

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



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Summer 2008

Off The Road Again: Flex-Scheduling and Telecommuting

More than the Presidential election, the Beijing Olympics, or even the war in Iraq, the dramatic rise in gasoline prices might be what Americans will remember most acutely about the Summer of 2008. Higher transportation costs have hit not only employers' bottom lines, but also their HR departments, as companies have looked for ways to help their employees—particularly those earning lower wages—cope with more expensive commuting. Flexible schedules and telecommuting have been the chief tools.

Consider these TIPs regarding flexible work schedules and telecommuting:

- Non-exempt employees are entitled to overtime pay as soon as they exceed forty hours in a workweek, not when they exceed eight hours in a day. Converting five eight-hour days into four ten-hour days per week should not affect overtime pay.
- Tracking the time worked by a telecommuting employee poses challenges. To prevent runaway overtime, have non-exempt employees sign written instructions that they will not work more than a certain number of hours away from the worksite. Require them to turn in daily reports of hours worked.
- Once an employer has altered its rules on attendance at the office or worksite, it will be more difficult to deny that same flexibility to a disabled employee seeking accommodation or to an employee requesting a modified schedule for intermittent leave under the FMLA.
- Employers need not offer flexible work schedules to all employees. The law allows excluding those whose duties are not conducive to off-site work. Remember, though, offering benefits (perceived or real) to some employees but not others can cause discontent and feelings of discrimination.
- Injuries while working from home may be compensable under workers' compensation laws, despite an employer's lack of control over the work space and the related safety risks. Discuss coverage issues with your insurer to consider how to minimize exposure.

TIP

Flexible scheduling and increased telecommuting can present unanticipated HR issues that are difficult to manage. Consider whether such changes in your workplace create more problems than they solve.



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The firm restricts its practice in the labor and employment area to the representation of management.

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