Critical Considerations in Hybrid Environments: There is no “One Size Fits All” Model



The COVID-19 pandemic created the need for employers to develop methods to allow for workforce mobility and functionality with the same efficiency levels as a pre-pandemic world. Today’s reality is that the number of employees who request work schedule flexibility has dramatically increased. A Robert Half survey performed in March 2022 of 1,000 employees throughout the country reflected that 50% of the surveyed employees would look for a new job if required to return to the office on a full-time basis. Meanwhile, the New Jersey Business and Industry Association performed a Focus NJ “Back to Work in a Post-Pandemic World” study where 65% of the respondents indicated that they would either continue remote work in a post-pandemic world, or at least consider the possibility.

Other factors such as increased gas prices and inflation have cemented many employees’ desire to continue working remotely, and the fluid job market is affording them the opportunity to find these roles. Employers developing policies for hybrid schedules should consider a variety of issues to reap the benefits of hybrid policies, including enhanced employee recruitment, cost savings, improved attendance and increased productivity, and strengthened employee engagement. Employers should carefully evaluate the general legal considerations arising from hybrid schedules, such as:

• **Equal Employment Opportunity Compliance:** Employers should consider which roles can be performed in an alternative or hybrid environment. It is important to ensure that the creation of hybrid opportunities does not result in discrimination on any prohibited basis. Employers should craft consistent
policies that clearly define and communicate which employees are eligible to take advantage of remote work schedules.

• **Remote Policies and Procedures:** Employers should evaluate their handbooks to determine if all existing policies and procedures apply to employees when working remotely and whether new remote policies must be enacted. Policies that may

require evaluation for a remote work environment include those that address smoking, alcohol/drugs (including legal prescriptions), second jobs, and dress codes. Antidiscrimination policies may also be necessary for remote work, including policies that address conduct on various online platforms, such as Zoom and Teams.

• **Technological Considerations:** Employers considering a hybrid schedule must evaluate the technology needed by employees to maintain work productivity. Implementing the correct technology can aid employers in other ways as well. For example, requiring employees to log in and out of a specific system may assist with determining a valid workers' compensation claim. Or, employing certain software programs may ensure that confidential data is protected.

• **Wage and Hour Laws:** If non-exempt employees are deemed suitable for remote work schedules, employers must consider applicable federal and state wage and hour laws. Employers should consider issues such as activities that constitute compensable working time, prohibition of off-the-clock work, requiring manager approval of overtime, and using software or other methods to track work performed remotely.

• **Workers' Compensation:** Remote work is covered under New Jersey's workers' compensation laws, where an employee is entitled to coverage for injuries that occur in the course and scope of employment. Employers may consider establishing remote workplace safety guidelines and remote reporting mechanisms to address injuries that occur while an employee is working remotely.

• **Confidentiality and Data Security:** Employers should assess the impact that working remotely may have on ensuring data privacy, and develop clear policies and guidelines for hybrid employees to follow. Such policies include ensuring that technological equipment is only used by authorized employees and for authorized business purposes.

Finally, hybrid schedules are not the only type of remote work option available to employers. Other forms of schedule flexibility include job sharing, compressed work-week, flextime, part-time schedules, and shift work.

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