

Podcast

2023 Mid-Year Report: The Future of Work

By Felice B. Ekelman & Tasos C. Paindiris

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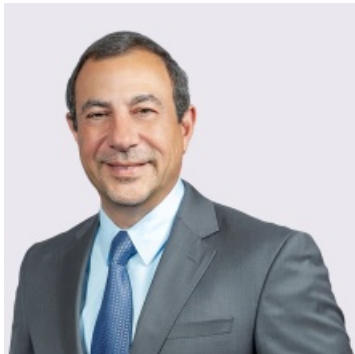


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Transcript

Alitia Faccone:

No matter the month or year, employers can count on one thing, changes in workplace law. Having reached the midway point of the year, 2023 does not look to be an exception. What follows is one of a collection of concise programs, as We Get Work™ the podcast provides the accompanying voice of the Jackson Lewis 2023 Mid-Year Report. Bringing you up-to-date legislative, regulatory, and litigation insights that have shaped the year thus far and will continue to do so. We invite you and others at your organization to experience the report in full on JacksonLewis.com, or listen to the podcast series on whichever streaming platform you turn to for compelling content. Thank you for joining us.

Tasos Paindiris:

So we are here today to talk about an issue that was starting to gain some momentum even before Covid, but has since become, I think one of the hottest issues employers are dealing with in the post Covid world. And that is remote or hybrid work arrangements as well as this issue of a four day work week and how that's going to start to bubble up and get some more attention we think going forward. I'm here with my colleague, Felice Ekelman. My name is Tasos Paindiris. I'm with the Jackson Lewis Orlando office and I co-lead our firm's advice and counsel practice group. I'll let Felice introduce herself.

Felice Ekelman:

Thank you, Tasos. Hello, I'm Felice Ekelman and I am a principal in the Jackson Lewis office in New York. I've been studying the phenomenon of the future of work

and in particular hybrid work for a couple of years and actually co-authored a book about it. And I think Tasos, what we're learning today is that hybrid work is here to stay. There are many, many reports about how popular hybrid work is, and I think we need to talk about what we mean when we say hybrid work, and that's the phenomenon of employees. And these are white collar workers, largely knowledge workers, largely working in an office some of the time, not remote workers who never report to an office, but folks who used to report to an office five days a week and now are reporting to an office some of the time, but not all of the time.

And the issue, because you asked me for the most pressing issue, the issue that I'm seeing is that companies are still trying to find their way. Companies are still searching for the right approach to where their work will be performed. And what I urge clients to think about is their business rationale for hybrid work. The decision to allow employees to work from home some of the time should not be a reaction to what's happening in the market, but of course, organizations can't be blind to that. But rather the hybrid approach for each employer should be a well thought out approach, which first of all would make it easy to explain to both leadership and staff, but is a rationale for why hybrid work is the best way forward to ensure productivity, a fair approach to the workplace, and establishes a basis for culture and employee retention. So employers are now still reckoning with this problem. Tasos, what new questions do you see arising from the clients you work with?

Tasos Paindiris:

Yeah, so that part of my practice is to advise clients on compliance issues and just sort of trend issues that we're seeing with the organizations we work with. So we are starting to get some questions around, in addition to the hybrid work format, the four day work week. You've probably seen that it's gaining some momentum outside the US and in Europe and now we have jurisdictions in the US looking at ways to promote it here. Things like tax incentives and changing the OT threshold, the overtime threshold, those laws are not necessarily getting a lot of traction yet, but they're out there.

But I've also seen some surveys where our clients, large employers are indicating some interest in exploring this concept. And there are different ways to go about it. You have the employers who will reduce the number of total hours per week and just have the same hours worked a day for four days, so that's fewer hours per week. Or you have employers who are compressing 40 hours into four days with 10 hours work days, but those of course raise a whole bunch of legal issues. You've got collective bargaining agreements that might be impacted. You have PTO policies, wage hour issues, all kinds of things like that.

So we are starting to see that sort of bubble up, but we're still getting most of the issues surround the accommodations relating to remote and hybrid work. And now what I'm starting to see as employers getting more inquiries about denying requests that seem questionable and that employers are struggling with whether they need to grant the request.

Felice Ekelman:

So what are the immediate compliance issues associated with those kinds of

requests?

