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COVID-19 in the Workplace

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Speaker(s)

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>>: Well, welcome back, everyone, for the afternoon session of our program. One of the best parts of being an employment attorney is that everything's so new and evolving and exciting, and there's always new things to learn and to think about. And there's probably nothing more current or - going on or more important going on right now than trying to figure out how to deal with issues relating to COVID-19 in the workplace, and so up next, Rebecca Pontikes is going to speak to us about that. OK, so I'm going to start sharing my screen here. So I've entitled this, The Pandemic and Beyond, because I'm going to talk a little bit about what's happened through the pandemic, but then I'm also going to go over where we are going from here and what we can expect from here. So I'm going to talk about the Families First Coronavirus Response Act and the American Rescue Plan Act, but I'm going to go through that really quickly. And I'm going to focus mostly on where we're going with respect to disability discrimination, reasonable accommodations and some issues to watch out for in the remote workforce. So first, the FFCRA, there were two types of paid leave that employees were entitled to. One was emergency paid sick leave. There were six reasons that people could qualify, and I've got those on the screen right here. And there were certain rules about what the employees could do. They had the option of using accrued time, they could top off, with employer agreement, and employers, of course, did have the right to ask for documentation substantiating the need for leave. Now, there was also the Emergency Family Medical Leave expansion, and that was made available for people caring for a child if their school had closed or a care provider was unavailable. And it was up to 12 weeks of job-protected leave and with the continuation of health insurance benefits.

And, of course, the employees could only take 12 weeks total for the year. That included any emergency sick time, and if an employee had used up FMLA leave under what we call regular circumstances, then the employee was not entitled to more leave under the emergency part of the act. And these are their qualifying reasons for the emergency leave. And then the - there was a question about the intermittent use of emergency paid sick leave. And that could be done by agreement, but it had to be due to COVID-related issues only, and paid leave for any other qualified reasons had to be taken in full-day increments. And then, of course, the employee had leftover hours. The employee could use the remaining sick leave at another time. So next, we had - then that, of course, expired on the 31 of December. And Congress then authorized the American Rescue Plan Act, which had a lot of pieces to it, but one piece of it was expanding the paid leave of the FFCRA. Now, it was not made mandatory. Employers had to opt in, but if an employer opted to continue to participate, there were - there are, I should say - tax credits available to the employer as an incentive. And - but there were some changes that were made to the FFCRA so that if employers did opt in, there were expanded reasons - qualifying reasons for eligibility. And there was an elimination to the reference of COVID-19 symptoms. It was rather exposed to COVID-19 because of some people being asymptomatic. And then leave for immunization was also allowed. And these are - this is a short explanation of the incentives to continue using it. It was tax credits for the additional 12 weeks. And the eligibility is going to be extended from April 1 through September - it shouldn't say 31. There's only 30 days in September, September 30 of 2021. The tax credit for the - for an individual's own health condition remains capped at $511 per day or top rate of the employee, and the tax credit for other forms of sick leave remains capped at two-thirds, up to $200 a day. There are fewer restrictions allowed by employers. So one of the most important is that there's no cherry-picking with respect to qualifying reasons to recognize when to extend benefits, so employers can't extend benefits for one group of employees and then refuse to extend it for another, for example, more highly paid employees versus lower paid employees. If they do do something like that, the penalty is that they don't get the tax credit. And I wanted to add down here - Alice is going to talk a little more about paid family leave, but this - the FFCRA and the ARPA extensions are voluntary. But as a reminder, compliance

