



When Every Day is “Blursday” Wage & Hour Compliance for a Remote Workforce

October 26, 2021



Littler

ACC Association of
Corporate Counsel
— CHARLOTTE —

Speakers



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That was then...

If you can work from home, you should. Now.

Help slow the coronavirus down by making it harder to spread

Littler

Coronavirus (COVID-19) Update: Littler's Remote Work Plan

We are providing an important update for all Littler clients and friends of the firm in response to the COVID-19 situation. Littler has instituted a remote work plan for attorneys and employees for the United States, Canada and Mexico. We will continue to monitor the situation as we follow local, state, and federal guidance; and will keep you informed.

To ensure there is no business disruption, we have outfitted our professionals with appropriate remote technology support, consistent with our firm's privacy and security policies. We expect to remain fully operational and accessible for all client matters, and will continue

As coronavirus spreads in the US, employers gear up for massive work-from-home experiment

Experts share tips on how to stay afloat and operational amid an outbreak.



By Catherine Thorbecke

March 3, 2020, 5:03 AM • 11 min read



██████ tells staff to work at home due to coronavirus

11 March 2020



██████ Latest Tech Company to Push Remote Work Amid Coronavirus

Apple is among several tech companies to in recent days ask employees to work remotely as coronavirus cases continue to climb.



By Andrew Soergel, Senior Writer, Economics March 6, 2020, at 4:52 p.m.



B BUSINESS & ECONOMY

Remote work becoming the new normal

By Anne Wallace Allen

Mar 16 2020

Seventy-fifth Congress of the United States of America;
At the Third Session,

Begun and held at the City of Washington on Monday, the third
day of January, one thousand nine hundred and thirty-eight.

AN ACT

To provide for the establishment of fair labor standards in employ-
ments in and affecting interstate commerce, and for other
purposes.

Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled, That this Act may
be cited as the "Fair Labor Standards Act of 1938".



