RECOGNIZING DESIGN POSSIBILITIES AND CHALLENGES

Equity Issues in a Remote Workplace

Remote work (also called telework and telecommuting) is the new "normal." While it presents benefits for some employees, it is also creating significant challenges for workplace equity. BIPOC[1] are disproportionately harmed by the COVID-19 pandemic, and the negative impacts of remote work are falling on women, older employees, and people with disabilities. In short, COVID-19 exacerbates existing inequity, including in the workforce. Employers should be alert to these challenges and guard against any threat that remote work will reverse commitments to equity and a diverse workforce. Failure to address these concerns can create liability under a wide variety of federal and state antidiscrimination laws. With close attention, responsiveness, and a little creativity, employers can give all employees the opportunity to succeed in a remote-work environment.

This paper describes equity issues that arise in the remote-work environment and suggests some ways that employers can respond quickly and proactively.

WOMEN ARE LEAVING THE WORKFORCE IN ALARMING NUMBERS

Background

- Shockingly, the September 2020 jobs report from the U.S. Bureau of Labor Statistics revealed that, of 1.1 million people who dropped out of the job market in September 2020, more than 890,000 were women.[2]

- Women cite child care as the number one reason for leaving the workforce. Women are also primary care givers for those impacted by COVID-19.

- This trend highlights underlying pay inequity.

Women are more often the lower-income earner in the family; they may leave the workforce because the lower income is easiest for the family to give up.

- The impact on mothers of color is even more severe, since they must navigate child care while also addressing disproportionate effects of the COVID-19 pandemic on diverse families and rising racism in some communities.

Actions to consider

- Ensure that all employees are aware of leave options, including the Families First Coronavirus Response Act (FFCRA). Where possible, offer flexible work arrangements to encourage women (and all parents!) to stay in the workforce.

- Consider offering an unpaid leave to employees who must stop working for a period of time for pandemic-related reasons (this pandemic will

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[1] Recently, the term "BIPOC," which stands for "Black, Indigenous, and People of Color," has grown in use and acceptance, and it acknowledges that not all people of color face equal levels of injustice. According to some, the term is significant in recognizing that Black and Indigenous people are most severely affected by systemic racial injustices.

[2] National Women's Law Center, *Four Times More Women Than Men Dropped Out of the Labor Force in September*, Oct. 2, 2020, https://nwlc.org/resources/four-times-more-women-than-men-dropped-out-of-the-labor-force-in-september/; U.S. Bureau of Labor Statistics, *September 2020 Employment Situation Summary*, Table B-1: Employees on nonfarm payrolls by industry sector and selected industry detail, available at https://www.bls.gov/news.release/empsit.t17.htm.

not last forever, and you want your employees to return).

- Revise performance evaluation criteria where appropriate to account for pandemic-related challenges.

- Review policies for unintended disproportionate impacts on women or other protected groups.

- Opportunities should of course be offered to all employees impacted by COVID-19 challenges.

EMPLOYEES WITH DISABILITIES ARE FACING DIFFERENT CHALLENGES WORKING AT HOME

Background

- Employers must respond to disability accommodation requests even when operating in a new work environment. Employers may need to adjust how they implement disability and leave laws in a virtual, partially virtual, or socially distanced workplace.

- Employees may not readily recognize that they can seek accommodation in the remote-work environment.

Actions to consider

- Reeducate employees about how to access disability accommodations. This will remind employees that they can access accommodation services even when working remotely.

- Employers must continue to engage in the interactive process, although it may look different as the workplace and workforce adjusts. At each step of the process, consider how the logistics of the interactive process may need to change. How will the employer collect all necessary information from the employee? Will there be delays due to COVID-19?

- Check in with employees who have existing accommodations to determine whether they remain effective in the new remote-work environment.

- Recognize that the new working environment may exacerbate conditions that previously required no accommodation.

MENTAL HEALTH ISSUES ARE ON THE RISE

Background

- Employee personal stress is increasing from societal factors such as the COVID-19 pandemic, social and racial-justice issues, schooling kids at home, isolation from work at home and social distancing, and changes to schedules or working conditions.

- These stressors manifest in employee work performance, accommodation requests, and erratic employee behavior. Employees are reporting increased levels of anxiety, stress, and depression, conflicts at work and with coworkers, and substance abuse.

Actions to consider

- Review leave and workplace accommodation policies, update them, and ensure they reflect the current workplace environment.

- Educate the workforce about mental illness and the resources available to employees through accommodation processes, leave options, and other available resources, such as the employer's Employee Assistance Program (EAP).

- Do not avoid discussions with impacted employees because they may be uncomfortable. Make sure that employers are available and have created a safe space for employees to raise these issues so that they can be addressed.

AGEISM IS INCREASING THE HARM OF THE COVID-19 PANDEMIC IN THE WORKPLACE

Background

- "Ageism" incorrectly paints all older people as the same. In reality, older people are just as different as employees in other groups, with diverse skill levels, perspectives, strengths, and weaknesses.

- The COVID-19 pandemic has raised unprecedented legal questions concerning employees who are older than 40 or who have a medical disability.

- The American Bar Association Journal recently reported a flood of complaints and questions to attorneys about layoffs, firings, and recalls that may discriminate against older

or disabled workers. Experts predict that the number of suits will grow over the next year as more people discover they are not being called back to work, employers fail to offer accommodations, and administrative filing periods end.

- The U.S. Equal Employment Opportunity Commission (EEOC) recently identified age discrimination as a cause for concern in the current environment.

Actions to consider

- Be flexible and offer multiple training sessions on new remote tools to everyone in case some employees need multiple sessions. This will ensure that an employee will not feel "singled out" or embarrassed for requiring more than one training session.

