

The New Working Environment

Thursday January 20, 2022

1:15 -2:15 PM

2022 APMA Forum

By

Jacqueline Rios, Esq. - Fowler Packaging

jacqueline@fowlerpacking.com

Lourdes Gonzalez - Gowan Company

lgonzalez@gowanco.com

Jonathan Siegel - Jackson Lewis

Jonathan.siegel@jacksonlewis.com

The New Working Environment

The pandemic has fundamentally transformed the way we work, do business, and meet customer needs. This past year has also taught us that so much more can be done remotely than we ever thought possible.

Flexible work is here to stay

Microsoft Hybrid Work: A Guide for Business Leaders.

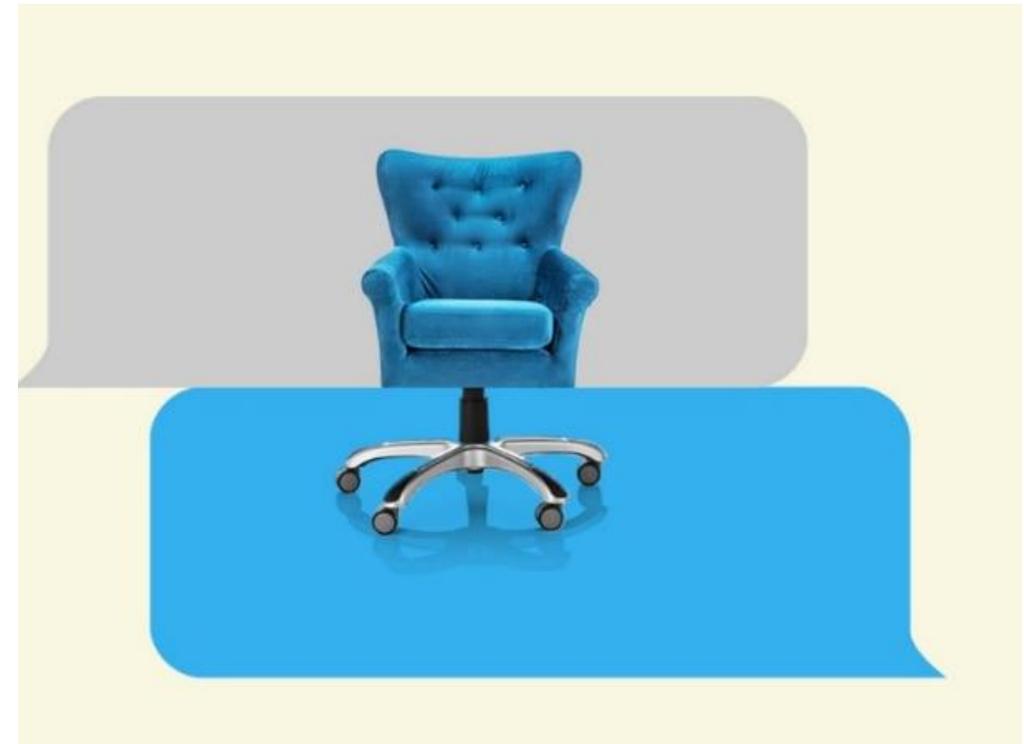


This Photo by Unknown Author is licensed under [CC BY-NC-ND](#)

Hybrid vs Remote Work Schedules

In the workplace, a hybrid work schedule would consist of time worked between a conventional in-office work style and working remotely

Remote work would consist of working exclusively out of the office with little to no in-office schedule



Hybrid or Remote?

As organizations develop their strategy, structure, and processes, they must consider the hybrid arrangement that best aligns with and supports their strategy.

Employees and leaders must have the same understanding of expectations in order for the model to work.

