



Managing A Remote Workforce:

What if They Never Come Back?

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Seyfarth Shaw LLP

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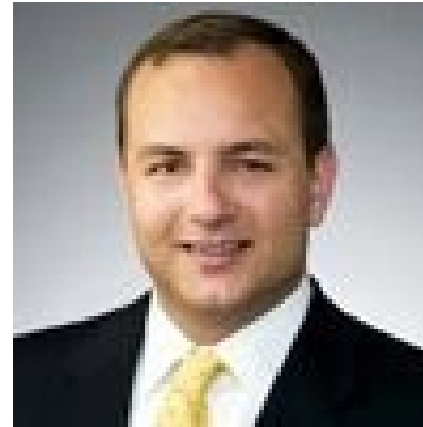
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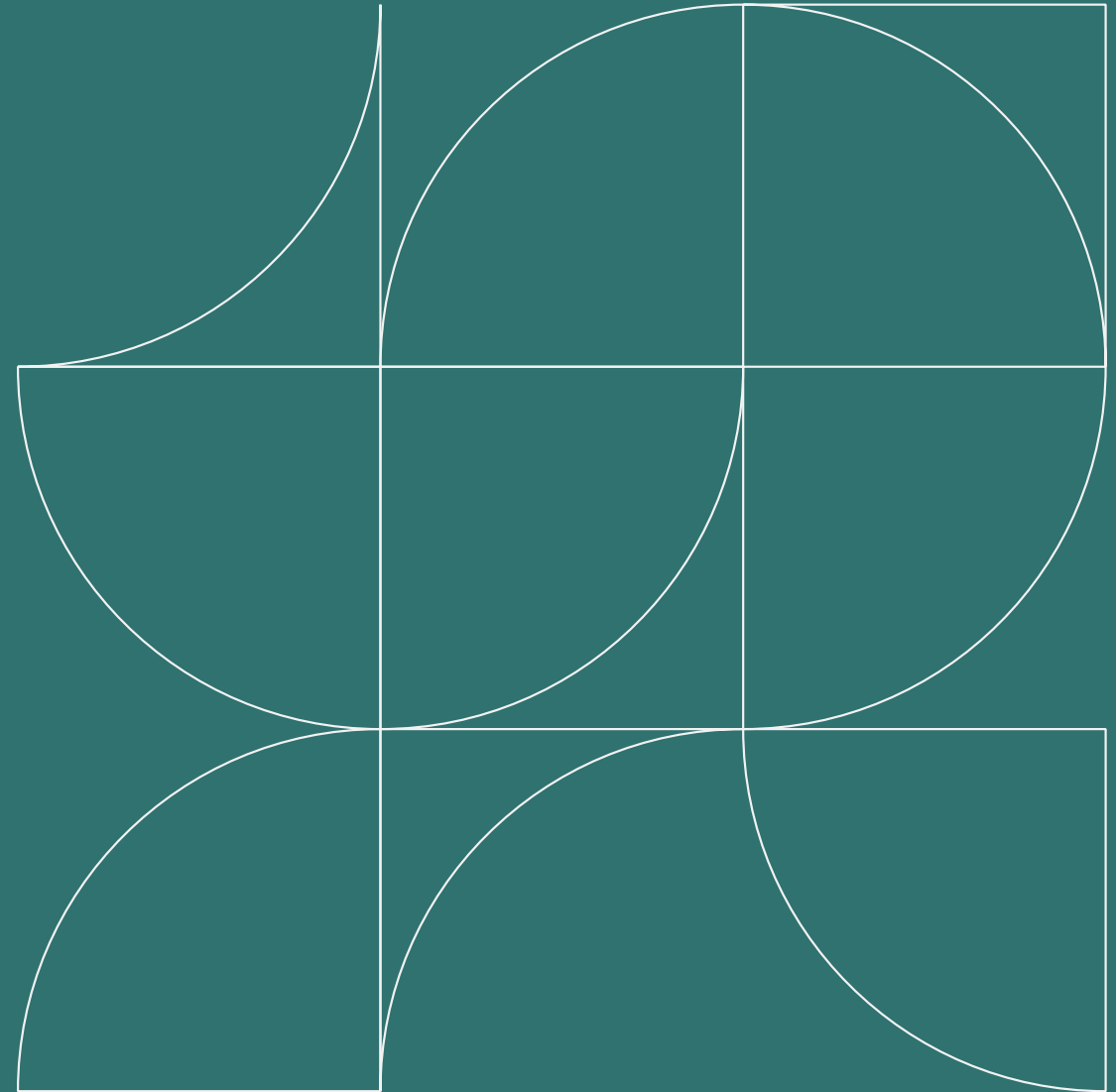
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Agenda



