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OPINION

# Today's Business: New rules needed for working from home

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The recent firings and changes in remote work policy at Twitter are once again igniting the debate about productivity in the office versus out of the office. Can one employee truly be “exceptional” enough to warrant a work-from-home exception, over a colleague required to report to the office each day?

Employee productivity and morale aside, there are many business advantages to having employees physically in the office. First, for non-exempt employees, it is far easier to track work time and ensure that employees are being paid for all time worked in accordance with the law. Offices guarantee certain workplace standards mandated by law and provide appropriate working conditions. Confidentiality and security breaches are less of a concern under a company’s

secure Internet and Wi-Fi network, in comparison to the unsecure public network typically used by employees who choose to work at, say, the local Starbucks.

Still, to stay competitive and attract top talent, many companies will continue to permit employees to work remotely, whether it be full-time or on a hybrid basis. Twitter's Elon Musk initiated the latest controversy when he suggested that "exceptional" employees could continue to work remotely, whereas their "non-exceptional" counterparts had to report to the office.

Wow! That had to be quite a blow to the egos and morale of those required to report to the office.

Musk's verbiage aside, with the COVID-19 pandemic waning, many companies now are being forced to make remote working decisions on an individual employee basis. A lack of company policy on this issue, however, does not come without risks.

First, companies that "reward" top employees with remote working arrangements create a real risk of ostracizing employees who are not afforded the same benefit. If remote working arrangements are based on work performance, has employee performance — both positive and negative — been documented across the board? Are similar work performance standards applied across a department? Companies need to ensure that all employees are being treated equally. Rewarding employees with the opportunity to work from home, for example, could be considered illegal if it is based on unlawful reasons.

Employers also must be cognizant of requests for remote working arrangements based on medical need. While in most instances an employer is not required to accommodate an employee who wishes to remain remote to avoid contracting COVID-19, if the request to work remotely is based on an underlying disability, then the request may need to be granted. Individual requests must be reviewed on a case-by-case basis.

There are a host of additional considerations that, at first, may not be obvious. Will the workers be using a personal computer or take one from the office? What anti-hacking protocols must be in place? Will the company have access to the home computer, able to see what is being viewed? What about hours? Will the

employer allow a worker to split the day, say work three hours early in the morning and the rest of the time after putting the kids to bed?

If working from home is going to be an ongoing consideration, then now would be the time to create a clear policy — a policy that will help an employer avoid accusations of favoritism or perhaps even discrimination. Time for a re-write of the employee handbook.

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