

Making Remote Work Work: Policies & Pitfalls

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Community Action Program Legal Services, Inc.

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Reality Reset: Employer Operations In a Pandemic and Beyond

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Agenda

- Why Have a Remote Work Policy?
- How to Use CAPLAW's Sample Policy
- What Does the Sample Policy Cover?
- Questions?

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Why Have a Remote Work Policy?

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Why have a remote work policy?

- Sets employee expectations
- Facilitates compliance with employment/tax laws
 - Ex. Consistent timekeeping under FLSA
- Streamlines and simplifies HR operations
- Protects organizational interests

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Why have a remote work policy?

NSCA Hypothetical



North South Community Action, Inc. (NSCA) tells all staff to work from home due to the danger posed by COVID-19. The agency does not have a remote work policy in place and does not provide any equipment to the staff.



What are NSCA's obligations to its employees? Recourse for the organization or employees if something goes wrong?

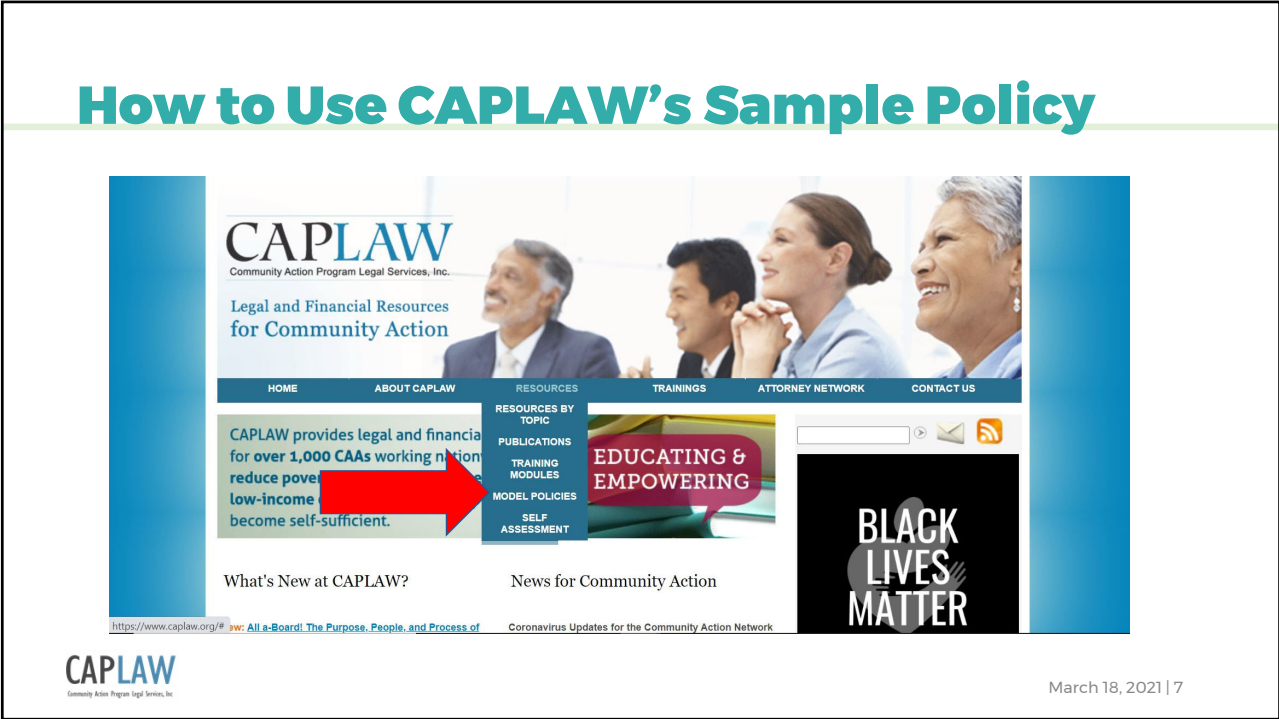
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How to Use CAPLAW's Sample Policy

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How to Use CAPLAW's Sample Policy

- Includes sample language & annotations
- Annotations highlighted in blue
- Text in [brackets]/yellow = info specific to your CAA

CAA's Policies Remain in Effect


Employees permitted to work remotely must continue to abide by CAA's Employee Handbook and all other applicable employee policies, including [Other Policy Name] policies. Failure to follow CAA policies may result in termination of the remote work arrangement and discipline, up to and including termination of employment.

