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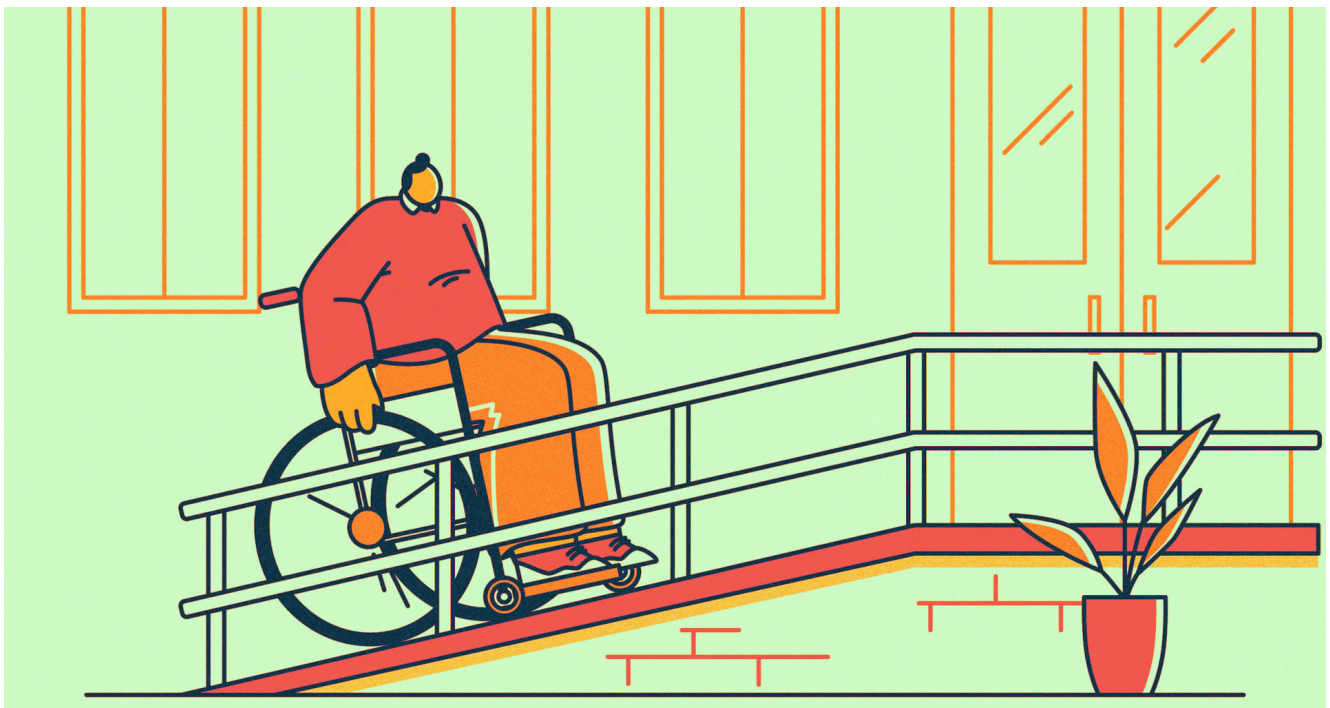
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## These are the legal risks of bringing workers back to the office

Legal experts say that as RTO policies become more stringent, employers could open themselves up to many more discrimination claims.



BY **PAVITHRA MOHAN** 6 MINUTE READ

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Leading up to 2025, major companies like [Amazon](#) and [JPMorgan](#) did away with remote work altogether, requiring employees to return to the office five days a week—a departure from the more flexible policies that had been popularized after the pandemic. Even as they contend with [a lack of workspace](#) and [complaints from workers](#), employers have pushed forward with the return to office.

“Many employees treated it as a suggestion,” Chris Moran, an employment lawyer at Troutman Pepper Locke, says of early RTO policies. “That was something I don’t know that employers saw coming—that a significant percentage of employees felt so strongly that they preferred to work remotely and were willing to sort of ignore [mandates].”

Some employers seemingly responded by upping the ante, making office attendance a factor in performance reviews or tying it to [eligibility for promotions](#). Others have moved ahead with [more stringent policies](#), eliminating their hybrid work policy altogether and forcing employees to return to the office five days a week.

As Trump’s administration imposes strict RTO mandates for the federal workforce, however, it’s

possible the private sector will feel even more emboldened to embrace punitive measures to ensure employees comply with their in-office requirements. “Now, with what’s going on in the federal government, there’s perhaps a little more cover for an employer to take the approach that they really mean it this time,” Moran says.



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At the same time, however, enforcing RTO mandates can present a minefield for employers—and not just when it comes to morale or worker discontent. The shift back into the office brings with it the risk of renewed employment litigation, or at least a return to the type of legal action that might have been more common prior to the pandemic.