- 01** Temporary Remote Work Policies
- 02** Wage Hour And Expense Reimbursement Issues
- 03** Protection of Confidential Information And Data Security Issues
- 04** Workforce Management
- 05** Remote Work in Other Jurisdictions

Temporary Remote Work Policies



Temporary Remote Work Policies

- Consider creating a temporary remote work policy
 - Helpful to have the temporary rules in writing if you need to enforce them
- Determine what temporary remote work policy rules make sense for your business
 - Good time to evaluate what is working and what is not, and reset the rules and expectations
 - Consider your timeline for bringing employees back and your philosophy on bringing employees back to the workplace after restrictions are lifted
- Not one-size-fits-all
 - Different rules if the company is requiring remote work due to COVID-19 than if an employee is requesting it
 - Different rules if employee is requesting remote work for protected reasons
 - Determine what exceptions to make

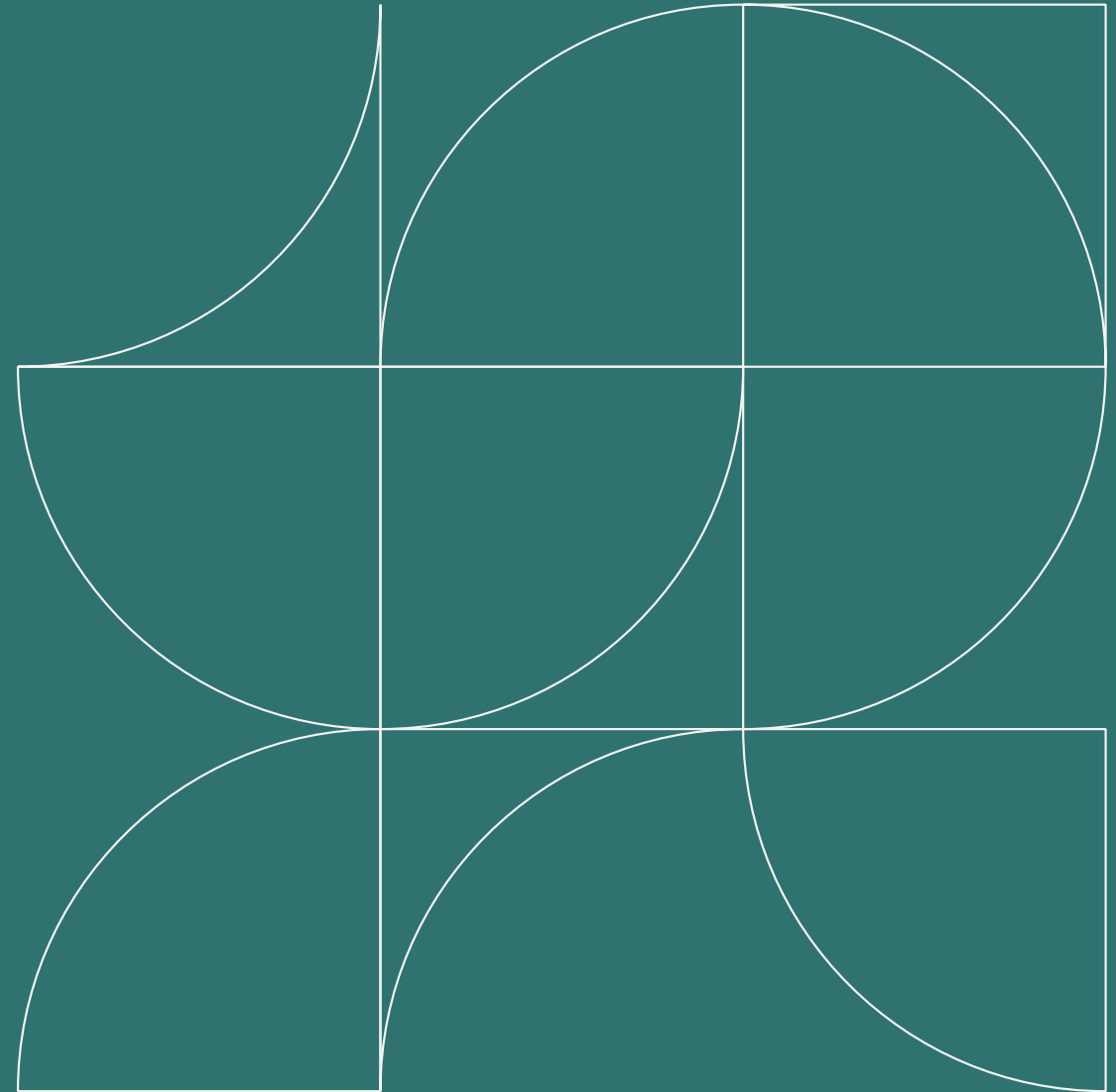
Temporary Remote Work Policy

- Many reasons to keep your temporary remote work policy separate from your regular employee handbook
 - Sets expectations that certain rules are temporary and will end
 - Challenges of disseminating and getting signed acknowledgments during COVID-19
- Set up a virtual bulletin board on your intranet
 - COVID policies, protocol, resources
 - Temporary remote work policy
 - Workplace postings
- Potential Contents of a Temporary Remote Work Policy
 - Working Hours/Availability and Methods of Communication

Planning for a Longer Term

- Good time to evaluate your philosophy and approach to remote work
 - What is your current philosophy around remote work?
 - What will your approach be after COVID-19?
 - Maybe remote work isn't all bad? Cost savings, employee morale and recruiting tool, etc.
 - What are your competitors doing?
- Will you continue to allow remote work after COVID?
 - If so, for what positions? What exceptions will apply (e.g., poor performers, peak periods, requests for protected reasons, etc.)
 - If so, what will the rules be long term? Will you revert back to your pre-COVID policies or make long term changes?

