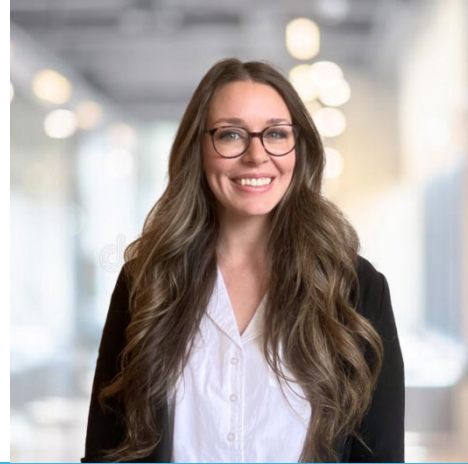




Return-to-Office Policies: Key Employer Considerations

November 14, 2024

Today's Webinar Host



STEPHANIE ZIELINSKI

Marketing Director

ComplianceHR

Who We Are



- Technology Platform
- Infrastructure enterprise

- Subject matter expertise
- Knowledge management team
- Case databases

What we do:
Deliver expert guidance in a fraction of time and cost vs traditional methods

Compliance **HR**



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



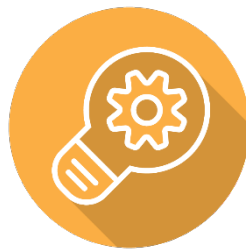
Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle

Our Most Popular Solutions



ComplianceHR
PolicySmart™
Changing the way companies create and maintain compliant handbooks

Creating and maintaining compliant handbooks is a daunting task.
Your company's employee handbooks can be invaluable tools that help shape company culture, communicate operational policies, and minimize the risk of employment-related legal liability. A well-thought and legally compliant handbook is essential to keeping the HR process running smoothly, and most employees would agree that keeping up with federal, state, and local employment laws can seem overwhelming.

PolicySmart™ takes handbooks to the next level.
PolicySmart™ is an intuitive handbook compliance tool that provides employers with national and state-specific templates, a unique compliance timeline, and so much more.

Fueled by the subject matter expertise of Littler, the world's largest employment law firm and built on Neo's AI-powered platform, PolicySmart™ allows users to easily create and maintain legally compliant handbooks that are cost-effective, up-to-date, and delivered on-demand.

- Federal and State Compliant Templates:** A comprehensive library of federal and state-specific templates, as well as policy templates that are fully customizable, depending on your needs and operational needs.
- Innovative Compliance Timeline:** Provides an up-to-date timeline of important legal changes that will soon take effect in your selected jurisdictions, helping to ensure that policies are updated at the right time.
- Handbook Policy Checklists:** Gain access to jurisdiction-specific checklists that tell employers which policies are required by law to appear in their handbook and who is covered by each policy.
- Automated Monthly Emails:** Receive a summary and analysis of relevant legal developments that impact your workplace, with guidance on how to revise policy language.



ComplianceHR
Reference Center
The Comprehensive Solution for Employment Law and Common Compliance Questions

Last year, thousands of employment law requirements were created and overhauled. Maintaining compliance across all jurisdictions is an incredibly difficult feat, but the Reference Center is here to help.

Answer your compliance questions with the Reference Center

ComplianceHR is committed to innovation. To better suit your workflow, we have created the Reference Center. This solution provides you with a single way to answer your compliance questions, easily find content on several employment law topics, and even provide deeper content that bridges multiple employment law topics.

Your organization needs a proactive strategy instead of a reactive approach to compliance. The Reference Center provides state and local information for a variety of topics, such as final pay, FMLA, minimum wage, predictive scheduling, and workplace posters, among many others.

Fueled by the subject matter expertise of Littler, the world's largest employment law firm, the Reference Center is a critical tool for your HR and legal teams.

- Local, State and Federal Information:** A comprehensive library of state and national information that bridges a variety of compliance topics to ensure you're able to access important data.
- Wide Range of Compliance Topics:** From COVID-19 final pay, FMLA to rate changes, pay frequency to an call, organizations of any size and in any sector can benefit from this information.
- Streamlined Workflow:** The Reference Center is designed to help people across your organization quickly find answers to their questions, whether they're on a centralized legal team or an HR team distributed across the country.

