

# RPLG

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## Reporting Back to the Office in 2022...Or Not? The Public-Sector Workplace & COVID

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## Is This The Future?

NYT Articles:

- "What do bosses really think of remote work?"
- "The worst of both worlds: Zooming from the office": calling a hybrid workplace "a mushy middle ground" and questioning whether such flexibility is sustainable
- "The vaccine mandate conundrum": will they bring people back to work?
- "When vaccine mandates collide" re conflicting federal, state & local orders



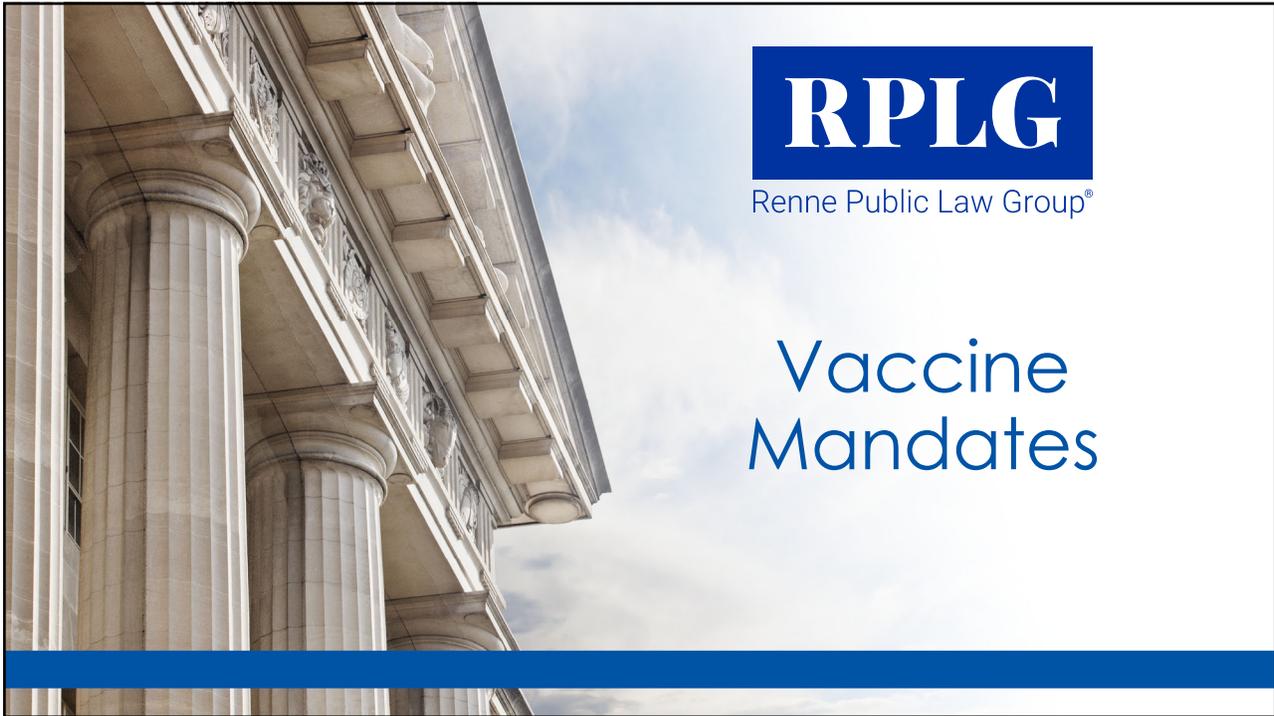
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## Today's Discussion

- Tension Between Remote v. In-Person Work
- Vaccination Mandates
- Flexible Work Schedule
- “Zoom” Etiquette & EEO Issues
- Questions

## Remote v. In-Person Work

- Equity Issues Resulting from “Essential” Public Servants
- Working Parents, Particularly Mothers
- Recruitment
- Accountability With Employees – Two-Job Phenomenon / SIAs
- Reluctance By Staff to Return to Office

A presentation slide titled 'Vaccine Mandate – Mandatory'. The left side features a blue vertical bar with the RPLG logo and 'Renne Public Law Group®' text. The main content area is white with a list of five bullet points. A solid blue horizontal bar runs across the bottom of the slide.

