

April 29, 2024

The Honorable Lisa O. Monaco  
Deputy Attorney General  
U.S. Department of Justice

Dear Deputy Attorney General Monaco:

We are four different DOJ employee organizations that collectively pursue equity, equality, accessibility, and inclusion. We write to request that, as the Department begins to implement the September 26, 2023, memorandum *Implementing OMB Directive Regarding In-Person Work* (In-Person Work Memo), DOJ take specific actions to mitigate any negative impacts on recruiting, retention, productivity, diversity and inclusion, and office culture in the Department.

We continue to stand by the concerns that DOJ GEN previously communicated to DOJ leadership regarding the impacts on the DOJ workforce that will result from decreasing components' ability to provide flexible work options.<sup>1</sup> For example, a May 2023 survey found that nearly half of employers that mandated returns to office have higher levels of attrition than anticipated, and nearly one-third struggled with recruitment;<sup>2</sup> and job candidates from historically underrepresented groups are more likely to look for new jobs if flexible policies are no longer offered.<sup>3</sup> In addition, we note that the DOJ requirement for non-remote personnel to work in-person at least six days per pay period is more burdensome than more than 20 other Departments and Agencies in the National Capital Region.<sup>4</sup>

However, we recognize that the In-Person Work Memo is now being fully implemented, and we focus our requests on ensuring that implementation is as equitable and minimally harmful to the Department as possible. These include but are not limited to reviewing the Memo's provisions after six months after collecting data and surveying the workforce.

To decrease potential harmful effects, we respectfully request that the Department:

1. Require components to track recruitment and retention data (including but not limited to application, hiring, and separation data) by demographics to determine whether recent

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<sup>1</sup> Department of Justice Gender Equality Network, *Flexible Work Policy Letter to Leadership* (July 25, 2023), <https://static1.squarespace.com/static/61f3032d7eb5233ccc782af9/t/64c011c6ad4f8f400329ab16/1690309063061/Flexible+Work+Policy+Letter+to+Leadership+FINAL.pdf/>.

<sup>2</sup> Unispace, *New Unispace Study Shows 72% of Companies Have Mandated Office Returns* (May 24, 2023), at <https://www.unispace.com/news/workplace-insights-report-global-press>.

<sup>3</sup> Melissa Suzuno, *Flexibility is Key: Results from the 2023 Greenhouse Candidate Experience Report*, Greenhouse (June 5, 2023), at <https://www.greenhouse.com/blog/2023-candidate-experience-report-us>.

<sup>4</sup> As one example, the Department of Defense released its policy in January 2024, required a minimum of two days in-person per pay period, and stated that its policy is to actively promote both telework and remote work. Anastasia Obis, *DoD updates telework policy for first time since 2012*, Federal News Network (February 5, 2024), at <https://federalnewsnetwork.com/federal-report/2024/02/dod-updates-telework-policy-for-the-first-time-since-2012/>.

return-to-office requirements disproportionately impact underrepresented groups, and share the anonymized data with the DOJ workforce.

2. Require components to conduct exit interviews and to ask whether the In-Person Work Memo had an impact on decision-making, to highlight both successes and challenges.
3. Encourage all components to offer flexible work options, such as Flexitour, Gliding Schedules, and Alternative Work Schedules,<sup>5</sup> to their employees to minimize disparities in components' policies.
4. Survey the DOJ workforce to ask for their views on the In-Person Work Memo's provisions.
5. Review the In-Person Work Memo's provisions six months after the January 2024 implementation and use the above data to evaluate whether adjustments are appropriate.

