

Employment law in real life (IRL)¹ is vexing enough, with US employers required to navigate the complex federal, state and local laws and regulations that impact the employment relationship. Now family offices and businesses are making the leap into the virtual world, where employment law takes an even more challenging turn. The metaverse has opened the door to new risks that employers must anticipate and carefully consider. Below, we explore how these risks differ from what we see IRL.

What Is the Metaverse?

We previously defined the metaverse in our June insight, [Real Estate Law May Soon Play a Role in the Metaverse – What Family Offices Need to Know](#). However, as a refresher, the metaverse is a mix of augmented virtual reality that operates with the help of blockchain functions such as non-fungible tokens (NFTs) and cryptocurrencies. Think of the metaverse as a universe with several platforms making up the actual virtual planets.

Work Is Inescapable; So Are Work-related Lawsuits

The metaverse is identifiable by its attributes – synchronous, live interaction; persistent; available individually and concurrently with others; supported by a fully functioning economy; offering an experience to a wide range of contributors; and extensive interoperability. What could go wrong?

Well, of course, in order to enjoy a truly compelling virtual reality experience, the metaverse must resemble, well, reality. Just as *Pretty Woman*'s Beverly Hills shopping experience was not solely about the designer clothes she bought but also the hands-on treatment she sought from the sales staff, so too does personal attention matter in the metaverse. While a metaverse visitor could scroll through retail apps to digitally buy a luxury watch, they instead may want a retail associate to explain the pros and cons of the available watch options, search for discounts for them, or explain the portability of the watch NFT to other decentralized platforms. This type of customer service tests the limits of robots, so a metaverse retail operator may elect to hire a human being to work in its metaverse boutique. Thus is born a new type of worker, a "meta-worker," if you will.

Metaverse employment is not just a futuristic concept. As discussed in the June Family Office [insight](#), a casino on Decentraland, one of the most prominent metaverse platforms, is currently hiring real-life human hosts to work the floor of its virtual gambling establishment.² The hosts work four-hour daily shifts, greeting guests entering the virtual casino and roaming the casino floor to converse with other avatars – the digital equivalent of a casino host or hostess. At the end of the month, the humans behind the avatars are paid in cryptocurrency or via Decentraland's unique digital token.

The employment of virtual workers in the metaverse means that employment-related litigation is sure to follow. Below are just a handful of the types of claims we can anticipate.

How is a meta-worker paid?

Decentral Games casino workers were/are reportedly earning a maximum of US\$500 per month in DAI or DG tokens for four-hour daily shifts. The metaverse generally relies on cryptocurrency to pay for in-app transactions and asset purchases, but old-timey state wage payment laws generally require wage payment via cash, check, direct deposit or pay cards. Meta-employers will need to determine whether and to what extent state laws allow wage payment via crypto, what penalties apply if a meta-employee is locked out of their digital wallet and therefore unable to recover their wages, and whether and how to make deductions and withholdings from crypto-pay. Furthermore, due to the decentralized nature of metaverse platforms, many have their own unique digital token systems that are not transferrable to other platforms. Has a meta-worker been paid if they can only use their wages within a single decentralized platform? They might be able to pay the rent on their digital home, but their real-life landlord may be less than satisfied.

How much must a meta-worker be paid?

The federal minimum wage remains just US\$7.25/hour, but how much is that in digital currency? The hallmark of crypto is its fluctuating value. Meta-employers will need to consider the cash-to-crypto exchange rate, and when to measure it, to determine whether they are adhering to applicable minimum wage requirements, unless they resort to paying meta-workers in cold hard cash.

In addition to compensation, meta-employers must consider whether compliance with the Affordable Care Act is required and, if so, how to offer group health insurance benefits to – and procure enrollment in those benefits from – its meta-workers.

As lines between working and personal time continue to blur, meta-employers must also implement measures to differentiate between time that users spend in the metaverse working and time spent exploring in their chosen avatar. US wage and hour principles require that employers pay employees for all hours "suffered or permitted" to be worked. How do meta-employers track hours worked, or differentiate between hours worked and hours played on a platform?

Where does a meta-worker live and work?

The beauty of the metaverse is its ability to gather people from around the world in the same digital living room, concert hall or office suite. Whereas *Pretty Woman's* judgmental attendants were all physically located in Beverly Hills with her when they blew a big commission, our hypothetical metaverse shopper may be logged on from Kansas and assisted by a retail clerk plugged in from California. At the next shift change, the California-based digital retail clerk may be replaced by one logging in from Delaware, then hours later, they may hand over the digital register to a meta-worker logging in from Florida. The possibilities truly are endless. But, state hourly minimum wages often exceed federal minimum wage, and in varying amounts depending on the jurisdiction. Does the meta-retailer have to pay each meta-worker manning the virtual boutique the minimum wage applicable in the state from which they are logged in, or does the law of the state where the meta platform is hosted have control? If the meta-worker is logged in from California, must they be provided meal periods and rest breaks as is required by California state law for IRL employees?