PolicySmart provides you with:

- Federal and state-compliant templates
- Innovative compliance timeline
- Handbook policy checklists
- Automated twice monthly legal update emails

The ComplianceHR Reference Center provides you with:

- Local, state and federal information
- Streamlined workflows
- Wide range of compliance topics
 - o Leave, final pay, FMLA, minimum wage, and more

When coupled, these two solutions provide you with comprehensive compliance program support

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit our website: [Compliancehr.com](https://compliancehr.com)
3. Email our team at demo@compliancehr.com

Benefits of a custom demon:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

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Presented By



PAUL CIRNER

Attorney

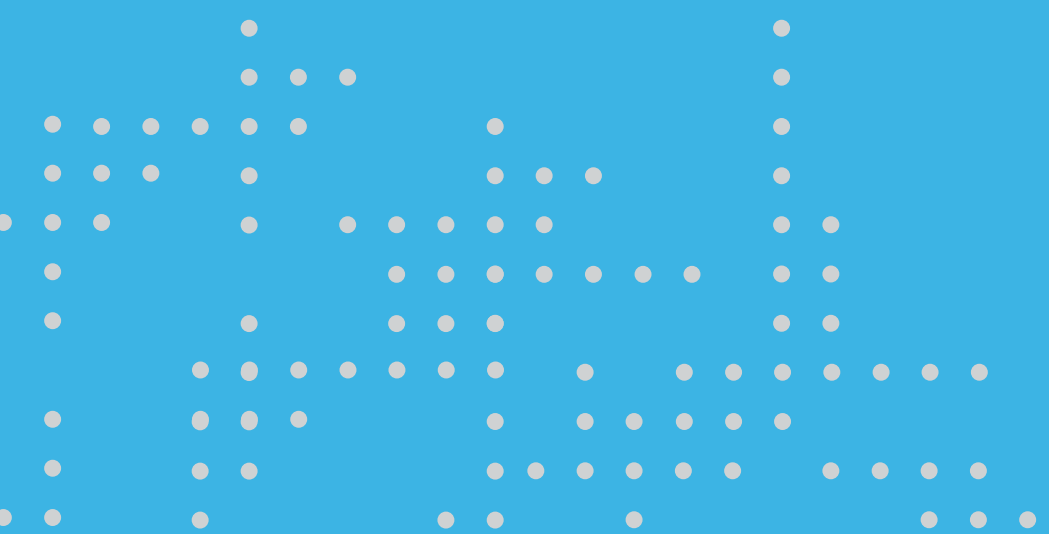
Littler Mendelson, P.C.

