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What You Need to Know About the Virtual Workplace and Transitioning Back to the Non-Virtual Office

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Agenda

- Returning to the Workplace
- COVID-19 Safety Measures
- COVID-19 Accommodation Issues
- Impact of Remote Back to School Plans on Employers

Returning to the Workplace



Bringing Employees Back to the Workplace

- Business decision on whether to require employees to return back to the workplace
- Importance of maintaining flexibility
- Develop transition plan to bring employees back to work
- Assess COVID-19 cases in the city and/or state of the workplace

Implement Policies and Practices to Ensure Safe & Lawful Return to Work

- COVID-19 related protocols (screenings, medical inquiries, temperature checks, fitness for duty, use of Personal Protective Equipment (PPE), modified work practices to enhance social distancing and address infection control)
- Prepare/update existing policies to address new laws related to use of leave and/or accommodations (state/city mandated supplemental sick leaves)
- Develop policies related to off-duty conduct

Implement Policies and Practices to Ensure Safe & Lawful Return to Work

- Impose appropriate limits on business travel (domestic and international), in-person meetings, seating proximity
- Train employees on new policies, protocols and rules
- Consider job description updates to reflect changes in job duties and essential job functions
- Consider how to adhere to regulations on changes in terms and/or conditions of employment for any employees on temporary visas
- Create business continuity plan(s)

Develop a Return to Work Plan

- Consider reopening and other orders specific to your state and/or county
- Procure supplies and make workplace modifications required for safe operations
- Identify individuals who will be brought back to work using neutral selection criteria
- Identify those who can continue to work remotely; consider more formal telework plans

Develop a Return to Work Plan

- Determine changes to exempt status, compensation and schedules (e.g., staggered shifts)
- Consider workshare and unemployment insurance implications
- Determine updates that must be made to I-9 Employment Verification Forms and E-Verify
- Anticipate unique needs of various vulnerable employee populations
- Notify employees of return to work with established dates and, if they were terminated, rehire documents

Address Remote Work Challenges

- If remote work is going to continue, make sure you have a plan in place that addresses your employee's unique circumstances and your need to get the job done
- It may be time for a re-set
- Set forth the expectations for the job
- Talk to employees about performance issues that have arisen with any previous flexibility
- Communicate that while you are willing to work with them during this difficult time, and want them to succeed, ultimately, it will require effort on their part to ensure that the job gets done

Address Remote Work Challenges

- Assess information security risks and address accordingly
- If non-exempt employees are working remotely, ensure systems in place to properly record and track time
- Be aware of potential evidence of off-the clock work – late night e-mails, etc.
- Train managers how to manage remotely
- Communicate to employees when there are issues

COVID-19 Safety Measures

Laws and Guidance Employers Must Consider



What Do You Need to Do?

3 Basic Rules

- Sanitize
- Stay home if sick or exposed
- Mask & Social Distance

Which for Employers Means

3 Basic Rules

- Clean
- Screen
- Mean it

Clean

- Require regular handwashing (and good respiratory hygiene).
- Place hand sanitizers in high-contact locations.
- Provide tissues and trash receptacles.
- Clean merchandise before stocking, if possible.
- Daily disinfection of desks and workstations.
- Daily disinfection of work areas.
- Close and deep clean any area where employee who was diagnosed with COVID-19 was working.
- Ensure good ventilation.
- Regularly clean and disinfect commonly touched surfaces.
- Daily deep disinfection of high-contact surfaces.

Screen

- Employees must perform daily symptom assessment.
- Require employees to stay home if symptomatic or had close contact with anyone who has been diagnosed with or suspected of having COVID-19.
- Employees should work from home when possible.
- Provide flexible leave.
- Limit travel as much as possible.
- Specify hours for at-risk populations as appropriate (customers).
- Ask customers and guests not to enter if symptomatic – post signs concerning same.
- Contact local public health department if employee is diagnosed with COVID-19 and disclose identity and close contacts of employee. (NOTE: Do not disclose identity if the state or local order does not require it.)
- Maintain records necessary to assist public health department with close contact identification.
- Perform close contact analysis and inform employees and customers who are close contacts, requiring employee close contacts to stay out of the office for 14 days.

Mean It (Masks and Social Distancing)

- Maintain social distancing -- If not possible, install barriers.
 - Min. 6ft between employees/workstations.
 - Min. 6ft between guests.
- Consider face masks for employees and/or customers (abide by state and local orders requiring face masks in public spaces).
- Have employees work from home when possible.
- Reduce sharing of work materials.
- Stagger lunch and break times.
- Establish maximum capacity.
 - Limit face to face meetings.
 - Cancel/postpone events where social distancing cannot be maintained.
- Discontinue self-service food stations, product samples; close or limit cafeterias/communal dining/buffets.
- Post signage on health safety guidelines in common areas.

Prepare for Common COVID-19 Related Scenarios Upon Employees' Return to Work

- Whether an employee's health, contacts or behaviors raise safety concerns
- Employees who are capable of but unwilling to work from home
- Employees who are asked to report to work but prefer to and able to work from home
- Employees who share rumors or concerns of employees or customers being sick
- Employees requesting information about another's (employee/customer) health condition
- Employees engaging in collective or other protected activity to raise safety concerns

COVID-19 Accommodation Issues

What COVID-19 Related Requests Should You Anticipate?