Topics We'll Cover Today



Hours Worked

Defining
Tracking
Managing



Expense Reimbursement



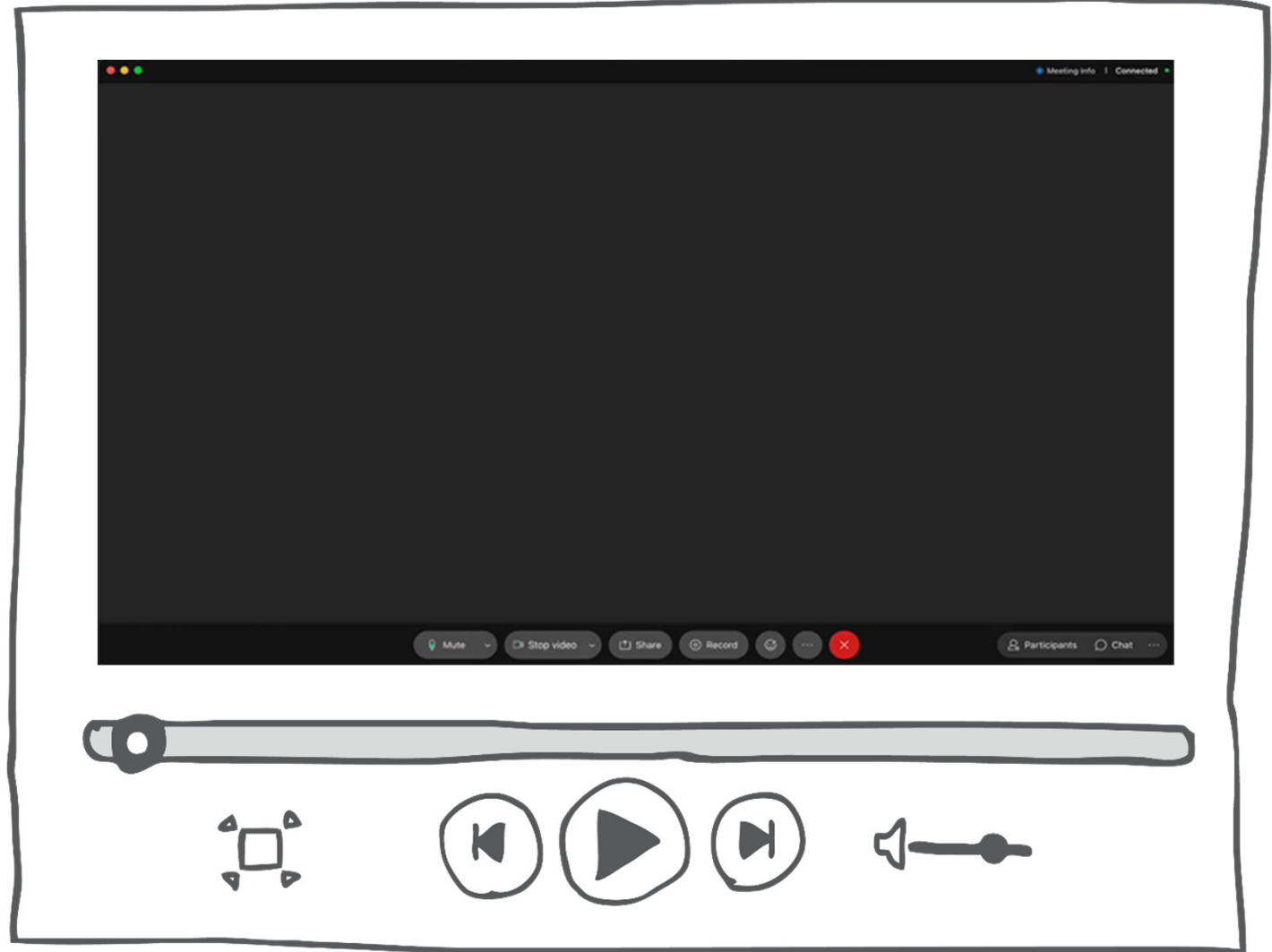
Preserving Exempt Status



Self-Help Remedies Involving Company Property



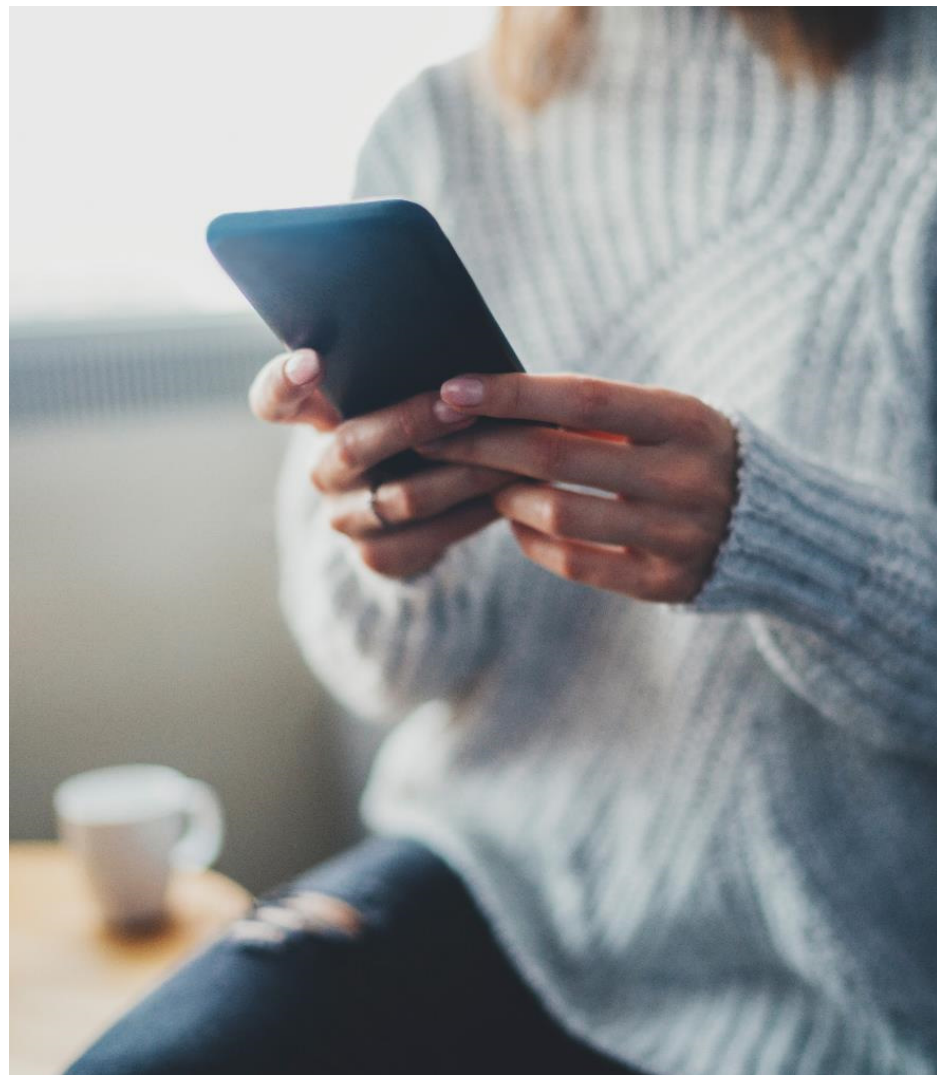
The “Next Normal”



ROUND 1!



I SPY
a wage and hour compliance risk!



I SPY

... a wage and hour compliance risk!

Telework Policy and Agreement

Non-exempt employees

- Hours Worked and Timekeeping Policy
- Specify what constitutes work
- Defined work schedule
- Prohibit work outside schedule



I SPY

... a wage and hour compliance risk!

Telework Policy and Agreement

Non-exempt employees

- Accurately report all hours worked
- Short interruptions = work
- Cannot aggregate short breaks



I SPY

... a wage and hour compliance risk!

