

# 2022 EMPLOYMENT, LABOUR & EQUALITIES LAW WEBINAR SERIES

## REMOTE WORKPLACE

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# SPEAKERS



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A modern office interior with a curved wooden wall, people walking, and a person on a bicycle. The scene is captured with a motion blur effect, suggesting a busy, active workspace. The office features a curved wooden wall with small decorative elements, a person on a bicycle, and several people walking. The floor is light-colored, and there are blue ottomans and a striped rug. Large windows on the right side offer a view of the city outside.

# REMOTE WORKERS

# REMOTE WORK - HERE TO STAY?

- In February and March 2021, BDC surveyed more than 700 businesses and 2,000 Canadian workers with respect to remote work (see: <https://www.bdc.ca/en/about/mediaroom/news-releases/remote-work-here-stay-bdc-study>).
  - 74% of businesses surveyed say they will continue to permit employees to work remotely
  - 55% of employees say they prefer to continue working remotely
  - 54% of employees say access to remote work will be a determining factor in applying for, or accepting a new job
  - 48% of those who have moved since the beginning of the COVID-19 pandemic factored remote work into their decision

# REMOTE WORKERS – EMPLOYMENT STANDARDS

- With the shift to remote work, employers must consider how the physical location of an employee may impact the employment laws and other laws that govern the employment relationship.
- Typically, the employment standards legislation of the province where the remote worker is physically located and where the work is ordinarily performed will govern the employment relationship.
- Therefore, if an Ontario based company, hires an employee to work remotely from British Columbia, then the British Columbia *Employment Standards Act* will apply.
- It does not matter that:
  - Offer of employment was made and accepted in Ontario;
  - Contract provides that Ontario laws will apply;
  - Wages are paid out of Ontario;
  - Company is an Ontario corporation and only has a physical premises in Ontario.

# REMOTE WORKERS – EMPLOYMENT STANDARDS

- However, if an employee performs work from two different jurisdiction, then the applicable law may not be as clear.
- In some provinces, the applicable employment standards legislation may apply both when work is performed within the province and outside of the province.
- For example, in Ontario, the *Employment Standards Act, 2000* applies to
  - Work performed in Ontario; and
  - Work performed outside Ontario, where the work performed outside Ontario is a continuation of the work being performed inside Ontario.
- This could create a situation where there is dual jurisdiction, if the employment standards of the other province also applies.
- Each situation must be assessed individually based on the specific facts and circumstances.

# REMOTE WORKERS – EMPLOYMENT STANDARDS

- It is important to understand which Employment Standards laws apply as there can be significant differences in minimum provincial Employment Standards requirements
  - Minimum wage
  - Hours of work (rest periods, maximum hours)
  - Overtime
  - Minimum vacation entitlements
  - Public holidays
  - Leaves
  - Termination

# REMOTE WORKERS – WORKERS’ COMPENSATION

- A remote worker may be eligible for workers’ compensation coverage and an employer may be required to register with workers’ compensation, even if:
  - The remote worker sustains an injury in the course of performing work remotely and not at the employer’s workplace;
  - The employer does not have a physical premises in the location where remote work is being performed by the employee; and
  - The employer may not be required to register with workers’ compensation in the province where they have physical premises.
- In each location where an employer has remote workers, the employer must review the workers’ compensation requirements of that province and determine whether there is a requirement to register with workers’ compensation.
- Failure to register could result in significant penalties being imposed on employer; penalties will vary by province.



