The Remote Work Hangover: EPLI Risks Firms Are Still Carrying From Hybrid Policies

Three years after the pandemic reshuffled workplace norms, many law firms are still operating under informal hybrid arrangements that were never documented, never reviewed by HR counsel and never stress-tested against employment law requirements.

How Informal Flexibility Became Formal Exposure

In 2020 and 2021, flexibility was survival. Firms made accommodations quickly, communicated expectations loosely and built hybrid work arrangements on the fly. Many of those arrangements were never formalized. Some were never written down at all. What exists in many firms today is a patchwork of informal understandings (some memorialized in emails, some existing only in verbal agreements) that varies significantly by partner, by practice group and by employee.

That inconsistency is now showing up in employment practices liability claims. Wage and hour disputes are arising from remote work arrangements where overtime wasn't tracked or compensated properly. Discrimination claims are being filed by employees who point to unequal application of hybrid policies across demographic lines. Wrongful termination cases are referencing remote work as a factor in adverse employment decisions.

The Three EPLI Exposures Hiding in Your Hybrid Policy

Wage and hour liability is the most immediate concern. Nonexempt employees working remotely must still have their hours tracked and overtime compensated. Many firms haven't updated their timekeeping systems or policies to account for remote work, and the resulting gaps create real FLSA and state law exposure.

Disparate application of flexible work policies is a growing source of discrimination claims. If senior partners are granted remote flexibility while associates face different standards, that inconsistency can form the basis of a discrimination claim, even if the unequal application was inadvertent.

Return-to-office mandates are generating wrongful termination exposure. Employees who accepted positions with remote work expectations and are now being required to return, or who are being terminated for noncompliance, are bringing claims in significant numbers. The legal landscape here is still developing, and outcome risk is real.

What To Do Before a Claim Arrives

A hybrid work policy audit is the right starting point. Document what your firm's current arrangements actually are in writing, consistently across the firm. Review those arrangements with employment counsel to identify inconsistencies or gaps. Confirm that your timekeeping and overtime compliance processes work for remote employees, not just in-office ones.

On the insurance side, review your EPLI policy's current limits and retentions. Employment claims have increased in frequency and severity, and many firms haven't updated their EPLI limits since pre-pandemic. Carriers are also increasingly asking about written workplace policies at renewal. Firms without documented policies face higher premiums and potentially limited coverage.

A Word From Gallagher

Gallagher can help you review your current EPLI coverage and identify whether your policy terms reflect your firm's current risk profile. If your firm has grown, changed its work arrangements or hasn't updated its employment policies in the past two years, this is the right time to take stock. Contact our law firm practice team.

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