Telework Policy and Agreement

Non-exempt employees

- Schedule options
 - Maintain regular schedule (8-12, 1-5)
 - Block schedule (7-8, 9-3, 10-11)
- Consider “core hours” (10-12 and 1-3)



I SPY

... a wage and hour compliance risk!

Telework Policy and Agreement

Non-exempt employees

- Avoid “Continuous Workday”
 - Work blocks \geq 1 hour
 - Blocks \geq 30 minutes apart
- Split Shift and Spread of Hours



I SPY

... a wage and hour compliance risk!

Telework Policy and Agreement

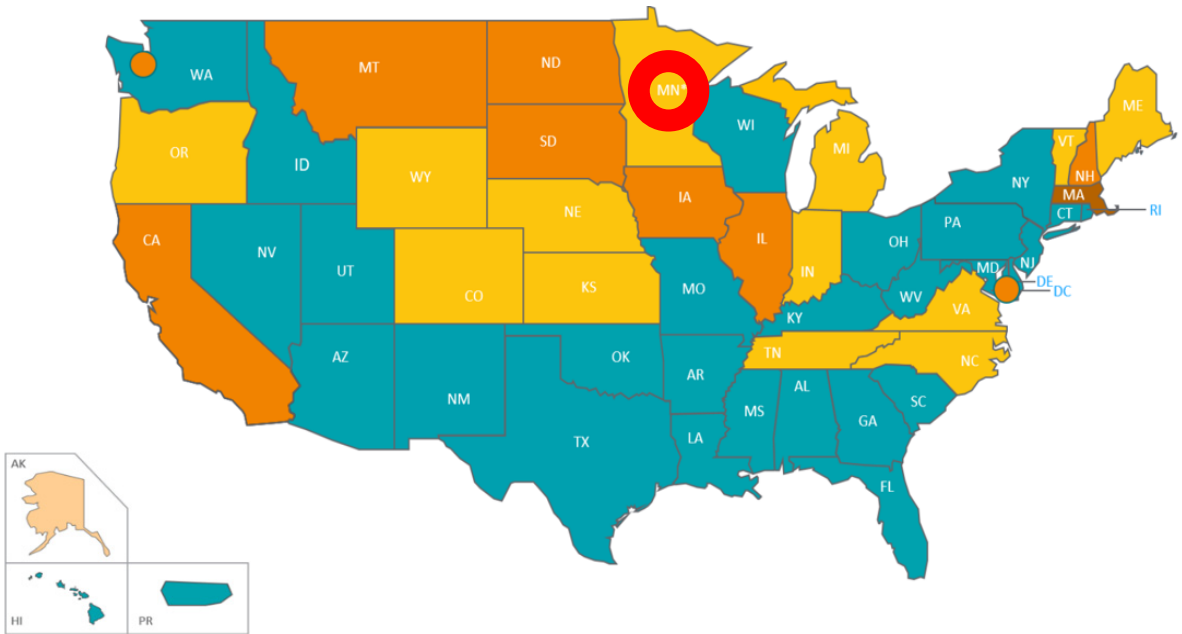
Non-exempt employees

- Prospective Changes
- One-Time Adjustments
- Timekeeping
- Defining “Work”
- State-Specific Issues
- Meal Periods and Rest Breaks

I SPY ... a wage and hour compliance risk!

Expense Reimbursement

Necessary
“Reasonable Percentage”
“Free and Clear”
Exempt Employees



REAL AD!

If you're a current or former employee of [redacted] and worked from home, you might be owed a substantial amount of money. California employers like [redacted] are required to pay almost all of your home office expenses, including computers, phones, peripherals, internet and phone service, office supplies, utilities, and maybe even part of your rent! You can recover up to 4 years of home office expenses, even if you no longer work at [redacted]. Click below to set up a FREE consultation with one California's leading employee-rights law firms. (Attorney Advertisement)

18 6. Further, Plaintiff and CSRs have incurred expenses as a result of working
19 from home during the Coronavirus Disease 2019 ("Covid-19") pandemic. Defendant has
20 failed to indemnify its employees for all such expenses incurred.

7 39. In performing their jobs for [redacted] CSRs have also incurred, and will
8 continue to incur, expenses such as cell phone and electricity costs. Plaintiff and some
9 members of the CA Class have also incurred expenses by way of purchasing a computer
10 which is the only means by which they are able work remotely and, thereby, retain their
11 jobs. Defendant has not indemnified its CSRs for any of the expenses incurred.

