

## Workplace Discrimination and Harassment Outside the Office

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The breakdown of a concrete workplace where worker interaction was somewhat limited to the office during work hours has led to increased flexibility for workers and employers. In many cases, this flexibility has allowed companies greater access to skilled workers, led to a more productive and engaged workforce, and reduced overhead. However, the blurring of the lines between work and home has created additional compliance burdens, especially when communicating and enforcing harassment and discrimination policies.

Difficulty ensuring that employees are compliant with workplace policies promoting healthy work environments did not start with the increase in remote work, but they have certainly increased since the world went remote a little over a year ago. Before the COVID-19 pandemic, employers were navigating the difficulties associated with employees' behavior on social media. Many companies found themselves balancing their desire not to control or police employee behavior outside of work with the impact their outside behavior had on the company culture and exposure. For example, if a group of employees have connected on social media and an employee posts something discriminatory in nature and her colleagues see that post and bring it to the attention of the company, the company may face liability even though the post was made outside of work hours on an employee's personal page.

Now, with many employees working remotely, the ability for employers to prevent and address discriminatory and harassing behavior has become even more complex, and the impacts of such behavior have been more severe. A 2020 Pew Research Center study found that 41% of Americans have personally experienced some form of online harassment. Virtual harassment can take many forms, including sexually explicit jokes, use of derogatory terms through electronic communications, inappropriate use of memes and emojis, insistence on video calls after work hours, and a failure to maintain dress code during video conferences and calls. With fewer natural touchpoints between management and their subordinates, workplace harassment is more likely to go unreported. With this conduct taking place virtually within employees' homes, employees are more likely to suffer more severe effects.

*So, what are employers to do?* Employers should invest in training and adapt their policies to fit new and evolving office dynamics. Companies can mitigate many of the issues outlined above through clear expectations of employee conduct during work hours and outside work hours, a practical reporting structure that meets the needs of a remote environment, and regular check-ins with remote employees. More than ever, clear and consistent communication with employees is essential to a compliant and healthy work environment.

**Questions about this or any other legal matter, please contact Sarah at [Sarah.Sawyer@offitkurman.com](mailto:Sarah.Sawyer@offitkurman.com).**