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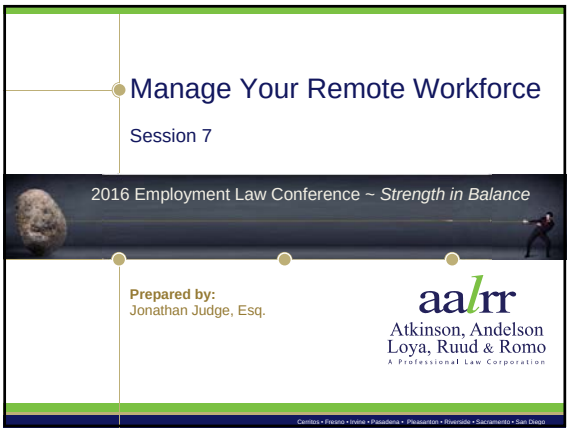

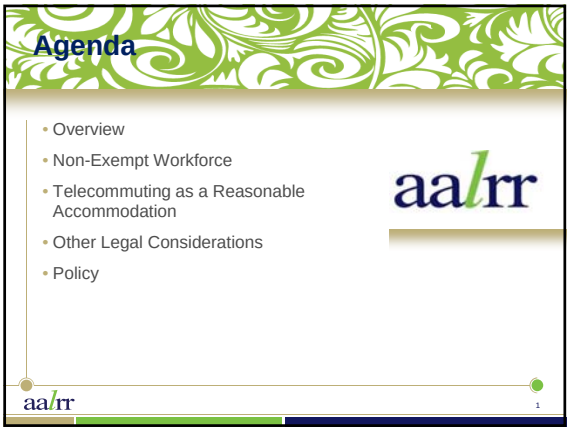

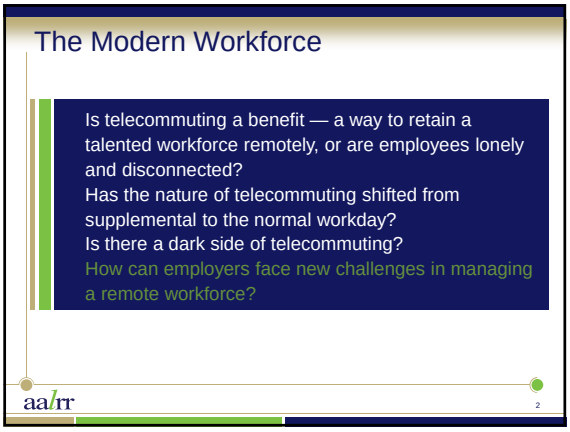

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Permitting Employees to Work Remotely

- Non-exempt employee considerations
- Exempt employee considerations
- Measuring performance
  - Establish clear and measurable performance standards
  - Privilege
  - Disciplinary action

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Telecommuting as a Reasonable Accommodation

- *E.E.O.C. v. Ford Motor Co.* (6th Cir. 2015) 782 F.3d 753
  - Court held that "regular and predictable on-site attendance [was] an essential function"
- *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal. App 4th 215
  - Entitled to accommodation, but not necessarily their choice
- *Kamali v. California Department of Transportation (March 17, 2015 unpublished)*
  - Failure to engage in the interactive process

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Where telecommuting is suggested as a reasonable accommodation, an employer should consider the employee's request as an alternative to a leave of absence

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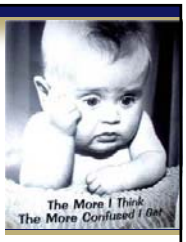
Other Legal Considerations

- What to consider when working with telecommuting employees



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Checklist

OSHA: Federal vs. state OSHA when administering home-based worksites

(OSHA Directive No. CPL-2-0.125)
(8 CA Code of Regs., ©14300.30(b)(3))

Workers' Compensation: Remote workforce not shielded from coverage

(Issue: has an injury occurred within the course & scope of employment)

Information Security: Protection of confidential, proprietary & other sensitive information

(Issue: expectation of privacy)

Liability Insurance: Liability for coverage suffered at a remote workforce by visitors, customers, and/or the employee's family members (homeowner's or renter's liability coverage for work-related accidents)

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Checklist *continued*

- Taxes
  - Adverse income/business tax consequences
- FMLA/CFRA
  - Acts specifically address telecommuting
- Privacy Rights
  - Off-duty vs. on-the-job considerations
- Out-of-State or Out-of-Area employees
  - Review applicable state/local laws

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Telecommuting Policy Implementation

1. Consider a Test Drive or Pilot Program First
2. Train Managers who will Supervise Telecommuters
3. Implement a Policy and Procedure
4. Monitor Performance

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Policy Considerations

- Supervision
- Safety
- Equipment
- Written Agreement
- Data Security
- Confidentiality
- Insurance

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Thank You

Question & Answer Session

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