Advantages of Hybrid or Remote Work

- Reduced absenteeism (2-4 days)
- Lowered overhead and real estate costs (10-90%)
- Expands coverage
- Provides workplace flexibility/work-life balance
- Vital component to a Business Continuity Plan
- Increased job satisfaction, loyalty & engagement
- Improved morale and productivity (3-20%)
- Increased morale, recruitment & retention (50-65%)
 - New possible recruitment areas – Single Parent families, Employee with disability, Mature Workers
- Lowered stress and health care expenses
- Environmentally friendly “green” program

Adaptation and Productivity

- **Productivity.**

- Employees' and teams' abilities to collaborate effectively. How strong was our team pre-pandemic?
- Working side by side in an office allows for rapid transfer of information and collaborative work. How do we communicate now?
- Are employees more productive when given the freedom to control their own schedules unconstrained by geographic and temporal boundaries? Depends on the person, habits, and ability to self manage.

- **Staffing.**

- The great work-from-home experiment has clearly changed employees' expectations
- Claims that some percentage of employees will quit if not allowed to work from home
- Is this a recruiting must have now?
- Flexibility is becoming a new battle ground in the war for talent.

- **Culture.**

- Instilling and maintaining a company's guiding values, beliefs, and norms when the workforce is out of the office
- Communicating cultural beliefs, norms, and assumptions via technology
- Clash of senior employees who learned a culture through firsthand experience and new entrants who didn't have that same onboarding experience.

How to Establish Remote or Hybrid Work

Setting a Clear Strategy Across Your Remote or Hybrid Workforce

- What organizational capabilities are needed to function globally and regionally in this new hybrid work model?
- How does the organizational structure need to shift to align and organize around those capabilities?
- How do we get the right people, and how do we support them from a training and leadership perspective?
- What are we measuring to determine the organization is shifting successfully?
- What are the expectations when it comes to days/hours of availability? Employees will burn out if expected to be available 24 hours a day

Aligning Organizational Capabilities in a Hybrid Workforce

- Establish the roadmap by which an organization can extend and protect its core, deliver managed growth, and capitalize on new growth areas
- Analyze collective skills, expertise, and alignment of people across an organization.
- Include cross-functional collaboration, unique technology, decision-making agility, talent management, and readiness for change.
- As the work processes and roles are shifted, jobs must be reexamined for fit within the new framework.

Remote Workplace: Productivity and Schedules



- **“Swiss Cheese” Schedule** - Have you measured when work is being done by your remote employees?
 - Is the fixed schedule a round peg in a square hole?
 - Many employers are finding that employees are performing work at different times of the day/night to deal with life’s hurdles – personal obligations, schooling from home, etc.
 - Some employers are finding employees are working more at night or taking longer breaks during the day or working more on the weekends.
 - One employer found employees sent 52% more communications between 6:00 p.m. and midnight since March 2020 BUT . . .
 - The same employer found the employees worked **four more hours a week, attended more meetings (even though shorter) and spent 10% more time in meetings.**
- Employers should evaluate when work is being performed, productivity, other metrics important to your company and determine what schedule works best for your virtual teams.

Overcoming Challenges of Remote or Hybrid Work

- Primarily an employee-driven change
 - Will create new challenges with a lack of social interaction
 - Struggle with separating work from home
 - Some will have difficulty fully engaging with their work
- Enabling People to Deliver
 - Organizations must prepare and enable people to deliver in this new environment
 - For those who prefer a traditional face-to-face set-up, the landscape of the workplace might create a challenge

How the work gets done: Performance Management, Compensation

- Empathy in Management. Some employers are training managers to be more empathetic in managing virtual workers. Managers are learning how to “validate” that the employee is being heard.
- How are employees incentivized?
- Is there a loop for gaining and sharing feedback?
- Are systems in place to support asynchronous work schedules in addition to differently located work?
- Learning systems address:
 - Understand what’s important to employees. More than ever, engage the entire person.
 - Continue to talk about career development regardless of location.
 - Be mindful of fatigue and burnout.
 - Know, above all, that this is not a one-size-fits-all approach.