Portland, Oregon

Agenda

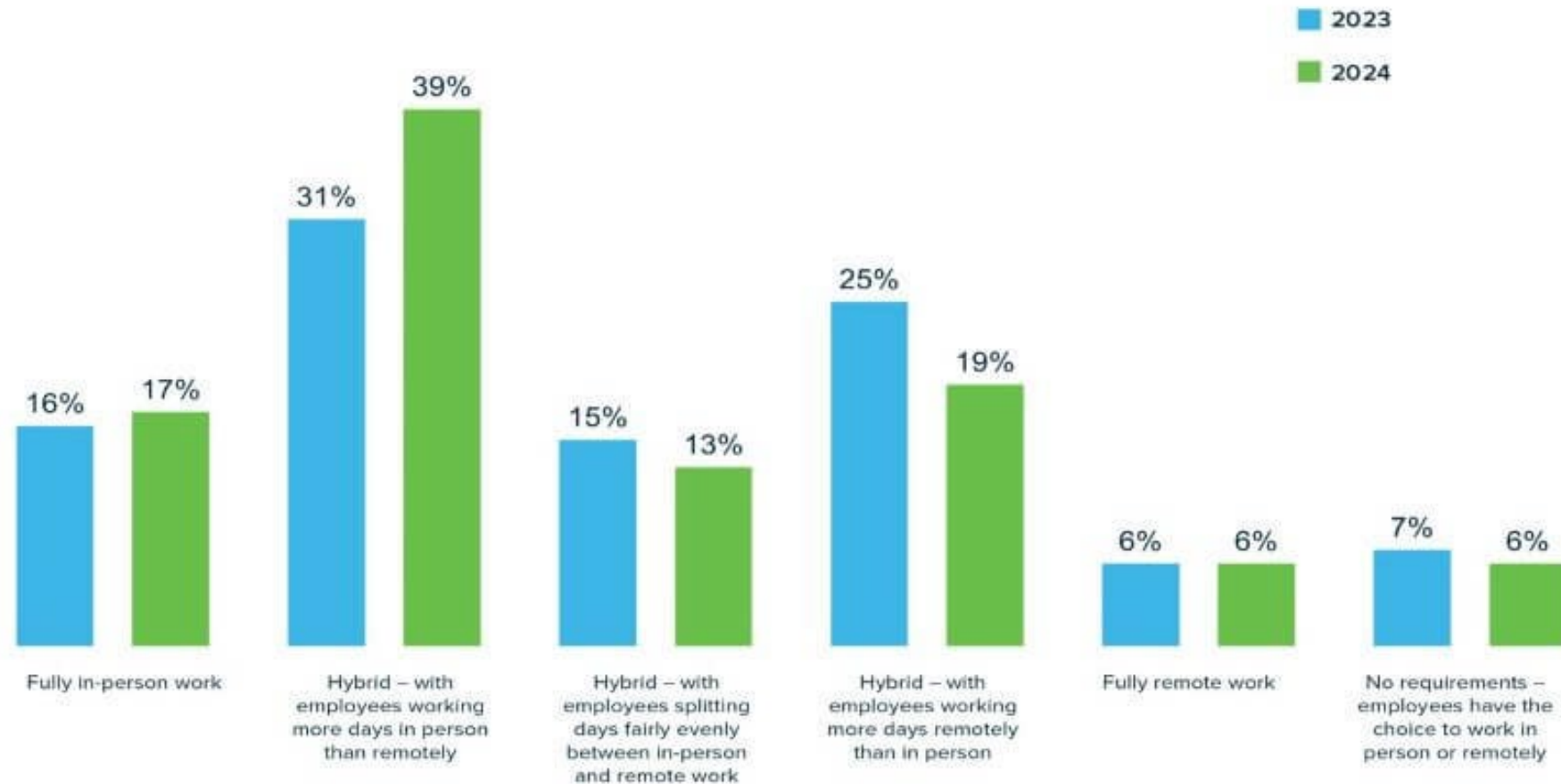
- Return-to-Office Options
- Return-to-Office Policy/Announcement
- Tracking and Enforcement
- Legal Pitfalls to Avoid
 - Remote Work Accommodations
 - Mandatory Bargaining
 - Protected Concerted Activity
 - Contract and Quasi-Contract Claims
 - Compensable Travel Time

Return-to-Office Considerations



Survey Says

Which of the following best describes your organization's current requirements for employee work schedules?



Survey Says



Survey Says

Why Return to the Office?

SHRM surveyed 1,500 HR professionals in June about their organizations' return-to-office plans. Of those who have brought their previously transitioned remote workers back to the physical workplace, the main factors in doing so were the need for in-person collaboration and teamwork, workplace culture and employee engagement, and leadership preferences.