18 place state-wide, Plaintiff and th
19 for, and have personally paid for, among other things, home internet service, electricity, and the
20 purchase and maintenance of all hardware used for work-purposes, including laptops, keyboards,
21 mice, Bluetooth headsets, and cell phones, as well as to allocate home office space, in the
22 discharge of their job duties (the "home office expenses"). These expenses ranged, but typically
23 amounted from \$100 to \$250 per month aggrieved employee. Before Defendants retroactively
24 partially reimbursed Plaintiff and the aggrieved employees for expenses incurred numerous months
25 into the COVID-19 pa
26 of its aggrieved emplo
27 for their home office e

11 12. From at least March 15, 2020 and continuing into the present, during which time
12 various work from home orders were in effect in California¹, Plaintiff and the Aggrieved
13 Employees, at the direction of Defendants and/or with Defendants' knowledge and acquiescence,
14 have incurred home office expenses including, among other things, home internet expenses,
15 equipment expenses, electricity, and home office infrastructure expenses, in order to perform
16 necessary work-related duties. Plaintiff, who was employed by [redacted] was

1 13. During the COVID 19 stay at home orders in place during the PAGA Period,
2 Plaintiff and the aggrieved employees were thus expected by Defendants to pay for, and have
3 personally paid for, among other things, home internet service, electricity, an allocated portion of
4 their home office space, in the discharge of their job duties (the "home office expenses"). These
5 home office expenses were required and necessary for work to be performed as illustrated in

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BUSINESS • COMPANIES

Working From Home Is Driving Up Our Energy Costs. Should Employers Foot the Bill?

POWERING WORK FROM HOME

Steve Cicala

Working Paper 27937

<http://www.nber.org/papers/w27937>

NATIONAL BUREAU OF ECONOMIC RESEARCH

1050 Massachusetts Avenue

Cambridge, MA 02138

October 2020

Study says Californians spent \$176 more on electric bills last year

By ROB NIKOLEWSKI

JAN. 25, 2021 1:44 PM PT

With so many Americans working from home due to COVID-19 restrictions on businesses, their home electric usage has gone up — and so have their bills.

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BUSINESS

[redacted] to give up one-third of its office space in downtown Minneapolis

Major consolidation will move employees to other locations, remote work.

By Kavita Kumar Star Tribune | MARCH 12, 2021 — 5:07AM

Bloomberg

Markets

[redacted] Seeks to Reduce Office Space in Two Manhattan Towers

By Natalie Wong and Michelle F. Davis
March 2, 2021, 2:54 PM EST

News

[redacted] Terminates 490,000 SF Lease

Law Firms Seizing Office Opportunities, Subletting Space Amid COVID

Forget more hoteling and other drastic office-use changes for now, though

BY TOM ACITELLI MARCH 8, 2021 1:52 PM

REPRINTS

Business

[redacted] plans sale of unused eight-acre headquarters campus as the retailer embraces remote work

Company is abandoning its headquarters even before employees move in. It had planned to occupy the space starting this summer.

Who still needs the office? U.S. companies start cutting space

By David Randall

5 MIN READ



NEW YORK (Reuters) - Corporate America is downsizing its real estate footprint as companies allow more employees to work from home, a growing threat to the bottom line of owners of traditional office buildings and a sign that companies are looking for ways to cut costs as a result of the coronavirus pandemic.

Cases Allowing Employers to Offset an Employee's Savings Against the Employee's Unreimbursed Business Expenses:

-
-
-
-
-
-
-

Is it “Necessary”?

Expenses associated with telework are not “necessary” if:

- participation is **optional**; *and*
- employer makes workspace and necessary equipment available.