As the Department's Office of the Inspector General (OIG) noted in *Top Management and Performance Challenges Facing the Department of Justice—2023*, the In-Person Work Memo's policies will present challenges to the Department's competitiveness, retention, fairness, productivity, and morale. "In the wake of DOJ's September 2023 memorandum," the OIG wrote, "the Department will face the challenge of retaining talented workers," noting that "[i]n 2022, even before DOJ announced this new policy, 26 percent of DOJ FEVS respondents—approximately 7 percent more than the federal government-wide average—disagreed when asked if their agency's workplace re-entry arrangements were fair in accounting for employees' diverse needs and situations." The OIG cautioned that the Department's challenges will include "fairly implementing the new in-person work policy's exceptions and attempting to ensure that employees have a 'meaningful' in-person work experience," as well as "carefully monitoring the effect of the new in-person work policy on employee retention, productivity, and morale."<sup>6</sup>

The OIG also echoed our first recommendation above, stating "[b]y leveraging workforce data, DOJ can determine whether its return-to-workplace plan succeeded in meeting organizational goals or must evolve further." Moreover, the OIG emphasized the importance of the Department monitoring other federal agencies' approaches to workplace flexibility, to ensure that "DOJ can remain competitive and learn what has worked at other agencies." We agree with the OIG's concerns and the imperative to collect and analyze workforce data to determine the In-Person Work Memo's successes and challenges.

Our requests will also support the Department's objectives in its Diversity, Equity, Inclusion, and Accessibility (DEIA) Strategic Plan. For example, Strategy D-1.3 in the Strategic Plan is to strengthen the collection of workforce demographic and survey data to support data-

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<sup>5</sup> Definitions and descriptions of these flexible work options are available from the Office of Personnel Management (OPM) at <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/>.

<sup>6</sup> U.S. Department of Justice Office of the Inspector General, *Top Management and Performance Challenges Facing the Department of Justice—2023* (November 16, 2023), <https://oig.justice.gov/sites/default/files/reports/TMPC-2023.pdf>.

driven decisions and streamline the tracking of DEIA initiatives; Strategy D-2.1 is to develop, implement, and maintain an agency-wide recruitment and outreach plan that addresses mission critical occupations with participation rates below the civilian labor force occupational availability rate.<sup>7</sup> Taking DOJ GEN’s recommended actions will allow the Department to both avoid harmful impacts of the In-Person Work Memo and achieve DEIA goals.

Finally, we note that the U.S. Office of Personnel Management (OPM) – the federal agency responsible for reporting on the status of telework across the federal government – stated in its most recent telework annual report that the expansion of telework has increased federal employees’ productivity, performance, and management. OPM wrote in December 2023, “In their qualitative responses to the Fiscal Year 2022 Telework Data Call agencies reported observing higher levels of work-life balance[,] increased productivity due to fewer distractions and disruptions[,] increased performance reflected in annual reviews[,] and improved management practices to ensure accountability and monitor employee performance. These data points are supported by 2022 FEVS data showing that both employees and managers overwhelmingly agreed (more than 84 percent) that their work units were producing high-quality work and meeting their customers’ needs.”<sup>8</sup> We urge DOJ leadership to consider these actual impacts of telework on federal employee performance as the Department assesses the provisions of the In-Person Work Memo.

We appreciate your attention to these concerns. The Department faces real risks in its ability to meet its mission if DOJ employees leave the Department as a result of the In-Person Work Memo. Already, we know of multiple employees who have worked for the Department for decades who have transferred to other agencies that offer greater flexibilities. And from our experience working in DOJ, we have observed that truly strengthening our team cultures is accomplished not simply by sitting in physical proximity to one another – but instead by focusing on the needs that each employee and team has, which can include training, social team get-togethers, work-life balance and flexible work options, and much more.

We ask that you take the above steps to minimize harm to the Department’s work and its workforce. We look forward to collaborating with you.

Respectfully,

DOJ Gender Equality Network  
DOJ Association of Black Attorneys  
DOJ Association of Hispanic Employees for Advancement  
and Development  
DOJ Muslim Americans in Public Service

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<sup>7</sup> U.S. Department of Justice, *Diversity, Equity, Inclusion, and Accessibility Strategic Plan for Fiscal Years 2024-2026* (2024), <https://www.justice.gov/jmd/media/1340036/dl?inline>.

<sup>8</sup> U.S. Office of Personnel Management, *Status of Telework in the Federal Government Report to Congress, Fiscal Year 2022* (December 2023), <https://www.opm.gov/telework/documents-for-telework/2023-report-to-congress.pdf>.