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## Vaccine Mandate – Mandatory

- Jabobson/Love Standard
- In California, mandatory vaccination policies are constitutional
- No mandatory vaccination policy from a major California City has been struck down as unconstitutional to date
- See list of California city policies
- OK to require vaccination for new candidates

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## Vaccine Mandate – Vax-or-Test

- OSHA issued an Emergency Temporary Standard requiring private employers with 100 or more employees to implement vaccination or weekly testing requirement for employees; will also apply to the public sector via Cal-OSHA
- Currently “on pause” due to pending federal challenge (5<sup>th</sup> Cir.) on November 12
- Risks of exemption for “personal beliefs”
- DIR guidance is that employers must pay for time spent testing and for the test itself

## Vaccine Mandate – Labor Relations

- No requirement to meet-and-confer over decision to implement a vaccination policy
- Must meet-and-confer over effects of the policy
- PERB Case
- MMBA emergency exception (requires official action by governing body)
- Paid v. unpaid leave pending termination hearing for failure to comply with policy

## Vaccine Mandate – Discipline

City	Unvaccinated Employees Must...	Discipline for Noncompliance
Los Angeles	Vaccinate unless exempt	Possible ban on promotion or transfer
San Diego	Vaccinate unless exempt	Subject to termination
San Jose	Test and report twice weekly until Dec. 31, 2021, then vaccinate unless exempt	Subject to termination
San Francisco	Vaccinate unless exempt	Disciplinary action or non-disciplinary separation
Fresno	Test and report once per week	Discipline up to and including termination
Sacramento	Vaccinate	Placed on unpaid leave status
Oakland	Test and report at least once per week	Subject to termination

## Vaccine Mandate – Medical Accommodations

- Similar analysis to any other employee requesting reasonable accommodation:
  - *Employee has a qualifying medical condition/disability that prevents them from getting the vaccine*
  - *Employee requests a reasonable accommodation;*
  - *Employee provides required documentation to support an exemption; and*
  - *An exemption would not pose a direct threat to the health & safety of the employee or others that cannot be mitigated*
- The Medical Board of California has informed all licensed professionals that inappropriate medical exemptions may subject physicians to discipline

- Legal standard – employers must accommodate a “sincerely held” religious belief, i.e., in good faith and relates to an established religious or belief system that holds place akin to God
- Employer must assume belief is sincere unless there is a legitimate basis to question otherwise, e.g.:
  - Whether an employee previously received other vaccines;
  - Whether an employee adopted the professed belief this year or since the start of the pandemic;
  - Whether the belief is predicated on conspiracy theory, e.g., fetal stem cells in the vaccine (although stem cell lines used in development)
  - Whether belief is based upon “wellness,” veganism, health lifestyle choices (would better support a “personal beliefs” exemption)
  - Distrust in the vaccine or medical community

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- Most recognized organized religions do not prohibit vaccinations
- If questionable basis appears, grounds to request documentation from faith leader; watch out for letters from an online “church” or pastor or otherwise engage employee in interactive process to resolve outstanding questions
- Make final decision based on holistic review
- Be consistent in granting or denying requests
- Based decisions on established criteria that could be produced in litigation
- Consider whether to meet-and-confer regarding such criteria as part of effects bargaining regarding vaccination policy

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This slide features a blue background on the left side with a faint, semi-transparent image of the same classical building facade seen in the top image. The RPLG logo and 'Renne Public Law Group®' text are positioned in the upper left corner of this section. The title 'Flexible Work Schedules' is centered in the upper half of the slide in a large, blue, sans-serif font. Below the title is a bulleted list of topics. A solid blue horizontal bar is at the bottom of the slide.

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## Flexible Work Schedules

- COVID has redefined expectations about flexible work schedules and impacted reasonable accommodation analysis generally
- Flexible work schedules
  - Remote Work versus family-friendly workplace policies
  - Child-care considerations
  - Commuting
- RA Requests
  - Influx in requests seeking permanent at-home days for medical reasons
  - Commuting
- Job suitability for remote work
- Disaster Service Worker status
- Productivity, attendance, and accountability
- Expenses
- Clear policy & remote work agreements are key

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## Flexible Work Schedules

- Work from Home Policy Tips
  - Success in the remote work context requires managing expectations. Both the employee and employer need to be on the same page in terms of work product
    - Set expectations regarding:
      - Performance and scheduling
      - Any tasks that cannot be completed at home
      - The line between home professional and private life
      - Any expenses to be reimbursed
      - How employees are to communicate among each other
      - Clear guidelines about remote integrations/ zoom protocols



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## “Zoom” Etiquette & EEO Issues

## “Zoom” Etiquette

- Evolution of workplace behavior while physically at home
- Need for workplace investigations based on remote-only conduct
- Consider updating EEO policy and/or Code of Conduct to address

# QUESTIONS?



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Thank you!

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