



# NAVIGATING THE POSSIBLE LEGAL PITFALLS OF VIRTUAL TEAMS

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**Abstract:** Virtual teams are an increasingly popular element of organizational designs. While virtual teams offer important advantages – including increased collaboration, greater flexibility, and cost savings – they may also create legal issues. Specifically, using virtual teams may lead executives to unwittingly violate labor and personnel laws. The results can be costly, including the loss of key personnel, damage to a company’s reputation, and financial harm. Viewing virtual teams from a legal point of view, we identify pitfalls that virtual teams may encounter and offer ways to avoid them.

**Keywords:** Virtual teams, legal challenges, employment laws, intellectual property

A virtual team is a group of individuals who are situated in different geographical locations that collaborate on tasks using various forms of communication and decision-making technologies (Lipnack & Stamps, 2000; Martins, Gilson & Maynard, 2004; Powell, Piccoli & Ives, 2004; Riemer & Vehring, 2012). Members of some virtual teams may all belong to one organization, while the membership of other teams may span multiple organizations. Virtual teams enhance organizational agility and are increasingly a part of organizational designs (Alberts, 2012). Indeed, a recent estimate suggests that 1.3 billion business professionals worldwide will participate in virtual teams over the next few years (Johns & Gratton, 2013). Virtual teams owe their popularity to the creativity, flexibility, and cost savings they often produce (Siebdrat, Hoegl & Ernst, 2009; Townsend, DeMarie & Hendrickson, 1998). Research has shown that global virtual teams generate more innovative solutions than traditional co-located teams (Zakaria, Amelinckx & Wilemon, 2004). Virtual interaction can reduce interpersonal problems within teams, as team members are more concerned with the content of the work than with the individuals performing it. A virtual team may be a good solution for the handicapped, disabled, senior citizens, introverts, single parents, and others whose work will benefit if they are able to work from home. Virtual teams can lower costs by connecting interdependent workers without incurring travel expenses. And they allow companies to access talent from around the world without consideration of their place of residence, thereby saving relocation fees.

Despite their advantages, virtual teams can be a legal landmine for organizations. Most of the federal laws that govern labor and personnel issues are grounded in traditional, highly structured work arrangements. One implication is that the creation and operation of virtual teams can lead executives to unwittingly violate laws. Accordingly, we seek to increase the awareness of designers and executives to the potential legal problems of virtual teams and how these problems can be avoided. Our focus here will be on U.S. laws, but other countries have similar applicable laws.

## POSSIBLE LEGAL PITFALLS OF VIRTUAL TEAMS

Legal issues may be overlooked by companies when using virtual teams as an organizational design tool, but this can be a risky omission. Without careful attention to the nuances of how people behave and interact within virtual teams, companies can run afoul of the law in

areas such as discrimination; wages and hours; disability, leaves, and accommodation; and intellectual property rights. Table 1 summarizes the relevant laws, how the use of virtual teams can lead an organization to run afoul of these laws, and how to avoid such problems.

**Table 1.** Avoiding the Legal Pitfalls of Virtual Teams

Statute	Source of Confusion About the Law When Using Virtual Teams	Best Practices for Avoiding Breaking the Law
Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex (including pregnancy), or national origin.	Companies face much stronger liability for harassment by a supervisor than they do for the actions of a co-worker. But within virtual teams, it is often unclear who is and who is not a supervisor.	Identify which team members can be considered supervisors and provide them with special training about workplace harassment.
The Fair Labor Standards Act of 1938 establishes minimum wage and overtime standards for workers.	Companies must comply with all relevant wages and hours laws (e.g., state and federal). On virtual teams, members can receive conflicting directives regarding work hours and overtime approval from virtual supervisors and in-person supervisors.	Identify which supervisor is responsible for setting work hours for all virtual team members. Similarly, designate which supervisor is responsible for approving overtime hours for non exempt employees.
The Family and Medical Leave Act of 1993 allows certain employees to take unpaid, job-protected leave for certain family and medical reasons.	In certain situations, companies are required to provide leave for their employees. On virtual teams, it can be unclear whether an office or company is an employer (or joint employer) and, therefore, responsible for providing, verifying, and monitoring leave.	Determine which office or company is the legal employer for each virtual team member. Advise such office or company regarding this determination before work begins so any confusion or disagreement regarding leave obligations can be addressed.
The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with actual disabilities or perceived disabilities, and against individuals because of their association with someone who is disabled (such as via marriage).	Companies that are employers or joint employers of virtual team members may have to provide certain members with reasonable accommodations to allow them to perform their essential job duties.	Ensure that virtual team supervisors oversee requests for reasonable accommodations, engage in interactive discussions with individuals regarding requests, and monitor whether and how such requests are handled.
Intellectual property laws (including patents, copyrights, trademarks, and trade secrets) prohibit or limit the manner in which individuals may use another person’s or company’s information.	When virtual teams are comprised of members from different locations within a company or different companies, team members may have different obligations or views regarding their right to use, discuss, claim, or receive money for team materials.	Before beginning work, require virtual team members to disclose any prior non-compete agreements and to sign new confidentiality and non-compete agreements for the virtual projects.

### Workplace Harassment

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination on the basis of race, color, religion, sex (including pregnancy), or national origin (Title VII, 1964, § 2000e).<sup>1</sup> Discrimination may include, among other things, harassment in the workplace. Under Title VII, an employer’s liability for harassment depends on whether the alleged harasser is a “supervisor” or a “co-worker” of the individual. In general, companies are vicariously liable for the harassing actions of a supervisor but liable only for the actions of a co-worker if the company is negligent in discovering the harassment and taking action to end it. Therefore, whether an employee overseeing a virtual team is considered a “supervisor” or a “co-worker” has a significant effect on whether the company could ultimately be liable for certain alleged wrongful conduct.