Need for in-person collaboration and teamwork

75%

Workplace culture and employee engagement considerations

69%

Leadership preferences

65%

Desire to restore a sense of normalcy and routine

54%

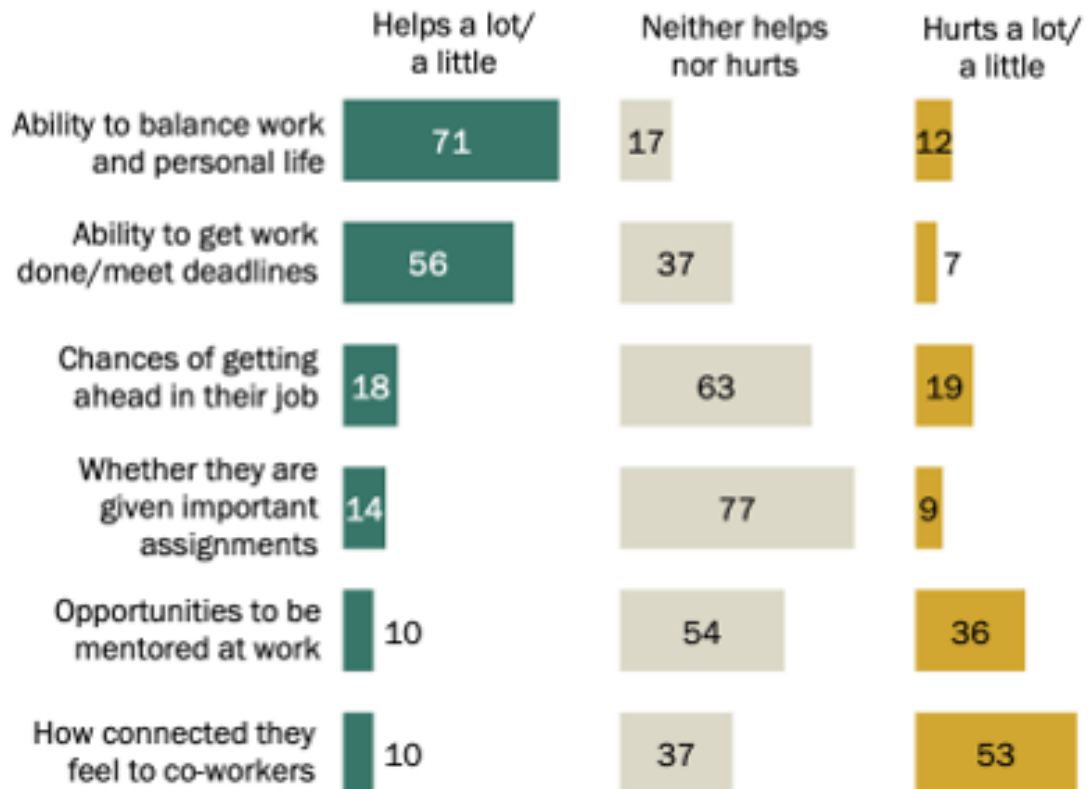
Employee productivity concerns

41%

Survey Says

Most teleworkers in the U.S. say working from home helps them balance their work and personal lives

Among employed adults with a teleworkable job who work from home all/most/some of the time, % who say this work arrangement ____ with each of the following



Return-to-Office Considerations

- What type of return-to-office protocol best suits your needs?
- Should expectations vary depending upon department or positions?
- How much opposition will you face?



Return-to-Office Considerations

- Full Return
 - Five days per week
- Hybrid Return
 - Days per week or pay period
 - Weeks per year
- Department/Position/Tenure Specific



Return-to-Office Policy and Announcement



Return-to-Office Policy

- Clearly explain RTO expectations.
- Identify enforcers.
- Explain disciplinary consequences for failure to comply.
- Reference accommodation policy and who to contact with questions.

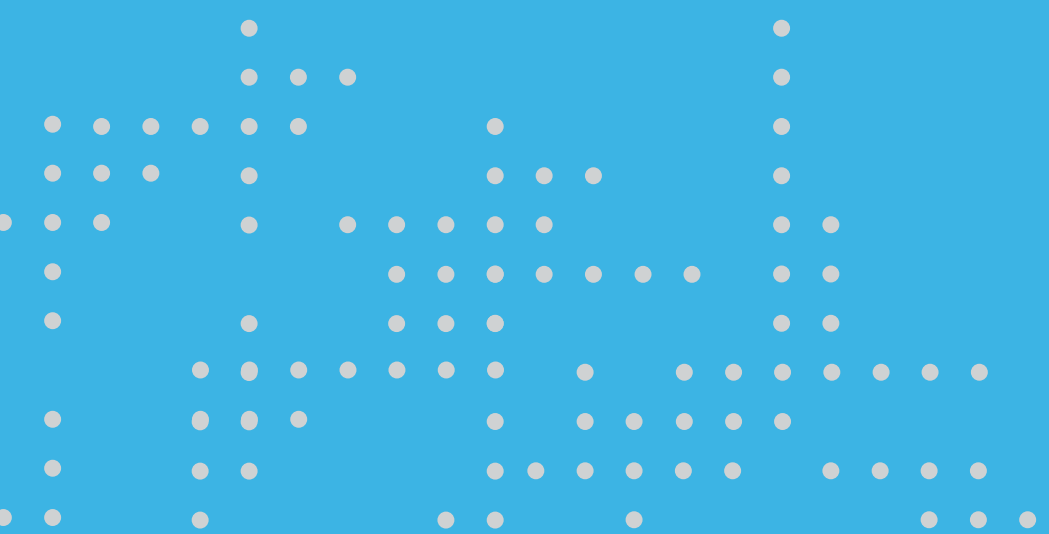


Return-to-Office Announcement

- Consider explaining the “why” to your employees focusing on vision of the future.
- Be accessible for questions and concerns but remain firm.
- Different Approaches
 - Town hall meetings / video
 - Newsletter
 - Informal manager conversations