# REMOTE WORKERS - HEALTH & SAFETY – ACROSS CANADA

- The extent and application of occupational health and safety (H&S) legislation to remote work arrangements varies by jurisdiction
- Multiple provinces have provisions in their H&S legislation with specific requirements for workers working alone
  - Requirements vary but include establishing check-in procedures to protect employees working in isolation, establish an appropriate method of communication in case of emergencies, carrying out appropriate checks to identify/minimize risks, developing/implementing safe work procedures to reduce identified risks to employees working alone, maintaining regular communication with lone workers etc.
  - Such provisions exist in QB, BC, AB, SK, MB, NFL, PEI, NB, NFL, YK, NWT, NV
  - Neither Ontario nor Nova Scotia H&S legislation have such a provision for lone workers

# REMOTE WORKERS – OHSA

## Ontario's *Occupational Health and Safety Act (OHSA)*

- Defines “workplace” as any land, premises, location or thing at, upon, in or near which a worker works
- S. 25, 26 of OHSA outlines the duties of employers
- Best practice is to consider OHSA to apply. Despite provision of OHSA regarding:

### **Private residences**

3 (1) This Act does not apply to work performed by the owner or occupant or a servant of the owner or occupant to, in or about a private residence or the lands and appurtenances used in connection therewith.

- We are not aware of case law regarding OHSA application to remote workplaces
- Prudent for an employer to meet all of its H&S obligations even for remote employees

# REMOTE WORKERS – HEALTH & SAFETY BEST PRACTICES

## Canadian Centre for Occupational Health and Safety

- A home office should meet the same H&S requirements as those available at work where possible
- Consider:
  - workstation design and arrangement (ergonomics and home work environment)
  - who will provide what items (e.g., chairs, desks, computer, monitor, office supplies, etc.)
  - Will the employer or JHSC have access to the house for safety inspections? Or, will alternative arrangements be made?
  - What parts of the house will be considered the 'workplace'?
  - How will incidents be investigated?

<https://www.ccohs.ca/oshanswers/hsprograms/telework.html>

# REMOTE WORKERS – HEALTH & SAFETY BEST PRACTICES

## Canadian Centre for Occupational Health and Safety

- **Home Office Safety Checklist**

- Fire Protection

- Smoke alarms, fire extinguishers, carbon monoxide detectors, exit plans

- Emergency Procedures

- Evacuation plans, first aid supplies, emergency contact numbers

- Electrical Safety

- Extension cords, grounded outlets, surge protection, equipment ventilation

<https://www.ccohs.ca/oshanswers/hsprograms/telework.html>

# REMOTE WORKERS – HEALTH & SAFETY BEST PRACTICES

- Routinely check in with your team
  - Ensure that all employees have the necessary equipment
  - Ensure all equipment is functioning properly
  - Ensure all employees are in an appropriate work space

# REMOTE WORKERS – HEALTH & SAFETY TAKE-AWAYS

- Comply with H&S obligations in the applicable jurisdiction, regardless of legislative ambiguity
  - Comply with violence and harassment provisions;
  - Ensuring equipment, materials, protective devices are used as prescribed and maintained in good condition;
  - Instruct/inform on protecting health and safety.

# REMOTE WORKERS – HUMAN RIGHTS

- Human rights legislation continues to apply to remote work arrangements, workspaces, employees
- Human rights legislation protects employees from discrimination regardless of where their workplace is located
- Employers have a duty to accommodate employees to the point of undue hardship
- In Ontario, employers also have a duty to inquire in certain circumstances
  - Where an employer is aware, or reasonably ought to be aware, that there is a relationship between a protected ground and employee's job performance, the organization has a duty to inquire into that possible relationship before making a decision that would negatively affect the employee

# REMOTE WORKERS – HUMAN RIGHTS & MENTAL HEALTH

**Statistics Canada, “Survey on COVID-19 and Mental Health”, February to May 2021**

“Findings released today from the Survey on COVID-19 and Mental Health (SCMH) indicate that one in four (25%) Canadians aged 18 and older screened positive for symptoms of depression, anxiety or posttraumatic stress disorder (PTSD) in spring 2021, up from one in five (21%) in fall 2020.”