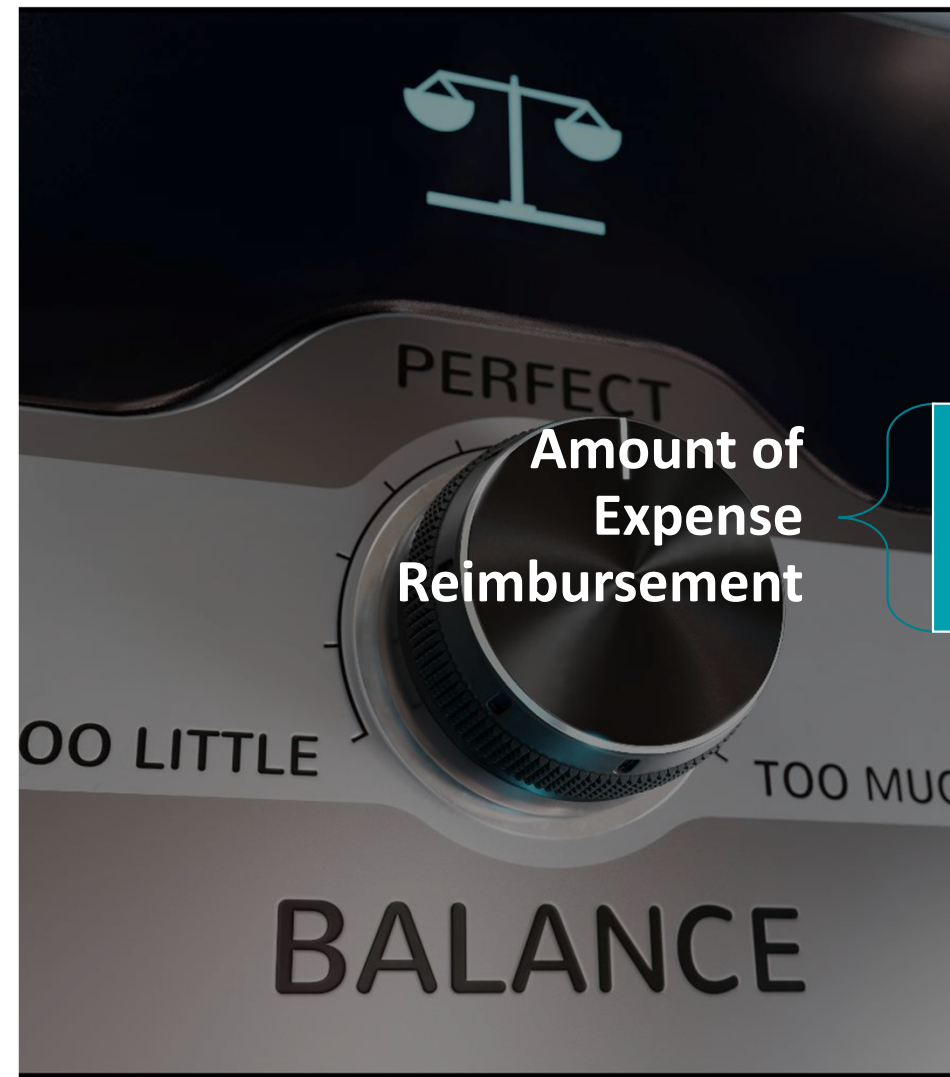


Telework Policy and Agreement

I SPY

... a wage and hour
compliance risk!

- **Make clear:** voluntary or involuntary
- Identify equipment and resources
- Prior approval for purchases
- Replenishing supplies
- Reasonable cost / percentage
- Right to appeal



I SPY

... a wage and hour compliance risk!

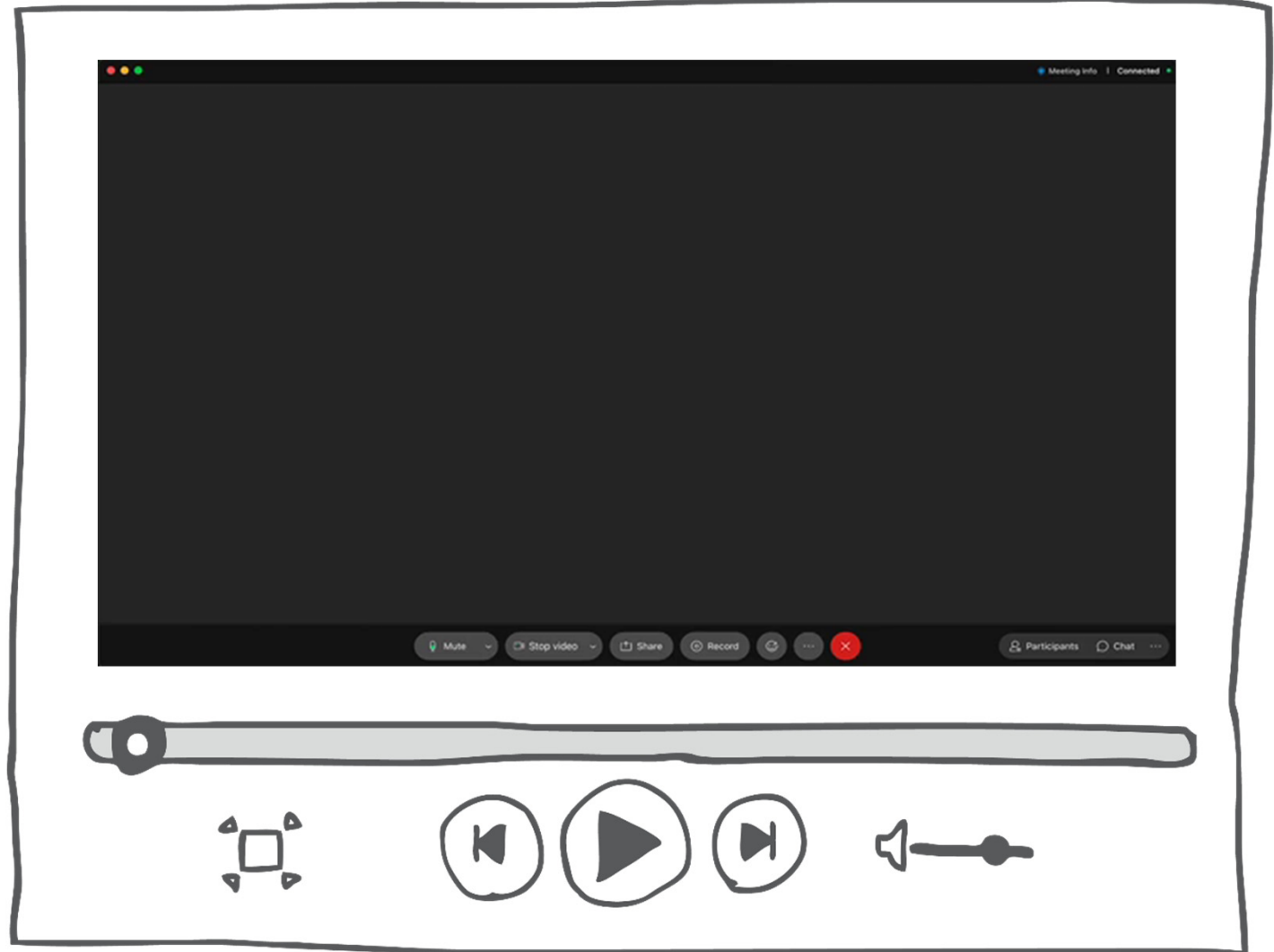
Follow the Goldilocks Rule...

