-hour per week threshold.
- Under the Employee Retirement Income Security Act (ERISA), the "1,000-hour rule" makes employees who have completed 1,000 hours of service in a period of 12 consecutive months eligible to participate in any company retirement or profit-sharing plan that is offered to other employees.
 - For plan years beginning after Dec. 31, 2020, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, requires employers to allow long-term part-time workers to make elective deferrals to the employer-sponsored 401(k) plan, except in the case of collectively bargained plans.
 - Eligible employees will have completed at least 500 hours of service each year for three consecutive years and are age 21 or older.
 - Years of service prior to 2021 do not have to be counted; however, employers may choose to have more generous eligibility rules.
- Eligibility for many other benefits (e.g., vacation, sick leave, retirement benefits, life insurance and most disability plans) is at the employer's discretion under federal law, but may be mandated by state law.
- Employers should verify their compliance with any applicable benefits mandates, ensure that their policies clearly state the eligibility requirements and administer their policies consistently.

D. Other Legal Concerns

When an organization allows people to work from their home offices exclusively or in addition to working from corporate facilities, a number of additional legal issues can arise.

1. **Workers' compensation.** If a telecommuter is injured while working at home, is the injury covered by workers' compensation? Many workers' compensation laws do not distinguish between home-based and central-office-based workers. Injuries to home-based employees can be particularly problematic because of the employer's inability to control the physical working conditions and the potential for fraud.
2. **Occupational safety and health.** On February 25, 2000, the Occupational Safety and Health Administration (OSHA) issued a policy on "home offices" (defined as "office work activities in a home-based worksite"), indicating the agency "will not conduct inspections of the employee's home offices," "will not hold employers liable for employees' home offices" and "does not expect employers to inspect home offices of the employees."
3. **Disability accommodation.** Telecommuting is sometimes requested as a reasonable accommodation under the Americans with Disabilities Act. Employers are not obligated to agree to such an accommodation in all cases, but they are required to engage in the standard give-and-take with respect to a requested accommodation and to allow flexible work arrangements when doing so is reasonable and does not cause undue hardship.
4. **Privacy and confidentiality.** Such concerns are particularly difficult to address in a telecommuting environment. As telecommuting becomes more common, employers must address the unique issues that arise from the use of technology by the home-based worker.
5. **Independent contractor status.** Sometimes employers attempt to avoid legal issues by classifying all offsite workers as independent contractors. If the individuals are not truly independent contractors, however, the employer may create more problems for itself than it solves by taking that approach. Just because an individual works off the company premises does not mean he or she is a legitimate independent contractor.

VI. NEW YORK LAWFUL ABSENCE LAW

New York Lawful Absence Law

- As of February 19, employers may not discipline employees for taking lawful absences pursuant to federal, state or local law.
- Section 215 of the New York Labor Law, which prohibits employers from penalizing, threatening, or discriminating or retaliating against employees for engaging in activities that are protected under the law, has now been amended to include an employee's use of any legally protected absence pursuant to federal, local or state law as a protected activity.

Note: Many employers generally maintain and utilize “no fault” attendance policies and/or absence control practices and procedures to regulate and minimize employee absences and tardiness within the workplace. “No fault” attendance policies typically operate by penalizing workers for absences or tardiness through a points system. Points – also referred to as “demerits” or “occurrences” – are typically allocated to an employee’s record for taking time off from work, regardless of the reason for such absence. When an employee incurs points for each absence or lateness under these attendance policies, the employee may be disciplined, up to and including termination.

Some “no fault” attendance policies omit and/or include misleading information about statutorily protected absences afforded to workers. As a result of these broad absence control policies, procedures, and practices, employees might feel discouraged from exercising their right to use legally protected absences. Accordingly, the Legislature enacted the lawful absence law with the intent to curtail such “no fault” attendance policies by making it clear that workers shall not be punished or subjected to discipline for lawful absences.

Although the law does not expressly define a legally protected absence pursuant to federal, local or state law, it presumably protects the use of any absences or leaves granted by the New York Paid Family Leave Law, the New York Paid Sick Leave Law, the New York Emergency COVID-19 Paid Sick Leave Law, the New York Paid Leave for COVID-19 Vaccinations Law, the New York City Safe and Sick Leave Law, the Family and Medical Leave Act, and the Americans with Disabilities Act, as well as other laws that authorize employee absences or leaves.

- The amendment to Section 215 of the New York Labor Law also prohibits employers from "assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay." Accordingly, this provision effectively prohibits the use of no-fault attendance policies in New York.

Note: The law provides a private cause of action for current and former employees to initiate a lawsuit to recover damages from employers that violate their rights under the law. In addition, the New York Department of Labor (NYDOL) may require employers that violate Section 215 to provide liquidated damages, back pay, and reinstatement or front pay. The NYDOL can also impose civil penalties of between \$1,000 and \$10,000 on first-time violators and up to \$20,000 for subsequent violations.

Employers should carefully review and update their policies to ensure that the distinction between protected and unprotected time off is clearly defined.

VII. HRtelligence TIPS

- **Set Clear Expectations**

Employees may enjoy the perks of working from home. However, they still need the support and guidance they had in an office environment. The key to managing flexible working arrangements is to set clear expectations. Be sure to communicate clear deadlines, collaboration expectations, and measures of success.

- **Communication**

To sustain the benefits of workplace flexibility, HR and leaders need to communicate proactively to ensure employees feel well-informed about important decisions. Identify the best communication methods for your organization.

- **Encourage Flexibility in All Aspects**

When managing flexible work arrangements best practices, keep in mind that workplace flexibility means different things to different people. Companies need to encourage their employees to think creatively and work with managers and teammates to find an arrangement that supports workplace flexibility for everyone.

- **Focus on Measuring Outcomes**

Adapting to best practices for working from home requires a mindset focused on outcomes rather than processes. While it may seem counterintuitive, giving employees greater control over how they work can ultimately lead to greater productivity. An outcome focus also gives employees a clear understanding of performance expectations and the metrics that will measure their work.

- **Accountability**

Personal accountability plays a vital role in shaping best practices for flexible workplaces. Employees should understand they will be held accountable for the results of their work and productivity, even if they are working from home. Measuring outcomes and transparently communicating those results can establish benchmarks to keep employees inspired, engaged, and accountable.