Employees are prohibited from engaging in work for third parties and all other unauthorized work during their remote work hours.

Remote Workplace Arrangement

¹ Remote work arrangements that involve employees working from a state other than the one where their employer is physically located may affect how state and federal tax laws apply to both the employee and the employer. CAAs considering such an arrangement are advised to consult with local tax professionals to fully understand the tax implications – particularly those concerning payroll and income tax laws – before committing to the arrangement.

² This provision may already be addressed in your organization's existing employee handbook/personnel policy. CAAs should confirm that this provision is consistent with other employee policies addressing outside employment and/or include language referencing those policies, if they exist.



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What Does the Sample Policy Cover?

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Three Main “Sections”

- Introduction +
Prearrangement Process
- Remote Work Arrangement
- Administration/Miscellaneous



SAMPLE REMOTE WORK POLICY

This sample remote work policy was developed by Community Action Program Legal Services, Inc. (“CAPLAW”) and has not been approved by any outside authority, such as the U.S. Department of Health and Human Services. When using this sample to develop, review or update a remote work policy, CAPLAW strongly recommends you consult with counsel familiar with your CAA’s operations and the laws of your state and locality.

This policy was developed under the CARES Act Community Services Block Grant (CSBG) Supplemental Funding supporting Community Action Program Legal Services, Inc.’s (CAPLAW) Legal Training and Technical Assistance (T/TA) Center. It was created by CAPLAW in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ET0467-03-02. Any opinions, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.

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Introduction + Prearrangement Process

- Defines policy
- Sets eligibility
- Establishes process for implementing arrangement

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Remote Work Arrangement

- Bulk of the policy – and this presentation
- Establishes employer and employee:
 - Conditions
 - Duties
 - Obligations
 - Expectations
- Highly variable/situational

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Administration + Miscellaneous

- Designates responsibility for administering policy
- Clarifies how the policy fits in to CAA's policy framework
 - What changes, and what doesn't change?
- Anything else specific to your CAA?

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Introduction + Prearrangement Process

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Introduction + Prearrangement Process

- Introduction
 - Explains what the policy is for – as well as what it is not for
 - Does NOT cover requests for reasonable accommodation
- Eligibility for Remote Work Arrangement
 - When is an employee eligible for remote work?
 - Largely depends on organizational discretion
 - Key consideration: can employee's essential job functions be performed remotely with legal risk to organization?

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Introduction + Prearrangement Process

- Eligibility for Remote Work Arrangement
 - Other considerations:
 - Employee Suitability
 - Job Responsibilities
 - Equipment Needs, Workplace Design, Scheduling Issues
 - Tax and other Legal Implications
 - See previous webinar for more information
 - Again, eligibility ultimately at employer's discretion*
 - *Barring unlawful discrimination/against, excluding legally-required accommodation



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Introduction + Prearrangement Process

- May Approve Requests for a Trial Period
 - Process is largely up to the employer
- Policies Remain In Effect
 - Clarifies that all other CAA employment policies that may normally apply continue to apply
 - Ex. Employee Handbook

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Remote Work Arrangement

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Remote Work Arrangement

- Availability & Communications
 - Confirm expectations for schedule and availability
- Timekeeping
 - Keep accurate record of exempt and non-exempt employees
 - **Non-exempt:** not working off the clock/padding hours
 - **Exempt:** clarity, time and effort reporting, record retention
- Workspace



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Remote Work Arrangement

- Who is responsible for equipment and technology?

Reasons to Provide

Greater control

Data security

Productivity

Reasons to Not Provide

Cost

Tax implications

Logistics

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Remote Work Arrangement

Equipment and Technology: [The Employee shall provide all furniture and equipment necessary for their remote work arrangement⁷. CAA is not responsible for any damage to Employee's furniture or equipment suffered in connection with Employee's remote work arrangement.]

[CAA shall loan the following equipment, as needed, to employees approved for remote work arrangements:

- [Computer/laptop.]