**NOT
TOO
BIG!!!**

not too small

Just right!

One month
later...



ROUND 2!



I SPY
a wage and hour compliance risk!





I SPY... more risks!

How to value expenses

PAGA-only claims

Voluntary → Involuntary

State variations



I SPY... more risks!

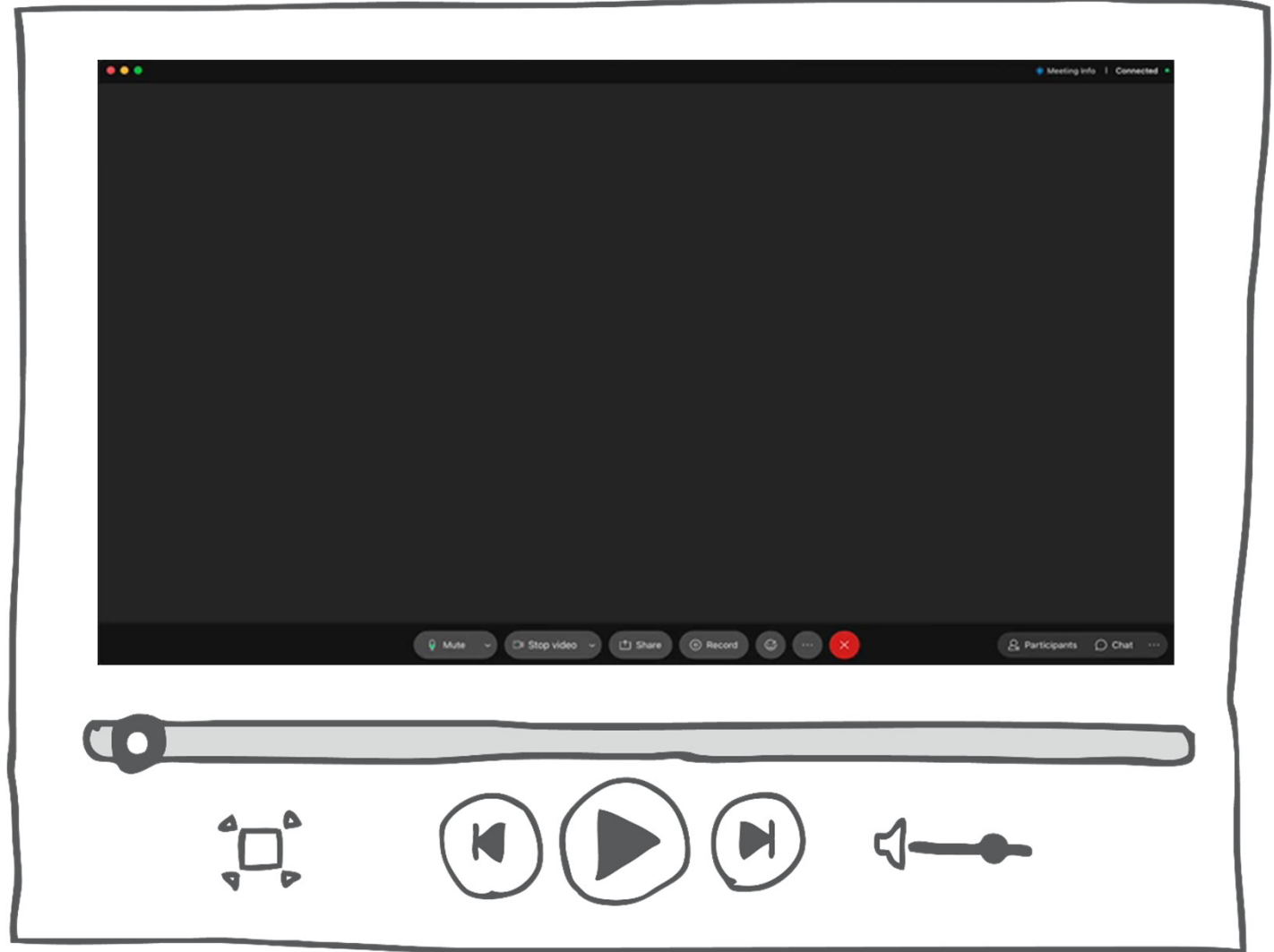
Suitable seating

Ergonomic workspaces

Suitable space

Identify equipment and resources

The next day...