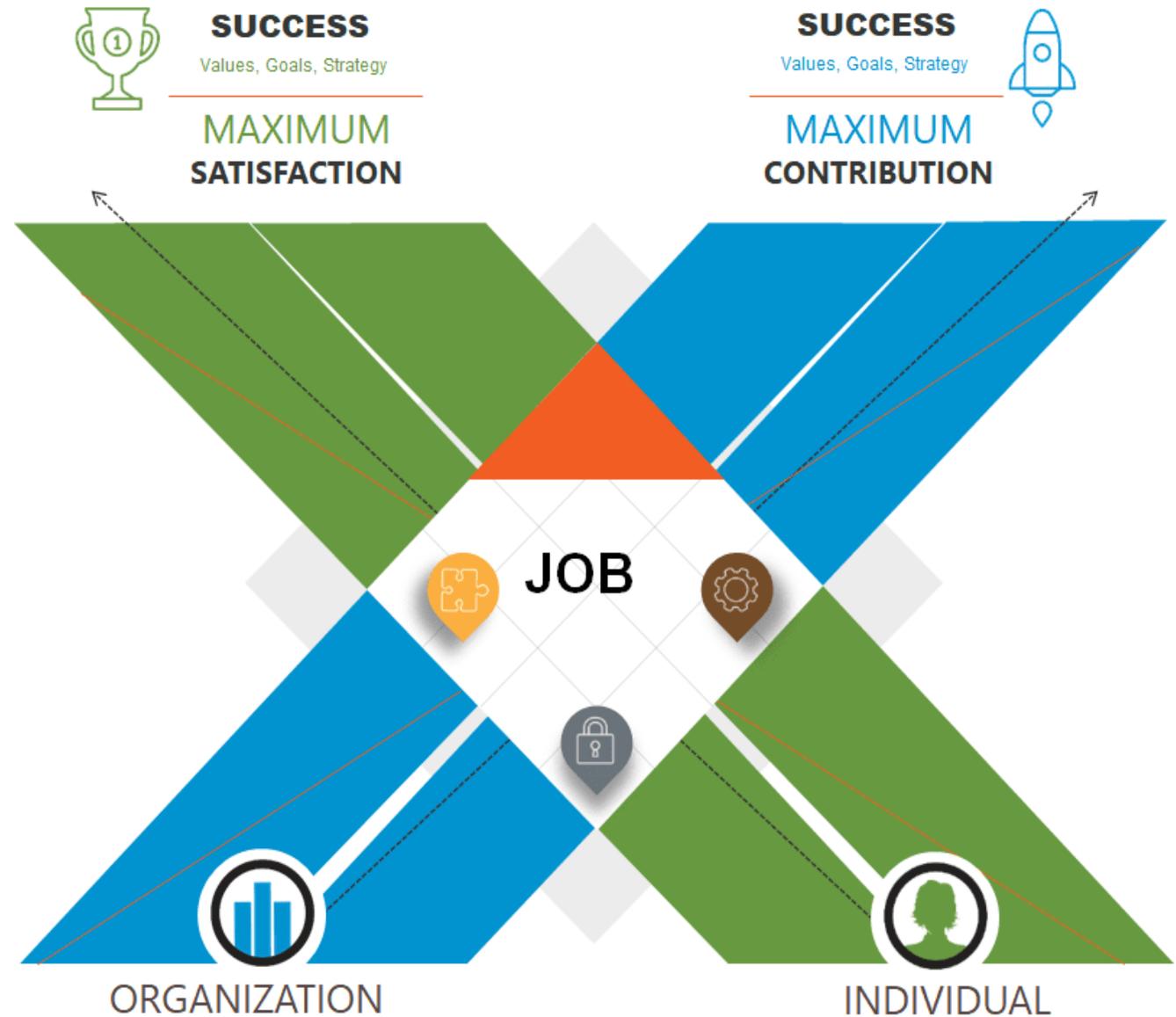
Leadership through Goal-Setting with Employees

- Assist employees in organizing work through one on one meetings prior to teleworking for the first few times
- Assigning work to employees
- Defining objectives and deliverables
- Establishing expectations
- Setting timeframes
- Reviewing status
- Coaching employees



Leaders of hybrid work teams:

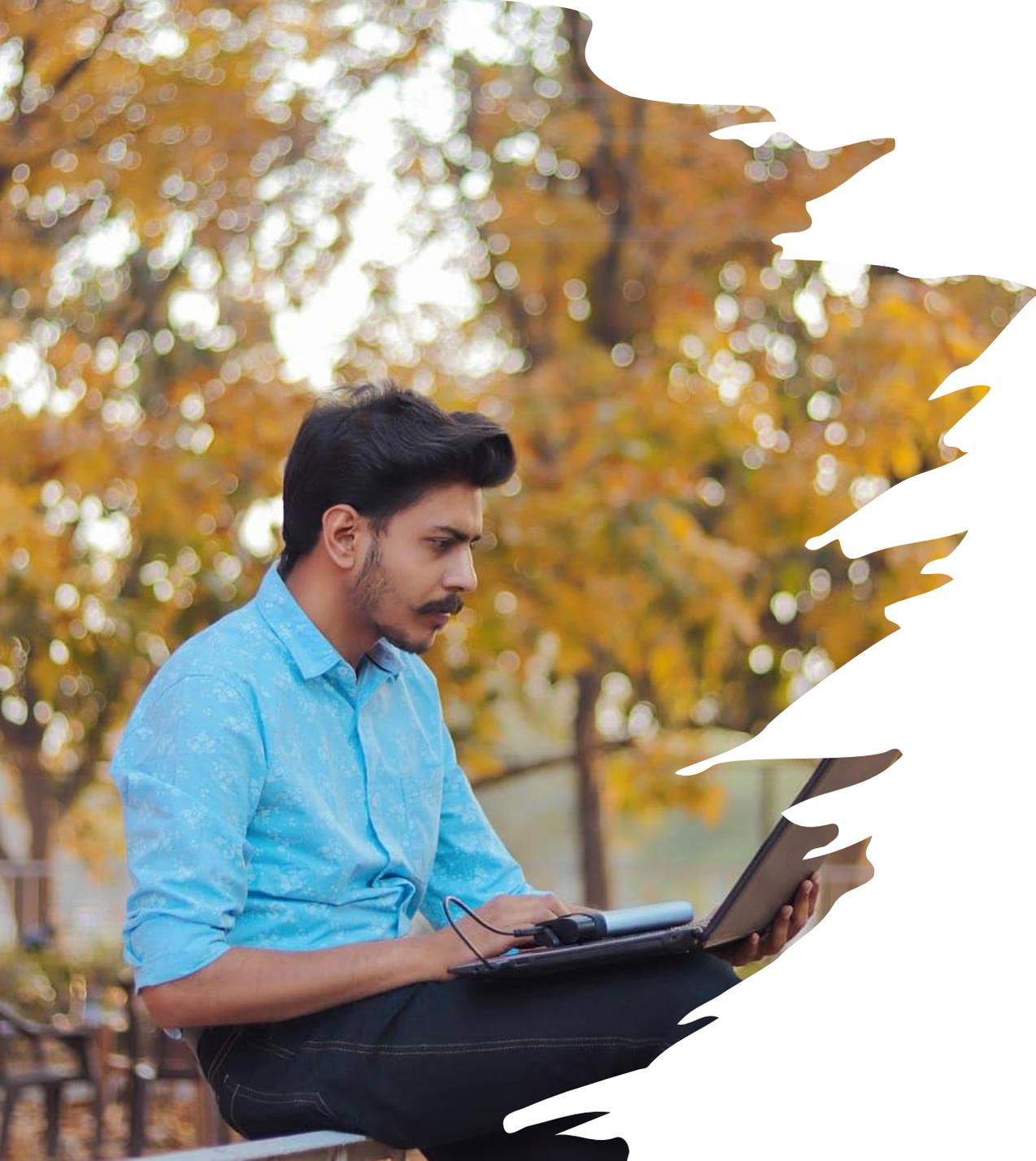
- Need to focus: contribution and satisfaction.
- They need to help their teams perform, and they need to understand what motivates employees.
- The context has changed, but the fundamental need to focus on these two things exists regardless of location.



