

# Responding To Remote Work Challenges

Presented by:

Tawny Alvarez  
talvarez@verrill-law.com

Emily Waddell  
ewaddell@verrill-law.com

## Remote Work Questions

- Who has the opportunity to work remotely?
- Who exercises the opportunity to work remotely?
- Are certain protected classes more likely to choose to work remotely?
- Why do they choose to work remotely?
- Does the choice to work remotely have adverse effects?
- Could those adverse effects constitute discrimination or retaliation in violation of the law?
- How does it effect DEI efforts?
- How do we rectify the issue?
- Are there wage and hour implications?
- Are there tax implications?
- Could the choice affect NLRA rights?
- Do we have appropriate policies and practices in place?
  - Behavior
  - Technology
  - Safety/Wellness
  - Productivity

# Who Has The Opportunity To Work Remotely?

Of job holders in the United States, 58 percent—the equivalent of 92 million people—say they can work remotely at least part of the time.

Availability of remote-work options, % of employed respondents (n = 13,896)<sup>1</sup>

Offered remote work on a full-time basis

35

Offered remote work part-time or on occasion

23

Not offered remote-work opportunities<sup>1</sup>

42



Number of workers, extrapolated<sup>2</sup>  
55 million

36 million

66 million

Note: Figures may not sum, because of rounding.  
<sup>1</sup>Includes respondents who answered "I don't know" (1%).  
<sup>2</sup>Of 158,105,000 employed people; US Bureau of Labor Statistics, Apr 2022.  
Source: McKinsey American Opportunity Survey Spring 2022

## Why Do Employees Choose To Work Remotely?

- Decreases the need to “cover”
- Code-switching
- Care for others
- Productivity
  - Collaboration
  - Decreased distractions
- Environmental factors
- Work/life balance
  - Time preservation
    - Commute
    - Flexibility
    - Wellbeing
  - Obligation balance



## Extraterritorial Application Of State Laws

- Registering to do business in the state
- Workers' Compensation
- Unemployment Insurance
- General applicability of Fair Employment Practices laws

# **Tax Implications & Considerations**

## **Personal Income Tax**

- Reciprocal Tax Arrangements
- State and Local Corporate or Business Activity Taxes

## **Business Tax Implications**

## Structuring Employee Handbooks for Multistate Workforce

**Ensure compliance across all states where employees are working**

- Utilize addendums as necessary
- Look specifically to requirements around PTO/sick leave/earned paid leave, state Family and Medical Leave Act rules, harassment policy requirements, posting requirements, and onboarding/notice rules
- Understanding which laws apply based on the number of employees in the organization or the number of employees at that location

## Remote Work Data Policies Related To Data Retention & Data Handling

- Multifactor Authentication
- Endpoint Monitoring and Threat Detection
- Virtual Private Network
- Employee Training
- Restrictive Covenant Agreements
  - Confidentiality
  - Return of devices/data



## Proximity Bias

**Studies have shown that protected employees have exhibited preferences for remote work:**

- Employees with disabilities were 11% more likely to prefer a hybrid work model than employees without disabilities
- More than 70% of men and women expressed strong preferences for hybrid work, but nonbinary employees were 14% more likely to prefer it
- LGBTQ+ employees were 13% more likely to prefer hybrid work than their heterosexual peers
- Women are 10% more likely to report desire to have a hybrid work arrangement over men – some data shows the number as high as 50% more likely
- Post-pandemic, 32% of employees say they never want to return to working in the office – these are often employees with young children

