

DENTONS

Return to office: Where we're at and where we're going

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Grow | Protect | Operate | Finance

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Agenda

- 1) Return to In-Office (“RTO”) Work Arrangements – Where we are at
 - Common work arrangements
 - Global trends
- 2) Structuring RTO work arrangements
- 3) Communicating RTO work arrangements
 - Be Clear
 - Be Consistent
- 4) Response to RTO work arrangements
 - Refusals
 - Duty to accommodate
- 5) Key considerations for employers – “Dos” and “Don’ts”

Return to the Office: Where we are at

Return to office mandates (RTO) in the post-COVID era

- Common post-COVID work arrangements:
 - Return to pre-COVID work arrangements (i.e. up to 100% in-office);
 - Hybrid (i.e. combination of in-office and remote work);
 - 100% remote.
- As of May 2023:
 - Approximately 72% of the global workforce have mandated return to office work arrangements.
 - Approximately 50% of the global workforce requires employees work from the office 4+ days per week.
- Despite these trends, employers continue to face resistance while enforcing RTO mandates.

Structuring Return to Office

Key Considerations

While structuring the return to office arrangement, consider the terms of the following documents:

1) Employment agreements

- Include a “location of work” provision?
- Reserve the right to modify employee’s work arrangement?

2) Remote Work Communications

- How did you communicate the transition to remote (or hybrid) work?
- Temporary or permanent in nature? Only in response to the COVID-19 pandemic? Subject to change?

3) Remote Work Policy

- Reserve the right to modify employee’s work arrangement?
- Was it communicated to all staff?

Unionized Workplaces

Key Considerations

- Generally, employers are responsible for determining the “best form of work arrangement”:
 - Exercise of “management rights”.
- Pay close attention to collective bargaining agreement (“CBA”):
 - Does the CBA address remote (or hybrid) work arrangements?
 - Does a Letter of Understanding address remote (or hybrid) work arrangements?
- Past practices:
 - Impose any limitations regarding employer’s ability to modify work arrangements?

Communicating Return to Office

Best Practices

Provide employees with ample notice of any changes to location of work (i.e. RTO).

- Clearly communicate:
 - Expectations (including consequences for failure to comply);
 - Reasons for return to office:
 - i.e. Employee collaboration;
 - i.e. Mentorship.
- Ensure communications aligns with remote work policy (if any).
- Provide employees with mechanism to provide feedback and/or ask questions.
- “Carrot” vs “stick” approach to enforcement:
 - i.e. Consider offering employees nominal incentives to encourage returning to the office.
 - i.e. Consider how attendance will be monitored and addressed (where required).

Return to Office

Refusals

- Step 1: Determine basis or reason for refusal.
- Step 2: Assess whether “duty to accommodate” is triggered.
- Common reasons for refusal to return to office:
 - Personal preference;
 - Productivity;
 - Transportation (i.e. length of commute to office);
 - Financial considerations (i.e. cost of returning to office);
 - Childcare, eldercare or other family responsibilities;
 - Disability.

Duty to accommodate

- Employers owe a duty to accommodate employee characteristics protected by human rights legislation up to the point of “undue hardship”.
- “Undue hardship” includes an assessment of the following factors:
 - Nature of the workplace;
 - Duties of the employee;
 - Limitations imposed on the employee by the protected ground.
- Reasonable accommodation ≠ “perfect” accommodation or “preferred” accommodation.
- Employees owe duty to “cooperate” and participate in the accommodation process.

! Note: Commuting to/from the office remains the **sole** responsibility of employees

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DOS & DON'TS: Return To Office Edition



The “Dos”

- **DO** provide employees with ample advance notice, in writing, of any changes to location of work arrangements. Consider employee townhalls (virtual and in person) to address questions.
- **DO** implement a formalized RTO policy that clearly communicates all current plans and is monitored
 - Include: Clear procedure for handling with attendance issues/ refusals to return to office
- **DO** apply the return to office policy and procedure uniformly
- **DO** clearly explain to employees why requiring employees to return to office
- **DO** follow and apply accommodation procedure consistently when handling such requests
- **DO** remember that employee personal preferences to work from home do not need to be accommodated
- **DO** solicit feedback from employees on a regular basis regarding return to office arrangements
- **DO** consult with legal counsel before taking any action against an employee & when making notable changes to work structure

The “Don’ts”

- **DON’T** rush to enforce RTO work arrangements
- **DON’T** rush to terminate the employment of employees for failing to meet return to office expectations
- **DON’T** forget to document follow ups with employees and efforts to support return to office
- **DON’T** forget to apply accommodation process consistently (where applicable)