Also unknown is the potential impact the metaverse will have on the use of restrictive covenant agreements. If an IRL employee is barred from working in the same or similar field for a limited period of time after separation within the county or city where they were previously employed, how would that restriction translate to the metaverse, where by design there are no artificial geographic boundaries? Would restrictions apply only IRL, or only in the metaverse, or both? Meta-workers in early-adopter industries may have few competitive alternative meta-employers, making virtual restrictions particularly onerous. How would meta-employers carve out meta-workers in states where restrictive covenants are void against public policy?

Are there requirements to verify a meta-employment candidate's authorization to work?

What if, instead of our meta-worker logging in from California or Delaware or Florida, they reside in Canada? If they were seeking employment in an IRL retail boutique, they would first have to establish their authorization to work in the US by completing a Form I-9 and producing supporting documentation. Must the digital boutique owner confirm a candidate's authorization to work before employing them and, if so, must it comply with every nation's unique immigration work authorization requirements? Would one ever need to apply for a non-immigrant visa and work authorization if the user behind the avatar never physically enters the US?

Can meta-workers organize and, if so, how?

Most US employers include in their handbooks a policy prohibiting solicitation during working hours, but allow employees to meet and discuss working conditions during non-working hours, even in company break rooms. What is the meta-equivalent of a physical break room? Must meta-employers create safe spaces within their platforms where meta-workers can gather, discuss working conditions, and weigh the benefits of organizing? If the result of such discussions is an election petition, who would organize such an event and how? Where would an unfair labor practice notice be posted in the absence of a physical work environment?

These few examples demonstrate how different the work world is when untethered to a physical location, but these are not the only employment-related challenges anticipated for the metaverse. The metaverse also offers opportunities for companies looking for virtual meeting options to accommodate COVID-19 precautions and the increasing number of remote workers. [Bill Gates predicts that the metaverse will host most office meetings via personal avatars within the next two to three years.](#) Can and should meta-employers place restrictions on how a meta-worker chooses to self-identify? What digital attire they should don for meta-meetings? How will diversity and self-identification data be gathered in a virtual world where avatars may bear little resemblance to the people behind the screen? Speaking of avatars, if a cis male employee adopts a cis female avatar and is denied a promotion or pay raise instead given to a male avatar, can "she" assert a claim of gender discrimination?

Assuming for the sake of argument that equal employment opportunity laws apply in the virtual world as they do in the real one (a point no US court has yet taken up), the metaverse creates an environment ripe for harassment. Assume that our hypothetical meta-worker selects a shapely avatar as her online identity and their meta-supervisor repeatedly comments on her attractive figure. Can an avatar experience sexual harassment in the same way that an employee can experience a hostile work environment through in-person encounters? If so, how will meta-workers be trained to report online harassment? How does one conduct an investigation of virtual impropriety?

A recent incident involving Meta's "Horizon Worlds" platform is instructive.³ In December 2021, a UK-based user adopting a female avatar was cornered by three avatars with masculine voices immediately upon entering the platform's "lobby" for the first time. The male-appearing avatars touched "her" body and shouted lewd messages while "they" photographed the female avatar and ignored her pleas to stop. Horizon Worlds is not a workplace platform, but rather a social platform where avatars can interact in an open-space area unless and until the user elects to block contact by other online avatars. The victim learned that UK criminal laws barring sexual offenses did not apply in the cyber-realm, even if the predator-avatars' users could be identified.

Although the victim in this scenario had the option of changing settings or opting out of the purely social network, meta-workers dependent on their meta-positions will have fewer options, and meta-groping and other improprieties remain a significant issue.⁴ Whether metaverse misconduct can be the basis for criminal or civil liability in the US remains to be seen, but Title VII's prohibitions on harassment have extended to email, text messaging and social media communications in the past, so there is little reason to doubt that the same principle will apply in the metaverse.

Metaversatility

Accessing the metaverse requires logging on to one or more gateway platforms. To state the obvious, this requires at least computer and internet access, and, depending on the platform and apps accessed, may require a mouse, joystick, VR headset or motion-detecting equipment.

But computer use is complicated for persons with disabilities, such as those experiencing a hearing impairment that prevents communicating with other avatars without closed captioning, or those living with a visual impairment that requires use of screenreader software to translate the images and text on the screen. Many metaverse apps require some degree of manual dexterity and fine motor skills to navigate their features. All of these challenges, and others, make meta-employment less accessible to workers with disabilities, absent reasonable accommodation.

It is unclear to what extent metaverse platforms can be adapted to allow for captioning, screen-reading, seamless audio descriptions and alternative methods of navigation, or whether features can be muted for users with sensory processing disorders or mental health conditions. Meta-workers requesting such accommodations will need to understand how to request such adaptations, and meta-employers will need to understand the cost and effort required to make such accommodations without blithely denying such requests as unduly burdensome. Indeed, because coding modifications to eliminate barriers to access are scalable and benefit countless employees and prospective employees with certain disabilities, kneejerk decisions based on stereotypes or baseless presumptions of cost and burden likely will not satisfy the employer's accommodation responsibility under the Americans with Disabilities Act and analogous state and local laws.