- “The government has advised that I stay home because I fall in a vulnerable population category.”
- “I’m caring for a parent who is old and could get sick” or “I live with someone who falls in a vulnerable population category.”
- “My spouse has been exposed to COVID-19.”
- “My spouse has COVID-19.”
- “I have a medical condition and need to work from home as an accommodation.”
- “I have COVID-19.”
- “I’m afraid and I think you are opening too soon.”
- “I’m receiving more money staying on unemployment than if I come to work.”
- “My child’s day care (or school) is closed, and I need to take care of the child or help with schoolwork.”

COVID-19 Vaccinations

- Current COVID-19 vaccines are only approved under an Emergency Use Authorization (“EUA”) status by the FDA and the CDC
- The EEOC has stated it is permissible for private employers to require employees to be vaccinated – as a general proposition

COVID-19 Vaccinations

- Important considerations if employers mandate the COVID-19 Vaccine:
 - ADA Implications
 - Religion Implications
 - GINA Implications

Impact of Remote Back to School Plans on Employers

The ABC's of the Remote School Issue For Employers

- PSL – Paid Sick Leave
- FMLA – Family Medical Leave Act
- ADA – Americans with Disabilities Act
- FRD – Family Responsibilities Discrimination
- ADEA – Age Discrimination in Employment Act

Overview of the Law: State PSL (and other leave requirements for childcare)

- Many state and local Paid Sick and Safe Leave laws provide time off work to care for a child who is ill or whose school has closed due to public health emergency
- Other states are considering bills that would provide time off work if employee is unable to work due to school closure for COVID-19 related reasons

FMLA

12 weeks of leave for:

Care for a family member with a serious health condition

Overview of the Law: ADA

Americans With Disabilities Act

- Cannot discriminate against employee because associated with disabled individual
- But no obligation to accommodate medical conditions of family members

Overview of the Law: FRD

Family Responsibilities Discrimination risk

- Women with caregiving responsibilities may be perceived as more committed to caregiving than to their jobs and therefore less competent
- Male caregivers may face the mirror image stereotype: that men are poorly suited to caregiving. As a result, men may be denied parental leave or other benefits routinely afforded their female counterparts

FRD Discrimination Cases

BIG JUMP IN CASES

The number of family responsibilities discrimination cases decided between 2006 and 2015 was more than three times higher than during the previous decade.

873

1996-2005

3,223

2006-2015

Source: Center for WorkLife Law at the University of California, San Francisco.

FRD: Risky Business

- Asking females, but not males, about their childcare and other caregiving responsibilities;
- Stereotypical or derogatory comments about female caregivers;
- Less favorable treatment soon after learning of caregiving responsibilities;
- Female workers without children or other caregiving responsibilities received more favorable treatment than female caregivers;
- Steering or assigning women with caregiving responsibilities to less prestigious or lower-paid positions;
- Males with caregiving responsibilities received more favorable treatment than females;
- Statistical evidence of disparate treatment against female caregivers;
- Deviating from workplace policy.

Overview of the Law: ADEA

Age Discrimination in Employment Act

- Cannot discriminate against employees because of their age (over 40)



So,
Who
Works?



**Do you have
to provide
leave
because of
school/
childcare
issues?**

Outside of some state laws
(and assuming the child is
healthy), generally...

NO

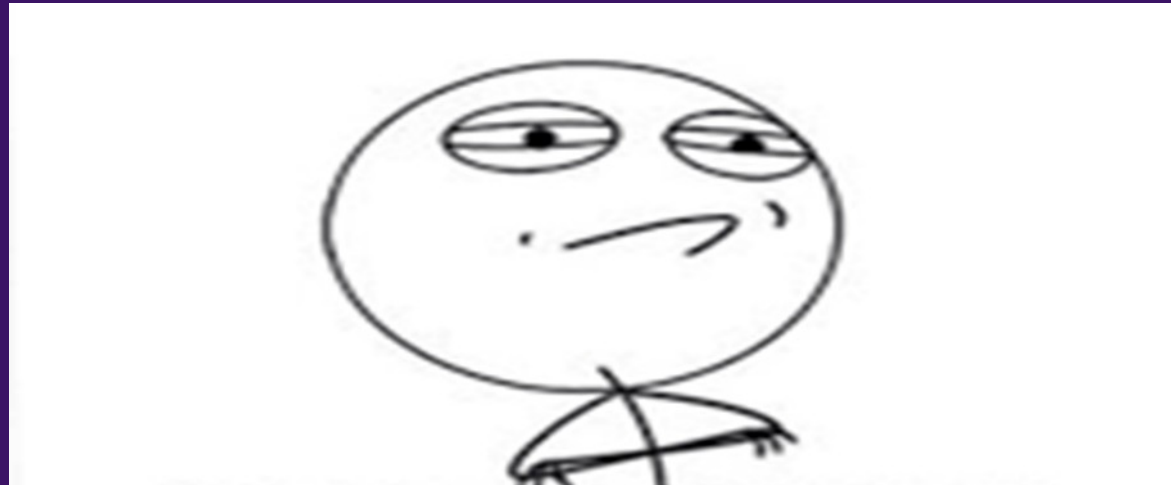
But...

Flexibility



Try Something New

“We Can’t do that!
We have never done that before!”



A year ago, most of you were
opposed to allowing employees
to work from home...

Questions and Answers

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Thank **you.**