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Remote Work Arrangement

⁷ A minority of states require employers to provide or reimburse employees for all equipment and supplies necessary to perform their job duties. Where such requirements do not apply, the decision of whether to provide equipment and technology to a remote employee, or to reimburse the employee for purchasing work-related equipment and technology, is entirely within the employer's discretion. However, relying on employees to supply their own laptops and other technology can introduce security-related inconsistencies and liabilities with regard to employers' sensitive data and information. As such, many employers may opt to provide employees with laptops and other equipment in the interest of making sure such information is retained and transmitted in a secure fashion. At the same time, while giving remote employees the equipment necessary to perform their essential job functions can promote informational security and have a positive effect on the employees' remote productivity, doing so may have tax implications for both the employer and employee. For instance, employer-provided equipment may qualify as taxable income to the employee, depending on whether the equipment was provided for "non-compensatory business reasons"; that is, there must be a substantial reason relating to the CAA's business for providing the employee with the equipment. CAAs considering providing equipment or reimbursing employees for equipment purchases should consult a local attorney and/or tax professional to fully understand the federal and state tax implications and potential security concerns of doing so.

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Remote Work Arrangement

NSCA Hypothetical

- Harry the HR Director has been working for NSCA remotely during the pandemic and storing sensitive organization documents and information on their personal computer.
- In July 2020, Harry downloads a file from a scam email, giving a hacker remote access to the computer.
 - Could NSCA have prevented this via a remote work policy?



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Remote Work Arrangement

NSCA Hypothetical

- Anti-virus software
- Shared drive/VPN access
- Limitation on personal internet activity
- Still may not have been an option
 - Can the organization afford it? Are the logistics feasible?

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Remote Work Arrangement

- Other expenses
 - Again, situational
 - Federal and State Law Considerations
 - Ex., federal FLSA prohibits employers from requiring employees to pay for business expenses if doing so causes employee's wage rate to fall below minimum wage

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Remote Work Arrangement

Expenses: [CAA will reimburse the following costs incurred in connection with performing duties for CAA at the written request of the Employee and after production of documentation verifying such costs:

- [Cellphone/long distance telephone charges.]
- [Internet access.]
- [Electric bills.]
- [Other Expenses.]

CAA will not reimburse any additional expenses without advance [notice/approval].]

[CAA will not be responsible for any of the following costs:

- [Cellphone/long distance telephone charges.]
- [Internet access.]
- [Electric bills.]
- [OTHER EXPENSES.]

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Remote Work Arrangement

- Expenses – personal device use
 - Some states require reimbursement of business expenses
 - In states that do not, up to the discretion of the employer
 - FLSA sets the floor, though
 - **Option:** consider reimbursement or stipend for use of personal devices for business purposes

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Remote Work Arrangement

NSCA Hypothetical

- During the pandemic, NSCA's Head Start teachers developed an online curriculum for their students in lieu of in-classroom learning and hosted via third-party social media platforms.
- In October 2020, the teachers demand reimbursement for their use of personal property and social media accounts.
 - How could a remote work policy address this situation?

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Remote Work Arrangement

NSCA Hypothetical

- Probably not obligated to reimburse
 - Keeping FLSA, state law in mind
- **Morale Consideration:** *Just because we don't have to doesn't mean we shouldn't do it . . .*
- Other potential issues?

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Remote Work Arrangement

- Security
 - Protect information and property
 - Existing policies likely applicable, helpful
- **NSCA Hypo:** Harry the HR Director
 - If Harry still uses their personal computer (cost), NSCA should make sure security procedures are clear and understood

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Remote Work Arrangement

- Injuries and Worker's Compensation
 - For more context, see prior webinar's discussion of OSHA
 - **Key takeaways:** define and document work activity and workspaces
 - **Worker's Comp:** talk to insurance carrier for clarity

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Remote Work Arrangement

NSCA Hypothetical

- Amy, an Administrative Assistant with NSCA, is working from their home office, again due to the pandemic.
- In January 2021, Amy trips over an extension cord in the hallway outside their home office running to answer the work phone set up in the office, breaking their hip.
 - To what extent is NSCA responsible for Amy's hip injury?



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Remote Work Arrangement

NSCA Hypothetical

- Define work activities and workspace
- Ensure policies includes necessary updates
- Work with WC carrier
- Review interaction between WC and other leave policies

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Remote Work Arrangement

- Employee Tax Implications
 - ***Employee's responsibility to understand tax implications of remote work arrangement***
 - Examples of Employee Tax Considerations:
 - Employer-Provided Equipment = Taxable Income?
 - Stipends/Reimbursement = Taxable Income?

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Administration + Miscellaneous

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Administration + Miscellaneous

- Administration
 - Establishes facilitation, oversight and enforcement
- Collective Bargaining Agreement (CBA)
 - Policy does not supersede CBA w/ unionized workforce
- Employee Rights Disclaimer
 - Policy does not preclude exercise of employee rights under NLRA
- Additional Terms

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Questions?

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