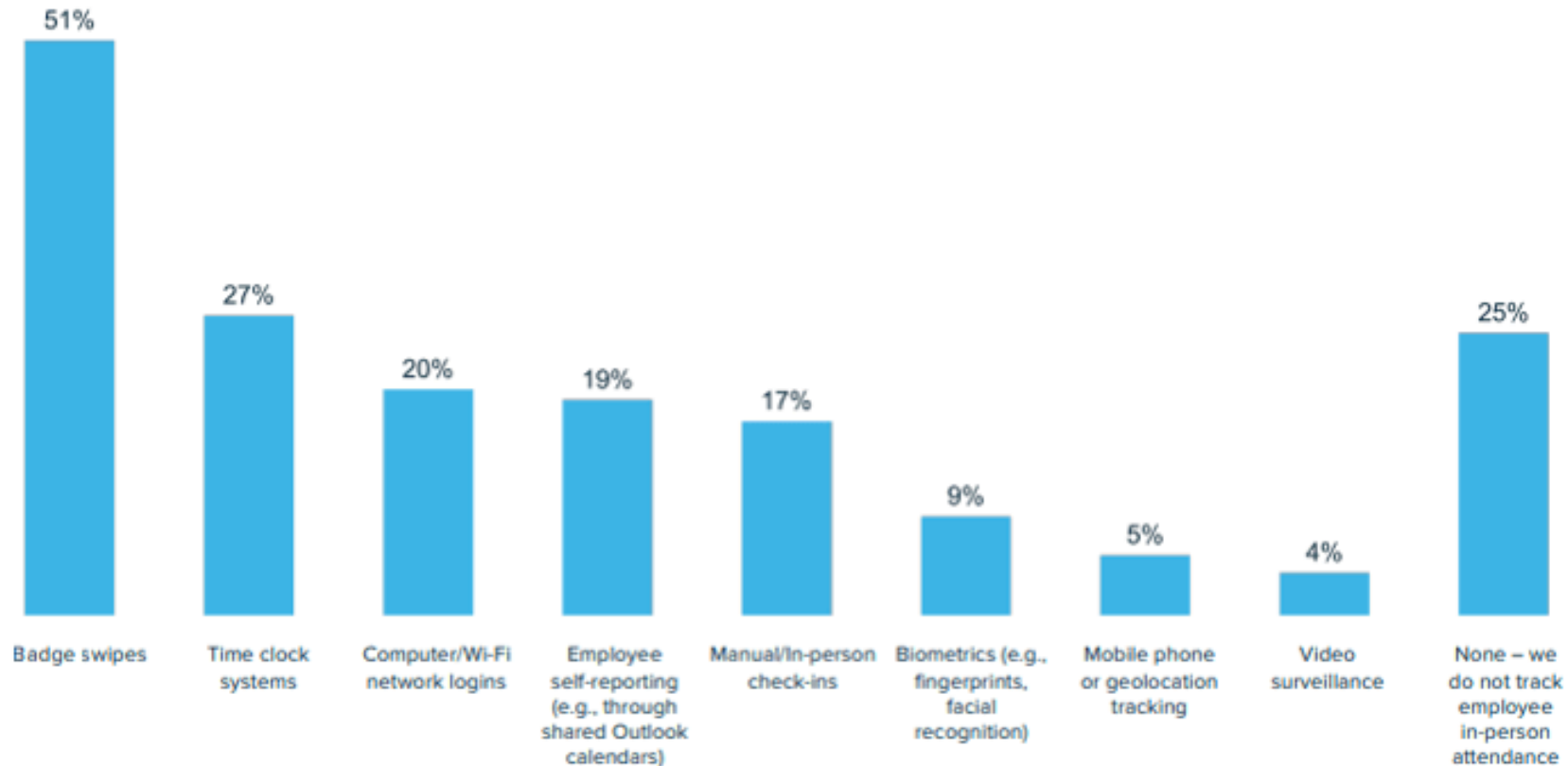
Tracking and Enforcement



Survey Says

Which of the following methods, if any, is your organization utilizing to track employee in-person attendance? (Select all that apply)

This question was not asked to respondents whose organizations are fully remote or who do not have any requirements for employees to work in-person



Survey Says

“1 in 5 Workers Admit They Aren’t Following RTO Policy”



Tracking and Enforcement

- Performance management for policy violations should be supported by documentation and applied equally to avoid discrimination.
- Consider whether other protected absences are in play before disciplining non-compliant employees.