## Proximity Bias

### MANAGERS OF REMOTE OR HYBRID WORKERS SHOULD:

Learn how to  
appropriately  
manage a hybrid  
team

Recognize bias  
based on  
geography

Consider the  
experiences of  
remote  
employees

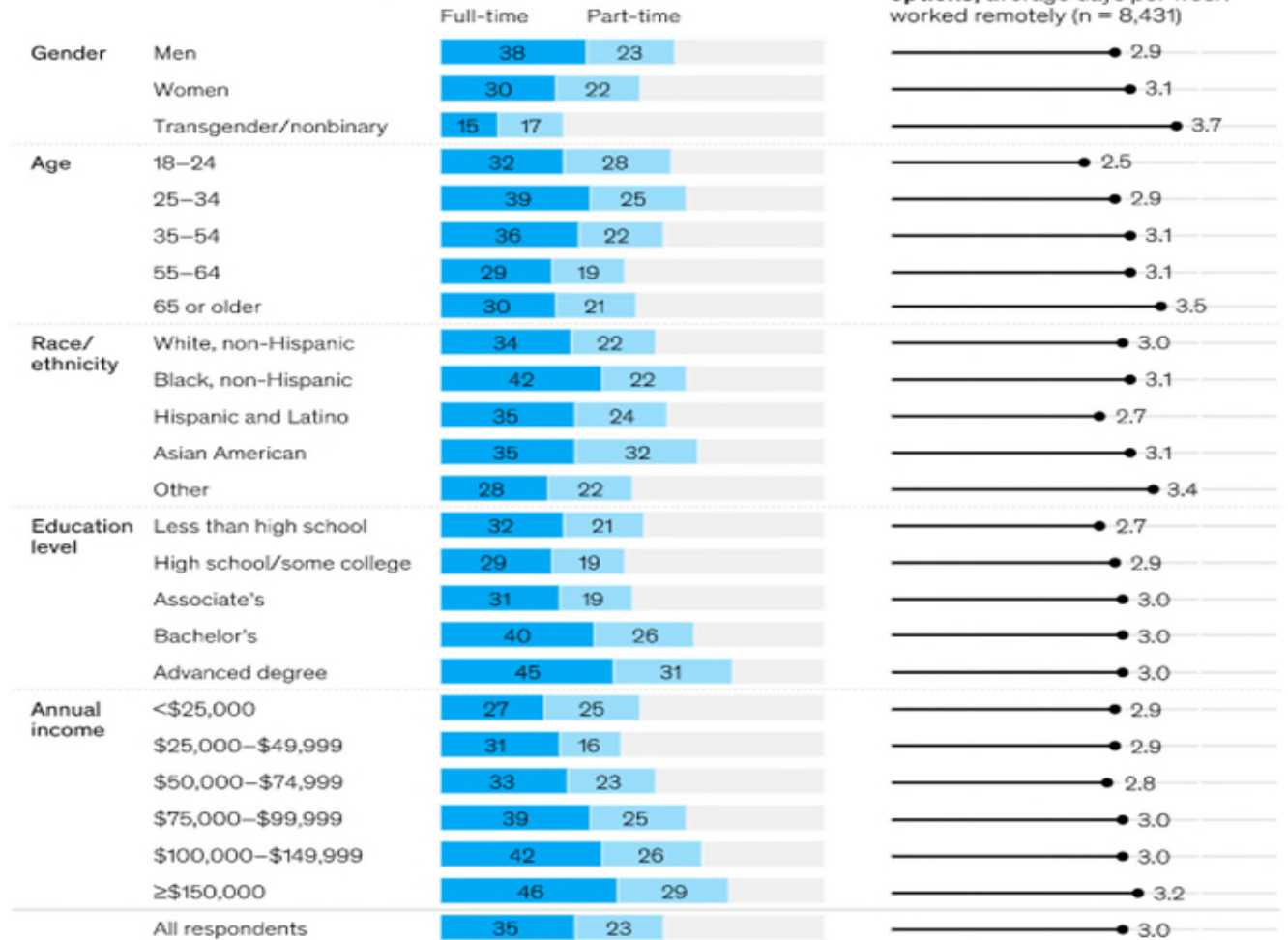
Focus on  
communication

# Who Has The Opportunity To Work Remotely?

People in the United States who are younger, more educated, or have higher incomes tend to have more options to work remotely.

Remote-work availability,<sup>1</sup> % of employed respondents (n = 13,896)

Of those with remote-work options, average days per week worked remotely (n = 8,431)



<sup>1</sup>Only asked to employed respondents: "Does your employer currently offer you work-from-home opportunities? Or are you able to work from home as a self-employed individual?"  
Source: McKinsey American Opportunity Survey Spring 2022

## The NLRA & Remote Work

*Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.*

### 29 U.S.C.A. § 157 (NLRA Section 7)

- Employers should be mindful that employee discussion around remote work may be protected under Section 7
- The NLRB General Counsel also released a memorandum (23-02) that identified employer electronic surveillance as conduct that could violate Section 7, if it were to impair employees' ability to engage in protected activity

## Work-From-Home Expectations

### Outline eligibility to work from home

- Business expenses
- Advance notice of moving
- Work expectations
- Termination policy for work devices and data of remote employees
- Acknowledgement

## Wage & Hour Concerns

- Suffer or permit to work
- When are employees working/when are they not working/how do they track work for payroll purposes?

## Privacy

- State law concerning employee expectation of privacy
- Keystroke Monitoring
- Visual or auditory monitoring of employee work habits
- Balance between employee's right to privacy and employer needs

## Accountability & Remote Work

- Should be the same as in person work
- Are Managers appropriately trained on best practices to manage remote team members?
- Are they aware of risks associated with proximity bias?



## Culture & Connectivity

- Know when to log off – avoid employees working unauthorized overtime
- Have a transparent remote work policy – avoid resentment over unapproved requests
- Lead by example – whether remote or in person, include all members of the team


## Does The Choice To Work Remotely Have Adverse Effects?


 Relationship building: formal and informal integration with team members

 Access to mentoring and sponsorship

 Access to spur-of-the-minute discussions and/or projects

 Adverse assumptions concerning commitment

 Speaking up (and being heard)

 Risk of overwork (or productivity if there are distractions)

 Video meeting fatigue

 General technology failures



# QUESTIONS?