Wage Hour And Expense Reimbursement Issues



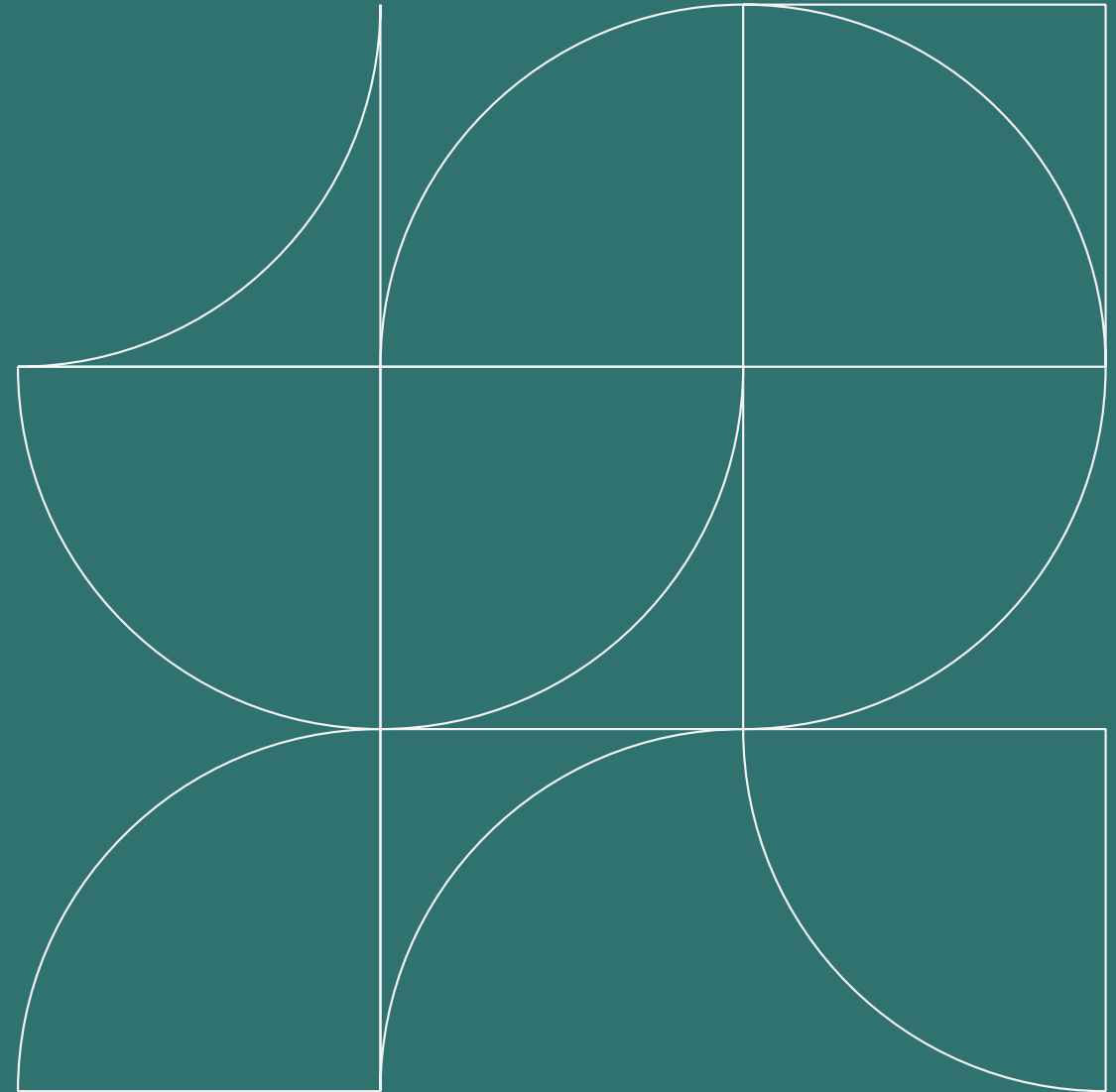
Wage Hour Issues

- Timekeeping and meal/rest period compliance
 - Non-exempt employees need to clock in/out just as they would if they were in the office
 - Process to review and approve time
 - Managing “off-the-clock” work risk
- Meal and rest period compliance – same requirements as if they were in the office
- Use of attestations – non-exempt employees certify that they recorded their hours accurately and got compliant meal/rest breaks
- Evaluate impact of changes to duties, schedules, and pay on exempt classifications – may need to temporarily reclassify to non-exempt
- Split shift, on call, reporting time pay, etc.

Expense Reimbursements

- Many states require reimbursement of business expenses – know the requirements
- What expenses to reimburse
 - One time home office set up expenses v. ongoing expenses
 - Cell phone and internet expenses
 - Home office furniture (and what to do with that furniture after COVID)
 - Office supplies
 - Electric bill, rent
- Whether to permit employees to take office furniture and supplies home (desk chairs, monitors, paper, etc.)
 - Do you have records of what was taken? Will you want it back?
- Flat sum reimbursement v. actual expenses