with Massachusetts's paid family medical leave law is not voluntary, so if there is a reason an employee could get leave under the paid family medical leave law in Massachusetts, the employer does not have an option to grant that. That's - that is mandatory. And then finally, ARPA made some extensions to the unemployment insurance benefits. There's a $300-per-week added benefit to any form of unemployment compensation, which now expires in September of 2021. And then the pandemic emergency unemployment compensation that might be available at the end of traditional unemployment compensation is now also extended through September 6, 2021, and the pandemic unemployment assistance benefits, which become available once an individual exhausts the extended benefits, are also now going to be applicable through September 6, 2021. OK, so that was our whirlwind tour of some of the emergency legislation that Congress passed in response to the pandemic. And I now want to talk and I'm going to spend a lot more time on disability discrimination and COVID. So there's - when is COVID itself a disability? Well, we go back to what we all know, which is there's actual disability, there's people who are regarded as a disability, and then there's the issue of future fear. So it - was COVID itself a disability? Well, it can be an actual disability, despite the fact that it's not a permanent condition, if it substantially limits a major life activity or bodily function and a temporary condition is a dispositive. I think that this is an important thing to think about because I'm going to talk a little bit later about something called long COVID, which is a long recovery period, and it's starting to be studied by health specialists so that COVID itself may not be the short-term, if somewhat deadly disease that we all initially thought it to be. Now, of course, regarded as a disability centers on what the employer believes, whether correctly or incorrectly, about an employee, whether they have COVID or don't have COVID or were exposed to it, and then taking adverse action against that employee. And then with future fear, you know, employers are certainly allowed to take steps to make their workplaces safer, including asking workers to comply with CDC requirements, and that's allowed. But employers should be careful not to treat employees who have chronic conditions and might be more susceptible to COVID any differently than someone who is not - does not have a chronic condition. So for example, somebody who has asthma should not be treated differently and their work hours reduced because the employer is worried

that this person is more susceptible to COVID and might get it more easily and therefore shouldn't be in the workplace. So when do employers have to make accommodations? So now that we're coming out of the pandemic, this is where I think the issues that came up with COVID may be extended, because I don't think that it's going to be over once we all get vaccinated, reach herd immunity, et cetera. So an employer would have to make an accommodation because an employee has COVID-19, if there's another disability that the employee has which creates a heightened risk of getting COVID-19, and also because - and this, I think, is one of the tougher ones to sort through, because the employee has a mental health condition which is exacerbated because of COVID-19. So I think the easiest example is what they call long COVID. So it's apparently - and I was reading on the CDC's website about this. There's a lot of really good information there, which I really recommend everybody go take a look at. Some employees who were sick with COVID might have a long-term recovery, meaning that COVID for them might not be so temporary. And the way the CDC defines long COVID is having a range of symptoms that can last weeks or months after the employee is first affected, and long COVID can happen even if an employee didn't get all that sick when that employee had COVID. And these symptoms can be things like tiredness and fatigue, difficulty concentrating - something you call brain fog - headaches, dizziness, continued loss of smell, heart palpitations and chest pain, joint and muscle pain, even depression or anxiety. But one of the more serious and concerning long-term effects of COVID is something that the CDC calls multiorgan effects, 'cause this can affect heart, lungs, kidneys, brain functions, it can result in something called multisystem inflammatory syndrome, which means that different body parts can become swollen and make it impossible for an employee to walk around or stand for long periods, sit for long periods. It can even lead to autoimmune conditions, where your immune system attacks your own body. And we don't know how long this lasts, and it might end up being chronic for the rest of someone's life. We just don't know. So an employee who had COVID perhaps temporarily had COVID, but may end up becoming a person with a disability because of the long-term effects of COVID on the human body. So if the condition is an actual disability, and I think that does include if an employee has long COVID, then that employee is entitled to an accommodation, if it - if needed. And I want - I'm - this slide focuses

