As we start to see the potential to bring COVID-19 under control through vaccinations and other control measures, let’s reflect on how COVID-19 has changed the workplace, in some ways permanently.

Telework Is Here to Stay

The COVID-19 pandemic has made teleworking mainstream for millions of work-from-home (WFH) employees and employers in the United States. Skeptical employees believed they could not be productive outside an office, and many managers harbored suspicions that teleworkers slack off. Both have been mutually forced to expand their horizons.

Many jobs can be performed very well remotely, which has disrupted societal and legal perceptions of telework. Before the pandemic, many employers argued in Americans with Disabilities Act (ADA) court cases that working in the office is an essential job function. Courts often embraced this without requiring evidence. A number of prominent jurists regularly
commented that “every job” requires on-site attendance in the office. We now know that simply isn’t true.

In summer 2020, anxious employers asked the Equal Employment Opportunity Commission (EEOC) if they must allow employees to continue working from home once the pandemic is over. The EEOC guidance says that if an employer relieved an employee of an essential office-based job function to allow that employee to work from home due to the pandemic, the employer can again require the employee to perform that essential function and, accordingly, require that they return to the office once the pandemic is over.

However, the EEOC also stated that if an employee has been successfully performing all of the essential job functions from home during the pandemic, this is very relevant in evaluating whether telework is a reasonable accommodation. Employers take note; teleworking may become a mainstay ADA accommodation.

**Video Conferencing**

Before the pandemic, video conferencing wasn’t wholly embraced, but now it is second nature. Meetings often occurred in person in conference rooms and were not recorded for the benefit of those who may have been unable to attend. At Sun Life, we have seen a steep rise in recording of video conferencing calls to provide more accessibility to all attendees and flexibility for those who have competing personal demands that prevent attendance.

Employees who worked remotely pre-pandemic now feel more widely understood and accepted as we all now communicate on the small screen. Some companies now require all meeting participants to be on video even if they are present in the same room, so that those working remotely feel more included.

**Flexible Scheduling Benefits Everyone**

In another lesson from COVID-19, colleagues now know each other as human beings. Children, spouses, and pets appear on video meetings, often without warning and usually with immediate needs. We have learned not just to tolerate, but to embrace and be supportive of these interruptions. At Sun Life, we have seen cats walking across keyboards, babies bouncing on knees, and other personal elements of our colleague’s lives sneak into our Zoom calls. We have embraced it as part of our culture, and employees are more engaged than ever.

The Department of Labor (DOL) suspended its “continuous workday guidance” under the Fair Labor Standards Act (known as the overtime law). Under that earlier guidance for “non-exempt” employees (i.e., overtime-eligible), all time between the first work act of the day and the last is presumed to be compensable work time. In the pandemic, the DOL relaxed this guidance, recognizing that employers wanted to create flexible schedules around childcare and parenting demands, especially with remote learning. It is not clear whether this temporary rule
will become permanent, but the need for flexible scheduling is real, especially for caregivers, who are often women.

**Women, Work, and COVID-19**

COVID-19 has disproportionately impacted women in the workplace, forcing more women out of the workforce than men, the opposite of the usual recession trend. Analysis of DOL data by the National Women’s Law Center showed that 865,000 women had left the workforce in September 2020 — nearly four times the number of men who left. Many have had to drop out of the workforce in response to the challenges of caregiving and working simultaneously.

However, necessity is the mother of invention. Many employers have embraced flexibility to recognize the reality of family demands while maintaining productivity. Forward-thinking employers will continue this trend after the pandemic, as the issue of work/life balance and its negative impact on women in the workplace predates COVID-19.

**Leave Is Needed for Many Reasons**

As a result of the pandemic, we saw a panoply of laws adopted for providing emergency leave at the federal, state, county, and city levels. Many of these laws were narrowly focused on COVID-19 and were intended to be temporary.

However, not all are temporary! New Jersey now has modified its paid sick leave law, statutory disability, and paid family leave programs to provide leave for specified issues resulting from a public health emergency or epidemic related need for leave. Before COVID-19, some city and county paid sick leaves had protections for situations in which work or schools are closed due to a public health emergency. At the time, it seemed we would never use those leave reasons. We now know better.

In 2020, a federal law mandating paid leave was passed so parents could care for a child who was otherwise healthy but whose school or daycare was closed due to COVID-19. Additionally, the DOL concluded that school closures and remote learning requirements can trigger this mandated leave. We believe this was the right conclusion, as young children need supervision and support while learning at home.

We may see additional leave reasons being created for other public emergencies. For example, during the COVID-19 pandemic, devastating Oregon wildfires resulted in a statewide emergency order. Oregon has a law that permits employers to grant unpaid leave to volunteer firefighters, and, if they do so, employers must provide job restoration along with the leave. As weather-related natural disasters continue to increase, more governments may respond by adopting emergency leave orders and laws to protect employees during these life-changing events.
While many hope for a return to “normalcy,” we must prepare for a “new normal.” We may drop some cumbersome pandemic work trends once we are able, but in many ways, the dynamic of the workplace has shifted permanently — and in some cases for the better.