<https://www150.statcan.gc.ca/n1/daily-quotidien/210927/dq210927a-eng.htm>



# REMOTE WORKERS – HUMAN RIGHTS & MENTAL HEALTH

## **Statistics Canada, “Mental health-related disability rises among employed Canadians during pandemic, 2021”**

New combined data from the Labour Force Survey (LFS) and the Canadian Income Survey shed new light on the impact of the COVID-19 pandemic on the prevalence of disability in the workplace. Among those who were employed during the first four months of 2021, more than one in five (21.5%) had a physical, mental health, cognitive or other disability. This was an increase of 2.7 percentage points compared with 2019 (18.8%), continuing a long-term upward trend associated with population aging and other factors.

<https://www150.statcan.gc.ca/n1/daily-quotidien/220304/dq220304b-eng.htm>

# REMOTE WORKERS – OTHER HUMAN RIGHTS CONSIDERATIONS

- Employers should be mindful of the potential consequences of work from home arrangements such as:
  - loneliness or isolation,
  - lack of separation between home and work,
  - potential for excessive working hours,
  - risk of injuries if home office is not setup properly
  - requests for accommodation on basis of family status, disability etc. such as if the employee also has children at home, because of school closures or childcare issues
- Consider proximity bias

# REMOTE WORKERS – HUMAN RIGHTS TAKE-AWAYS

- Comply with all applicable human rights obligations, and be mindful of an employer’s duty to inquire
- Communicate with your remote workers regularly and meaningfully
  - Mind the “invisible” disabilities
  - Ensure everyone is aware of the relevant policies and procedures to thrive in a remote workspace

# REMOTE WORKERS - PRIVACY CONSIDERATIONS

- Protecting personal information when working remotely
  - See following link for on-demand webinar on Cyber Security and Privacy Risks in a remote work environment:

<https://gowlingwlg.com/en/insights-resources/on-demand-webinars/2020/cyber-security-privacy-risks-remote-environment/>

- Determine the applicable privacy legislation
  - Three provinces have provincial privacy legislation that is comparable to federal privacy legislation (B.C., Alberta and Québec).
    - This legislation applies to the personal information of employees working in the province.
  - Review privacy legislation and current privacy policies to confirm the policies are broad enough to cover remote work and adequately protect personal information.

# REMOTE WORKERS – QUÉBEC PERSPECTIVE

- Having an employee working remotely from their residence in Québec will not automatically trigger the application of all Québec employment-related laws.
- Key consideration: Does the employer have an establishment in Québec?
- The notion of establishment in Québec will vary depending on the applicable law.

# REMOTE WORKERS – QUÉBEC PERSPECTIVE

## *Act respecting labour standards*

- Applies to an employee who performs work both in Québec and outside Québec for an employer whose residence, domicile, undertaking, head office or office is in Québec.
- Recent case law provides insight as to what is considered an « establishment » of the employer in Québec.
  - Does the employer operate a physical location in Québec?
  - Does the employer hire remote workers who are located in Québec?
  - Does the employer provide services/products in Québec or does the employer has customers in Québec?

# REMOTE WORKERS – QUÉBEC PERSPECTIVE

## Registration with the CNESST (workers' compensation program)

- The *Act Respecting Industrial Accidents and Occupational Diseases* applies only to workers to whom an industrial accident happens in Québec or who contracts an occupational disease in Québec and whose employer has an “establishment” in Québec.
- The notion of establishment requires facilities and equipment grouped in a location for the production or distribution of goods or services.
- Overview of the recent administrative position of the CNESST.
  - Does the employer own, lease or uses for its benefit facilities in Québec?
  - Is the remote worker's home the only link of the employer with Québec?

# REMOTE WORKERS – QUÉBEC PERSPECTIVE

## Other considerations

- Civil code of Québec
- Charter of human rights and freedoms
  - Right to privacy
  - Discrimination
- Privacy legislation
- Charter of the French language



# REMOTE WORKERS - IMMIGRATION CONSIDERATIONS

- Country of location/residence:
  - Each country has its own immigration laws. To assess the specific country where employee is physically located to confirm whether remote work is permitted and/or whether they can legally work.
- Foreign workers in Canada:
  - Review work permit to confirm whether remote work is permitted pursuant to the work permit, and whether work in the specific location, for the specific employer and in the specific occupation is permitted.
  - Assess the type of work permit and compliance obligations of employer (LMIA vs. LMIA-exempt).