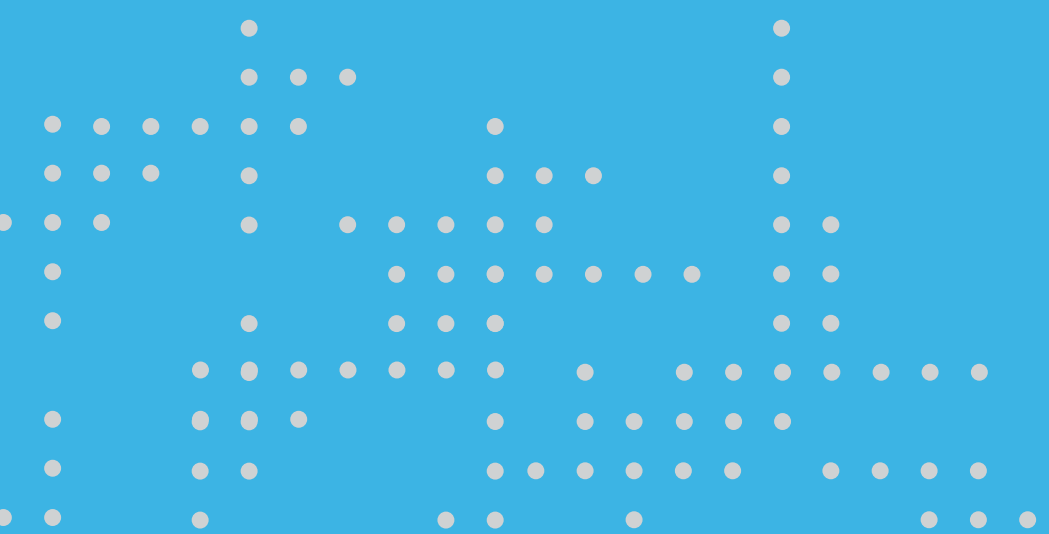


Tracking and Enforcement

- Electronic Monitoring Considerations
 - Availability and accuracy of data.
 - Cost of monitoring.
 - Collection and storage.
 - Training.
 - May need to implement separate policies and procedures for data privacy law compliance.

