

July/August 2021

BARBEAT

Genesee County Bar Association



William J. Brickley, 2021-2022 GCBA President

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Justice Center (GCJJC)

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Beginnings

By William J. Brickley, President

As one works their way up through the ranks of our bar Association our fabulous executive director, Tina Burroughs, reminds us all in her subtle and gentle ways that the time will come when our mug is going to appear on the cover of *Bar Beat*. I know for some of us this is not why we signed up to help the GCBA and it is something that we would prefer to avoid. Yet apparently tradition calls for it, trying to avoid it would cause much more effort and, in reality, it is a relatively painless process.

Given the inevitability of this event I put some thought into what I wanted the photo to depict. I chose the Genesee County Courthouse as the backdrop. While I have spent a great part of my 37-year legal career in this building, that was not my motivation. I chose it because of what it represents.

One of the joys of my legal career has been to be able to handle cases throughout the state. In almost every county, the focal point is the courthouse. In most counties the courthouse is the tallest building. It is almost always the most beautiful and the most architecturally diverse. Those entering are almost always enveloped by a sense of reverence, respect and knowledge that we can believe in a sense of justice in this country. This also is not why I chose the courthouse for my picture.

To me the courthouse signals a beginning. Beyond being the place where new life is recorded, where unions of individuals are formalized, and where a business can protect its new name, almost everything that happens in a courthouse is about beginnings.

The courthouse is the beginning when people wish to peacefully and civilly try to resolve their disputes. The courthouse is the beginning for those seeking justice for a wrong that occurred to them. The courthouse is the beginning for a victim of a crime to start to heal from the pain inflicted upon them.

Even when a case is closed this is not the end, but again just another beginning. An individual can begin a new life after their litigation has ceased. A divorced couple can begin to seek to find love again and begin to move on from the pain they have felt. A victim can begin to find peace in knowing that the person who hurt them is no longer a threat to them or the community. Business partners can begin to mend their relationship and find success in a different form. The courthouse represents these and many other beginnings.

Not only in our society, but more specifically in the legal system, we are undergoing a beginning. The pandemic that began in 2020 caused us to begin new ways of attending to our clients' needs. The beginning of our post-pandemic world will cause us to begin anew in many ways. Not only will we

begin to come back to the courthouse, we will begin the process of incorporating some pre-2020 behaviors with pandemic learned processes.

Our profession has always stood taller and been more perfect when we are making connections to one another, and the GCBA is one organization that can help make those connections. We can begin this now. Your GCBA, through the leadership of Sherri Belknap, Mike Tesner and Tina Burroughs, did an excellent job of navigating the challenges of the pandemic. Yet we missed something: contact with *you*. That will be part of this beginning. Very soon your Bar Association offices will be fully open. We will begin to have in-person meetings in the fall. We will begin the process of trying to help you be a better lawyer to your clients.

As you travel on Saginaw Street and pass by our courthouse, I hope that you will see it as I do, as a symbol of a beginning.

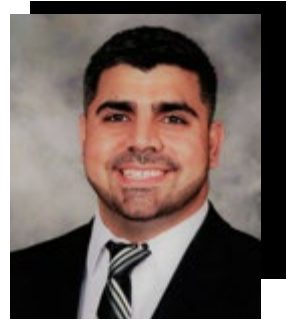


William J. Brickley



Cleaning Slates

By Amir E. Abu-Aita



Amir E. Abu-Aita

On October 12, 2020, Governor Whitmer signed the “Clean Slate” bill, which became law on April 11, 2021. The purpose of this bill is to assist people who have criminal records to find better jobs and locate better and safer housing options. In addition, “cleaning the slate” of a person who has a criminal record can help strengthen families, communities, and local economies across the state, and promote public safety.

The new law allows for people with criminal records to expunge an unlimited number of misdemeanors and up to three felonies. Of course, there are exceptions to the general rule; some misdemeanors and felonies cannot be expunged. Also, since Michigan voters legalized marijuana in 2018, the marijuana misdemeanor crimes can be automatically expunged.

This past spring, Attorney General Dana Nessel contacted our very own Genesee County Sheriff Christopher Swanson to inquire about hosting the State of Michigan’s first “expungement fair.” The intent was to create a prototype starting in Genesee County that could be used in each county across the State of Michigan. Sheriff Swanson quickly agreed to the request and started planning the event with local community partners.