# REMOTE WORKERS – TAX CONSIDERATIONS

- Taxation of Benefits and Office Expenses: Covid-Related
  - From March 15, 2020 to December 31, 2022, the following allowances or reimbursed expenses are non-taxable if paid in relation to Covid-19:
    - commuting costs;
    - parking costs;
    - computer equipment costs;
    - home office equipment costs;
    - overtime meals
    - subsidized meals; and
    - employment-related cell phone and internet service plans.
  - See <https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/covid-19-benefits-credits-support-payments/employer-provided-benefits.html> for conditions to be met in order for benefits to be non-taxable.

# REMOTE WORKERS – TAX CONSIDERATIONS

## Taxation of Benefits and Office Expenses: General Principles

- Generally, all benefits and allowances received or enjoyed by an employee because of employment are taxable.
- Whether a benefit is included in an employee's income depends on whether the primary beneficiary of the benefit is the employer or the employee. The Courts have held that where something is provided to an employee primarily for the benefit of the employer, it will not be a taxable benefit if any personal enjoyment is merely incidental to the business purpose. In CRA's view, a positive answer to one or more of the following questions may suggest that the employer is the primary beneficiary of the benefit:
  - Does the employer have a business purpose for providing the benefit?
  - Is the benefit required for the employee to perform the employment duties more effectively?
  - Is the benefit required to fulfill a condition of employment?
  - Does the employer have a moral or contractual obligation to provide the benefit to ensure that employees are not unduly subject to harm from performing the employment duties?

# REMOTE WORKERS – TAX CONSIDERATIONS

## Taxation of Benefits and Office Expenses: General Principles (Continued)

- An allowance received by an employee to cover home office expenses is taxable. However, expenses related to a home office may be deductible by the employee if the home office satisfies the following criteria: (1) the work space is the place where the employee principally performs the duties of employment; or (2) the work space is used exclusively to earn employment income and on a regular and continuous basis for meeting clients or other persons in the ordinary course of performing employment duties.
- If the head office of an employer is a regular place of employment for the employee, travel between the employee's home (including a home office) and the head office is personal travel and the reimbursement of the employee's personal travel expenses would be taxable to the employee.

# REMOTE WORKERS – TAX CONSIDERATIONS

- Deductibility of Work from home expenses for Employees: Covid-Related
  - Deductibility of home office expenses extended until December 31, 2022
  - Similar conditions as in 2020-2021 (worked from home 50% or more for at least 4 months)
  - Flat rate method at \$2/day up to max \$500 in 2021
  - Detailed method to claim actual expenses, requires employer to provide Form T2200S

# REMOTE WORKERS – TAX CONSIDERATIONS

- Form T2200S - Declaration of Conditions of Employment for Working at Home Due to COVID-19
  - Option for employers to develop their own forms that meet certain criteria:
  - it must be made available to employees in a format that CRA representatives can read;
  - it must be completed in full before being given to the employee (Part A, Part B and the employer declaration);
  - it must mirror the CRA paper version of Form T2200S;
  - it must be in an immutable format that cannot be altered; and
  - it must meet all of the CRA's general guidelines on record retention and electronic records (all of which can be found in information circular IC78-10R (Books and Records Retention/Destruction)).