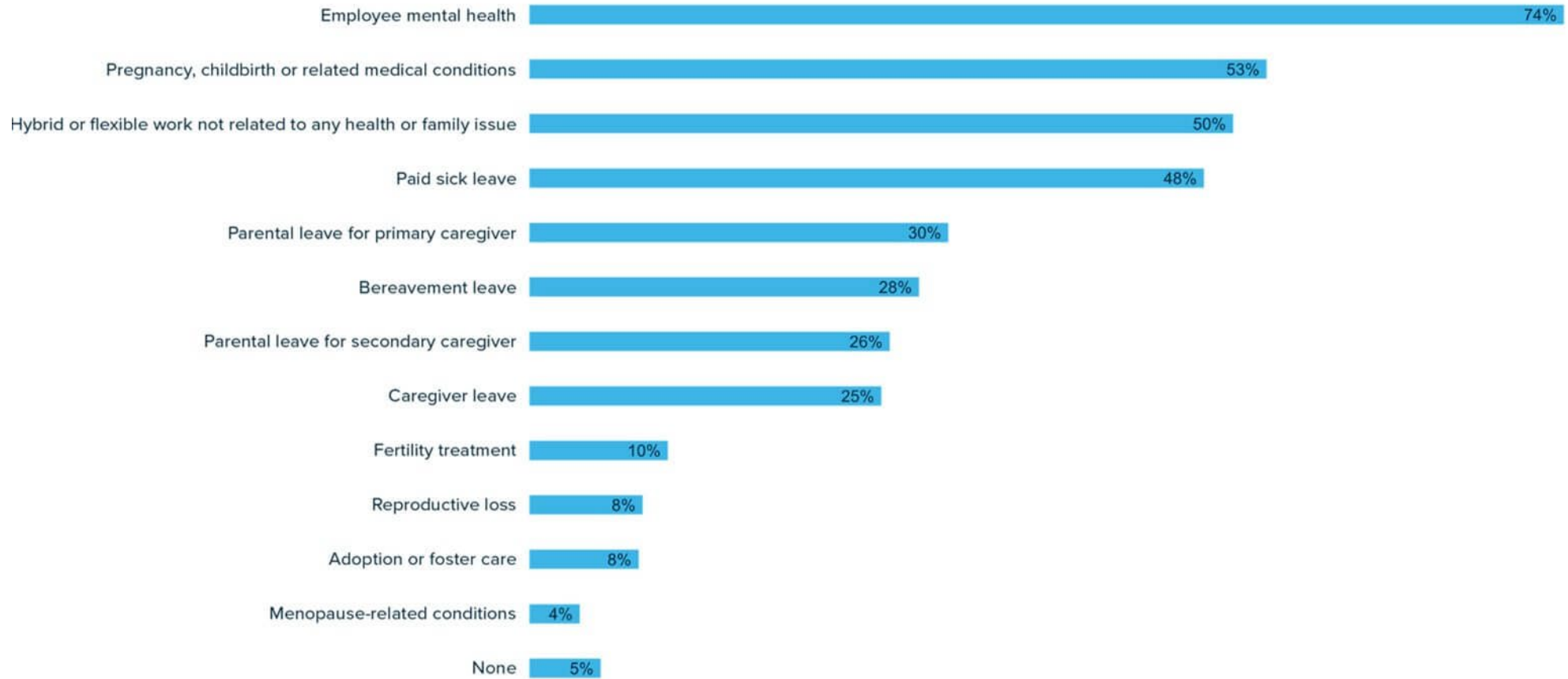


Legal Pitfalls to Avoid



Survey Says

In which of the following areas has your organization received increased requests for leaves or accommodations over the past year? (Select all that apply)



Surge of Remote Work Accommodation Requests

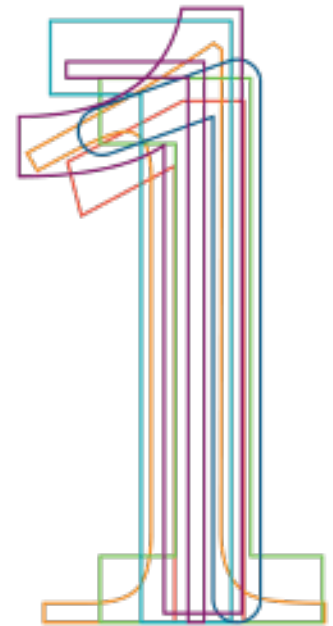
How many of you have received a request for accommodation to work remotely due to stress or anxiety?

Doctor's note: "Darcy struggles with in-person work since the proximity of co-workers and having in-person interactions with others are highly stressful to them. Their home office stabilizes them, allowing them to perform their work. Even the commute creates anxiety because of the fear of arriving at work safely."



Work From Home: Find Out the Facts

- Interactive Process is Critical
 - Obtain the basic medical facts, address generalized fears
 - Why, and how long do you anticipate the need to WFH?
 - Are there any changes or modifications we could make that would enable you to perform your job duties on-site?
 - How, specifically, would those help?
 - Is complete WFH the only modification you believe we could offer?



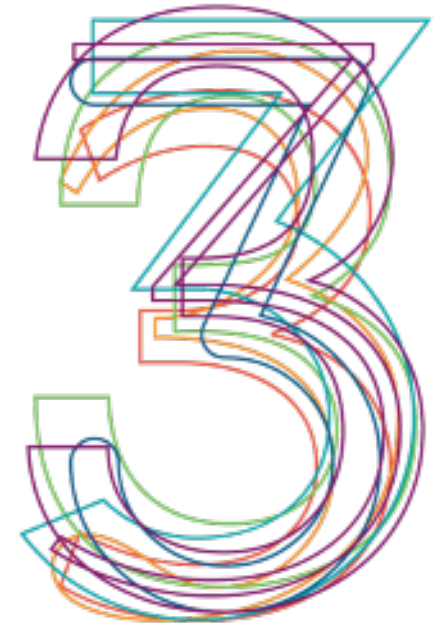
Work From Home: Interactive Process

- Obtain medical information, if necessary
- Consider possible accommodations
- Examples:
 - Partial remote work
 - Enhanced protective gear or other safety measures
 - Decreased contact with co-workers or modifying workspace/schedule
 - Temporarily eliminating “marginal” job functions
 - Time off under the ADA/FMLA/PLO



Work From Home: What is the Hardship?

- Discussions with managers
 - **Key:** Why is in-person work essential?
 - Need to be able to support the buzzwords – with specificity:
 - Teamwork/Collaboration
 - Creativity
 - Supervision
 - Assess performance to date: Does this give us an argument to limit/deny WFH?
 - Have business circumstances changed since pandemic started?
 - What does retention data look like?



WFH: What is the Hardship?

DOCUMENT!