Even meta-workers without pre-existing disabilities face health and safety risks from working in the metaverse. VR headsets remain clunky and wearing them for extended periods may cause eye strain, headaches or neck pain. Repetitive strain injuries from keyboard, mouse and joystick manipulation are possible as well. The use of metaverse-access equipment may add to the frequency of work-related injuries, increase OSHA-related health and safety monitoring, and contribute to workers' compensation claims.

Privacy in a New Dimension

Futurists predict that metaverse operators will be able to harvest personal and physical information about users to customize the user interface (UI), collecting everything from eye twitches and heart rate to financial information and browsing preferences to personalize each user's meta-visit. In fact, a review of patent applications filed by Meta suggests that the company has active plans to mine biometric information to enhance UI and refine targeted advertising.⁵

Meta-employers privy to such information should be mindful of state law limitations on the use of such data, and implement security measures to prevent its misuse. Several US states (Illinois most prominently) restrict the use and regulate the storage of biometric data.⁶ A meta-employer tracking productivity of its meta-workers through eye movement or heart rate risks violating these laws if they fail to give proper notice and obtain meta-worker consent to collect such information, or if they fail to protect such data or store it as required by law.

Meta-employers also must consider whether meta-workers have the right to opt out of their personal data collection, whether and how to consent to such information being sold, and whether this data could be evidence against them in a lawsuit. Biometric data may conflict with recorded work hours, creating wage liability. It may also provide physical evidence corroborating a meta-worker's complaint of work-induced anxiety.

Employers in the metaverse should also develop policies and procedures in the event of data breaches, just as IRL businesses should do, but they face the added challenge of determining to which state(s) they must provide notice of a data breach and how to inform users of the incident and the company's remedial steps. Meta-employers should also be mindful of corporate espionage risks posed by unauthorized users obtaining confidential or proprietary information from insecure meeting rooms or using spoof identities.

Far From the Final Frontier

If your takeaway is that we have asked more questions than we have answered about employment in the metaverse, you are in good company. As with any new technology, it takes regulators and courts years to catch up with the development, so meta-employers, meta-workers, human resources professionals and legal practitioners will continue to operate for some time in a state of uncertainty.

But it is not all grim news. The metaverse presents tremendous employment opportunity as well. After years of remote working leading to employee disengagement, the metaverse offers an alternative remote work scenario, one in which colleagues can gather and interact not as little boxes on a Zoom or Teams screen but as co-working avatars. Meta-workers can meet around virtual conference tables, join virtual department lunches and happy hours, conduct interactive trainings, lounge in virtual breakrooms, "bump into" each other in virtual hallways to enjoy the small talk that fosters camaraderie, and track attendance in a less intrusive manner. New hire and employee training can be liberated from dull webinars and replaced by engaging, interactive and adaptable training to meet the needs and address the questions posed by avatar attendees. Office layout is no longer a binary choice between cubicles and open spaces; in the metaverse, the office can be endlessly reconfigured, redesigned and reimaged. In place of dreary institutional paint colors on the walls of dreary institutional office spaces, now virtual meetings can take place on a virtual beach, in a virtual pirate ship or on the virtual moon, limited only by creativity (and good judgment).⁷

The metaverse may also help to improve equity in the workplace. Employees who are reluctant to contribute during in-person meetings because of developmental challenges, emerging fluency, social anxieties or internalized bias may feel freer to contribute in a virtual environment. Conversely, "oversharers" may be muted to give others an opportunity to speak. Users can gracefully exit awkward conversations or avoid coworker avatars prone to lengthy gossip sessions in a way impossible in the physical workspace.

Meta-workers may choose to disclose personal details such as age, gender identity or pregnancy only if and when they choose to do so. Employees who request remote work arrangements due to medical condition, disability or caretaking responsibilities can still experience community and collaboration with their coworkers. By limiting the number of hours a user can be continuously logged into the workplace, meta-employers also can reduce burnout, manage labor costs, and take definitive steps toward reinforcing work-life balance.

Prudent employers entering the metaverse will balance the tremendous possibilities these platforms present and the legal uncertainties they create. Careful consideration of IRL employment issues at the earliest stages will serve meta-employers well. As Neal Stephenson wrote in the 1992 science fiction opus, *Snow Crash*, in which he first coined the term “metaverse,” “Interesting things happen along borders – transitions – not in the middle where everything is the same.” Employment law has always been made along the borders, during the transitions, and its application in the metaverse is the next logical frontier.

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Endnotes

- 1 <https://www.merriam-webster.com/dictionary/IRL>
- 2 <https://www.coindesk.com/tech/2021/03/18/this-casino-in-decentraland-is-hiring-for-real/>
- 3 <https://www.dailymail.co.uk/news/article-10455417/Mother-43-avatar-groped-three-male-characters-online-Metaverse.html>
- 4 <https://www.technologyreview.com/2021/12/16/1042516/the-metaverse-has-a-groping-problem/>
- 5 <https://www.ft.com/content/9463ed05-c847-425d-9051-482bd3a1e4b1>
- 6 See Illinois Biometric Information Privacy Act, 740 ILCS 14 et seq. 2008
- 7 More creative workplaces envisioned at <https://hbr.org/2022/04/how-the-metaverse-could-change-work>