# REMOTE WORKERS – TAX CONSIDERATIONS

- Payroll Withholding Obligations: Employee working remotely from another province
  - Withhold income tax, pension and EI at rate of province where payroll department is located
  - Employee adjusts on tax return but can ask for additional income tax withholding using TD-1
  - Consider Québec differences in QPP and QPIP contributions

# REMOTE WORKERS – TAX CONSIDERATIONS

- Payroll Withholding Obligations: Employee working remotely from another country
  - Canadian payroll withholdings continue to apply if the employee remains a resident of Canada
  - Foreign payroll withholdings may be required, unless:
    - obtain a waiver from income tax withholding under domestic law in the other country
    - apply for a certificate of coverage in Canada to be exempt from social security contribution in the other country



# REMOTE WORKERS – TAX CONSIDERATIONS

- Permanent Establishment Considerations: Employee working remotely from another province
  - Employee could create an establishment in the other province, triggering income tax on attributed gross revenue and tax filing obligations
  - An establishment is created by a fixed place of business
  - An establishment can be created by the employee having the general authority to contract on behalf of the employer
  - In Québec, other types of deemed establishments
  - Having an establishment triggers payroll withholding obligations in the province.

# REMOTE WORKERS – TAX CONSIDERATIONS

- Permanent Establishment Considerations: Employee working remotely from another country
  - If no treaty, carrying on business may trigger income tax obligations
  - If treaty, carrying on business may trigger income tax filing obligations but no tax owing unless has a permanent establishment
  - Permanent establishment is a similar concept as provincially but with certain other deeming rules (e.g. services can create one)
  - Withholding tax on services physically rendered in that country could apply
  - Must consult local tax counsel
  - Consider secondment to a subsidiary in that country

# PANEL DISCUSSION – FACT SCENARIO #1

- Company ABC has its headquarters in Ottawa, Ontario and hires John to work fully remote in British Columbia.
- John is hired in the role of VP, Operations and he signs ABC's standard executive employment agreement which is based on Ontario law.
- ABC does not have an office in British Columbia. John ordinarily performs his work from his home in British Columbia.
- John's work involves managing employees working out of the Ontario office and dealing with client's based in Ontario.
- John's role also involves handling highly confidential information, including some personal information regarding clients, suppliers etc.
- While John works primarily out of British Columbia, as a member of the management team he is required to attend in-person meetings at headquarters, on the last Thursday of every month.
- As ABC does not have operations in British Columbia, all of its current policies are based on Ontario's laws – Employment Standards, Privacy etc.

# PANEL DISCUSSION - FACT SCENARIO #1

- Ontario v. British Columbia Employment Standards?
- Other legal considerations from an employment perspective?
- Privacy concerns?
- Potential Tax risks?

# PANEL DISCUSSION – FACT SCENARIO #1

- **Best Practices**

- Carefully review circumstances to determine applicable laws – employment, privacy etc.
- Review employment agreement to ensure that it is governed by the applicable law and complies with the minimum employment standards.
- Review workplace policies to ensure that there is no potential violation of minimum employment standards and other applicable laws.
- Review Privacy Policy and update as needed to ensure that it complies with the requirements of any applicable privacy legislation.
- Ensure employee is legally permitted to work in the other jurisdiction.
- If you allow an employee to work remotely in a jurisdiction where company does not have physical premises, consider potential “deemed establishment” risks.
- If employee will be required to pay their own travel expenses from their remote workplace in another jurisdiction to headquarters, ensure the contract of employment makes clear that the employee is required to work remotely and that they are required to pay for their own travelling expenses.

# PANEL DISCUSSION –FACT SCENARIO #2

- Mary works for ABC as a sales person.
- Although Mary worked at Ottawa headquarters prior to the pandemic, during the pandemic all employees worked remotely.
- ABC has given employees the option to continue working remotely.
- Mary has continued to work remotely and has not been to ABC's headquarters since the initial shut down in March 2020.
- Mary has a four season cottage on Lac Ste. Marie in Québec.
- Mary has been working from her cottage at least 50% of the time since March 2020 unbeknownst to her manager and in January of 2022 she decided to sell her home and live at her cottage full time.
- Recently, Mary's relationship with her manager has become strained and a decision has been made to terminate Mary's employment.
- ABC terminates Mary's employment and provides her with minimum ESA entitlements pursuant to Mary's contract.
- Mary's cousin is a lawyer and tells her that she should file a claim under Québec laws.

