



IS YOUR CONTRACT OF EMPLOYMENT REMOTE WORK COMPATIBLE?

The COVID-19 pandemic changed the world of work as we knew it in a dramatic fashion with remote work as one of its pivotal changes¹ from home².

WHAT THE "NEW NORMAL" WORLD OF WORK MAY LOOK LIKE

What will the "new normal" world of work look like in the foreseeable future? One of the foreseeable changes in the way we work is the rise in remote work.

Before the pandemic, less than 20% of workers worked remotely. By late 2020, this figure increased to more than 70% of workers working remotely.³ At the peak of the pandemic, more than five billion workers worldwide were compelled to work from home.² With the introduction of COVID19 vaccines and more countries easing the lockdown, employers are experimenting with hybrid working arrangements where employees can switch between working from the office and working remotely from a non-office location (the home office or remote workstation) for a number of days of the week or working remotely on a permanent basis.

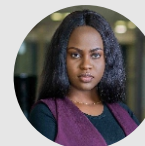
These emerging work arrangements have raised practical never-before tested questions relating to employment contracts which have snowballed into a plethora of pandemic-related labor lawsuits. This is just the beginning of what is to come as the pandemic appears to have moved faster than the speed of law.

The recent Taneasha Newsome case is classic example of the novel issues raised by remote work. Taneasha, a Black single mother of four children and an associate researcher for Axos Bank already felt like she was being passed over for promotions and raises, even as she absorbed more responsibilities over the past nine years. When the COVID19 pandemic struck, she was forced to care for her children, including two with special needs, while working out of her apartment. When employees were ordered back to the office, she was allowed to continue working from home but it was getting more and more difficult cooping, being a lone caretaker. Her timesheet and performance on the job was tracked by a remote monitoring system. Taneasha was recently fired from her job on a Zoom call after the report from the remote monitoring system showed her to be "unproductive." Taneasha is now appealing the decision, claiming the technology could not properly measure her type of work and it underreported her work hours.⁴

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¹What's next for remote work: An analysis of 2,000 tasks, 800 jobs, and nine countries, McKinsey Global Institute. <https://www.mckinsey.com/featured-insights/future-of-work/whats-next-for-remote-work-an-analysis-of-2000-tasks-800-jobs-and-nine-countries#>

²<https://www.internationalawoffice.com/Newsletters/Employment-Immigration/Nigeria/Bloomfield-Law/Impact-of-COVID-19-on-employment-law?redir=>

³<https://www.pewresearch.org/social-trends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/>

⁴More than 400 coronavirus-related employment lawsuits have been filed nationwide (in the US), according to a court-filing tracker managed by Fisher Phillips, a national workplace law firm representing employers. Lawsuits surrounding remote work and leave are the most common, according to Fisher Phillips. <https://www.sandiegouniontribune.com/news/courts/story/2020-07-30/covid-19-is-re-writing-employment-law>

- remain accessible by phone, email and other means of communication to the employer, clients and other staff;
- provide regular status updates on assigned tasks;
- be available for video/teleconferences as may be scheduled on an as-needed basis;
- be available to physically attend scheduled work or client related meetings as may be required by the employer;
- take rests, comfort breaks and meal breaks while working remotely and also utilize available vacation, sick, or other leave.

EMPLOYEES' WORK TOOL AND EQUIPMENT

In view of the fact that employees working remotely would need certain amenities and equipment that is essential to the efficient performance of their duties, like laptops, computer, modem, software, smart phones, power supply, internet, etc., the employer has the responsibility to provide some of these equipment and facilities or pay appropriate allowances to the employees to procure them.

The employer will bear the responsibility to cover the following expenses incurred by the employee during remote work or reimburse the employee for such expenses:

- cost of procuring employee's work tools and equipment;
- cost of business related telephone calls, tele-conferencing, online meetings;
- cost of maintenance and repair to employer owned equipment; and
- cost of employee's business related trips.

The employer will not bear the responsibility for the following expenses incurred by the employee unless previously agreed:

- maintenance or repair of employee's privately owned equipment used for remote work;
- utility costs associated with the use of the employee's home for remote work;
- expenses associated with commuting to the office.

A pertinent issue to be dealt with is the ownership of the equipment, work tools and facilities provided by the employer to the employee for remote work. All equipment and materials provided by the employer remain employer property unless otherwise agreed.

MAINTAINING A SAFE REMOTE WORK ENVIRONMENT

The employee has a responsibility and must commit to designate a workspace within the home or remote work location for placement and installation of the employer's equipment to be used while working remotely. The employee is expected to maintain this workspace safe and ergonomically sound free from hazards and other dangers to the employee and equipment.

The employee has an obligation to keep the equipment, work tools and facilities provided by the employer safe, avoid any misuse and return them to the employer upon the termination of the contract of employment. Employee should give an undertaking to allow the employer to make on-site visits (with advance notice) to the remote work location to maintain, repair, inspect, or retrieve company-owned equipment, software, data or supplies.

⁵ A typical employment contract will contain a time and effort clause that read as follows: "The Employee shall during the period of employment with the Company, devote his full time, energy and best efforts exclusively to the business and affairs of the Company and not engage directly or indirectly in any other business, investment, or activity that may interfere with the performance of his duties."

In the event that legal action is required to regain possession of company-owned equipment, software, or supplies, employee should undertake to pay all costs incurred by employer, including attorney's fees, should employer prevail.

Employee should undertake to report work-related injuries that occur at the remote work location to the employer at the earliest opportunity and to hold the employer harmless for injury to others.

The employee also has an obligation and should undertake not to use employer-owned equipment and materials, or allow others to use such equipment for purposes other than the employer's business.

INFORMATION SECURITY

Employees must keep employer owned equipment (official laptops, computers, phones, tablets, etc.) password protected, follow all data encryption, protection standards and settings, refrain from downloading suspicious, unauthorized or illegal software.

The employer can put in place data security policy and procedures which employee is obliged to observe while working from an alternate work location. Such policy or procedure may require the employees to ensure the following:

- protection of office data on disk, in hardcopy, and on portable devices from theft, loss, or unauthorized access;
- approved firewalls and anti-virus software are on all official laptops, computers, phones, tablets, etc.;
- flash drives or other portable drives are scanned for viruses before uploading or downloading data from official laptops, computers, phones, tablets, etc.;
- sensitive information in hardcopy form is returned to the office or shredded;
- all work on official laptops, computers, phones, tablets, etc., is backed up according to office procedures;
- office network is accessed from the remote worksite or other locations only after prior approval and for approved purposes.

CONCLUSION

Prior to the pandemic, the notion of remote work in Nigeria was almost unheard of as employers worried about its impact on productivity and corporate culture. However, with the advent of COVID-19, millions of employees who could work remotely were sent home, armed with laptops and other digital technologies, to continue their work. It is now the trend for employers to adopt a "blended" working environment where employees juggle between working from a remote location and working from the office when necessary. The old form of employment contract is incompatible with remote work and unsuitable to deal with the various issues that will arise from remote work. The employer has a responsibility to introduce appropriate remote work related policies, procedures, guidelines and workflow processes to regulate the employment relationship. This is the only way to make the contract of employment remote work compatible.