718 people preregistered for the fair (walk-ins were allowed but the process time was longer than for those who preregistered). For the marijuana misdemeanor expungements, the process was quick and easy, with the AG’s office setting up booths to process those expungements. The more difficult expungements were non-marijuana misdemeanors and felonies. For these types of cases, we gathered a group of gifted attorneys who assisted the applicants in the application process. Several pro bono attorneys such as Elias Fanous, Matt Norwood, and Rick Hetherington were well versed in the new expungement laws. Others were new to the expungement process. The attorneys all had to read and understand the laws before assisting in the expungement process. Thankfully, we had the assistance of John Pallas, First Assistant, Criminal Trials and Appeals Division. The pro bono lawyers counseled the registrants to determine if they were qualified to proceed with the expungement process. The lawyers thumbed through the iChats that were supplied by the AG’s office. Most of the preregistered applicants were qualified, but some were

Continued on next page

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Cleaning Slates

Continued from page 5

not. In addition, some criminal histories did not show up on the iChat reports. The applicants were extremely forthcoming with any criminal history they sought to clear from their records. Once the applicants were deemed eligible, the lawyers assisted in filling out the application (MC 227). Once the form was completed, the applicants were given a set of instructions to complete the application process. The AG's office did a great job of compiling the instructions in an easy-to-read form.

The most asked question was whether the records were cleared on the day of the event. The short answer was no. Although the new clean slate law is significantly broader than

the prior law, the process of expunging records take time. A few attorneys were willing to follow up with some applicants to see it through, but generally, the applicants were responsible to follow through with the paperwork themselves.

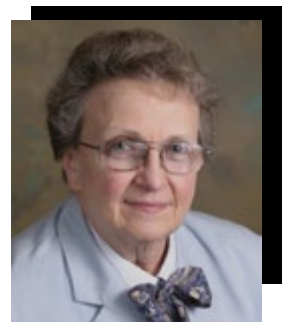
In the end, the number of attendees totaled more than 1400. With the help from the Attorney General's office, the Genesee County Sheriff's office, the Genesee County Prosecutor's office, and several excellent local lawyers – the event was a success. Other expungement fairs have been scheduled in several Michigan locations for the end of July.

SCOTUS Update

By Roberta J.F. Wray

The NCAA may not prohibit student athletes from taking education related financial assistance such as computers, paid internships, or foreign studies. The NCAA was taken to task for profiting from players' efforts. Subsequently, NCAA is reworking their rule book to permit players to profit from their "name[s], image[s], and likeness[es]."

A transgender student won when SCOTUS declined to hear appeal in *Gloucester County School Board v Grimm*. Grimm had sued over requirement that he use the bathroom and showers that matched his gender identification at



Roberta J.F. Wray

birth. Three lower courts had found that requirement to violate prohibitions of discrimination on the basis of sex.

A high school cheerleader won the first student First Amendment case in 50 years. In *Mahanoy Valley School District v B.L.* (a minor), by and through her father (Levy), challenged her suspension from her J.V. cheerleading squad for an expletive-laden rant on Snapchat while outside school property and hours after she failed to make the varsity squad. The court held 8-1 that the school does not have control over student speech, with some exceptions such as bullying and threats.

Later in the term the court more predictably upheld changes in Arizona voting rules (*Brnovich v Democratic National Committee*) that impose criminal penalties for voting in the wrong precinct, and having third parties deliver absentee ballots to the clerk's office.

Reaction from civil rights groups included calls for Congressional action to restore the 1965 Voting Rights Act, which has been seriously gutted by recent Supreme Court actions.

The most recent action makes it "[s]ignificantly more difficult to challenge laws on the basis of hindering minority voters," according to Civil Rights attorney, David Henderson.

Field Day at the Genesee County Juvenile Justice Center (GCJJC)

By Shelley R. Spivack

Field Day at GCJJC (f.k.a GVRC) began six years ago when the staff came up with the idea to do a track and field event. The first year started with basic track and field events. By the third year, extra events and the obstacle course, which was designed and built by the youth, were added.

When the obstacle course was introduced, it took on a life of its own. Staff named it the *Warrior Confidence Course*, recognizing that life will present itself with obstacles that are challenging. A staff member runs beside each youth and encourages them to take a chance not only at overcoming the obstacles, but finishing the course.

