



**HUSCH BLACKWELL**

# **Managing Employees in a Work from Home Environment**

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# Remote Work Statistics

- Before COVID-19, only 7% of U.S. workers had access to a “flexible workplace” benefit
- Quarantine will end. Is remote work here to stay?

CNN BUSINESS

Markets Tech Media Success Perspectives Videos

LIVE TV Edition

## Twitter will let some employees work from home 'forever'

### Nationwide's Left the Building. Insurer Makes Remote Work Permanent in 5 States.

April 30, 2020



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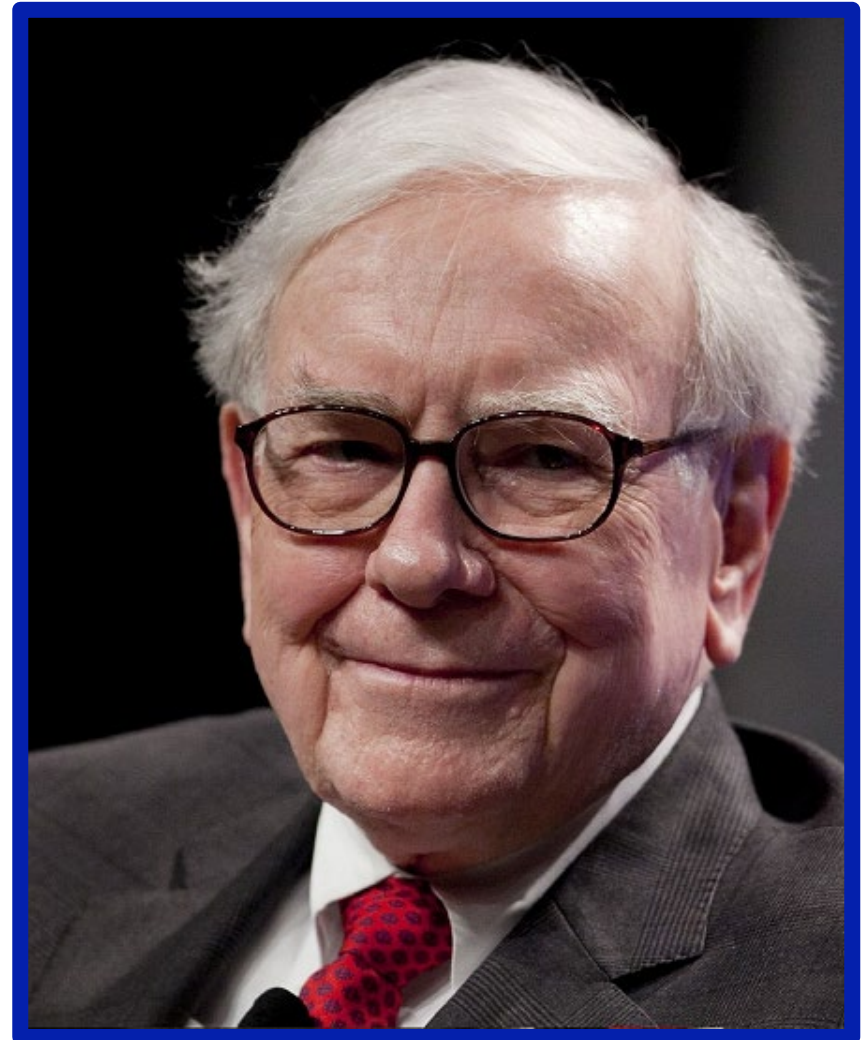
### DOD's telework surge could be permanent

By Lauren C. Williams | Apr 14, 2020



“A lot of people have learned that they can work at home, or that there’s other methods of conducting their business than they might have thought from what they were doing a couple of years ago. When change happens in the world, you adjust to it.”

Warren Buffet, Chairman and CEO of Berkshire Hathaway, Inc.