Protection of Confidential Information and Data Security Issues



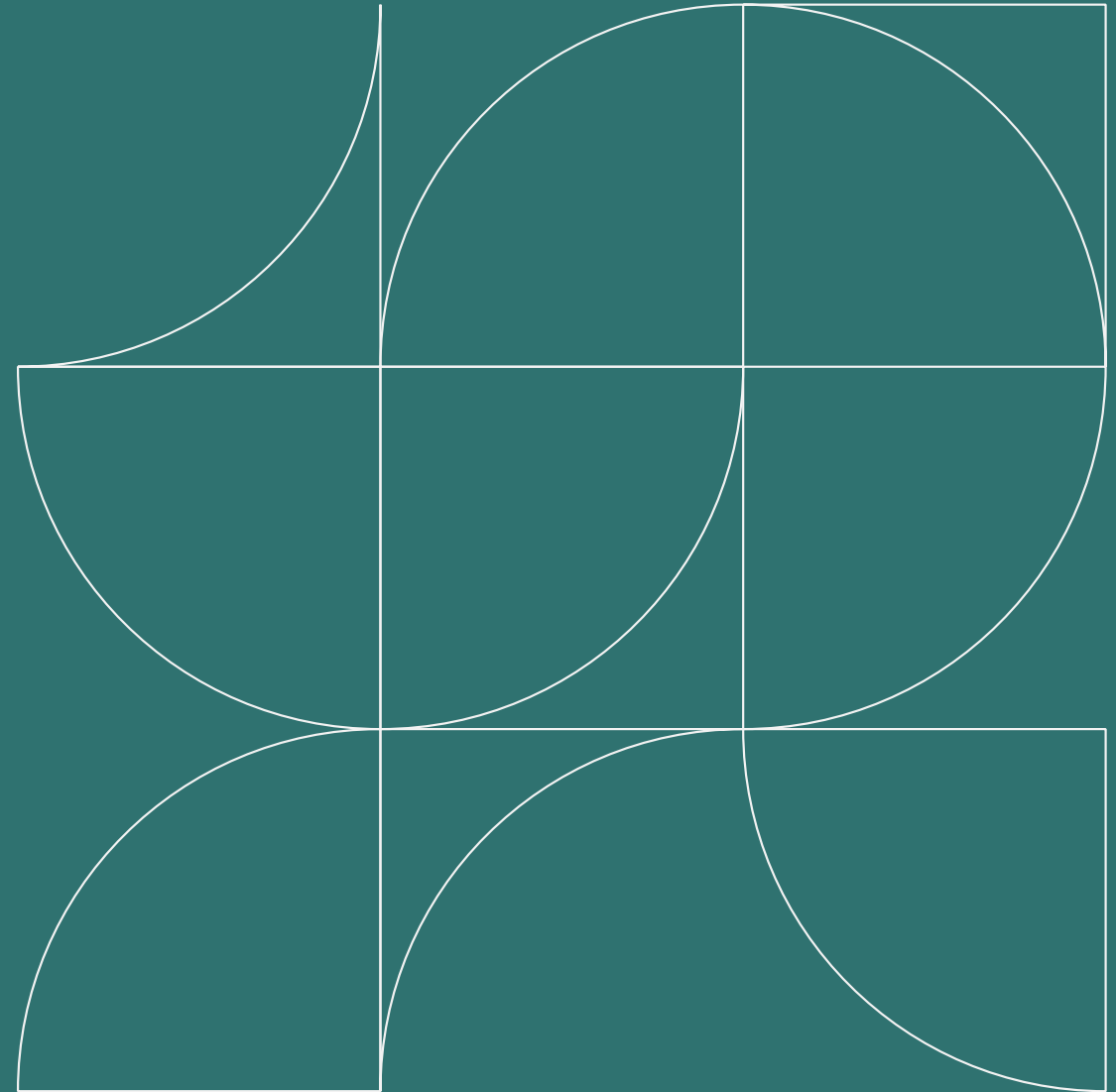
Protection of Confidential Information / Data Security