Local police and fire departments, as well as judges, regularly attend the event. As stated by Chad Sharpe, Director at GCJJC, "We want to introduce the belief that there are kids behind the crime and people behind the badge. Ultimately our goal was to provide the youth an experience of positive sportsmanship and a taste of a sporting event other than basketball."



Hon Chris Christenson and Chad Sharpe

This year Sharpe invited the YOUTH ARTS: UNLOCKED (YAU) program, which provides visual and performing arts workshops at GCJJC, to present an exhibit. Also on exhibit were some of the products made by the youth in the new Microbusiness program, The Phoenix Concept. Sharpe's intent was to showcase not only the quality of GCJJC'S programming, but the quality of GCJJC staff and the partners such as the YAU program, Mt. Morris Schools, GHS (Genesee Health System), and Variety Food Services.



Shelley R. Spivack

Sharpe further commented: "Sports echo real life: there is competition, teamwork, victory, loss, conflict and resolution. Being part of a sporting event and a team teaches the value of looking out for others, developing trust and confidence, and showing respect for authority. Regardless of natural athletic ability, doing activities like these create opportunity for the youth to recognize they are not alone and that they can overcome challenges physically and mentally. With the addition of the cognitive behavioral practices and our group programming, events like this seem to enhance the work we do with our kids, helping them develop into better versions of themselves."



YOUTH ARTS: UNLOCKED display



Hon. Brian Pickell and Chad Sharpe



Warrior Confidence Course

Law is the Family Business: Local Attorney Families

By Sherri L. Belknap



The GCBA has a rich history of members who come from a family of lawyers. Many of our attorney families accomplish as much as the “big name” attorneys, but they do not receive the same public recognition. In each edition we will highlight a couple of our local attorney families who work hard to serve the Genesee County community.

The Buckley Family

In 1954, **James R. Buckley** moved to Flint to work in labor relations at AC Spark Plug. He formed lifelong friendships with Allan L. (Duke) Parker and his family, and others.

Mr. Buckley moved his family to Detroit and attended night school at Detroit College of Law. In 1968, he was admitted to the State Bar of Michigan. Duke Parker offered office space, and Jim and family returned to Flint. The friends formed the new Flint firm of Parker, Kelly, and Buckley. In 1980, James R. Buckley, P.C. was incorporated.

Daughter **Kathleen Buckley** also attended Detroit College of Law. Sworn in by the Honorable Robert Ransom, she was admitted to the State Bar of Michigan on June 2, 1981. She joined her father in private practice. Ms. Buckley retires this year after 40 years in private practice.

Jim and Kathy served on bar association and community boards and were founding members of the Genesee County Bar Foundation. Ms. Buckley was a Trustee of the Foundation from 1991 to 2020. She was the Foundation’s President from 1994 to 1997 and Secretary from 2000 to 2020.

In 1983, Kathy was President of the Genesee-Shiawassee-Lapeer County Section of the Women’s Lawyers Association of Michigan and served as Vice-President in 1987 and 1988.

Son **J. Michael Buckley** also attended Detroit College of Law and graduated *cum laude*. On May 15, 1984, he was admitted to State Bar and entered the family business. In 1988 he joined the Wayne County Prosecutor’s office. In 1990, he joined the Department of Justice as an Assistant

U.S. Attorney for the Eastern District of Michigan where he now serves as Deputy Chief of the Public Corruption Unit.

Mike is a veteran trial lawyer who teaches students and colleagues about trial advocacy. He has been an adjunct professor at Michigan State University College of Law, and a guest instructor at the Department of Justice National Advocacy Center in South Carolina.

Mike has received numerous accolades for his work. He has been awarded the Director’s Award for Superior Performance by an Assistant United States Attorney in Washington D.C. three times (1998, 2005, and 2014), one of the most prestigious awards from the Department of Justice.

Son **John Buckley** attended the University of Michigan Law School and graduated *cum laude* in 1985. He moved to Chicago where his trial practice included general litigation, class action/mass torts, and insurance coverage.

John earned numerous awards, including Leading Lawyer and Super Lawyer honors in Chicago and national recognition as a Fellow of the American Bar Foundation and a member of Litigation Counsel of America (invitation-only organizations where membership is limited to less than one percent of American Lawyers). In 2003, John received the Edmund Muskie Pro Bono Award from the ABA’s Tort Trial and Insurance Practice Section. John taught trial advocacy at the Federal Trial Bar course, National Institute of Trial Advocacy (NITA), and at Northwestern University Law School. He was also a Senior Editor of Terence MacCarthy’s nationally acclaimed treatise, *MacCarthy On Cross Examination*.