ROUND 3!



I SPY
a wage and hour compliance risk!



I SPY... more risks!

Off-the-clock work

Actual or constructive knowledge
of hours worked

Interruptions

Trust but verify

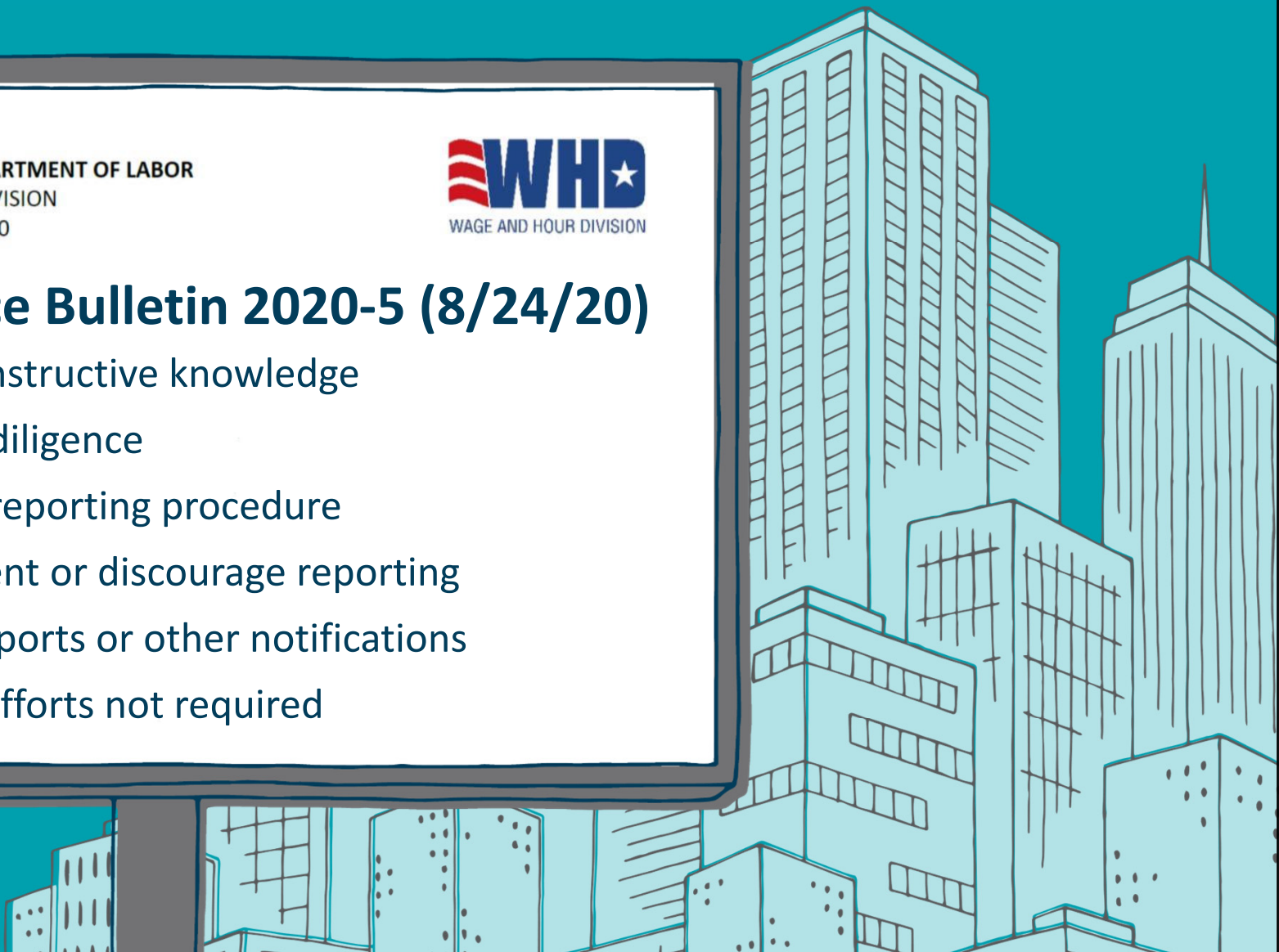


UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, DC 20210



Field Assistance Bulletin 2020-5 (8/24/20)

- Actual or constructive knowledge
- Reasonable diligence
- Reasonable reporting procedure
- Do not prevent or discourage reporting
- Employee reports or other notifications
- Impractical efforts not required





I SPY... more risks!

Mixing personal and work time

Travel (time and expense)

Meal periods

Recording time



I SPY... more risks!