particularly on employees who have long-term health risks, or it could be heightened risks of getting COVID because of another chronic condition. I've quoted here the EEOC's pandemic preparedness advice, but if an employee discloses a long-term underlying disability that puts this person at increased risk and requests an accommodation, the employee might be entitled to one if that's needed. And I think that this isn't going away because we are all getting vaccinated. The vaccines, while they're great, and they seem to be protecting most people who take them, aren't foolproof, and there isn't good data on how long the immunity will last. And we also don't know if some of the variants that are coming up in COVID are going to be blocked by the current set of vaccines, so employees with chronic conditions that put them at a heightened risk, even if they're vaccinated, may still need a reasonable accommodation. And of course, I put down here this last bullet, because we have to remember that we cannot assume that all disabilities increase the risk of complications with COVID or make them more susceptible. Many don't. And I put that there particularly to emphasize the need for an individualized assessment for all employees when assessing whether or not there's a - the employer can make an accommodation. I'm going to talk a little bit more about that later, but that is very, very important. And then finally, something that is, I think, probably the stickiest issue to iron out, which is exacerbation of mental health conditions. So some employees may be entitled to an accommodation because the pandemic has exacerbated a psychiatric treatment - impairment, and again, I don't think we can assume that that's going to disappear because we have vaccines or people are vaccinated or that we reach herd immunity. So like I said before, there is some uncertainty about how effective the vaccines are, how long they're effective and what they ward off against, and if an employee has, for example, an anxiety mental health disability, that anxiety may still be heightened in the current situation. So I'm going to talk next about types of accommodations. I'm going to focus particularly on telework. I'm highlighting this because this type of accommodation became really common during the pandemic. And there's some evidence that employers are going to continue to use telework or remote work in their workplaces, whether or not employees, you know, need to be socially distanced or not. There's a lot of great reasons for employers to be doing this. So one of the main things that came out for me during the pandemic was that it was - telework became

such a prevalent arrangement that a lot of the, no, no, no, that I was used to hearing as a plaintiff's lawyer when I would seek telework as an accommodation for my clients suddenly went away, and suddenly, a lot of employers, even ones who didn't think they could do it, were figuring out ways to do remote work and telework. Now, that being said, of course, if an employer wants to order everyone back to the workplace, that's absolutely allowed, and they don't have to continue providing telework to an employee that had it before. And if they do continue providing it, they - my third bullet here is, I think, not often obvious. But if you do start to require telework as an employer, there might be workers with disabilities who need additional accommodations from home, for example, a larger screen or a screen reader, if they're going to be very dependent on screen-shares or Zoom, or remote interpreting - video remote interpreting if somebody has a hearing impairment. But I do want to put it out there, because I think that it is an issue, that now that we're post-pandemic, if employers want to cut off telework - if an employee was successfully teleworking during the pandemic, I think it's going to be harder to argue that this is an undue hardship post-pandemic. And I'm going to highlight this case called Peeples v. Clinical Support Options, Inc. because I think this is a really good example of why the individual assessment is so important, and it's a good example of how successful telework undermined an argument about undue hardship. So for those who aren't familiar with this case, it's a District of Massachusetts case. The case actually came before the court on a motion for preliminary injunction brought by the plaintiff, asking that their employer be ordered to continue telework for them. Now, the plaintiff - (inaudible) this slide has some facts about the case. The plaintiff had asthma and was advised to telework to avoid exposure to COVID. The company then ordered them back to the office, and the plaintiff initially complied, based on representations from the employer that certain protective items would be provided in the workspace. Only one of those protective items was provided, so the plaintiff left work and again requested to be able to telework. The company denied the plaintiff's request and based it on a generic order to all employees, you've got to return to work now. So the plaintiff sued and moved for a preliminary injunction asking that they be continued to allowed to telework. And the court granted the employee's motion, which initially surprised me. The court found that asthma was a disability, and one of the points of interest in