- Evaluate every layoff or recall in advance to determine whether it appears to favor younger workers. Employers should list employees by job title, seniority, and age. Then, the employer should check that decisions within each job classification are based on seniority or another nondiscriminatory criterion.

- Refrain from commenting about attributes that may be correlated to employee age. For example, saying that an employee needs to keep their job because they have young children or commenting that an older worker did not learn how to use technology when they were in school may be viewed as a preference for younger employees.

- View the COVID-19 pandemic as an opportunity for all employees—including older adults—to develop 21st-century skills that will be key in tomorrow's workplace.

- Avoid "benign" discrimination based on the employer's well-meaning desire to "protect" vulnerable older employees from COVID-19. For example, certain words and phrases, although intended as benign (or even positive), may inadvertently perpetuate negative attitudes, stereotypes, judgments, and assumptions. Another example: people often use the phrase "youthful spirit" to indicate someone who is engaged in life and with the world. Alternatively, employees can be encouraged to describe someone as having a "vital spirit" or "engaged spirit." Paternalistic approaches to protecting older employees by forcing them to take leave or stay out of the physical workplace when

others are not subject to the same standards because of a heightened risk associated with COVID-19 is also discriminatory.

BIPOC EMPLOYEES REPORT LESS ACCESS TO PROMOTIONS AND OTHER OPPORTUNITIES IN A REMOTE-WORK ENVIRONMENT

Background

- Remote work creates more isolation, and it results in fewer chances to create connections and trust in the workplace. This can fall especially hard on employees who may not have easy access to supervisors or the informal power structures within an organization, or otherwise have the chance to hear about new opportunities.

- Without such relationships, supervisors tend to give choice assignments and opportunities for promotions to employees they already know—and that can often leave BIPOC and new employees out.

- Remote work is also opening up new opportunities for many employees; make sure these benefits are equally available to all.

Actions to consider

- Actively work against the isolation of remote work; continue to explore new ideas and best practices for keeping all employees connected.

- Offer intentional opportunities for employees to network and meet new people within the organization; don't leave this to previously existing informal networks.

- Establish formal mentoring and sponsorship programs to ensure that employees most at risk for isolation and loss of opportunities receive consistent mentorship.

- Carefully monitor assignments and opportunities to ensure equal access.

- Ensure that employees are being acknowledged for good work and for taking on additional or new assignments.

- Create teams/pairs for projects wherever possible. This helps employees work together and creates more access for all employees.

- Review policies to make sure that they don't create an unintentional disparate impact on BIPOC employees or other protected categories of employees. Using an equity lens can help employers understand how policies play out for different groups of employees.

SOCIETAL RACISM AND IMPLICIT BIAS AFFECT REMOTE WORK

Background

- Implicit bias refers to beliefs that influence decision-making.[3] At times, the subconscious beliefs may even contradict the person's deeply held personal values.

- Implicit bias can have an even more profound impact in remote-work settings, since a lack of personal connection (inherent in remote work) can allow stereotypes to persist.

- Societal racism and the COVID-19 pandemic disproportionately harm BIPOC people. Racism and hate crimes are rising at alarming rates across the country.[4]

- This means that diverse employees may be experiencing more stress and demands at home. This can lay the groundwork for greater difficulty at work and thus even greater inequity.

Actions to consider

- Continue to train employees on bias in the workplace, including how implicit bias plays out in the remote-work environment. The more that supervisors and coworkers understand implicit bias, the more it can be addressed. For instance, managers and coworkers should monitor their own implicit biases against social class and cultural signals they may observe in BIPOC employees' personal appearance and workspace.

- Be sensitive to the multiple factors that are impacting BIPOC employees, including systemic and societal racism, and provide supports. Ask BIPOC employees what supports they need to be successful in the workforce. Express understanding of the disproportionate rates of COVID 19 on BIPOC people, and provide flexibility when employees need it.

- Immediately address concerns about racism or expressions of hate in the workplace.

PAY ATTENTION TO INTERSECTIONALITY

Background

- The term "intersectionality" describes "the interconnected nature of social categorizations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage."[5] Understanding intersectionality is essential to understanding the experiences of many BIPOC employees.

- Some employees identify with more than one group that experiences marginalization or discrimination, such as a Black male employee who is gay, or an immigrant employee who has a disability. Multiple forms of inequality can exacerbate an employee's experience of marginalization or discrimination. "We tend to talk about race inequality as separate from inequality based on gender, class, sexuality or immigrant status. What's often missing is how some people are subject to all of these, and the experience is not just the sum of its parts."[6]

Actions to consider

- Educate the workforce about intersectionality.

- Seek to learn from employees about how multiple identities can affect their experience at work, and follow up on any concerns.

- Finally, in all these situations, focus on how your BIPOC employees enhance your workplace.

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[3] The Kirwan Institute has more information about implicit bias. http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/.

[4] According to the FBI's annual report on hate crimes, 2019 was the third consecutive year in which more than 7,000 hate crimes were reported. https://ucr.fbi.gov/hate-crime/2019/hate-crime.

[5] Oxford Dictionary, https://www.lexico.com/en/definition/intersectionality. The concept of intersectionality was first identified by legal scholar Kimberlé Crenshaw in 1989. Crenshaw, Kimberlé "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum*: Vol. 1989: Iss. 1, Article 8.

[6] Katy Steinmetz, *She Coined the Term 'Intersectionality' Over 30 Years Ago. Here's What It Means to Her Today*, Time Magazine, Feb. 20, 2020, available at https://time.com/5786710/kimberle-crenshaw-intersectionality/.