Misclassification

→ Executive

→ Outside sales

→ Computer professional



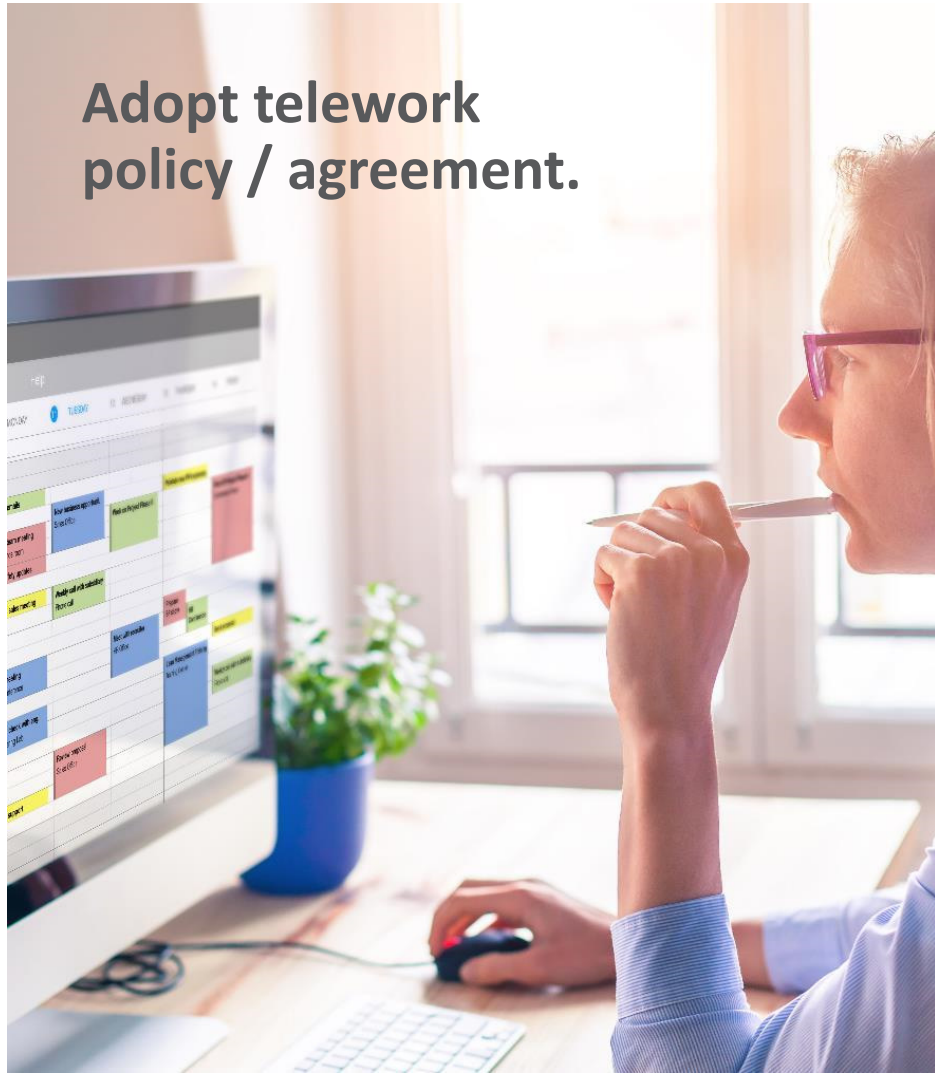
I SPY... more risks!

Equipment

→ Final wage deductions

→ Reimburse for lost /
damaged property

**Adopt telework
policy / agreement.**



I SPY... solutions!

- For non-exempt employees:
 - Define “work”
 - Set a schedule
 - Include breaks
 - Prohibit work outside schedule
 - Set expectations regarding interruptions
 - Include reasonable reporting procedure



I SPY... solutions!

- For all employees:
 - Identify equipment and resources
 - Specify which are employer-provided
 - Clarify expense reimbursement
 - What
 - How much
 - Allow appeals
 - Plan for lost or damaged property, and return of equipment upon separation

I SPY... solutions!

- For all employees:

- Specify if arrangement is voluntary or involuntary
- Reconsider exemption status
- Take state law variations into account
- Don't leave this to chance!
 - Document!
 - Training!
 - Don't forget the supervisors!





Littler Remote Work Toolkit for Employers

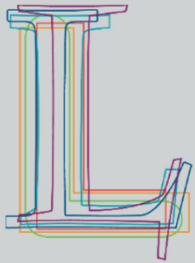
The Remote Work Toolkit for Employers contains a **Guide, Model Policy and Model Agreement** for companies to use when implementing remote work and telework programs in the pandemic and post-pandemic era. The Policy and Agreement are annotated and editable – and can be customized to your needs and circumstances.

To learn more or to purchase the Remote Work Toolkit, visit littler.com or email us at Innovation@Littler.com.



Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.



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