

Managing Flexible Work Arrangements

HR Newsletter

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Overview

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 are lifted, and businesses reopen, 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.

Even in the absence of a pandemic, 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](#).*

Weighing the Opportunities and Challenges

Many U.S. workers now consider work/life balance and flexibility to be the most important factors in considering job offers. In fact, 81 percent of employees said they would be more loyal to their employers if they had flexible work options, according to a 2020 survey by FlexJobs.

However, offering flexible work arrangements can involve a paradigm shift for organizations, especially smaller ones that may not have the critical mass of technology, budget, management and competitive flexibility necessary to make extensive use of flexible work arrangements.

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](#).

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.

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](#).

Location Flexibility

Location flexibility refers to arrangements that make it possible for employees to work from a location different from the main worksite. Telecommuting/remote work is the most common type of location flexibility. A June 2021 SHRM survey found that almost one-third of employed Americans (30%) would prefer to work remotely in some capacity, and plan to search for another remote or hybrid job elsewhere if their current employer doesn't give them the option.

Telecommuting

Telecommuting, also known as telework or remote work, involves the use of computers and telecommunications technology to overcome the constraints of location or time on work. In a global economy, physical location has become less important than efficiency of operations. Remote work may occur from home, a telework center, or on an airplane or bus.

Remote work is best suited for jobs that require independent work, little face-to-face interaction, concentration, a measurable work product and output-based (instead of time-based) monitoring. Nevertheless, telecommuting is not unknown in jobs—even HR jobs—that do not fit this mold.

Remote work also may be offered as a reasonable accommodation under the Americans with Disabilities Act.

Telecommuting has become a widely accepted practice, and most organizations that do permit it develop metrics to track their return on investment. Telework often includes these three different types:

- Regular, recurring telework, such as an employee spending every workday or regularly scheduled workdays working from a home office or other remote office.
- Brief, occasional telework, such as an employee writing a report or preparing a spreadsheet from a home office after hours or on weekends, or just working from home to avoid interruptions.
- Temporary or emergency work, such as working from home to ensure business continuity during inclement weather, a natural disaster, or an event such as a political convention that causes significant traffic and parking disruptions.

See [Checklist: Emergency Telecommuting Preparation](#).

Companies that give their workers the option of telecommuting 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 telecommuting 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](#).

Hybrid Work Arrangements

Many workers became accustomed to working remotely during the pandemic, and splitting time between the office and home is expected to become the new normal, according to a PwC report, [It's Time to Reimagine Where and How Work Will Get Done](#).

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 March 2021 [Mercer survey](#) of more than 700 U.S. employers reports that 87 percent of employers will embrace greater flexibility post-pandemic, with most planning a hybrid onsite/remote-work model.

A hybrid approach comes with similar opportunities and challenges to a full-telecommuting model. 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](#).

See also:

[Employers Launch Hybrid Work Plans, Identify Early Obstacles](#)

[Reopening Strategies Recognize Many Will Keep Working Remotely](#)

[What to Consider When Moving to a Hybrid Work Model](#)

Snowbird Programs

Snowbird programs allow employees to transfer to an organization's location in a warmer region during winter months. A telemarketing operation or help-desk call center can be physically located anywhere. An organization might be able to attract a better and larger labor force (including older people) if, for example, it had a program allowing employees to spend winter months working in Florida or Arizona. 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. See [Which state law applies when an employee works from one state and the company is located in another?](#)

Schedule Flexibility

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.

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](#).

Compressed Workweek

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. 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](#).

Shift Work

Shift work has traditionally been used in manufacturing environments to maximize productivity from fixed resources and costs. More recently, shift work has become a feature of the 24/7 service economy and a byproduct of globalization. For example, supermarkets and computer help desks are now typically open 24 hours a day, seven days a week. Nowadays, a computer user calling for technical support during regular U.S. business hours is likely to end up speaking with a technician working the "graveyard shift" in India. Despite its extensive use in certain environments, shift work poses some practical challenges for some employers. Employers are encouraged to provide schedules that are as predictable as business needs permit.

Part-Time Jobs

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. Part-time work can be used to attract a workforce that includes students, parents of young children, older workers, and others who need or want to work but do not wish to work a full-time schedule. Although more commonly associated with jobs in retail and food service, some employers do have part-time professional employees. Part-time work can help organizations retain professionals who otherwise would be lost.

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.

Like part-time jobs, job-sharing arrangements may appeal particularly to students, parents of young children and employees nearing retirement, helping them balance careers with other needs. For employers, the practice may include retention of skilled employees, increased employee loyalty and productivity, and a measure of flexibility that can occur when two people fill one job slot.

Supporting Working Parents

Whether allowing for flexible work hours for employees with children at home during the COVID-19 pandemic, or offering flexible work arrangements on an ongoing basis, supporting working parents is an employee engagement and satisfaction necessity. In addition to the more-traditional flexible work options discussed in this article, employers may want to consider

creative options, such as staggering employee shifts, rotating days or weeks of in-office presence with telework, and phasing in return-to-work starting with a reduced schedule and transitioning back to full time.

See:

[Working from Home with Kids? How to Manage the Impossible](#)

[Juggling Child Care with Telework? Here Are Some Tips](#)

[Support for New Parents Can Keep Employees On Board](#)

[How Employers Can Help Working Parents During Back-to-School Season](#)

Legal Issues

Applicable laws should play a major role in the decision of whether to implement flexible work arrangements. Below are some legal issues to consider in terms of alternative work arrangements.

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. Despite an organization's best intentions and nondiscriminatory business motivations, however, 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. As with all other employment practices, clear policies, consistent decision-making and careful documentation are needed to fend off possible discrimination charges. *See* [EEOC Files First Pandemic-Related Remote-Work Bias Suit](#).

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. *See* [Do Your Remote-Work Policies Comply with California Wage Rules?](#) and [Out-of-State Remote Workers Are Increasing Legal Risks for Employers](#).

Telecommuting raises even more issues, including:

- Identifying compensable working time.
- Controlling unauthorized off-the-clock work.

- Controlling unauthorized reported work.
- Managing overtime pay obligations.

See [Are employees working a compressed workweek and paid biweekly entitled to overtime in the week they work over 40 hours?](#)

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. See [How are benefits impacted when an employee's hours are reduced?](#)

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. See [IRS Guidance Clarifies Employers' SECURE Act Obligations](#).

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. See [Are we legally required to offer benefits to part-time employees?](#)

Other Legal Issues

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.

- **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. See [Are telecommuters covered under workers' compensation?](#)
- **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." See [Home-Based Worksites](#).

- **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.
- **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.
- **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. See [Independent Contractors](#).

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