Tasos Paindiris:

The compliance issue is if an employer has a request that's questionable for remote work, employers are struggling with, well, what can I do if I find this request to be questionable? Can I ask for more information? Can I deny it based on the information I have? And those can be really tricky issues under the ADA and under state law. So once the employer goes through that ADA process to request medical documentation and the employee submits something, we look at it and we advise the client, did the employee's doctor provide the information that supports the accommodation requested? Can the employer ask for more? And if they can ask for more, what exactly can they ask for? These issues can be tricky. There are limits on what the employer can and can't do with respect to these requests.

And sometimes, as I said, you have something that's submitted that seems very questionable, the authentication of it is an issue. I just think that employers are starting to settle into a place where they have a system in place for what they want to do with their hybrid work and they want to assess accommodation request with a little bit more scrutiny than they did before. Now that we're sort of in a place that we're moving forward with this concept, but Felice, you're one of our thought leaders in the firm on this issue, what do you see as sort of the broader baseline issues here?

Felice Ekelman:

Well, employers right now recognize that in order to... again, we're focused mostly on knowledge workers, white collar workers because so many employees don't have the benefit of working away from an office or workplace. But I think what employers recognize is that to attract and retain talent, they're going to need to be creative. And you talked about the four day work week. That's a fascinating movement. And for those of our listeners who are interested, this really originated in the present era. In 2010, there was an effort in Iceland for employees to switch from five to four days and a 32 hour work week. And according to that report, and you can find it online, the results are kind of stunning. Productivity stayed the same, people wasted a lot less time in the workplace. You talk about a blue sky approach, that is a real new novel change.

I'm negotiating a collective bargaining agreement for a client that is, again, employs knowledge workers and they have a proposal for a 32 hour work week. And the proposal is not to do less work, but to do it more efficiently. I think that this is a real issue, but that's all part of what I was saying when I spoke a moment ago. This is really the time for employees to sit back and think about really the future, not next week, next month, but in the next day, what is the workplace going to look like? And those employers who want to be thought leaders in this area and really want to attract and retain the best are going to really think about what is my policy about where work is going to be performed and why does it matter?

And if I do want employees to come to an office, what's going to happen in that office when I ask employees to commute? Because now we all recognize that commuting is tough for many people and a lot of wear and tear and a lot of expense. And so visiting an office to perform work that could be performed at home really should have some

additional meeting.

So I think for employers who want to distinguish themselves, and we call it being an employer of choice, is start anew. Why do I have an office? What's the purpose of the office? What are employees going to be doing in the office, and how long should it take? And how should I measure productivity? Because I think the other big issue, aside from the accommodation issue that you discussed, is the difficulty employees are having assessing employee productivity when employees are not always working together in the same place. And a supervisor can't just walk down a hall and see that folks are present on the phone or on a computer. So those are challenges that employers need to really face up to. And those employers who are going to be best in class are going to have to start thinking about it today. And there's no one answer.

I really think every organization is different. And so this is a project that requires some real deep thought. So in 2023, we were thinking about accommodations, I know. But what in addition do you think employers need to be thinking about, Tasos, based on what you are seeing in your advice and counsel practice?

Tasos Paindiris:

Yeah, so I think the employers who have a better communication plan with their employees about why, if they're making a change to their hybrid work policy, if they're making people come into the office and like you said, it is a burden with regard to commuting and time and things like that. I think it's important for employers to be able to communicate something beyond, I don't trust you to be productive when you're at home. Because I think a lot of employees take away that concept as their understanding of why my employers only require me to come in because they think I'm not working hard enough when I'm at home. There may be some truth to that with some employers, but I think it's important to have a communication plan that better articulates the benefits that both the employer and the employee are getting by being in the workplace.

But I do also see sort of the up and down trend of remote and hybrid work where it was way up, obviously at the beginning of the pandemic, and then we saw some fluctuations and some companies are bringing people back and some weren't. It started to level out. So I was looking at a recent survey by Gallup that showed that the percentage of workers who are exclusively remote has gone down, but is expected according to the survey responses to stay pretty level going forward. So we're not going to see those fluctuations like we've been seeing. And similarly that the employees who are working in a hybrid role went up, but is also expected to level out.

So I think that we've gotten to a place where employers have sort of settled into what they're trying to do with this issue, and now it's a matter of implementing it effectively. And like I said, I think the communication is a big part of that.

Felice Ekelman:

I agree with you on all points, Tasos. And it is an exciting time to be advising employers, so thank you for your thoughts on this.

Tasos Paindiris:

Yep. All interesting stuff. This issue is not going away anytime soon, and it's always a pleasure to catch up with you and talk about these trends.

Alitia Faccone:

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