

Blog Post

Zooming In On Return-to-Office Compliance: Key Legal Issues and Best Practices

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As the effects of the pandemic continue to feel more and more like a distant memory, a sweeping “return-to-office” (RTO) trend is underway. Often motivated by collaboration goals and productivity gains for bringing staff back on-site, RTO mandates may cause employers to wrestle with complex legal compliance issues during the transition, and spark employee morale and retention concerns. While the below offers general insights on key legal considerations and best practices, employers should consider consulting counsel for assistance with juggling business objectives in one hand and compliance obligations and employee expectations in the other, to ensure a smooth RTO transition.

Key Legal Considerations for RTO

Remote Work Requests as ADA and PWFA Accommodations

The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to qualified employees with disabilities — including, potentially, remote or hybrid work arrangements. An employee’s disability-related need to work from home is still relevant in a post-pandemic era. Employers who have previously allowed an employee to work remotely for a prolonged period of

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time may have a harder time justifying why remote work is not presently a reasonable accommodation. By the same token, remote work is not a “given.”

Employers should be prepared for more accommodation requests tied to RTO policies and should not perfunctorily dismiss requests for remote work as a reasonable accommodation. Even if an organization has ended its general telework program, it must take each request in good faith as it comes, document its interactive process to assess the request, and, as there are no blanket solutions, be open to *case-by-case* exceptions. Not surprisingly, there has been an explosion of mental health claims filed with the EEOC in recent years, including based on anxiety, depression, and similar disorders. Employees may associate their mental health concerns with return-to-office stressors like social anxiety, unequal treatment among the workforce, and rush hour commutes. Employers should not be too quick to dismiss these concerns, but may request a statement from a healthcare provider that remote work is necessary as an accommodation to a diagnosed disability. Employers may also explore what other accommodations would work, such as a hybrid or flexible work schedule, private working space, or midday breaks. Employees may be entitled to a reasonable accommodation, but they are not guaranteed the accommodation of their choice if other alternatives would effectively allow them to perform the essential functions of their job. However, if a request for remote work is denied and no other alternatives are offered, employers need to be prepared to establish that the accommodation would impose an undue hardship on their operations.

The same principles apply under the Pregnant Workers Fairness Act (PWFA), which requires employers to accommodate known limitations related to pregnancy and childbirth. Under the EEOC’s current regulations, the agency lists telework and flexible scheduling as examples of reasonable accommodations for pregnant employees. In

practice, this means a pregnant employee or newly returned mother could request a temporary remote work arrangement as an accommodation, which employers must consider, absent undue hardship.

Avoiding Discrimination When Crafting Hybrid Work Policies

Many employers have compromised with hybrid work models that require a few days in-office and allow a few days remote per week. While no law requires companies to offer hybrid work generally, it's critical that any hybrid policy is applied in a consistent, non-discriminatory way. Allowing certain employees greater flexibility or imposing stricter return requirements on specific groups can invite discrimination claims.

To mitigate these risks, employers should set clear criteria for who must be in the office and when, and ensure that these policies expressly address — in writing — any required in-office days, core hours, and how employees can request adjustments. Employers wanting to implement performance-based criteria, as opposed to general role-based criteria (such as restrictions on remote flexibility for employees who have unsatisfactory performance reviews or are placed on performance improvement plans), can best protect their organizations from discrimination claims by keeping records of clear, fact-based performance documentation, providing feedback regularly, and avoiding the appearance of arbitrary rules by consistently enforcing these standards and requirements. Transparent communication about attendance monitoring, such as badge swipes or network logins, is additionally crucial for building trust. It's also wise to train managers on the importance of consistency so that unofficial exceptions don't undermine an employer's policy or morale.

Wage and Hour Considerations for Remote and Hybrid Teams

RTO transitions also raise important wage and hour compliance issues, especially if maintaining a hybrid workforce. Companies requiring their remote workers to return to the office should anticipate that these employees will be adjusting to less time flexibility in the office than they may have had at home and may want to refresh trainings on timekeeping in the office to maintain accurate and compliant practices under the Fair Labor Standards Act (FLSA).