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Reflections . . .

By Mary A. Hood

When asked to write an article reflecting on my legal career, my initial reaction fell short of enthusiasm, as I doubted I had accomplished anything remarkable to share with my fellow attorneys. Later, I asked myself: "How did you, a black female who gave birth to a child the same year you graduated high school, become the first black attorney appointed Attorney Referee in Genesee County?" Go with me on this journey down "memory lane," where I found the answer to this question, on the 30th anniversary of my admission to the State Bar of Michigan.

My paternal grandfather was a cement contractor who was active in local politics and passionate about the law, so much so that he conducted moot court competitions in the home. These competitions groomed my father's brother, **John Thomas**, his first cousin, **Herman Gibson**, both of whom were members of the Genesee County Bar Association (1960 courthouse photo collection), and Herman Gibson's brother, **Will Gibson**, to become lawyers in the 1950's. The next generation of my family produced a number of attorneys as well, including myself, **Henry Clark** and the late **Honorable Tracy Collier-Nix**.

My journey began on Flint's north side where I was born five years before the official end of the Civil Rights Movement; in reality the civil rights movement never ended in my community. I was born the year Governor George C. Wallace stood in a doorway at the University of Alabama to block two black students from registering, and of other major events of the civil rights movement. Though only a child, this period in American history was etched in my mind forever, not as an excuse to fail, but as a reason to succeed. How could it not be? As a child of the 1960's, I watched the many atrocities suffered by civil rights activists on television. My parents' and grandparents' experiences during this era and beyond became a yardstick for how they would raise their children.

Attending the Flint Community Schools, I excelled. My career choice is largely attributable to my father who strategically groomed me for the profession from early childhood, and my mother's (a teacher) insistence that her children overcome barriers which prevented most blacks of my generation from obtaining a college education.

I graduated from the University of Michigan-Flint and then Thomas M. Cooley Law School. While in law school, under my leadership, the Black Law Student Association (BLSA) formed the first moot court teams from Cooley to ever participate in the annual Frederick Douglas Moot Court Competition. We received an outpouring of support from the administration and faculty, including Dr. Kimble's willingness to proofread our briefs. Upon graduating, I took the first job offer I could

secure (I had a mouth to feed), which was at Legal Services of Eastern Michigan in Saginaw. This experience proved rewarding because it enabled me to do something I had done since

I was a young girl: fight for the underdog. I also gained invaluable trial and legal document drafting experience. During this period, I assisted domestic violence victims in drafting court documents at the YWCA's Safe House and was a support person at a women's shelter.

My public service began with an appointment to an assistant city attorney position in Highland Park. Thereafter, I became the first female attorney appointed magistrate for the 68th District Court. During two of these years, I was president of the Mallory Van Dyne Scott Bar Association. The highlight of my leadership was our annual career day at Flint Northern and Carmen Ainsworth high schools and a banquet honoring the late attorney A. Glenn Epps. During this period I was also the keynote speaker for several events at local churches and served on two boards.

In 2002, I became the first black appointed Attorney Referee for the 7th Judicial Circuit Court -- Family Division. In this capacity I have used all of my experiences (good, bad and ugly), to help restore families in Genesee County. I completed foster parent classes and was "relative placement" for foster children. I have also been a guest lecturer at the University of Michigan-Flint and Mott Community College and served on the Women's Advisory Board at the University of Michigan-Flint. I practice mindfulness and perform random acts of kindness. It is through my work with the families of Genesee County, and time spent with my own family, that I find my center and my most meaningful accomplishments.

Editor's Note: **Mary A. Hood** is an Attorney Referee in Genesee County.