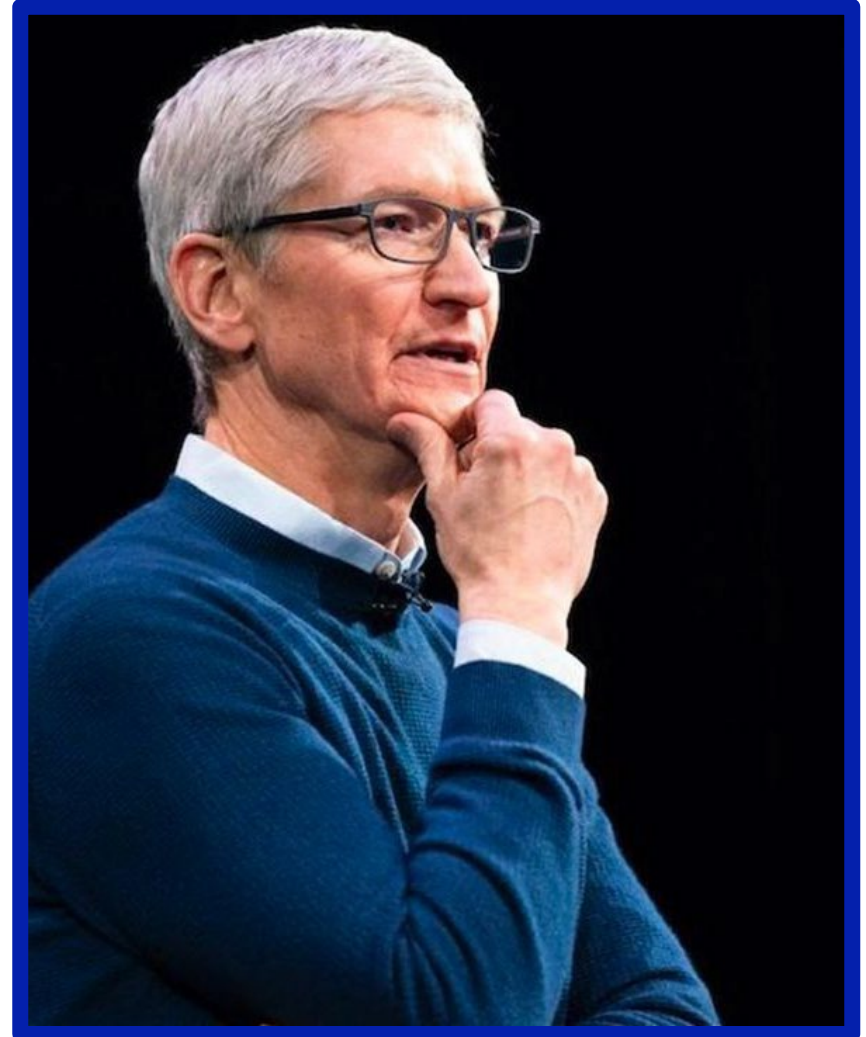


“We’re all grown-ups and we have adapted to these new work realities. That’s going to produce permanent changes in how we all work.”

Dana Canedy, SVP and Publisher of Simon-Schuster’s book-publishing unit of ViacomCBS, Inc.

“In all candor, it’s not like being together physically. And so I can’t wait for everybody to be able to come back into the office. I don’t believe we’ll return to the way we were because we’ve found that there are some things that actually work really well virtually.”

Tim Cook, CEO of Apple, Inc.





# Remote Work

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- Is telework here to stay?
  - For some, yes
  - For others, no
- Should it be considered as an accommodation?
  - Yes

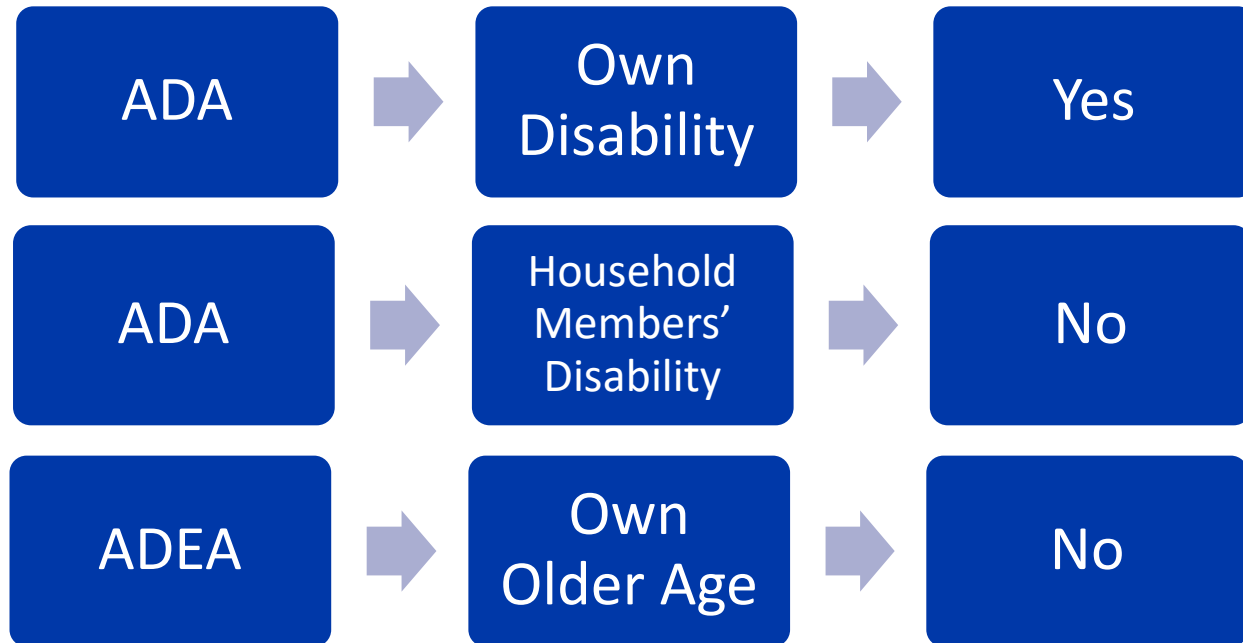


**Google will try 'hybrid' work-from-home models, as most employees don't want to come in every day**



# Remote Work as an Accommodation

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**Prediction: it will be harder for employers to deny remote work as unreasonable accommodation when required during the pandemic.**