Further, some employers may have adjusted schedules, salaries, or classifications during the remote-work era that may now need to be revisited during an RTO transition to ensure they meet FLSA exemption tests. An employee who was treated as exempt and working remotely without strict hour tracking may need reclassification if their role or salary has changed. Additionally, when bringing remote workers back to the office, employers will want to confirm whether any travel time or schedule adjustments could be compensable. At a minimum, clearly defined expectations of working hours for hybrid employees might help to avoid confusion over when the workday starts and ends.

Workplace Safety and OSHA Requirements

Employers have a duty to provide a safe and healthy work environment, and these workplace safety responsibilities extend to hybrid and remote contexts. Even if a home office is “inherently lower risk” than traditional worksites, OSHA advises employers to address ergonomic risks, provide workstation guidance, and ensure remote workers understand emergency protocols. Employers should also conduct workplace safety checks and refresh fire, ventilation, and security systems in anticipation of increased in-office attendance. Similarly on trend, mental well-being has become a recognized OSHA concern, prompting some companies to implement mental health resources and flexible policies to ease RTO stress.

Workforce Culture and Retention Considerations

Rigid RTO mandates risk alienating employees, especially top performers who value remote flexibility. No wonder some remote or hybrid workers would reportedly consider quitting if required to return full-time on-site. To mitigate turnover risks, employers should thoughtfully communicate the rationale for RTO policies, seek employee feedback to refine policies, offer flexible scheduling where feasible, introduce incentives like commuter stipends or on-site perks, and foster an inclusive culture that values both in-person collaboration and remote contributions.

Regional Adjustments for Multi-State Employers

Employers should also be cognizant of state-specific considerations. For example, when altering remote work arrangements, employers will also need to consider any implications for state leave laws on legally mandated breaks, or state-specific requirements to compensate or reimburse employees for home office costs. Certain cities and states also recognize “caregiver status” as protected against discrimination. A handful of those laws may provide limited accommodations or protections for employees based upon their caregiver status or family responsibilities, beyond what is required for pregnancy or disability accommodations. As a result, a standardized policy may need tweaks for local laws.

Employer Best Practices for a Compliant RTO Transition

To ensure compliance and smooth transitions, consider these best practices:

- **Review and update policies with legal counsel.** Employers should collaborate with legal counsel to audit existing policies for ADA, PWFA, FLSA, and civil rights law compliance and draft

clear guidelines on attendance, expense reimbursement, and flexible work options.

- **Train managers on ADA/PWFA obligations.** Employers should educate management and HR business partners on how to properly respond to accommodation requests and avoid retaliation.
- **Engage in the interactive process.** Employers should follow and document a clear process for evaluating accommodation requests for legal protection.
- **Confidentiality is key.** If certain employees are working from home due to medical accommodations, supervisors should simply communicate on-site expectations without disclosing private details.
- **Apply RTO rules consistently.** Consistent enforcement minimizes exposure to discrimination claims and improves morale.
- **Update your tech to implement robust time-tracking systems.** Adopt technology that records remote and in-office hours accurately. Avoid off-the-clock work pressure and consider technological solutions that remind employees to log out at day's end.
- **Maintain a safe and healthy workplace.** Ensure facilities meet safety standards and implement health protocols.
- **Foster open communication and flexibility.** Encourage dialogue about RTO policies, incorporate employee feedback, and demonstrate flexibility where possible.

The return-to-office wave presents both opportunities and legal pitfalls for employers. By staying abreast of evolving laws, employers can ensure their policies remain compliant, while still achieving their business objectives. Employers that proactively address compliance issues and listen to employee concerns can implement return-to-office policies that uphold the law, protect their people, and

strengthen workplace culture. Your Akerman Labor & Employment team is ready to assist with additional insights.

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