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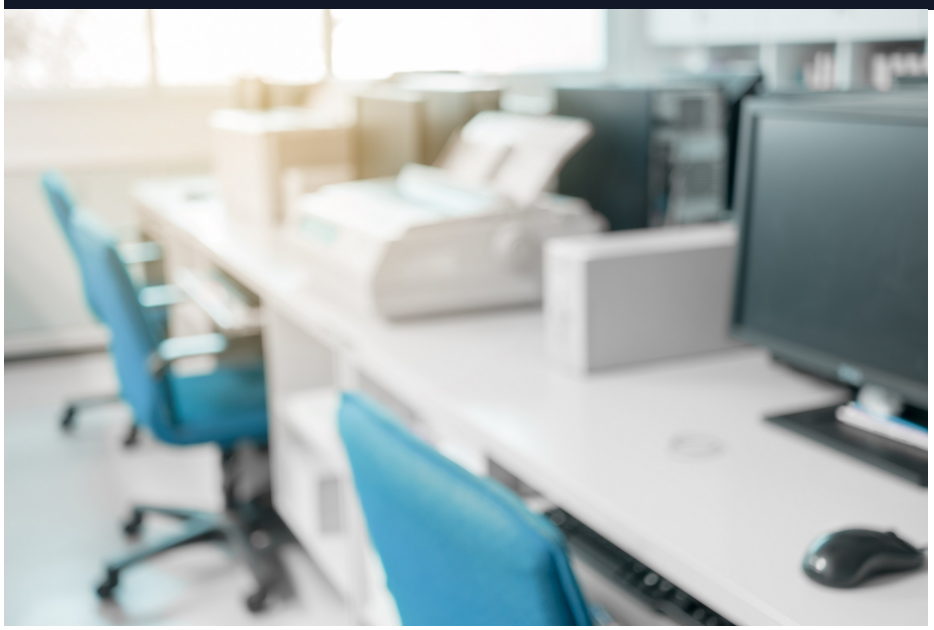

Do You Have To Negotiate Your Office Return-to-Work Plans?

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David J. Pryzbylski
Partner

Many – if not most – employers have begun asking, and in some cases demanding, their workers return to the workplace after a couple of years of allowing remote and/or flexible work arrangements. Companies may encounter various morale and cultural obstacles (e.g., pushback) in addition to legal issues (e.g., addressing reasonable accommodations under the Americans with Disabilities Act) once they go down this path. Employers with unions have yet another layer of nuance to deal with: collective bargaining.

Generally speaking, any change to the status quo of unionized employees' employment must be bargained with their union representative(s). For example, if a company has allowed a workforce to work remotely for several years, demanding that the employees now come to a physical office or other worksite likely is a "change" that requires bargaining.

There are some exceptions to this general rule. For instance, if the labor agreement has language that permits the employer to determine where work will be performed by its employees, then it may be privileged to take unilateral action even in the absence of formal negotiations with the union.

The New York Times is encountering this issue right now. According to a recent report from Bloomberg Law: "The newspaper has brought workers back to the office and made changes to its safety measures despite demands from the NewsGuild of New York that it negotiate over those policies. The

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union has filed unfair labor practice charges targeting the paper's plans, while 1,300 employees pledged to work from home in protest last week."

This illustrates that union employers contemplating changes to work arrangements as the pandemic (hopefully) continues to subside need to be cognizant of potential bargaining obligations in this context. If a duty to bargain exists, failure to honor it can result in the National Labor Relations Board (NLRB) or an arbitrator negating unilateral unlawful action. Companies should also keep in mind that while the NLRB currently has a flexible "waiver" standard, the current general counsel of the agency has signaled she may seek to make it more difficult for employers to argue they can take unilateral actions without negotiating with their unions. Accordingly, companies should consider treading cautiously on this front.