## **WORKPLACE HARASSMENT**

During the pandemic, there were **many reports** that workplace harassment and other misconduct had not disappeared in the era of remote work but had simply migrated online. As virtual communication became the norm, this kind of inappropriate behavior cropped up not just in video interactions or phone calls, but also via Slack and across other digital platforms.

Still, the number of harassment complaints filed with the Equal Employment Opportunity Commission **did drop** at the height of the pandemic, in both 2020 and 2021 (though those figures don't account for state-level complaints). As employees return to the office in full force, however, it could open the door for more incidents of traditional harassment and sex discrimination, according to Lisa Koblin, an employment lawyer at Saul Ewing. "The more people are interacting together—especially if there is work-related travel or work-related functions that are offsite or involve alcohol—the more likely we are to see those claims pop up," she says.

Employers should, of course, already have clear policies in place around workplace harassment and misconduct, especially given many of them have been back in the office in some capacity for years at this point. But Koblin says it's important for companies to revise their policies and training sessions year after year, even if it might seem basic.

## **DISABILITY ACCOMMODATIONS**

Since companies started calling employees back to the office, experts **have noted** that the RTO push could disproportionately hurt workers who benefited most from remote work, particularly those who are disabled or neurodiverse. While employers will likely continue to provide accommodations to workers with disabilities, the

bar might be higher in workplaces that are requiring all employees to return to the office.

In fact, disabled workers at Amazon **have said** their exemptions to work from home were denied, and **according to a *Bloomberg* report**, the company has implemented a more stringent process for approving disability accommodations. (In a statement to *Bloomberg*, Amazon said the changes were part of its “broader return-to-office philosophy.” A spokesperson for the company added, “When in-person accommodations are needed, we’ll provide them, and in some cases, offer an exception to working from the office.”) Vincent White, an employment lawyer who represents plaintiffs in discrimination and harassment cases, says his firm is currently working on about 50 different cases that are related to accommodations that have been dialed back amid the return to office.

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Moran believes it's likely that private sector employers will continue to see a spike in disability discrimination claims—something he observed when academic institutions started asking teachers to return to the classroom in the aftermath of the pandemic. “There was a spike in the number of people who said, ‘I have a disability, and a reasonable accommodation is working from home, and good luck proving that it’s not a reasonable accommodation because we just did it for two years,’” he says. “I would expect that will happen again in other private settings, as well.”

### **OTHER EMPLOYMENT DISCRIMINATION**

But it's not just disability-based employment claims that might be on the rise. “What we're hearing a lot of right now is: ‘We want everybody back,’” Moran says. “That has the ease of saying, well, unless you have a disability, we don't have to deal with making exceptions, one way or the other.” The reality, however, is that there are always exceptions to these policies—as was the case prior to the pandemic, when certain workers were allowed to work from home occasionally or even secured permanent remote arrangements.

Even as companies lean into RTO, it is becoming clear that the strictest of policies **can be sidestepped** by top performers and star employees who have more leverage to negotiate. Depending on how

companies enforce these mandates, granting exemptions to certain workers and not others could invite more legal claims from employees whose requests are denied, a group that could include caregivers who are seeking flexibility to manage elder care or young children.

Koblin has said that in her experience, employers tend to allow these arrangements for certain types of workers. “I find that most of the time when there is a shift to return to work but there’s exceptions for some remote work, it’s usually tied to a disability-related accommodation,” she says. “Or there are certain cases where someone has moved across the country, and their position is so critical that they’re willing to make an exception for that person.”

Still, employers who base performance reviews or promotions on office attendance can run the risk of punishing disabled workers or others who have successfully secured exemptions. “The implication of not carefully evaluating that type of policy would be that you could inadvertently discriminate against certain people who are not physically able to come to the office, or who need to stay home to take care of a sick family member, or something of that nature,” Koblin says.

Some employers seem to have opted for a blanket policy that leaves little room for flexibility or exemptions—perhaps in part to steer clear of the

legal issues that might arise over inconsistent enforcement. But Koblin argues that it's in many employers' best interest to offer some flexibility. "I think the key is clarity and consistency in terms of: What is your culture, and what are you really expecting from your employees?" she says.

"Everybody has something going on, in some way, shape, or form, and people are going to talk and understand how their coworkers are being treated and what exceptions have been made for them. Generally, unless policies are being abused, I counsel clients to think about how they can strike that balance between appropriate flexibility while ensuring that work gets done."

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#### ABOUT THE AUTHOR

Pavithra Mohan is a staff writer for *Fast Company's* Work Life section, where she covers labor and workplace issues, often through the lens of race and gender inequities.. She has reported extensively on **workplace discrimination** in the tech industry **and beyond**, from the **disproportionate impact of layoffs** on pregnant tech workers to the **growing rejection of NDAs** that silence workplace mistreatment and **the complicated bureaucracy** of taking discrimination claims to the EEOC **More**

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