Mary A. Hood

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Congratulations to our 2021 Award Recipients

Herbert Milliken, Jr. Civility Award

The recipient is a longtime, practicing member of the Genesee County Bar Association, who is recognized for the habit of offering professional guidance and advice to their fellow attorneys and being widely recognized as a professional role model who demonstrates the highest standards of professional courtesy and civility combined with a zealous and thorough advocacy on behalf of their clients. Congratulations **Hon. Mark C. McCabe!**



Greg Gibbs, Hon. Mark McCabe, and Ronald Haldy

Brian M. Barkey Community Service Award

The Brian M. Barkey Community Service Award recognizes a GCBA attorney member or affiliate member who has demonstrated an outstanding commitment to community service and provided volunteer services to charitable, religious, civic, community, governmental or educational organizations that have improved Genesee County. This year's recipient is **Dean T. Yeotis.**



Hon. Thomas C. Yeotis, Mrs. Yeotis, and Dean T. Yeotis

It's So Hard to Say Good Bye...

By Tatilia Y. Burroughs

Imagine my surprise when I received official notice of retirement from an employee. For the past 10 ½ years the Bar Association has been honored to have Eileen Harris as an office manager. She has been an excellent employee who has exceeded our expectations. Eileen has greeted you at membership meetings, seminars, and answered your membership questions. For the past few years, she has taken the helm of our annual golf outing. She has become a well-loved member of the Association.

The GCBA was not Eileen's introduction to the legal field. She previously worked as a paralegal and an administrative assistant in a law office in Lapeer.

Eileen grew up in the Royal Oak area and for the past 32 years has lived in Lapeer. Her family consists of her husband of 33 years, two adult daughters, a beloved son-in-law, and a grandbaby on the way.

We will miss you, Eileen! Good-bye seems so final, so we'll say, "See you later"! Best of wishes on your next phase in life!



State Bar Governance in a Nutshell

By Sean M. Siebigteroth



Sean M. Siebigteroth

I knew relatively little about the governance of the State Bar of Michigan until I was given the opportunity to serve in the SBM Representative Assembly. I thought a short and simple summary of how our State Bar is governed might be useful to my fellow GCBA members and Representative Assembly constituents.

The Michigan Supreme Court is granted the constitutional authority to regulate the practice of law in the State of Michigan. See Const 1963, art 6, §5. In 1935, the Supreme Court used that authority to establish the State Bar of Michigan and promulgated Rules Concerning the State Bar of Michigan.

At the outset, the Supreme Court established a Board of Commissioners as the State Bar's policy-making body. The Board originally consisted of 21 elected Commissioners representing about 4,300 State Bar members. In the succeeding 35 years, the membership of the State Bar almost tripled without a proportionate increase in the size of the Board of Commissioners. In response to a request from the Board of Commissioners, the Supreme Court established a new, larger policymaking body—the Representative Assembly—in 1971.

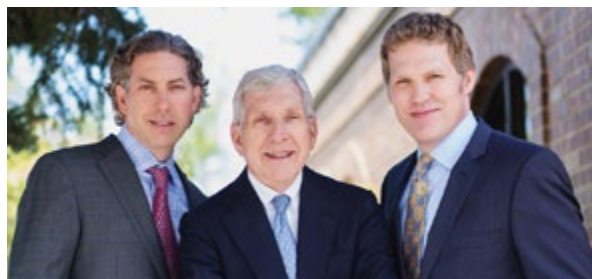
Today, the Representative Assembly has 141 members (there are nine vacancies) representing its approximately 46,000 State Bar members. That is a ratio of about 1 Rep-

resentative Assembly member per 300 State Bar members.

On a very basic level, here is how governance responsibilities are allocated among the Representative Assembly, the Board of Commissioners, and the President of the Bar:

1. The Representative Assembly “is the final policy-making body of the State Bar.” SBR¹ 6, § 1. The Representative Assembly may meet at “any time and place it determines[.]” SBR 6, § 7, but generally meets twice a year, in the spring and fall. *Id.* The Representative Assembly is solely authorized to increase State Bar dues.² *Id.*
2. The Board of Commissioners is charged with: (1) implementing policy adopted by the Representative Assembly, (2) establishing State Bar policy between meetings of the Representative Assembly, and (3) managing the State Bar, including adopting its budget, organizing committees and sections, and arranging for the publication of the *Michigan Bar Journal*. SBR 5, § 1.
3. The President of the State Bar chairs the Board of Commissioner’s 10-person Executive Committee, which includes the Board’s Officers and the Representative

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Assembly Chairperson. State Bar Bylaws, Art III, §9. The President may call an Executive Committee meeting at any time; the Executive Committee may exercise all the Board's powers between the Board's meetings. *Id.* The President, in turn, can exercise any of the Executive Committee's powers if a meeting is unnecessary or impracticable. State Bar Bylaws, Art III, §8.

