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Workplace changes to consider during the COVID-19 pandemic

The pandemic has forced employers to create new policies or update existing ones to address a new kind of workplace. Given these changes, employment lawyers need to consider all of the areas that may require revisions or additions in a client's employee handbook. As employers and their legal counsel adjust to life under COVID-19, here are some things to review:

Remote work: Often used as a way to protect and the health and safety of their workers, employers must also consider the safety of the company when enacting work-from-home policies. For many, this is the first time a company has allowed remote working for any employees. Company security and confidentiality policies are directly affected by employees use of their personal wireless services, personal computers, printers, fax machine, etc. Issues like whether an employee can print out confidential company documents at home is a question that needs to be addressed, especially if the client company is in financial services or acts as a fiduciary.

Company travel policies: Consider reevaluating any policies around the need for business travel until the pandemic subsides. To the extent travel can be avoided, it should. However, for others it is a must. Employers must account for the safety of its workers when they need to get on a plane, or perhaps more poignantly, travel through airports.

PTO and paid sick leave: State and federal laws have

drastically altered how a worker might avail him or herself of the sick leave or paid time off. Specific provision of the Families First Coronavirus Response Act, or FFCRA, allow for additional time off for those who have been diagnosed with the virus or those whose family members have diagnosed with the virus. New laws tend to create initial confusion. Companies need to review existing policies on time off and sick leave to provide options for employees to stay home instead of coming into the workplace while sick.

Layoff and furlough policies: These are areas that are sensitive to employees as well as company owners. If there are mass layoffs or furloughs, an employer must be cognizant of these like the total number of employees laid off, their titles, tenure, ages of those laid off, or how many associate with a particular protected class in order to avoid potential litigation.

Policies for various leaves: Leaves for medical or family reasons have been turned upside down because of COVID-19. Employers with fewer than 500 employees and some public employees are subject to the FFCRA, meanwhile employers with fewer than 500 employees who are considered "essential" may not be subject to the FFCRA. It is not always clear how a company should be categorized. Certain provisions of this act are effective through Dec. 31, so, categories and compliance is subject to change.

Accommodations for high-risk employees: Some employees are at high risk of



EMPLOYMENT LAW

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severe illness from COVID-19 and they may require special accommodations even if working from home. Furthermore, some employees live with family members who are high risk or autoimmune deficient. The Americans with Disabilities Act contains a specific provision that protects workers who care for disabled family members from discrimination. This law has a new meaning and brings brand new implications. The nature and the length of a particular accommodation should be considered.

Employees who refuse to return to work: Providing employees with information ahead of time for expectations and timing for returning to

work for various situations, including health reasons, furloughs, and layoffs, can help mitigate issues in the future. Building this into the handbook or as a special smaller handout may be useful to both employees and employer clients.

Group benefit plan eligibility: These are standards in the handbook, but with conditions potentially changing, such as eligibility for special COVID-19 time off, they should be reviewed carefully. Make sure to address various scenarios including furloughs, layoffs, terminations, and new hires.

Confirmed COVID-19 employee protocol: Steps employers should take in the event an employee being diagnosed with COVID-19, need to be specifically worded and equitable. Notifying staff of their potential exposure and notifying public health authorities cannot be ignored, if required in the client's jurisdiction.

Other issues and policies to consider

Physical distancing: This issue is very important to those who must return to an office setting. Alternative setups that provide space between employees and policies for shared spaces are key to keeping employee complaints down.

Staggered work shifts: How to ensure equitable treatment in staggered work shifts will require careful attention to detail for these policies, especially because they may be new to all employees. But they can go a long way toward physical distancing.

Revised flow of workspace: Employers are being encouraged to review the typical flow of workers within the workspace to improve increased physical distancing.

Sanitation protocol: Implementing frequent disinfecting protocols can be built

into the handbook. Keeping the workplace safe should be the priority.

Daily checks: These are being handled online for the most part and have become standard. How long to consider these daily checks as the pandemic eases needs to be

planned. These checks can include temperature screenings or questionnaires.

PPE supplies: What to have on hand in the way of PPE supplies may be hard to estimate, but it is important. Employers may think they do not have to provide these

supplies, but that is yet to be determined.

Additionally, consider having employees electronically sign a document saying they have reviewed and understood handbook revisions, protocols, and policies may be helpful once the pandemic subsides.