Peeples is that the court found that it was a disability, taking into the totality of circumstances in the pandemic - because of the pandemic. So it wasn't just a very limited view of the employee and what the employee could do in normal circumstances. The court said, well, no, we have to analyze whether or not this is a disability, taking into account the fact that we're in a pandemic, and there is a situation where one could get a deadly disease, and in this person's case, that would be very dire consequences. The court also noted that the plaintiff was able to do the essential functions of the job via telework, because they had done so for a period of time, and there was evidence in the record that they had done so successfully and to compliments from their supervisor. And finally, the court found that the company had not provided evidence of an individualized assessment of the plaintiff's ability to continue working remotely. And this is where I - this is why I've continually throughout this presentation been saying we have to really be very careful and look at the individualized assessment. It can't just be generic. The company in this case had a generic return-to-work order and said that's our reason the plaintiff has to come back in. Everybody has to come back in. It would be an undue hardship if the plaintiff were to continue to telework. And the court said, well, the plaintiff was teleworking pretty successfully right up until now, and we don't see evidence of an individualized assessment about the plaintiff's condition and whether this would be - continue to be appropriate for the plaintiff. And some more items of interest here, the company said that they were offering accommodations to the plaintiff. And the court said, well, what you were offering were compliance with workplace safety rules from the CDC, and that sort of compliance with rules from the government is not an individualized assessment for an individualized accommodation for this particular plaintiff. And the court actually makes particular emphasis about that in its decision, which I think is very important as we go forward and we see that there are going to be long-term effects of COVID and we are still uncertain about what will happen and when we will all be in the clear. This individualized assessment for individualized plaintiffs, I think, is going to continue to be very important. The court also said that there was not a showing of undue hardship since the plaintiff had remotely worked before the order to return to work. And interestingly, the court also said that unemployment - in other words, if the plaintiff didn't return to work, the plaintiff is fired - was a particular issue with the high unemployment rate

during the pandemic. The court was looking at the plaintiff's ability to secure other employment in terms of the hardship to the plaintiff during that balancing test for the motion for preliminary injunction. And the court said the risk of infection to the public illustrated irreparable harm and that withholding an injunction might have an adverse effect on public health or the plaintiffs who get sick in the workplace and then carry that infection back with them outside the workplace. So it's a very interesting case. It was written by Judge Magistrate Robertson, and I think it will continue - I think the lessons from it are going to continue to be very important, particularly about the individualized assessment for individualized accommodations for particular plaintiffs and the analysis the court did about looking at telework during a period of time being done successfully and it got - and analyzing whether or not it would continue - would be an undue hardship on the employer to have the plaintiff continue to do that sort of work. So - and I want to also talk about leave, because leave - during the pandemic, it was something of an obvious accommodation. If people had COVID, they would need leave. If they had a disability that made them more susceptible to COVID, they might have needed leave. But leave is going to - post-pandemic - still be very important, particularly for any employees that had COVID and may have long COVID or may continue to have a heightened susceptibility in an environment where there are variants, and we're not sure if a vaccine is going to ward off those variants. So these are the rules about leave that I put on this slide just as a refresher for everyone. Almost all courts recognize it as a reasonable accommodation, as long as it's not indefinite. And because - well, this is if someone has COVID, if it's of short duration, leave may be a reasonable accommodation and would normally be reasonable if it was a very short duration. Leave can be unpaid, but - and this is something the EEOC has put particular emphasis on - if unpaid leave - if there is an alternative, a viable alternative, to unpaid leave, such as a way to keep the plaintiff working through a reasonable accommodation other than unpaid leave, then it may be unreasonable to force unpaid leave on the plaintiff. And a longer leave, while not indefinite, may be reasonable to avoid exposure or in the case of long COVID, if we have an employee that is taking a longer time to recover. So I'm going to talk a little bit now about issues to watch with a remote workforce. And I'm going to start out with discrimination based on stereotypes. I'm starting with this because I do caregiver