In *Vance v. Ball State University* (2013), the United States Supreme Court clarified the definition of “supervisor” for purposes of employer liability under Title VII. The Supreme

<sup>1</sup> To be subject to liability under Title VII, employers must have 15 or more employees for each working day in 20 or more calendar weeks in the current or preceding calendar year. For purposes of Title VII, an employer includes private employers, state and local governments, educational institutions, private and public employment agencies, labor organizations, and joint labor-management committees controlling apprenticeship and training.

Court said a supervisor is one who is empowered to take tangible employment action against the alleged victim of workplace harassment. According to the Court, a tangible employment action is one that imposes a significant change in employment status, such as hiring, firing, failing to promote, and reassigning an employee with a significant change in job responsibilities or benefits.

When a company staffs a virtual team (either with individuals within the same company or from different companies), it should identify those employees who have the ability to create vicarious liability on behalf of the company and target those supervisors for special training regarding workplace harassment. Failure to do so could expose the company to additional liability.

### **Wage and Hour Requirements**

Virtual team members also have to navigate different work demands and expectations from different sets of managers – their managers in the virtual world and their managers at their work locations. To avoid conflicting directives and to ensure compliance with the Fair Labor Standards Act of 1938 (FLSA), companies should determine who is responsible for establishing work hours and approving overtime. The FLSA establishes minimum wage and overtime standards for workers (FLSA, 1938, § 201). These standards require employers with one or more employees to pay non-exempt employees for all hours they are required or allowed to work. This includes work performed away from work premises (e.g., work performed at home) and work that employers know of or have reason to know of (e.g., mandatory conference calls at night to accommodate different time zones). Further, employers have to provide non-exempt employees overtime pay for any hours worked over 40 hours in a workweek. If a company is considered an employer of its virtual team members, it must ensure compliance with the FLSA and the appropriate state wage and hour laws.

### **Disability, Leave, and Accommodation Issues**

Companies must consider whether they have any leave or accommodation obligations to virtual team members under the Family and Medical Leave Act (FMLA) of 1993<sup>2</sup> or the Americans with Disabilities Act (ADA) of 1990.<sup>3</sup> The FMLA allows eligible employees – employees who have worked for their employer for at least 12 months and worked at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave – to take unpaid, job-protected leave for certain family and medical reasons. The ADA prohibits discrimination against individuals with actual disabilities or perceived disabilities, and against individuals because of their association with someone who is disabled (such as via marriage). The ADA requires an employer to provide reasonable accommodations to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship. Generally, an accommodation is any change in the work environment or in the way work is customarily done that enables an individual with a disability to enjoy equal employment opportunities (ADA, 1990).

One question that may arise on a virtual team made up of employees from various companies is whether the company that hired them for the virtual team project is considered an “employer” or “joint employer” for purposes of the FMLA and/or ADA. If so, the company has certain responsibilities under these laws. Under the FMLA, the company would have to provide the employee with up to 12 weeks of unpaid leave each 12-month period (FMLA, 1993). Depending on the reasons for the leave, such leave could be taken in one continuous 12-week block of time, in various intermittent blocks of different lengths of time totaling 12 weeks, or in a uniform, recurring block of time each week (e.g., 10 hours of leave per week) totaling 12 weeks. This creates an additional oversight responsibility for managers. Under the ADA, a covered company must provide a virtual team member who has a disability with a reasonable accommodation to perform his or her job unless to do so would

<sup>2</sup> To be covered under the FMLA, a private sector entity must employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year. Employers also include any person acting, directly or indirectly, in the interest of a covered employer to any of the employees of the employer, any successor in interest of a covered employer, and any public agency.

<sup>3</sup> To be covered under the ADA, an organization must have 15 or more employees.

be an undue burden. Permitting the use of accrued paid leave, or unpaid leave, is a form of reasonable accommodation when necessitated by an employee's disability. Thus, managers must be aware of any FMLA and ADA obligations so they can handle disability, leave, or accommodation requests in a lawful manner.

### Intellectual Property Rights

A final legal issue companies should be aware of that may involve virtual teams is intellectual property rights. Consideration of such rights before a virtual team begins work ensures everyone understands his or her rights and obligations. Intellectual property can take various forms, including patents, copyrights, trademarks, and trade secrets. Rights to these assets can be granted to certain individuals or companies. Companies must determine in advance what, if any, rights individual team members or members from other companies have to the knowledge and information generated by the virtual team. This can be particularly important when dealing with individuals from different countries, each of which has its own intellectual property laws.

On a related note, a company hiring individuals from different companies to work together on a virtual team project should determine if any members are subject to non-compete or confidentiality agreements that prohibit them from taking part in the group project. Similarly, such a company should consider whether it wants to require its virtual team members to enter into a non-compete or confidentiality agreement regarding the project so vital information developed and shared is not released unintentionally to other individuals or companies.

## CONCLUSION

Looking to the future, our view is that two trends related to virtual teams are likely to continue. First, as information technology continues to become cheaper, faster, and more effective, the trend of incorporating virtual teams into organizational designs may even accelerate. Second, the litigiousness of U.S. society is unlikely to abate and may in fact increase. To the extent that these trends are realized, executives need to take careful steps to avoid the legal pitfalls of virtual teams. More generally, executives need to realize that any complex organizational design can unintentionally violate one or more laws. It is therefore wise to thoroughly examine potential legal ramifications of any organizational design decision before that decision is implemented.

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