



Elon Musk Demands Tesla Employees To Return To The Office Or Quit: Can He Really Require That?

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Recently, Tesla Inc.'s CEO Elon Musk reportedly sent an email to all his employees demanding they return to the office and cease solely working from home. Musk specifically told employees "Everyone at Tesla is required to spend a minimum of 40 hours in the office per week," and that "the office must be where your actual colleagues are located, not some remote pseudo office. If you don't show up, we will assume you have resigned." Can Musk legally require employees able to work remotely from home to work in the office or be terminated? The answer is yes, with some considerations.

Americans with Disabilities Act (ADA)

When requiring employees to work in-person in the office, the largest consideration employers must make is whether an employee may be entitled to a reasonable accommodation to work remotely from home. Under the ADA, reasonable accommodations are adjustments or modifications provided by an employer to enable employees with disabilities to enjoy equal employment opportunities. Importantly, in order for an employee to be entitled to a reasonable accommodation, the employee must have a disability as defined under the ADA.

Many employers, including Tesla, allowed employees to work remotely from home for the purpose of slowing or stopping the spread of COVID-19. Even though employers allowed such remote work during the pandemic, employers are not necessarily obligated to continue to grant remote work to employees. This is especially true where employers excused employees from performing one or more essential functions of their position by working remotely. The ADA never requires employers to eliminate an essential function of a position as an accommodation. However, if an employee with a disability requests remote work as an accommodation, additional consideration should be made by employers.

Where an employee with a disability under the ADA requests an accommodation to work remotely from home, the employer should engage with the employee in an interactive process. Where an employee has a disability-related limitation, but the employer can effectively address the need with another form of reasonable accommodation at the workplace, then the employer can choose an alternative to remote work. Reasonable accommodations involve a fact-intensive analysis that should be determined on a case-by-case basis.

Family and Medical Leave Act (FMLA)

Another consideration for employers requiring in-person work is the FMLA. Although the FMLA does not require employers to allow for remote work, it does require certain employers (with 50 or more employees) to provide eligible employees with job-protected leave. Thus, the FMLA may provide a basis for an eligible employee to take job-protected leave for their own serious health condition or to care for a family member.

Fair Labor Standards Act (FLSA)

An additional consideration relating to remote work is compensation requirements under the FLSA. Under the FLSA, employees must be compensated for all time worked, including work performed in the office and work performed remotely from a different location. Musk indicated that Tesla employees are required to “spend a minimum of 40 hours in the office per week.” If non-exempt employees work additional hours outside of the 40 worked in the office, they must be compensated for those hours. Non-exempt employees must also be paid overtime for any hours worked over 40 in a workweek, which would include any hours worked remotely away from the office. It is important to also keep in mind that certain states or collective bargaining agreements may require overtime for any hours worked over 8 in a day for certain employers.

McGrath North Mullin & Kratz - Ruth A. Horvatic

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