- Consider implementing clear rules around the use of personal devices and email accounts, protection of confidential information/files, etc.
- Where are your confidential files and data?
 - Employees taking confidential files home
 - Employees working on multiple computers and devices
 - Employees emailing documents to their personal emails so they can work on their home devices
- Protection of confidential information and files when stored on personal devices or taken home
 - May lose trade secret and other protections if fail to take adequate steps to protect it
 - Consider legal obligations around confidentiality
 - Challenges if employees are working remotely from other jurisdictions – potential for the law where the employees are working to apply, which may be less favorable

Protection of Confidential Information / Data Security

- Data security issues – evaluate need for additional security and insurance
- Litigation hold issues
- Challenges getting your confidential information and files back at termination

Workforce Management



Performance Management

- Important to set clear expectations
 - Availability expectations
 - Performance expectations
 - All of the normal workplace policies still apply – harassment, professional conduct, etc.
- Train managers on how to manage remote workers
 - Regular check-ins, document expectations
 - Proactively document and manage problems
 - Pre-COVID standards and management strategies may need to be adjusted
 - Legal obligations to make exceptions
 - Need for flexibility and creativity during COVID-19
- Performance reviews and salary increases

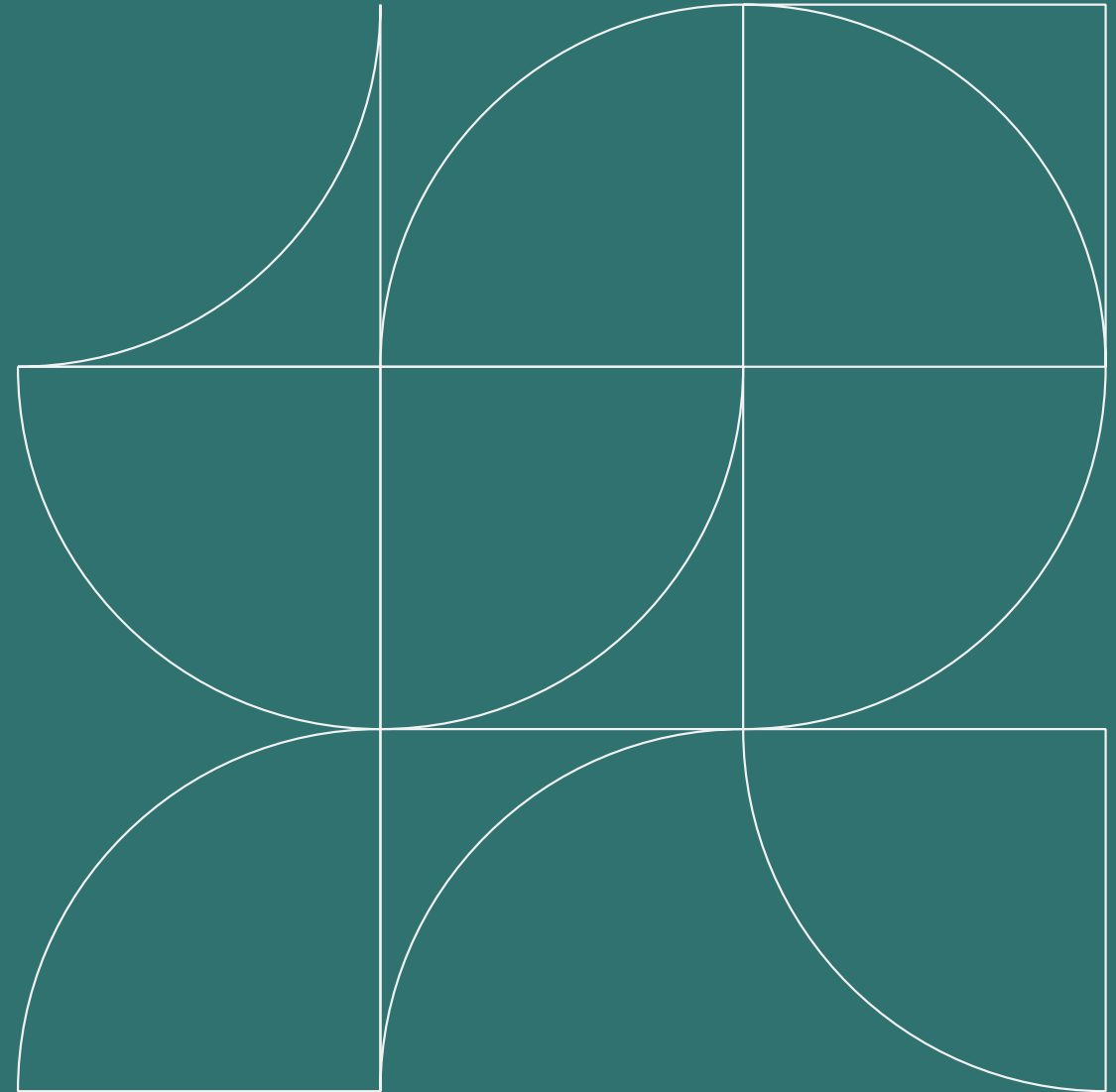
Handling Labor and Employment Issues

- Impact on workplace investigations (e.g., harassment complaints, safety complaints, etc.)
 - Important to continue to do investigations (can do Zoom interviews where body language is important)
- Logistics of training a remote work force (harassment training, etc.)
