

# Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

NOVEMBER 26 - DECEMBER 9, 2021

Happy Thanksgiving from everyone here at the CBA. We hope you enjoyed a safe and fun holiday with friends and family.



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## THE FUTURE OF WORK: ARE BARISTAS IN EVERY OFFICE THE ANSWER?

**N**early two years into the COVID-19 pandemic, office occupiers are still feeling around corners to fully understand what we've learned in moving from an office-centric work environment to the current work-from-home flexibility that many companies have adopted and employees desire. But is it here to stay?



**PAUL TINGLEY, CBRE**

First, there is no "right" answer. Each company and industry is facing their own unique set of challenges and opportunities. However, there are a few primary themes emerging as companies return to in-office experiences:

- The trade-off between "hello Zoom" versus in-person interaction
- Workplace redesign to drive collaboration, culture and engagement
- Workplace redesign to entice workers back to the office
- Employees are demanding more flexible work arrangements; Casual

Fridays no longer are the ultimate expression of worker independence

- Dedicated use of office space is diminishing as hoteling / desk-sharing becomes commonplace

Video-conferencing technologies and services have enabled businesses to leave in-person office meetings behind

while continuing to foster engagement both internally and externally with one's clients. However, many workers are admitting to Zoom fatigue and looking for deeper social interactions and engagement that correspond with in-person meetings.

Employers are balancing the real estate cost savings derived from work-from-home strategies with the belief that collaboration, culture and employee engagement work best through direct connection in the workplace. Watercooler conversations, mentoring new employees, fostering teamwork and connecting to a company's mission –

rather than just a paycheck – are all part of this conversation.

On the other hand, many workers are searching for the why in their return-to-office scenarios as they enjoy their technological freedom to WFA (Work-From-Anywhere). CBRE's surveys indicate that most employers want employees to spend at least half of the week in the physical office. To achieve this goal, employers are moving to enhance the at-work environment by being more human-centric with a focus on flexible gathering places with multiple work surfaces and seating choices. That can include stadium seating and lounge-like seating, cafes with everything from healthy snacks to baristas to full meal service and bourbon bars, and outdoor patio areas.

Underpinning flexible work arrangements are factors such as the rapid adoption of new technologies to keep employees connected; productivity gains from saying "goodbye" to that 45 minute commute; and the increased lifestyle balance concerns expressed by

Millennial and Gen Z employees.

Offices are here to stay, but absent select industries and job roles that require confidentiality – think attorneys and human resources – the private office and one-to-one seating plans are fading in popularity as companies move more convincingly to desk-sharing office strategies that embrace the hybrid employee model. This movement doesn't mean wholesale office vacancy – some of the office-specific downsizing will be offset by increased amenity space and more hiring – but CBRE is seeing a trend towards moderate space reduction in companies with static to low-growth workforces.

While we may well be on a two- to four-year trajectory to solve for the current trends, it is an exciting time to witness this evolution in workplace strategy and participate in the unfolding technological, social and cultural innovations and lessons that will define our working relationships for years to come. ■

WONDERING WHAT THE OFFICE WILL LOOK LIKE A YEAR FROM NOW? JOIN US FOR THE LAW FIRM WORKPLACE OF THE FUTURE ON DEC. 9! REGISTER NOW: CBALAW.ORG

## COVID-19 AND THE ADA: ANYTHING TO SEE HERE? (YES.)

**I**t has been an interesting two years for employment lawyers. Much of what has always been interesting about employment law is not the change in the law (though there is plenty), but how we apply old law to the human condition. Well, you can't beat 2020 and 2021 for an interesting human condition.

COVID-19 is about health, so almost by definition that implicates the Americans with Disabilities Act. Earlier this year the U.S. Equal Employment Opportunity Commission issued guidance saying that "long COVID" – more or less the persistence of COVID-19 symptoms over time – may be a disability under the ADA.

To its credit, the U.S. Equal Employment Opportunity Commission has, from

time to time, issued guidance on various discrimination law issues under COVID-19. The guidance is generally plain English – always a plus – and on topics that employers and employees want to understand. But we have yet to be surprised by any of this guidance.

The guidance on long COVID is no exception. While it's a good headline – after all, it includes "COVID" – the guidance is simply that long COVID might be a disability subject, like any disability, to a facts and circumstances determination of what is required of the employer. We knew that, because the standard for what constitutes a covered disability is not high since the passage of the ADA Amendments Act in 2008. If you have a serious and persistent

health condition, it is a probably a disability under the ADA, and we move on to the analysis of what the employer's reasonable accommodation obligations entail. So it is with long COVID.

Employees limited in their ability to work due to long COVID should communicate that fact to employers and request appropriate accommodation. Employers of such employees should manage these situations just as they have other disabilities in the three decades since the ADA passed. They can handle this, because they have been for years.

The real COVID-19/ADA game changer



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will be the acceleration of remote work, not specific to COVID-related conditions but rather to any conditions where an employee might benefit from working remotely. It is going to be harder for many employers to claim it is not a reasonable accommodation to let employees work from home when they have been doing so seemingly successfully

throughout the pandemic. I expect that to be the employment law issue of 2023 as COVID-19 largely passes (right!?) and these issues arise more.

We will undoubtedly be back on both of these and other ADA issues. ■



### Hon. Jeffrey Sutton to Speak at CBA

**Who Decides? States as Laboratories of Constitutional Experimentation**

The Hon. Jeffrey S. Sutton, 6th Circuit Court of Appeals, will discuss his new book: *Who Decides?* Join us for a compelling and informative discussion about the role of the state courts and state constitutions on our complex and ever-evolving federalist system. This program will be presented on Zoom from 12:00-1:30pm.



### REGISTRATION:

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