discrimination. I do a lot of work in this area. And even before the pandemic, the types of issues that my clients faced were founded in stereotypes about what caregivers would do or their availability or their distractions if they had caregiving responsibilities, and there was - there are particular assumptions made about men versus about women. And I think those are all going to start coming into play in a big way post-pandemic, especially for companies that are going to continue to allow some remote work or going to start allowing a wider use of their flexibility policies, or if they allow pandemic arrangements with some employees to continue. So stereotypes include assumptions about what appropriate caregiving roles are for men and women. Men are assumed to be breadwinners who will prioritize work and who will not have any caregiving responsibilities, and women are often assumed to be caregivers who do prioritize caregiving and therefore aren't as good workers or are assumed not to be as good workers. And then there's people who are caregivers for folks with disabilities. There is many assumptions that are related to them, and what - I'm talking about people who do elder care, someone who might have a parent or older relative that has a chronic disease, like Alzheimer's or a disease like that, or some sort of dementia or someone who has, for example, a child with educational special needs or with a chronic condition. There's an assumption about those employees that they will necessarily be distracted, that the care will necessarily interfere with the job requirements, and these types of assumptions are often not true and certainly should not be assumed by anyone. The pandemic created conditions under which these sorts of biases got unleashed, and the reason for that is because there was so much remote work that it did make it somewhat harder to see what employees were doing. It wasn't as transparent. One couldn't simply walk down the hall and pop in and see that somebody was doing work, or start to chat with them about the process or the progress on certain projects. And biases, especially stereotypes about, like, what caregivers do, will get amplified under conditions of ambiguity like that, and when you have conditions of ambiguity, that can lead to stereotypes in the evaluation of an employee. A couple of examples here, someone may start to focus on a few instances in which an employee fell short and forgets about all the other times that the employee delivered and then base their performance evaluation for whatever period of time it is on the two instances that they fell short. And of course, when evaluations are made

on assumptions, rather than direct observation or clear criteria, bias can often very easily kick in. One of my - so I have here some indicators of bias that are common. One is the implementation of a reduction in force or a pay cut that impacts one group more heavily than others - for example, caregivers more heavily than others, women more heavily than men - without measuring actual productivity of those people and whether that's justified. There's situations - the next two bullets involve situations where there's what I call second supervisor syndrome. So for example, an employee has an informal arrangement that accommodates their needs for caregiving with one of their supervisors. That supervisor moves on, gets promoted, and a new supervisor moves in. This new supervisor doesn't really want to have to accommodate this employee and revokes the informal arrangement. That can be an indicator of bias in that situation. Another situation is where the informal arrangement might be revoked, and then the supervisor will then start to require that the employee use the FMLA leave available to them to do the caregiving. Now, while certainly I don't mean to imply that the employer is not allowed to require FMLA leave in an evenhanded manner for caregiving responsibilities, if there's a situation where there was an informal arrangement where it was not required for a substantial period of time, and we have a new supervisor who then suddenly starts to require it, those can lead to suspicious circumstances, particularly if the employee uses up FMLA leave and is then terminated from employment for not having any more FMLA leave. And of course, modification of job requirements for employees who aren't caregivers, but strict application of those same requirements for caregivers, so one of my favorite examples is, you know, people take cigarette breaks for five, 10 minutes. Nobody cares. It's fine. They go out and play on Facebook, do whatever they do. But if someone takes a short break to speak on the phone to a parent's caregiver, for example, or to a child's school, that person is classified as distracted, as not paying attention, as not available and not present. These are indicators of bias. And I entitled this slide Flexibility Stigma, because I want to talk about flexible work arrangements, which are getting very popular. They were getting popular before the pandemic. And I think since the pandemic, they are going to just increase in popularity, and I think we're going to see them continue to increase in popularity. And I think they're here to stay. And they are, on the whole, wonderful. I think they're a great addition to the