Mandatory Bargaining

- May be obligated to bargain with the union before implementing and enforcing Return-to-Office policy with respect to bargaining unit employees.
- **Goddard College Corporation (03-CA-283012; 372 NLRB No. 85) Plainfield, VT, May 3, 2023.**
 - The Board adopted the Administrative Law Judge’s conclusion that the Respondent violated NLRA Section 8(a)(5) and (1) by implementing a return-to-campus policy without first bargaining with the Union to agreement or an overall good-faith impasse and by unilaterally changing an employee’s full-time remote work status to in-person, thereby effectively terminating his employment.
- The NLRB has filed complaints against companies that implement RTO in close proximity to union campaigns.



Protected Concerted Activity (Opposition)

- Employee opposition through walkouts and petitions may enjoy protections under the NLRA, which gives all workers the right to engage in “protected concerted activity.”
- Includes strikes, picketing or protesting, as long as the employees are responding to a work-related issue that concerns their interests.



Contract or Quasi-Contract Claims

- Increase in breach of contract, fraud, and estoppel claims arising from alleged promises of remote work.
- Evaluate past representations to employees as well as any written employment agreements.
- Be mindful of representations made to employees about remote work.



Compensable Travel Time

- Compensable worktime generally does not include time spent commuting to or from work under the FLSA for non-exempt employees. 29 U.S.C. § 254(a); 29 C.F.R. § 785.35; WHD Opinion Letter FLSA2018-18 (Apr. 12, 2018). Compensable worktime also generally does not include travel from the worksite to a hotel and vice-versa. *Id.*
- Employees who choose to telework for part of the day and work at the office for part of the day are generally not owed compensation during their mid-day commute. WHD Opinion Letter FLSA2020-19 (Dec. 31, 2020).
- In a hybrid arrangement, non-exempt remote employees may be entitled to compensation if they:
 - Are required to take overnight trips to return to office; or
 - Are required to return to office on rare occasions and travel a considerable distance from their home to the office.
- Fact-specific assessment and careful review of each employee’s circumstances and the law before determining compensable time.
- Be wary of nuanced state law and policies or contracts promising to pay for commuting time.





Concluding Remarks

Takeaways

- Tailor return-to-office to best fit your needs unless a one-size fits all approach is best suited for your organization.
- Planning your return-to-office announcement and policy may limit some pushback especially if you coincide the announcement with a new benefit offering (paid personal days off, flex starts, etc.)
- Pushback is inevitable and often severe. Be patient and firm in your decision and ensure equal application of your policy.
- Be mindful of legal obligations to avoid liability in the wake of returning-to-office.

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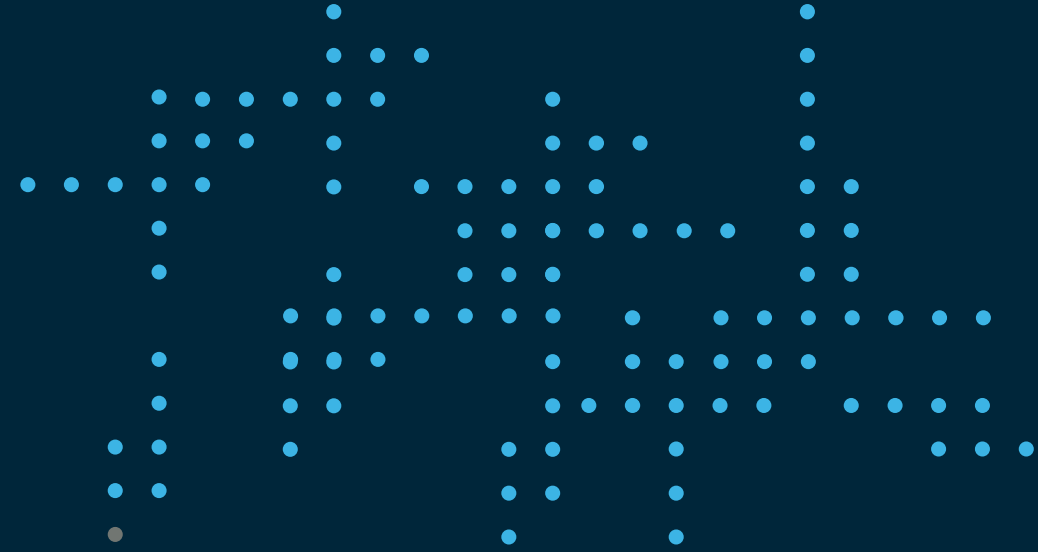
Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.

Fueled by ingenuity.
Inspired by you.®



Thank You



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