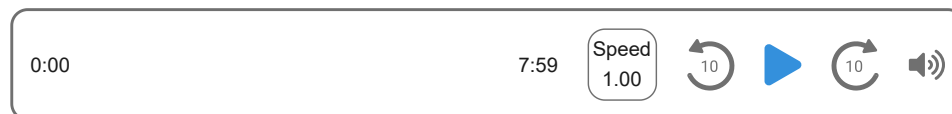


Roberson, Leighty and Jean-Baptiste: Return-to-office mandates carry discrimination risks

March 12, 2025 | Elizabeth M. Roberson and Hilary K. Leighty and Marsha Jean-Baptiste

KEYWORDS **DISCRIMINATION** / **OPINION**

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Elizabeth M. Roberson, Hilary K. Leighty,
and Marsha Jean-Baptiste



The COVID-19 pandemic ushered in a dramatic shift in the way employers operate, making remote work the new normal for millions of employees.

Employers quickly adapted to virtual collaboration tools, and many workers found increased productivity, flexibility, and work-life balance through remote arrangements. As pandemic restrictions eased, however, many employers began rolling out return-to-office, or RTO, mandates, emphasizing the benefits of in-person collaboration, company culture, and productivity oversight.

Companies such as Amazon, JPMorgan Chase, and UPS have all implemented or announced RTO requirements. Federal and state governments have followed suit.

President Donald Trump, on his first day back into the Oval Office, issued an Executive Order calling for all federal employees to return to in-office work. Indiana and other states have also mandated increased in-office attendance for state employees.

Despite the perceived advantages of such policies, some RTO mandates have given rise to legal challenges, particularly in cases where they may disproportionately impact employees with disabilities or other legally protected characteristics.

Compliance considerations

While returning to the office can foster teamwork and innovation, employers must carefully consider legal compliance when mandating in-office attendance. One of the most pressing concerns is ensuring compliance with equal employment opportunity laws, including the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and the Pregnant Workers Fairness Act.

Under these laws, employers must ensure their RTO mandates allow for reasonable accommodations when necessary and do not discriminate against employees based upon their protected characteristics, such as disability, race, sex, national origin, or

religion. Employers must also avoid retaliating against employees who exercise protected rights under these or other applicable laws.

A strict RTO policy that does not allow for reasonable accommodations could expose employers to substantial legal risks, including claims of discrimination, failure to accommodate, or retaliation.

Employees who successfully performed the essential functions of their job remotely during the pandemic may argue that returning to the office unfairly targets their protected class, especially if they have medical conditions that make commuting or in-office work difficult. These concerns have led to a variety of enforcement and litigation cases against employers, including EEOC charges and investigations into whether employers are unlawfully denying accommodation requests or otherwise implementing RTO policies in an unlawful manner.

EEOC findings

One such case, in which an employee's complaint triggered an investigation and adverse finding by the Equal Employment Opportunity Commission, proves instructive for employers.

Bell Road Tire and Auto (Big O Tires) implemented a 100% RTO policy for all employees in. One of Big O Tires' employees requested an accommodation to the RTO policy under the ADA, which was denied. The employee subsequently filed a charge of discrimination against Big O Tires, alleging a failure under the ADA to (a) engage in the interactive process and (b) provide a reasonable accommodation.

The employee alleged they had been allowed to work remotely for an extended period and had demonstrated an ability to perform all essential functions of the job effectively from home. The employee further alleged that their request for continued remote work as an accommodation following implementation of the RTO policy was denied without any individualized assessment or interactive process.

After investigating the complaint, the EEOC found reasonable cause to believe Big O Tires violated the ADA by (a) enforcing its 100% RTO policy; (b) failing to engage in the interactive process required under the ADA; (c) retaliating against its employee for engaging in protected activity; and (d) failing to store employee medical records separately from its personnel files.

Settlement and its implications

Rather than proceeding to litigation, Big O Tires reached a settlement with the EEOC, which included a \$64,500 payment to the employee. As part of the resolution, Big O Tires agreed to take several corrective actions, including:

Streamlining requests: Appointing an ADA coordinator to handle all ADA-related issues and inquiries and creating a placement program.

Training management and HR personnel:— Providing training for managers and human resources staff on handling accommodation requests and engaging in the interactive

process required under the ADA.

Informational postings: Updating and distributing written ADA policies and posting informational ADA notices in the workplace; and

Ongoing monitoring: Periodic reporting to the EEOC regarding ADA and retaliation complaints.

“This resolution sends a clear message about the importance of ADA compliance,” stated Melinda Caraballo, district director of the EEOC Phoenix District Office.

This case serves as a critical reminder that, while employers may have legitimate business reasons for implementing a RTO policy, they must remain flexible in considering their obligations under applicable law, including avoiding discrimination, implementing reasonable accommodations when appropriate, and avoiding retaliation. Failure to do so could result in enforcement action, reputational damage, and financial penalties and other liability.

Employer next steps

Employers looking to implement or enforce RTO mandates should proactively assess their policies to ensure compliance with federal equal employment opportunity laws, including the ADA. Examples of best practices for organizations seeking to maintain EEO compliance while implementing RTO policies include:

Providing clear and consistent policies: Communicate a clear RTO policy and enforce it consistently, while also adhering to EEO obligations under applicable law.

Conducting an individualized assessment: Review accommodation requests on a case-by-case basis rather than imposing blanket denials of requests for remote work.

Engaging in the interactive process: Maintain meaningful and productive communication with employees seeking accommodations and think creatively about ways to honor accommodation requests and avoid an undue hardship.

Training leadership and HR teams: Empower leaders and Human Resources professionals to understand their duties and respond in proactive and compliant ways to accommodation requests.

Maintaining complete and confidential documentation: Maintain thorough records of accommodation requests, discussions, and decisions in compliance with the ADA or other applicable EEO law, and store employee medical information confidentially and separately from personnel files.

Conclusion

This recent settlement with the EEOC, the aggrieved employee, and Big O Tires highlights the risks to employers in enforcing rigid RTO mandates without adhering to their EEO compliance obligations.

While in-office work may offer clear benefits for collaboration and company culture, employers must integrate their business needs and aspirations with EEO compliance obligations under applicable law. By implementing flexible, legally compliant RTO policies, companies can avoid potential enforcement actions or litigation while fostering an inclusive workplace that supports all employees. •

Elizabeth M. Roberson and **Hilary K. Leighty** are senior associates and **Marsha Jean-Baptiste** is an associate at Krieg DeVault LLP. Opinions expressed are those of the authors.