- Health and safety rules and workers comp
- Reasonable accommodation rules still apply for remote workers

Thinking Longer-Term

- Impact on recruiting
- Potential to use long-term remote work as a tool to expand your potential applicant pool when hiring and consider candidates in other jurisdictions
- Some companies are resetting salaries based on remote work location
 - Setting salaries for new hires based on remote work location?
 - Reducing salaries for existing employees based on the local market rate if employees choose to relocate? If so, for prospective requests only and grandfather in employees who are currently approved for a remote work location?
 - Impact on morale, impact on employees (employees may have bought houses, etc. based on salary expectations)
 - Potential impact on pay equity
- Impact on new hires

Remote Work in Other Jurisdictions



Remote Work Location

- Many companies were flexible with remote work locations during the rapid shift to remote work
- We thought this was temporary and relaxed the policies around remote work locations
- Many employees have relocated, either temporarily or permanently, during COVID-19 for a variety of reasons
- Many companies do not know where employees are working remotely with no end in sight to remote work

Remote Work Location

- Why does location matter?
 - Tax issues
 - Corporate/business
 - The local employment laws where the employee is working remotely may apply
 - Particularly problematic if employees are working from other countries
 - Venue and Jurisdiction Issues
 - Local COVID rules
 - Health and safety and workers compensation
 - Industry restrictions on out-of-state work (e.g., lawyers, financial industry, etc.)
 - Makes layoffs/terminations more risky
 - Potential impact on pay equity if using geography to justify pay differentials
 - Potential for discrimination claims if selectively allowing it