Planning for Success

- Keeping the team together
- In-office meetings
- Teleconferencing
- Social activities
- Lunches
- Act on problems as they arise
- Be honest with remote workers
- Ask for input from co-workers
- Respect the remote arrangement
- Maintain scheduled team and individual meetings
- Integrate a review process
- Remember! There is an adjustment period





Some Possible Legal Issues in Hybrid or Remote Work

Data Privacy/Trade Secrets & Confidentiality

- Increasing data privacy protections
 - Consequences are high
- Physical and technical security
- Electronic monitoring
 - Who supplies hardware/software?
- Address via training, policies and remote work agreements
- No mingling of company/personal information
- Destruction/shredding of documents or hard drives with confidential/sensitive information
- Obtaining timely/complete return of company property



Wage and Hour



- California Labor Code and Fair Labor Standards Act (“FLSA”) must be adhered to in all formal and informal work at home arrangements
- Rest and meal periods
- Timely distribution of paychecks
- Tracking vacation/sick time
- Exempt vs. non-exempt
 - Is an exempt position doing more non-exempt?

Wage and Hour

- Non-exempt employees must record start and end of each work period and meal periods!
 - Accurate recording of **all** hours worked state law
- “Off the clock” work strictly prohibited
 - IPHONE/PDA/Email/Texting
- Is occasional commuting time to office compensable?
- Are there any city/county laws which cover the employee’s home?



Reimbursement of Business Expenses

- Employers must revise business expense reimbursement policies to account for equity and fairness for the virtual worker.
- In California, employees were entitled to a reimbursement for using their personal cell phones for work, even if the use of those phones did not result in any additional cost to the employees because the employee had an unlimited plan. The CA court imposed a reimbursement requirement on the employer even though the employee had an unlimited call/data plan.
- Expectation of “teleworking, virtual or remote working” verse “work from home” – could have significant implications for business expense reimbursement issues.
 - Avoid “work from home” – foster “teleworking” or “virtual” working which allows the employee to perform work remotely but not regulate where but may limit to the state. There are increased possible business expenses if mandate from “home” work and regulate the location.
 - Many employers provide laptop, hot spot and/or phone and allow flexibility where work.

California Family Rights Act (“CFRA”) and federal FMLA/Workers Comp

CFRA – 5 or more employees in the state/ FMLA - 50 or more employees within a 75-mile radius

Remote work rule: Long-distance telecommuters may be deemed to work in the location to which they report

Entitled to same CFRA/FMLA rights

Employees required to follow established “call in” procedures

Prohibit “working” FMLA leaves

Ensure leave (including intermittent leave) recorded accurately

Workers Comp – handle on a case by case basis.

FEHA and ADA Accommodation - Disability

- Reevaluate - Telecommuting *may* be deemed reasonable accommodation
 - EEOC guidance/case law
- Depends upon essential job functions – is attendance in office essential function?
- Undue hardship
 - Supervision
 - Cost
 - Face-to-face contact/interaction
 - Poor performer
 - Do others work remotely?



References

- **Figure Out the Right Hybrid Work Strategy for Your Company** by [Mark Mortensen](#) (Harvard Business Review [HBR] June 15, 2021)
- **Which Hybrid Work Model Is Best for Your Business?** by [Esther Tippmann](#), [Pamela Sharkey Scott](#), and [Mark Gantly](#) ([HBR] August 15, 2021)
- Microsoft - **Hybrid Work: A Guide for Business Leaders 2021.**
- Georgia Commute options. (<https://gacommuteoptions.com/>)

The New Working Environment

Thursday January 20, 2022

1:15 -2:15 PM

2022 APMA Forum

By

Jacqueline Rios, Esq. - Fowler Packaging

jacqueline@fowlerpacking.com

Lourdes Gonzalez - Gowan Company

lgonzalez@gowanco.com

Jonathan Siegel - Jackson Lewis

Jonathan.siegel@jacksonlewis.com