Your Commissioners and Assembly members are your voice in the State Bar of Michigan. Your representatives are:

- *Commissioner Hon. B. Chris Christenson:* cchristenson@co.genesee.mi.us; (810) 257-3262
- *Assembly Member Sandra K. Carlson:* scarlson@co.genesee.mi.us; (810) 768-7559

- *Assembly Member Alena M. Clark:* AClark@co.genesee.mi.us; (810) 237-6159
- *Assembly Member Sean M. Siebigteroth:* ssiebig@thewilliamsfirm.com; (810) 695-7777

Endnotes

- 1 Rules Concerning the State Bar of Michigan <<https://bit.ly/3dV1Qin>>
- 2 At its April 24, 2021 meeting, the Assembly voted to recommend a \$80 increase in State Bar dues, the first increase since 2003.



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Remote Work: The New Normal

By Marc D. Morse



Marc D. Morse

The concept of remote work is not new. In fact, the term “telecommuting” was coined in the 1970s alongside a theory that as telecommunications technology improved, employees would no longer need to physically travel to a central location to fulfill their job duties. In the nearly fifty years since, the world has seen remarkable advances in communications technology. In the past two decades alone, personal computers, Internet access, and even smartphones have all gone from luxuries to basic necessities. Despite this progress, some employers have been hesitant to leave the traditional framework of the employee commute.

Before COVID-19, hesitancy toward remote work was largely tied to the mindset that a lack of oversight and increased distractions from outside the workplace would lower employee productivity. Employers also did not want to be among the first to navigate the trials and tribulations of developing a successful framework for remote employees.

In March 2020, the pandemic began, and many employers were forced to quickly adapt to a world where employees could no longer come to the workplace. Any hesitancy surrounding remote work was overcome by the necessity of a business model that did not rely on physical interaction.

In the early days of the pandemic, employees had to learn how to “Zoom” and navigate what was previously the almost mythical “cloud.” A common phrase used during that time was “when things go back to normal.” However, as the weeks turned to months, and employees developed and became comfortable using the skills necessary for remote work, the notion of what “normal” was began to change. Employees began reporting greater job satisfaction and the loss in productivity that employers had feared, in most cases, never developed to the extent they thought it would.

Now, as the pandemic winds down, employers are left with a decision: do they continue allowing remote work? If not, do they end it entirely, or do they develop a hybrid approach? Or do they lean in and develop an entirely remote workforce? The answer to these questions depends on the employer’s unique circumstances, but all employers should consider the legal implications when developing their remote work policy.

Timekeeping

Employers contemplating remote work must ensure they have a system in place for accurately tracking the hours of remote employees. Employees should be adequately trained on how to use this system and prohibited from working unlogged hours.

Overtime

Employees who work from home may have the urge to continue working on assignments outside of their normal

work hours, which could increase the employer’s overtime liability if unmonitored. To avoid this, employers should require employees to receive written authorization before working any overtime hours.

State Laws

One benefit of utilizing a remote workforce is the applicant pool is not confined to a certain geographical area, allowing the employer access to a wider variety of applicants. However, this also requires employers to be mindful of the differences between state laws. For instance, employees who reside in different states may be subject to different wage and hour laws and leave requirements. Employers should not assume following federal law and the law of the state in which they do business will protect them from liability in all other states.

Misclassification

Employers must be careful to not misclassify remote employees. Employers may believe an employee who works remotely full-time, who never comes to the office, and whom they have little oversight over, can be classified as an independent contractor. However, a remote worker is not necessarily an independent contractor. Employers should use the same care in classifying remote workers as they would any other position.

Discrimination

If employers choose to maintain a hybrid workforce where only certain employees are permitted to work remotely, they should ensure their policy is administered in a nondiscriminatory manner. Employers should also strive to avoid an “out of sight, out of mind” mentality with remote workers, and ensure that they are offered the same opportunities and receive the same treatment as other employees.

Technological Concerns

Remote work by its very nature relies on technology. Employers should have clear policies regarding what equipment will be provided, and how employees may or may not use such equipment. Employers should also have adequate security measures in place to avoid data breaches or other security threats.

As technology advances, remote work will continue to grow and become more commonplace. Employers should seek the advice of legal counsel when contemplating adopting or adjusting a remote work policy.



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