workplace, and I think it's great that employers are starting to recognize that sitting in front of a computer in a particular building for a particular period of time every day is not the only way that people work or do their best work. But I - there is a risk of something that I call flexibility stigma. So employees who take advantage of flexible arrangements sometimes can be deemed to be bad workers. They get wage penalties, they get worse performance evaluations, they're tracked into lower-level roles or their advancement is derailed in some way. So when we go out in the world and we use these flexible arrangements, employers should be aware of stigmas that are attached to them, which may drive down their use but may also open up the employer to liability under an associational claim under Chapter 151B or the Americans with Disabilities Act, a gender stereotyping claim, an FMLA claim. So one of the ways I think - the best way - well, actually, one - couple of the best ways to track this and make sure that it isn't happening is to measure objective metrics of performance and productivity to the best that you can and keep data on who gets bonuses, who gets promotions, who gets merit increases, who's rewarded, and keep it by parental status and caregiving status to make sure that these workers aren't being unduly penalized for taking advantage of a company policy. There are gender differences in the presentation of flexibility stigma. Fathers who request to work flexibly are often viewed very positively for helping out at home. Mothers, though, when they request to use a flexible policy, are thought of as doing more at home, and they're assumed to therefore be doing less at work and so therefore either shouldn't be tracked for advancement, don't get a bonus or don't - aren't considered worthy of getting a bonus. On the other hand, mothers who rely on help at home can also be viewed negatively at work, because they're stereotyped as bad mothers. And fathers who are caregivers can also be penalized for not fulfilling the breadwinner role, questions like, you know, why can't your wife do this, why can't you hire someone to do this? I've seen this particularly with fathers who are caregiving not for children, but for aging parents or for a spouse who is very sick. So I'm going to transition a little bit here into talking about equal pay, and I'm sure everyone is wondering what in the world does equal pay have to do with gender stereotypes or the way we're assessing - or the way remote work is being conducted? Well, if there is continued remote work in an employer's workplace, men are more likely to decide to return to the workplace, and women are more likely to continue

to work from home. I'm basing this on data that I've seen that showed that men were more likely during COVID to protect their at-home work time, whereas women were more likely to continue to carry the heavy lifting in terms of child care and were much more likely to dial back on their work responsibilities during the pandemic. There's a company called Gartner who did a survey. It was very interesting, and it found that 64% of the managers surveyed believed that office workers are higher performers than remote workers and were more likely to give in-office workers a higher raise than those who worked from home. 64% is almost two-thirds, so that's an awful lot of room for flexibility stigma to take hold, for stereotypes to take hold and for there to be potential exposure to gender discrimination claims, you can all see where I'm going with this, if the people who come back to the office are rewarded very highly, and those are mostly men. I'm going to get to this in a second, but I think this also may end up becoming a potential liability under MEPA, the Massachusetts Equal Pay Act, if this belief about workers performing in office is transferred into how pay rates are set for a position that is going to be hybrid remote-in-office or mostly remote. Gartner also did another survey. They collected some data on productivity of workers in 2019 and 2020, and they found out that the assumptions being made by these managers is wrong. In fact, workers who are remote full time are 5% more likely to be high performers than those who work full time in the office. I'm not going to spend a whole lot of time on this. It's a very interesting survey. If you Google it, you can find it. But it is consistent with other surveys that I've seen, because this has also been shown to be true not just with office workers, where somebody is a knowledge worker or a creativity worker, but there was a study done of Chinese workers who were customer service representatives, and those who did their work from home were found to be more productive than those in the traditional call center environment in a, you know, large facility where they were working in front of a computer. So it's true across the board. So - again, so here we are, MEPA. Here's where MEPA comes in. MEPA bans gender discrimination on the basis of - in paying wages for jobs that do comparable work. And I've underlined comparable work here because it's important to remember that they don't have to be identical. They have to be comparable. And where we're looking at a remote workplace, and there are jobs that are now being created or restructured as remote hybrid or totally remote, I

