

page 2

When the same realtor represents both the seller and buyer

page 3

Empty trailers can create road hazards

page 4

Adultery allegations may form basis for alimony reduction

Legal Matters®

Employees working from home? There are issues to consider

There is no employer in this country whose operations were not dramatically impacted by the COVID-19 outbreak this spring. While the coronavirus disrupted the workplace in countless ways, one of the biggest sudden adjustments was the massive increase in employees working remotely from home.

For some employers, this was nothing new. For other employers, however, this probably has been a logistical adventure. Either way, having employees working from home raises a host of legal implications. That means it's a good idea to conference with an employment attorney to discuss issues like the following:

Wage and hour laws

Under the federal Fair Labor Standards Act, any "non-exempt" employee (an hourly wage worker with no managerial or discretionary decision-making responsibilities or a salaried administrator, manager or professional who makes less than \$684 per week) is entitled to overtime pay at 1.5 times their regular rate. But it can be very challenging to comply with the FLSA in a remote environment where work and home gets blurred.

For example, it can be hard to tell how many hours employees are actually working and when they're on or off the clock. It's critical to remember that the FLSA applies in both traditional and remote work settings and that if you do not have strong systems in place to monitor and record what



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your workers are doing, you could run afoul of the FLSA and find yourself subject to an enforcement action or a lawsuit.

Another FLSA issue is the minimum wage. The federal minimum wage is \$7.25 per hour. But each state has its own minimum wage laws and some states' minimum wages are higher. If you have employees who live in multiple states commuting to the same physical workplace (for example, a

continued on page 2



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continued from page 1

St. Louis company with workers living in Missouri and



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Illinois or a Boston business with employees who live in Massachusetts, Rhode Island, New Hampshire or even Maine), you're subject to the wage and hour laws of the state where your business is located. But when your employees work from home, this can complicate things. If a non-exempt employee is working from home in a state with a higher minimum wage, a court could decide they're entitled to earn that rate. An employment attorney can help you navigate this trap.

Discrimination laws

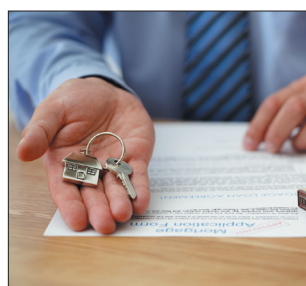
The coronavirus situation has led to remote work by necessity. As the crisis clears, many workers will probably opt to have their employees back in the physical workplace. Others, however, may decide to continue to allow a certain degree of working at home as a privilege. If this is the case, it's critical that work-from-home eligibility be based on neutral factors such as job responsibilities, past performance, seniority and the like and that these requirements be applied consistently. It is equally critical that remote employees be subject to the same rules and expectations as other workers. Failure to do so could potentially lead to a discrimination suit if an aggrieved worker can somehow tie unequal treatment to his or her race, sex, religion, ethnicity or disability.

Similarly, employers need to make sure there's a clear written policy in place regarding the use of electronic communications like email or text. It's very easy for workers to treat these mediums as informal communication and let their professional guard down, creating the risk of inappropriate comments that could be interpreted as sexual or racial harassment.

Privacy and security

The more employees you have working remotely, the greater the possibility of a data breach that could result in legal trouble. That's why it's important to have a written work-from-home policy with clear protocols for accessing and transmitting confidential information. That's also why employers need to make sure remote access to company resources is secure with passwords, firewalls, antivirus software, encryption and other security technology. Employees working remotely will also likely be using their own Wi-Fi (or public Wi-Fi if they camp out at Starbucks or Panera for a change of scenery in a non-pandemic situation). If that's the case, it's important to have protocols in place about what kind of information they can access or transmit.

These are just a few issues to consider. Employers also need to consider the health and safety of the employee's workspace for OSHA compliance purposes and because work-at-home injuries may result in workers' comp claims. Talk to an employment lawyer where you live to discuss these and other issues.



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When the same realtor represents both the seller and buyer

When you sell your house, your real estate agent usually represents you throughout the process. And your agent has a fiduciary duty to you, which means he or she has a responsibility to act in your best interest.

It is possible for the seller's agent to represent the buyer as well. But how does that work in practice? The idea is that the "dual agent" manages all negotiations and paperwork between the buyer and seller and acts as a neutral, with no fiduciary duty to the buyer or the seller.

If you live in any state where dual agency is allowed, it's helpful to understand the pros and cons.

The real challenge of 'neutrality'

Even if an agent agrees to fairly represent both parties in a home sale, it's not always so easy in practice.

In fact, in some cases, it might make the deal feel rather lopsided. Imagine a sale in which the buyer

requests certain repairs and/or a lower price. And on top of that, imagine they ask the seller to cover the closing costs.

In such a case, it's easy for the seller to feel shortchanged by not having an agent of his own to support his side of the deal.

The benefit of each having your own agent

The process of buying and selling a house brings with it a host of uncertainties and reasons to negotiate. Everything from the price to the terms is up for discussion, and it's your real estate agent that acts as your advocate throughout.

