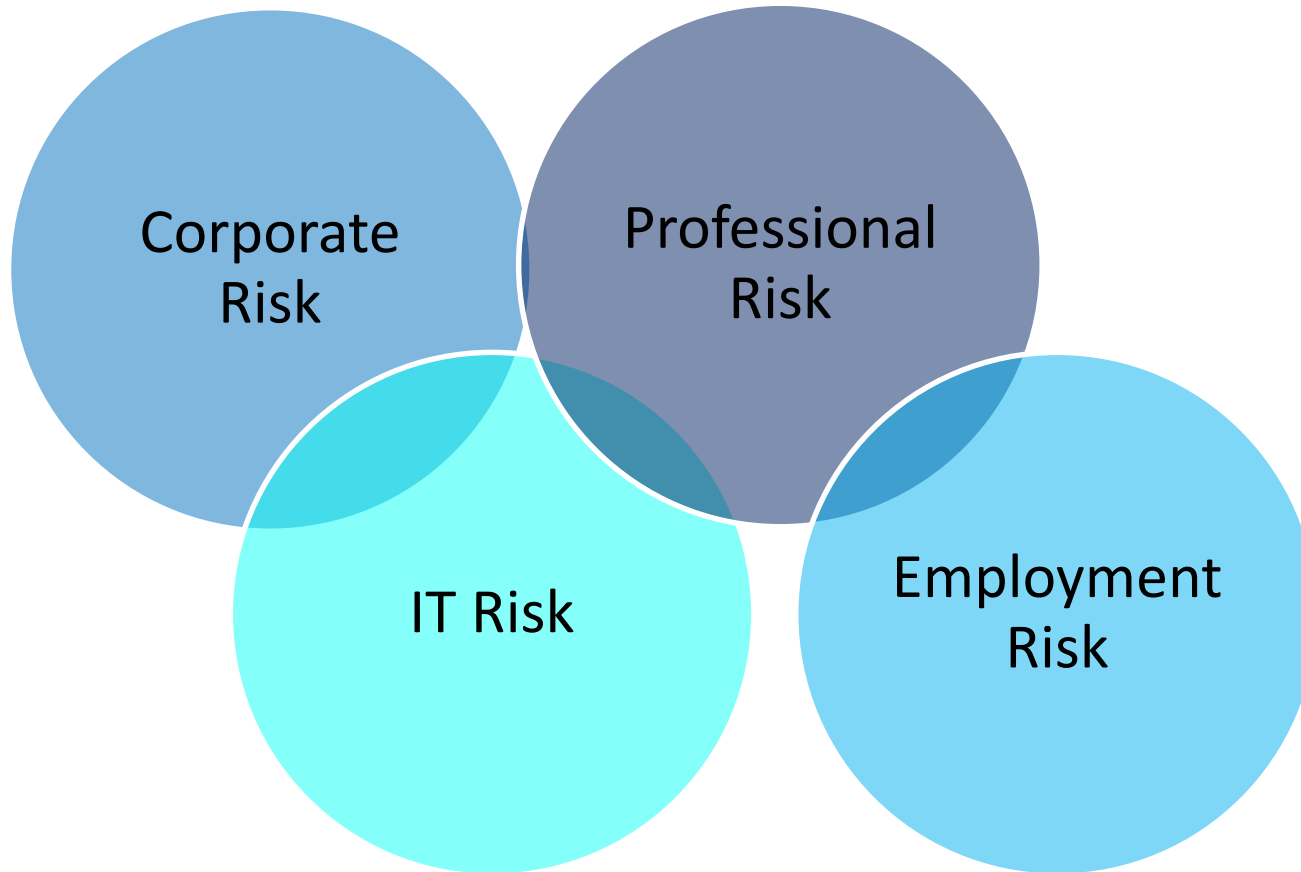


Telehealth & the Remote Environment: Considerations for a Post-Pandemic Workforce

Molly S. Evans
May 26, 2021

LEGAL CONSIDERATIONS FOR REMOTE WORK



LEGAL CONSIDERATIONS FOR REMOTE WORK: EMPLOYMENT RISK

- What are the health center's expectations regarding compensation and scheduling on-hours and off-hours, especially for non-exempt employees? How is overtime being monitored?
- Is the health center adjusting compensation if an employee is working remotely from a place where the cost of living is lower?
- What is the health center doing regarding expenses for home offices/ remote workspaces?
- How are staff members being trained?
- How are staff members being evaluated?
- How are separations conducted?

LEGAL CONSIDERATIONS FOR REMOTE WORK: CORPORATE RISK

If employees are working remotely from another location, does that require the health center to register to do business in that other location?

EXAMPLE: A health center located in Ohio plans to allow all of its administrative staff (50 people) to work remotely through 2022. 35 of the 50 people reside in Kentucky. The health center needs to determine whether Kentucky would require it to register as a foreign corporation doing business in Kentucky.

LEGAL CONSIDERATIONS FOR REMOTE WORK: CORPORATE RISK

If employees are working remotely from another location, what are the tax implications of that work? Does the health center need to pay taxes in that location as well.

EXAMPLE: A health center located in Ohio plans to allow all of its administrative staff (50 people) to work remotely through 2022. 35 of the 50 people reside in Kentucky. The health center needs to determine whether it needs to pay taxes in Kentucky.

LEGAL CONSIDERATIONS FOR REMOTE WORK: PROFESSIONAL RISK

If providers are providing telehealth services from home or another location, are they providing the services within the scope of their employment for FTCA purposes?

EXAMPLE: An employed psychiatrist at the health center is providing services via telehealth exclusively from her home. The psychiatrist's employment agreement and job description only contemplate that the psychiatrist will provide services at the health center's 4 sites. A patient files an FTCA claim related to care provided by the psychiatrist and OGC says there is no coverage because it was outside the scope of employment.

LEGAL CONSIDERATIONS FOR REMOTE WORK: PROFESSIONAL RISK

If providers are providing telehealth services from home or another location, are their services covered by the health center's gap insurance policy?

EXAMPLE: A part-time contracted psychiatrist at the health center is providing services via telehealth exclusively from her home. The psychiatrist's employment agreement and job description only contemplate that the psychiatrist will provide services at the health center's 4 sites. A patient files a lawsuit and the gap insurance company says no coverage because its not covered by the policy.

LEGAL CONSIDERATIONS FOR REMOTE WORK: IT RISK

- How is technology issued, used and/or accessed by health center staff?
- Are staff members permitted to use their own devices when providing services remotely?
- How is IT security effectively implemented in remote workforce? How are employee vulnerabilities analyzed?
- What about HIPAA privacy and security considerations?

QUESTIONS?

Molly S. Evans
mevans@ftlf.com