# Accommodations

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- Other Common Accommodations During and After COVID-19:
  - Leaves of Absence (FFCRA, FMLA, Policy)
  - Physical Barriers/Space
  - Personal Protective Equipment
    - Some employees may need more
    - Other employees may need an exception to a new rule
  - Relief from Attendance Policies
- EEOC Guidance warns against blanket exclusions from the workplace based on high-risk status
- Individual inquiries still required





# Accommodations

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## Tips for Managing Requests for Remote Work:

- Establish protocol for requests
- Designate an accommodation team to ensure fairness and consistency
- Train management to ensure protocols and confidentiality maintained
- Require sufficient doctor's notes (unless FFCRA)
- Make accommodations temporary
- Revisit reasonableness and effectiveness of the accommodation periodically

# Managing a Remote Workforce

- Performance Management
  - Continue documenting issues to support decision making
- Protection of Confidential Business Data
  - Protocols and policies in place to ensure protection of confidential personnel, trade secret, proprietary information



**“My manager is having trouble embracing the new teleworking policy.”**



# Managing a Remote Workforce

- Wage and Hour Issues
  - Timekeeping
  - Required breaks/meal periods
  - Limiting overtime
  - Travel time
  - Exemptions
- Safety Concerns
  - Home office injuries and workers' compensation





# Controlling the Remote Office

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- More control likely means exposure to reimbursement requirements
- Fair Labor Standards Act (FLSA)
  - Employers cannot **“require”** employees to pay for business expenses if doing so would reduce the employee’s earnings below the required minimum wage
- Illinois Expense Reimbursement Statute
  - Applies to “all employers and employees **in this State**. . . except[] employees of the State or Federal governments.” 820 ILCS 115/1
  - Must reimburse for all reasonable expenditures or losses **“required”** of the employee. 820 ILCS 115/9.5



# Managing a Remote Workforce

- Before hiring employees to work remotely regardless of location, consider potential implications:
  - State and local taxes
  - Workers' compensation insurance
  - Unemployment insurance
  - Compliance with other state laws where employees live and work (e.g., antidiscrimination, wage payments)
- Consider limiting geographic footprint?



# Videoconferencing Conduct

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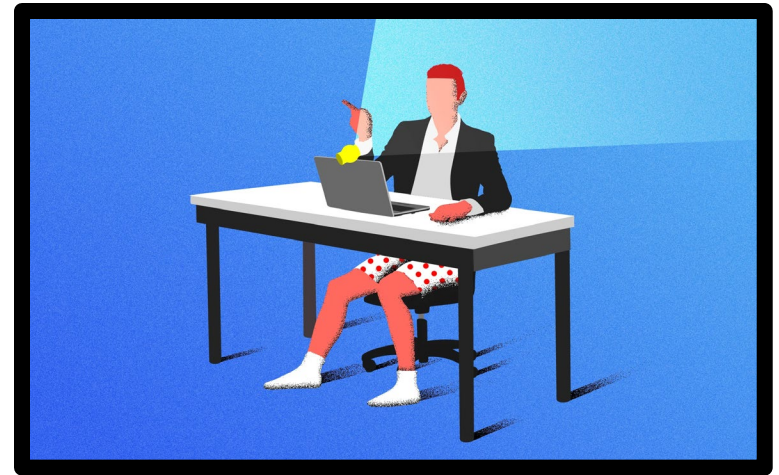




# Virtual Meetings

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- Unique opportunity to leverage videoconferencing platforms
  - Easier scheduling
  - Interactive technology
- Important legal issues to consider that may not appear obvious



# Virtual Meetings

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- Potential pitfalls
  - Lack of personal connection or ability to collaborate
  - Unequal participation
- What can employers do?
  - Raise awareness with supervisors
  - Conduct workplace surveys to vet issues
  - Adopt a videoconferencing policy that reiterates expectations and decorum

# Videoconferencing Policies

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- Anti-discrimination, anti-retaliation, and anti-harassment provisions
- Neutral dress and appearance rules
- Cameras and backgrounds



**Caregiver bias is the assumption that, because women are the primary caregivers of children and aging or infirm family members, they will not be able to effectively work without being distracted by their caretaking responsibilities.**





# Caregiver Bias

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- Assumptions could lead employers to treat women adversely compared to men
- Assumptions:
  - Family responsibilities leave women unavailable when school is out for the day
  - If a woman is distracted or steps away during the workday, it is because she is caring for her kids
  - Responsibilities associated with remote learning will fall on women
  - Women want or need to take a step back and focus on family-related obligations right now
  - Women are generally less competent, committed, and productive at work because they are focused on children



# Caregiver Bias

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- In June 2020, EEOC guidance reminded employers that provide remote work to employees with children due to distance learning that they should not treat employees differently based on sex or other legally-protected characteristics
- In June 2020, the Supreme Court reiterated that sex-stereotyping is unlawful under Title VII in *Bostock v. Clayton County, Georgia*
- Lawsuits have already been filed by female employees