If you're a seller, your agent knows the positive and negative elements of your home, and knows the key things about you, including your willingness to give and take, and where you stand on a price that's

continued on page 3

When the same realtor represents both the seller and buyer

continued from page 2

comfortable for you.

If you're a buyer, your agent knows what you can afford and how willing you are to negotiate when you have certain requests or concessions you're seeking.

These are some of the reasons why a dual agent plays a more removed role in the process, to avoid taking any one side. That means the buyer and seller end up working out the details more closely with each other and each loses the benefit of an agent's experience and direct help in the process.

The benefits of dual agency

While there are clearly several drawbacks, there are also some benefits to having a dual agent.

First, having one agent handle the sale can streamline the process. It avoids a waiting game with phone call chains that usually include your agent calling the buyer's agent, who calls the buyer and then call your agent back again each time there is

something to decide.

Also, with one single agent receiving commission on the sale, it's likely you can agree to a lower rate.

Designated agency is another option

Dual agency sometimes arises when the listing agent also has a client who is a buyer that wants to buy your home. Instead of serving as a dual agent, the listing agent can pass the buyer off to another agent to represent them, often in the same brokerage, or the brokerage can assign another agent to the buyer. This arrangement is known as designated agency.

While this gives each party their own representative, it also allows two agents who work for the same company to possibly negotiate terms that benefit the company.

No matter the arrangement, it is important to consult a lawyer when you're selling or buying a home to ensure you understand the legal implications and the details.

Empty trailers can create road hazards

A pair of recent settlements illustrates the danger vehicles stopped on the side of the road — particularly trailers — can pose for motorists. These cases also show that if you have been hurt in an accident caused by such hazards, an attorney can determine which entities might be responsible.

In the first case, Alfred Jackson was on Interstate 20 in Lexington County, S.C., traveling home from a Thanksgiving dinner, when the passenger van he and his family were riding in crashed into an empty flat-bed car-hauler trailer. Jackson, who was riding in the passenger seat, died at the scene from his injuries.

At the time of the crash, the trailer, which was equipped for one car, was parked on the side of the road. But a good portion of it had been left in the roadway, and its operator, Jerome McWilliams, had failed to place warning placards in the road. The truck's owner, Michael Brown, had paid McWilliams \$250 to drive the trailer, and Brown's federal motor carrier placard was displayed in the truck. McWilliams's insurer ultimately acknowledged fault and paid the full policy limits, supplemented by Jackson's own uninsured motorist coverage, which entitled him and his family to a certain amount of benefits

beyond the limits of the at-fault party. Meanwhile, the family continues to pursue a case against Brown in state court for providing the vehicle to McWilliams.

In the other case, a married couple was in their SUV during the evening hours on a two-lane highway in Forsyth County, N.C. After cresting a hill, their vehicle slammed into an empty logging truck trailer blocking both lanes of traffic. The husband suffered vertebral fractures, a brain injury and damage to his esophagus, tongue and vocal cords that left him unable to eat solid foods. His wife, who suffered a fractured sternum and ribs, now must care for her husband full time.

The truck driver was cited by police for improperly backing the trailer across the highway at night without safety markings or spotters to warn oncoming traffic. Although the truck driver argued that the husband should have seen the truck, the victims countered that it was dark, the roadway was unlit and the husband was obeying the speed limit. Ultimately the parties settled, with the driver agreeing to compensate the couple for their harm.

We welcome your referrals.

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Adultery allegations may form basis for alimony reduction

A recent Virginia case suggests that engaging in extramarital affairs can come back to hurt you later on, even if your spouse did not raise your alleged

adultery as an issue in the initial filings. That's because in some states the divorce itself and spousal support, while related, may be separate issues with different considerations.

The case in question involved a couple, Julia Karabaic-Chaney and Jacob Chaney, who got married in 2012 and separated in 2017. Julia filed

a complaint for divorce, seeking equitable distribution of their property (in other words, a court dividing their marital assets and liabilities in a way deemed fair under state law), alimony, child support and attorney fees. Jacob did not mention Julia's alleged adultery in his answer to her complaint.

After hearing testimony from both spouses, the

judge granted Julia a divorce, divided the property, ordered Jacob to pay child support and awarded Julia \$45,000 in alimony to be paid in installments over the next five years. The judge also gave Julia the right to go to court to seek further spousal support once the five years were up.

In fighting the alimony award, Jacob sought to introduce evidence of Julia's alleged unfaithfulness, but the judge said it was inadmissible because he didn't bring it up in his pleadings.

Jacob appealed and the Virginia Court of Appeals reversed the decision, pointing out that state law on spousal support says a judge can consider a variety of factors, including adultery. This language "commands" a court to consider adultery when awarding alimony, even if the person introducing the evidence didn't raise it as grounds for divorce or as a defense.

This is a Virginia case and not all states will handle the issue the same way. So consult with a family law attorney in your state if you're facing a similar situation.



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