Remote Work Location

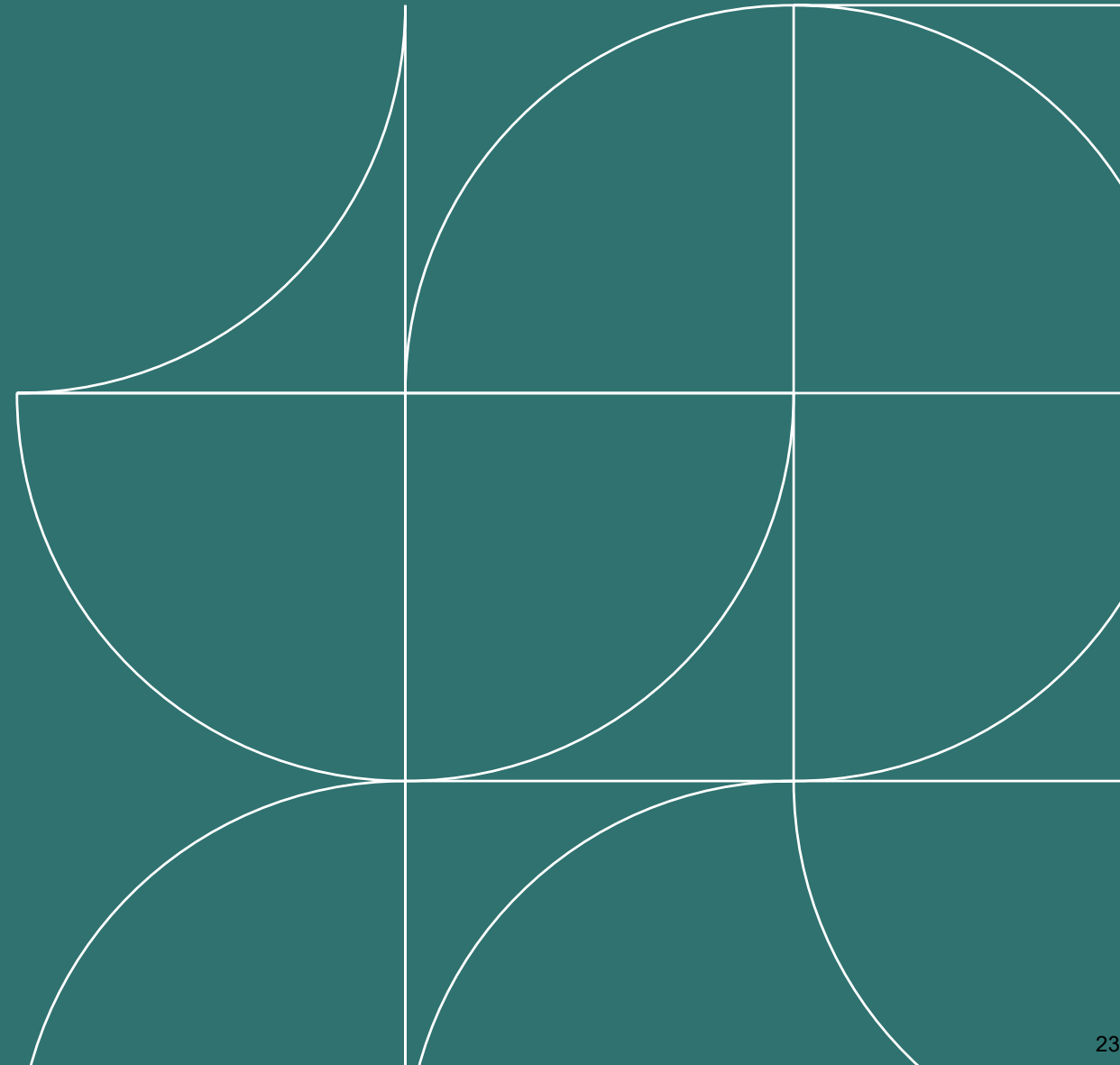
- Solutions?
 - Determine where your employees are working
 - Surveys
 - Requests to update home contact information
 - Requirement to report different location
 - Log-in challenges
 - Determine the legal risks and business considerations and set a policy around remote work locations (e.g., you must notify the company and obtain pre-approval if want to work in another location for more than __ days)
 - List of pre-approved locations (e.g., places you already have an office)?
 - Set deadline to return?
 - What will you do if an employee refuses to return? Grandfather in people who are already working remotely?



Questions?

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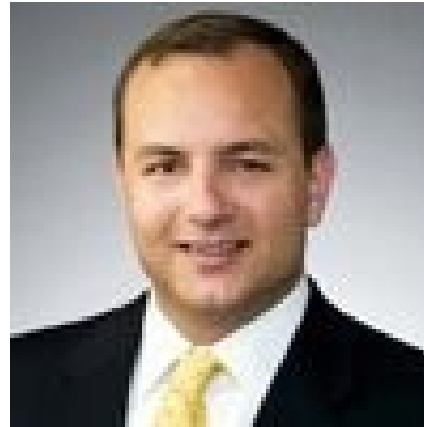
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Thank You