# PANEL DISCUSSION – FACT SCENARIO #2

- Does Mary have a valid claim that Québec laws apply?
- If Québec laws do apply, what are the implications for ABC?
- If Mary had continued to work 50/50 between home in Ontario and cottage in Québec, would Québec laws apply?

# PANEL DISCUSSION – FACT SCENARIO #2

- **Best Practice**
  - Implement a Remote Work Agreement or Policy that clearly stipulates:
    - The remote work location is employee’s residence and expressly provides that permission is needed to work in a location that is not the employee’s residence;
    - While employee may make a request to work at a different location, employer retains the discretion as to whether or not to grant permission; and
    - If employee works from remote work location that has not been approved by employer, may result in termination of remote work arrangements and possibly, employee’s employment.
  - If the Employer grants permission, the employer will have opportunity to put in place terms and conditions that will apply to continued employment from Québec and ensure that they are compliant with all Québec laws, as applicable.



# PANEL DISCUSSION – SCENARIO #3

- Jane has been working from home since the beginning of the pandemic and like Mary, she has continued working from home on a full time basis.
- Jane’s husband has been offered a job in New York.
- Jane tells her manager that she will be moving to New York and that she intends to continue working remotely from New York.
- ABC advises Jane that she is not permitted to work remotely from New York and will be required to work from the office.
- Jane takes the position that she has the right to work remotely and further questions why it matters what location she is working from, since she is permitted to work remotely.
- ABC refuses to allow Jane to work remotely from New York because of the complicated tax and immigration issues and takes the position that if Jane moves to New York, they will treat her as having resigned from her employment.

# PANEL DISCUSSION – FACT SCENARIO #3

- What are the tax considerations for ABC, if Jane were permitted to work remotely from New York?
- What are the immigration implications that ABC would need to consider if Jane were permitted to work remotely from New York?
- Does ABC have the right to require that Jane work exclusively from the office?
- Is ABC permitted to treat this as a resignation?

# PANEL DISCUSSION - FACT SCENARIO #3

- **Best Practices**

- Clearly set out in writing (i.e. Employment Contract, Remote Work Agreement, Remote Work Policy) that remote work arrangement is not a right but rather a privilege and employer may terminate the remote work arrangement and require that the employee work primarily or exclusively from the office.
- In this case, the employer should have set out in writing the terms/rules that apply to remote work at the time the temporary remote work due to COVID shifted to an indefinite term arrangement.
- Again, as noted in the previous scenario, the employer should make it clear that the remote work location is the employee's home and if the employee wants to work from a different location they must obtain approval from the employer. Furthermore, it should be made clear that the decision as to whether to allow employee to work at a different location remains in the sole and absolute discretion of employer.
- U.S. immigration laws need to be considered – the employee would need to obtain work authorization for the U.S.
- Tax issues are complex and could be costly, consult your tax lawyer!

# PANEL DISCUSSION – SCENARIO #4

- ABC is recruiting for a VP, Sales and although they do not have any offices in Toronto, they are expanding their search for candidates outside the Ottawa-Gatineau Region.
- Mark lives in Toronto and is hired by ABC in the role of VP, Sales. Mark will work remotely on a full time basis.
- Mark is young and single and loves to surf so he decides to move to Costa Rica.
- Mark is not sure whether his manager will approve of this move so he doesn't tell her, he makes sure that he keeps his same work hours based on ET time zone, sets up a virtual background during zoom meetings, and travels to Ottawa office for any in-person meetings, as needed.
- Mark's manager starts to notice that Mark is looking very tanned but doesn't ask any questions.
- Mark is loving the surfer life and it starts to impact his performance at work. His manager decides to terminate his employment. After giving Mark notice of termination and severance package, Mark's manager learns that Mark has been working from Costa Rica for the last 1.5 years.

