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Ending Remote Work Schedules Holds New Challenges for Employers

With Pandemic Over, Back-to-Office Measures Must Be Consistent, Say Labor Attorneys



THE DMC REPORT PODCAST SERIES

Businesses hoping to phase out remote and hybrid work schedules and requiring employees to return to the office should proceed with caution to minimize employee resistance and avoid potential litigation, according to two employment attorneys.

Kristin L. Wedell and Shaka S.J. Sadler, employment attorneys in the Cleveland office of Dickie, McCamey & Chilcote, say “one size fits all” policies aimed at ending remote or hybrid work are perilous and could potentially result in

violations of the Americans with Disabilities Act (the “ADA”). One strategy for easing the transition back to the office, they say, is to make reasonable accommodations for all employees that blend the needs of the business with the needs of employees.

Wedell and Sadler discussed their return-to-office strategies on the Dickie, McCamey & Chilcote podcast, *The DMC Report*.

“Employers have a responsibility to engage in an interactive process that takes into account individual needs with the needs of the business,” says Wedell. “A ‘one-size-fits-all’ approach is not going to work because as an employer you have to abide by the ADA and take into account individual needs that may require reasonable accommodations.”

“I find that giving employees enough notice to adjust childcare needs and personal needs in own lives, reiterating expectations for performance and attendance ... may also help with retention,” added Sadler.

Update Employee Handbook and Policies

The COVID-19 pandemic was declared to be officially over in May, and many employers are now hoping to encourage employees to resume normal in-office work schedules. However, a number of major employers have been frustrated by employee resistance to such measures. That’s one reason why Wedell advises that employee handbooks be reviewed and revised with a new focus on remote, hybrid, and in-office work in the wake of the pandemic.

“The employee manual is the key document that needs to be adjusted,” she says.

“Employers didn’t have a policy to deal with COVID-19. They didn’t have a policy to deal with teleworking and telecommuting and return to work or return to office processes. So the first thing employers really need to do now is come up with some kind of an agreement that addresses the criteria for remote work.”

“You have to decide that if you're going to allow remote work, you've got to comply with wage and hour laws,” adds Wedell. “You have to decide who's paying for computers and office supplies and how you're going to track hours. And so I would encourage employers that are struggling with this to meet with their human resources staff and talk to their lawyers on how to craft these agreements that need to be incorporated in their handbooks.”

The Risk of Return-to-Work Ultimatums

While some employers have instituted mandatory return-to-office work schedules, Sadler urges caution to those who might consider terminating employees who resist.

“Terminations have to be applied evenly across the board,” she warns, since inconsistency in applying such a policy could be grounds for a lawsuit. “Making those hard lines in the sand has to be something that's heavily considered ... and if you're not ready to lose a huge group of employees, you need to consider that as well,” she adds.

Bringing Employees Back to Work

Wedell and Sadler urge employers to provide a thoughtful and consistent approach to back-to-work policies and to apply “post-COVID” thinking in analyzing their staffing requirements.

“Review the needs of the business first and foremost,” says Sadler. “See if it's actually necessary to be in the office. Perhaps hybrid work would be a better solution than a hard and fast policy that may cause disruption and employee retention issues.

“Give enough notice if you decide that you need your employees back in the office that allows them to take care of any kind of personal needs or childcare needs that they have. Make sure that whatever policy you do set has room for reasonable accommodations.”

“Have your handbooks in order, have your policies in order, and if you're choosing to do a hybrid model, have that in order.

“And very lastly,” adds Sadler, “letting employees know that this benefits the business. The more detailed the explanation, the better your retention rates may be.”

“It has been a tough call for employers to navigate the minefield of how to craft a return-to-office plan while keeping employees happy,” says Wedell.

