



Thursday Roundtables - Interactive Webinar Series

COVID-19 LEGAL PART 2: Labor & Employment Issues for Work Reopening



Presented by:

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HANDBOOK AND POLICY REVIEW

1) Sick Leave and PTO policies

- The FFCRA mandates paid sick and expanded family leave for certain COVID-19-related reasons;
- Employers may want to require accrued paid leave under these policies to be used concurrently with expanded family leave under the FFCRA, to the greatest extent allowed by law;
- As states and travel begin to reopen, there may be a surge in employee requests for vacation time – you may want to look into developing a system and criteria for granting time off requests; and
- Consider allowing a one-time carryover of accrued vacation time if employees generally forfeit unused leave at year's end.

2) Remote Work Policies

- If employees successfully teleworked during a stay at home order, the employer must determine whether that degree of teleworking is desirable or feasible going forward, which may vary depending on the phase of reopening (for example, employees may fear using public transportation before a vaccine is available);
- A demonstrated ability to telework effectively during a stay at home order may affect the reasonableness of (or undue hardship posed by) an employee's request to work from home as an accommodation for a disability, particularly given the now commonplace use of remote meeting technologies;
- Reminder that telework is privilege, not a right; and
- The criteria and conditions required for assessing work from home requests must be handled in a non-discriminatory manner.

3) Travel Policies

- Non-essential business travel should be discouraged or prohibited during one or more phases of reopening;
- Employees should be discouraged from traveling to any specified regions during the pandemic; and
- Questioning employees about personal travel and requiring a period of quarantine after return, if consistent with CDC or other guidelines.

4) Job Descriptions

- Consider whether as a result of business closures, the employer has identified certain essential job functions for any positions, such as an employee's physical presence in the workplace, or determined that certain functions are no longer essential.

5) Expense Reimbursement Policies

- Reimbursement for PPE or other health and safety equipment;
- Work-from-home expenses, such as high-speed internet, computer monitors, ergonomic chairs, or cell phones required or requested for performing telework; or
- Tolls and parking for employees unable to safely use public transportation but need to come to the workplace.

6) Training

- Train managers and employees on all new protocols and policies relevant to their position;
- New safety measures; and
- Harassment training.

7) Posters

- Remember to physically post required posters that were previously emailed to employees while they worked remotely.

8) (Re) Offer Letter

- Review possible need to memorialize the following:
 - Changes to employment terms
 - Changes to hours
 - Change to compensation
 - Date of return
 - Return of equipment used at home
 - Notification of new policies
 - New background checks
 - New hires v. returning workers
 - I-9 compliance
 - Re-sign or update restrictive covenants
 - Reconfirm continuation of previous terms
 - Review the terms of any employment agreements and/or equity agreements

9) Benefit Implications

- Review plan documents for possible permissible election of benefits change; and
- Failure to return significant number of employees could impact retirement/benefit plans, e.g., termination of 20% of 401(k) participants could result in partial plan termination and trigger certain automatic vesting.

DISCRIMINATION ISSUES

Returning A Select Number of Employees

- Evaluate business rationale of selection procedure
- Disparate impact analysis
- Formalized process for how to select/identify
 - Determine whether the selection criteria for workers recalled is dictated by ordinance, existing policy, or CBA
 - If using selection criteria, develop same – preferably use neutral criteria
 - Examples of non-discriminatory, business-related criteria for selecting individuals include the employee's tenure, past performance ratings, job skills or experience required to perform essential tasks
 - Provide opportunity to self-select out of the organization

Religious Accommodation

- In relation to screening methods (providing a screener of the same gender)
- Wearing of protective gear and possible need for modified equipment due to religious garb

Age Accommodation

- ADEA prohibits employers from involuntarily excluding an employee from the workplace simply because the employee is over 65
- No duty to accommodate someone based on their age

Pregnancy Discrimination

- May not exclude an employee from the workplace involuntarily due to pregnancy
- Duty to accommodate

National Origin Discrimination

- Be aware of harassment of Asian employees
- Remind employees of Title VII prohibitions and of open door policies
- Training opportunities

Gender Discrimination

- Treating female caregiver accommodation requests more favorably than male requests

Thank you!

Q&A

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