

## [Cybersecurity Policy Report, EXPERT SPOTLIGHT—Mintz employment attorney Jen Rubin discusses worker privacy and the COVID-19 pandemic, \(Mar. 31, 2020\)](#)

Cybersecurity Policy Report

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By Mark S. Nelson, J.D.

Jen Rubin offered tips for employers and employees to navigate privacy, mental health, and litigation risks that can arise from work-from-home arrangements necessitated by the COVID-19 pandemic.

Employment attorney Jennifer B. Rubin, member at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., suggested how companies and their employees can handle a variety of employment issues that may arise in the context of the COVID-19 pandemic. Rubin counsels companies across a range of industries, including financial services firms, on wage and hour compliance issues and related litigation matters. Rubin has recently written and spoken about gender diversity on corporate boards, employee mental health, and employee mobility. Rubin spoke to Wolters Kluwer about some practical tips for how employers and employees can adapt to work-at-home arrangements during the COVID-19 pandemic.

What are some of the unique risks that companies and employees face as many employees are suddenly working from home due to the COVID-19 pandemic?

The obvious ones include unsecured Wi-Fi access, failure to use firewalls or proper multifactor authentication, etc., but here are a few others:

- Saving and printing documents on home computers and printers—which are accessible to entire households
- Leaving work “up” on screen while someone wanders away for a bio break, lunch, or a phone call. Another household member comes into the home office (which is now located on the kitchen counter) and accesses the employer’s system because it is left open or even simply reads what is there. Think about it – do you log out of your computer in the office when you run to the kitchen for coffee? That is not a concern in an enclosed and secure office, but what about the family kitchen – the center of the family home – which is now occupied by the entire family?
- Telephone/zoom/webex calls – easily overheard in the next room or even the next apartment or on the street.

Privacy in the work-from-home setting is perhaps a two-way street. What steps can companies take to protect the confidentiality of corporate information? What steps can companies and employees take to protect employees’ privacy?

- Employees should be reminded that all of the usual corporate policies apply – not just confidentiality but appropriate use of corporate electronic information systems.
- Companies might consider monitoring (whether spot checks or continuous depending on circumstances) access to and from company servers to ensure compliance with corporate policies (assuming of course appropriate notifications and consents are received pursuant to applicable state and federal law).
- Employee privacy rights are implicated by allowing the employer into the employee’s “home” – such as use of video (employee can choose with some programs to block out employee’s home or use an icon in place of live video).

There have been many national emergencies during the early 2000s, ranging from the 9/11 terrorist attacks to Superstorm Sandy and other weather-related events, but the COVID-19 pandemic may be the first of these events to directly affect the entire nation simultaneously. Employees’ mental health is an important part of

keeping people working under these challenging circumstances. What can companies do to ensure that they offer EAP services to employees who must work from home and to those employees who may be deemed essential employees without the option of working from home during the COVID-19 pandemic?

Mental health issues in the workplace can be frequently overlooked – but COVID 19 will bring those issues into sharp focus as employees struggle with severe anxiety and grief – and yet those still working in offices or at essential businesses or even those teleworking are expected to continue to be productive. Employers and employees must not only be flexible at this time with respect to expectations, but compassion needs to be practiced at every level. Everyone is struggling to figure out the new normal and a healthy dose of civility will help in this regard. Those companies with EAP programs should be affirmatively reminding employees of this incredibly valuable benefit. Other employers might consider contacting local resources to obtain referrals for employees who need assistance. Telemedicine is a growing area – and likely will include teletherapy as well (which predated this crisis). Most group health insurance plans will also provide for referrals for those practitioners on their plans.

Workplace harassment is perhaps often thought of as something that happens in person. Given that many employees will be working remotely for an extended period of time, are there different risks related to workplace harassment that arise from employees being connected primarily over the Internet?

I do not see a material difference – particularly given the prevalence of social media and the nearly total acceptance of BYOD [bring your own device]. It is really more a matter of amount of time spent in the home and outside the office that is material here. But the issues and concerns really remain the same.

How might companies reduce the risk of employment litigation regarding their treatment of employees' mobile working arrangements during the COVID-19 pandemic?

Employers with excellent compliance hygiene – those focused on the basics and fundamentals – are well-positioned to address claims, disputes, and concerns because culturally there is a systemic manner in which to address them. But all employers are at risk when the employer cannot make decisions fast enough to keep up with daily legal changes and developments. My advice is to do the best you can and try to approach these issues with human-first sensibilities. If it turns out a legal mistake was made, the likelihood of our legal system's forgiveness may have a direct correlation to the employer's bona fide attempt to do the right thing. Covid-19 has impacted every aspect of our lives, but it also fundamentally reminds us that we are all human.

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