think this is a potential pitfall for employers who are looking at a remote job and seeing that more women are taking advantage of it and assessing the duties with that job in a way that perhaps is going to allow gender discrimination into the mix. So according to the attorney general's guidance, comparable work means that two jobs have duties that are substantially similar with respect to skill, effort, responsibility and working conditions. So this is what - according to the attorney general, this is what substantially similar means. And this is from the Attorney General Guidance, which is available on its website. We don't have a lot of case law right now that is defining all of these terms in the statute, so the attorney general's opinion on that is the best that we have. It's pretty comprehensive, and I think it's helpful in the absence of any other case law that defines this for us. So substantially similar means alike to a great or significant extent even if not necessarily identical in all respects. So I think that the not necessarily identical is where things are going to get tricky for employers, because some jobs may be greater alike to a significant extent, but if they're not identical, I think assessing those parts of the jobs that are not identical is where gender bias could potentially creep in. This is what MEPA - so in that sense, I think that focusing on what MEPA - what the attorney general has defined as skills, effort, responsibility and working conditions is helpful to keep the gender bias from coming into the assessment. So skills is experience, training, education and ability, measured in terms of the performance requirements of the jobs, and I put this part down at the bottom, not in terms of skills that an employee happens to have. So if somebody has a master's degree in a position that doesn't really need a master's degree, does that person get paid more necessarily? MEPA would say maybe not, unless there's another reason that is allowed by the statute for that employee to be paid more. And what does MEPA mean by effort? Well, the amount of physical or mental exertion needed to perform a job, and these are a couple of interesting comparisons that the attorney general had set forth, gave us a couple of examples. I've thought of another one - if there's a job in an office, one involves more volume than the other, but the other involves more complicated and intricate regulations and compliance rules, these jobs could be comparable. I wouldn't rely on volume alone to say that one job should be paid more than the other. And then working conditions, environmental or other conditions, like physical surroundings, shifts that

are required, that are night shift required, or hazards on the job, and the attorney general has given us some examples of what physical surroundings mean, what hazards mean. I think, when we're talking about the remote workforce, a very good question is once somebody starts to work remotely, how are these working conditions different? Are they better working conditions? Do they justify a pay differential, particularly if you're going to be scaling it down? And I think that is something that employers would be well advised to ask themselves and really think about what it is that these employees are doing and the conditions that they're in. Some of it will be obvious, but some of it may not. And then, of course, responsibility, which is the degree of discretion, accountability or accountability involved in performing the essential functions of a job, and that includes supervision and whether there is any supervision or how many employees are supervised and the degree of decision-making power, and again, the attorney general gave us a couple of examples. But I wanted to add in an example here from something I read. There was in The Washington Post an op-ed written by a CEO from Washington Media, and she in her op-ed said that she thought that employees who wanted to stay remote were at a disadvantage and - because they wouldn't be able to contribute to any of what she called the extras, by which she meant the parts of their jobs that weren't in the job description, like mentoring or arranging birthday parties for people or, you know, discussions in front of the water cooler, what she said were contributors to workplace culture, which was impossible to do if one was working remotely. Now, she was thought to have threatened some of her own employees with being reduced to contractor status in the event that they didn't return to the office. That particular threat would probably be illegal under the Massachusetts independent contractor statute, but leaving that aside, if we are assessing what people's roles and responsibilities are, some of these intangibles, if they're not in a job description, and they're just assumed to be part of a job, may not actually - in my opinion, wouldn't actually justify paying one job less than the other because someone is remote. And the CEO's assumptions about what could - how culture would be built and whether or not that's impossible if somebody is working remote part of the time or all of the time could be an entire nother symposium and panel, so I won't get into that. But I think it is something that employers are going to have to watch out for, because I don't think this particular CEO is the only one

making the assumption about what's required for workplace culture and who should be rewarded for being in office because they contribute to it. There's also a gender angle to this. You know, women are much more likely than men to volunteer for some of these issues - for some of these things, like baking a cake for someone, and if they are often going to work remotely, then whether we assess their jobs as suddenly being worth being paid less may violate MEPA. And I'm running over, so I'm going to go through this really quickly. But there are some permissible reasons for gender pay differences. I've set them out on this slide, which is available to everyone. So I'm going to go through it fast. Don't worry if you can't get it down. And I've got some bullets here about things that employers can do to cut down on assessing bias - on assessing - on having bias enter the assessment of job value. So I'm running over. So I'm going to stop here, but I'm going to hand it off to the next person. And thank you, everyone, for joining us today.

>>: Thank you.

>>: Thanks, Rebecca.