# PANEL DISCUSSION – FACT SCENARIO #4

- Do the laws of Ontario still apply or would Mark's termination be governed by the laws of Costa Rica?
- What is the potential exposure to ABC from a tax perspective ?
- What are the potential implications from an immigration perspective?

# PANEL DISCUSSION - FACT SCENARIO #4

- **Best Practices**

- Have a Remote Work Agreement or Policy that sets out this situation (lying about remote work location) as an example of serious violation leading to severe discipline up to termination of employment.
- Again, as noted, the employer should make it clear that the remote work location is the employee's home and if the employee wants to work from a different location they must obtain approval from the employer. Furthermore, it should be made clear that the decision as to whether to allow employee to work at a different location remains in the sole and absolute discretion of employer.
- Consider immigration laws of the remote work location outside Canada, including whether work authorization is required, despite working remotely for a Canadian company.
- Tax issues are complex and could be costly, consult your tax lawyer!

# PANEL DISCUSSION – SCENARIO #5

- ABC's regular travel policy states that employees are reimbursed for costs incurred for travel, except for regular travel to and from their home and the workplace.
- ABC also has a policy that states that working hours includes time spent travelling for work but expressly excludes time spent travelling between home and the workplace.
- Frank works fully remotely but is required to travel to ABC's headquarters for regular team meetings.
- Frank moved during the pandemic and his commute to the office is now one hour each way.
- Frank is paid on an hourly basis and submits his time for travelling to the workplace for meetings and submits an expense claim for the travel.

# PANEL DISCUSSION – FACT SCENARIO #5

- Where home becomes the “workplace” and the employee is required to attend at the office for meetings, would this travel time qualify under Ontario *Employment Standards Act, 2000* as working hours?
- Does employer have an obligation to pay for travel costs?
- Can ABC Company have a policy that applies specifically to remote workers that states that if they live within a certain radius of the headquarters, they will not be reimbursed for travel?



# PANEL DISCUSSION – FACT SCENARIO #5

- **Best Practices**

- Review Policies to ensure that they address new situations that may arise as a result of remote work.
- Review applicable provincial legislation to ensure that you are compliant with the minimum requirements, including hours of work.

# PANEL DISCUSSION – SCENARIO #6

- While ABC's employees were working remotely during the pandemic, ABC was fairly flexible with scheduling, they allowed employees to care for their children during the work day and they did not really impose any obligations on the employee to ensure that they had a proper workspace.
- During the pandemic, Francesca was given a lot of flexibility to work varied hours because she had to care for her 2 year old due to daycare being closed.
- Once ABC opened its offices, given the nature of Francesca's position, she was required to attend at the office at least 3 days per week.
- Francesca asked if she could continue working fully remote because her daycare closed down, she has not found another daycare, although she has not really made much effort to find new daycare because she actually prefers to keep her child at home.
- Francesca also noted that she has been working from her kitchen table throughout the pandemic and developed some medical issues and her doctor has recommended that she use stand up desk. Francesca has a stand up desk at the office.

# PANEL DISCUSSION – FACT SCENARIO #6

- Can ABC refuse her request to work 100% remote or does Francesca's request give rise to a duty to accommodate?
- Does ABC have an obligation to accommodate both workspaces, at its own cost?
- If ABC does need to accommodate, do they have to provide a stand up desk or can they provide a less expensive alternative option such as a desk riser?

# PANEL DISCUSSION – FACT SCENARIO #6

- Best Practices
  - Duty to accommodate arises whether employee works remote or in person.
  - Always ask questions and start with a meaningful conversation with the employee to understand their needs.
  - Document all your discussions with the employee and consult with counsel before making any decisions regarding accommodation.
  - Ensure that employees have a healthy and safe remote workplace that complies with Occupational Health and Safety standards.

**QUESTIONS?**

# SPEAKERS



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# THANK YOU FOR ATTENDING

- Please scan the QR code below to complete our survey



- Join us at our next webinar in the series on Bill 88 on May 18. Invitations will be sent out soon!



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