



Monday, May 18, 2020

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## COVID-19 Employment Law Update



With our usual day-to-day, I find that cooking can be a chore but with life having slowed down, I am cooking and baking more than ever.

Dear Clients and Friends,

I know that many of you are preparing to re-open your businesses. In preparation for this step, there are many things to take into consideration, including but not limited to, workplace health and safety, sick leave policies, employee needs and availability, and industry standards.

Bear in mind that as with everything these days, this is ever an evolving environment and additional changes may need to be made. Below is a summary of some of the things you should be thinking about to help you prepare for re-opening. Feel free to contact me with any questions or to request specific advice on your workplace.

### **BROAD CONSIDERATIONS**

- Will you require employees and/or customers to be tested prior to opening?
- Will employees be required to take a COVID-19 test on a regular basis?
- Be sure to regularly review Cal OSHA, Center for Disease Control (CDC) and State and local government websites and requirements.
- Designate an individual, or individuals, responsible for staying up-to-date on State, local, and industry-specific developments and requirements.

### **RETURNING TO WORK:**

- Evaluate, determine, and document the reasons for which employees will return, and which will not return to work, based upon legitimate business needs.
- Is it better for your staff to return to work all at once or in stages?

- Will your staff work staggered schedules?
- Prepare written offers to employees for re-hire and obtain written documentation from any employees who reject an offer as this will assist with PPP loan forgiveness work.
- Work with employees on their requests and agree to reasonable and workable accommodations as long as they do not create an undue burden for the business.
- Promptly respond to employees complaints regarding workplace health and safety.
- Maintain confidentiality. Only ask employees who raise medical concerns or ask for disability accommodations, for information about limitations and restrictions. Do not ask about a diagnosis or any medical recommendations unrelated to the workplace.
- Consider asking employees with previously established medical accommodations whether they need additional accommodations.

### **HEALTH AND SAFETY**

- Employers are responsible to ensure a healthy and safe workplace for employees.
- Preventing the spread of COVID-19 and other illnesses:
  - o Implement cleaning and sanitation protocols.
  - o Implement written policies and guidelines around when employees should stay home, if they are sick.
  - o Implement a process to regularly clean your workplace.
  - o Provide PPE for employees. Employers are required to pay for PPE.
  - o Stock up on cleaning and sanitization supplies for everyday cleaning.
  - o Minimize business travel and possible self-quarantining after travel.
- Evaluate office layout to ensure physical distancing, including, changing work stations, rearranging desk configurations so that there is a single walk way, consider long-term telecommuting, and changing schedules.
- Do you need to re-think manufacturing or production processes to ensure social distancing?
- Look at implementing or changing alternative work schedules.
- Consider having some employees work from home while others work in the office on an alternate basis.
- Have a plan for limiting occupancy in common areas (including break rooms) and conference rooms at any given time. Should there be plexi-glass dividers?

### **TESTING**

- The CDC currently recommends conducting daily health checks of all employees who report to work onsite.
- Employers may require testing depending on circumstances of business.
- Consider:
  - o Who will do the testing?
  - o How often will testing be done?
  - o How do you guarantee privacy during testing? How do you guarantee confidentiality of results?
  - o Hourly employees must be paid for time they spend being tested.

- o Have a plan for immediately isolating, and then sending home, any employee whose test comes back positive
- o Ensure you have appropriate paid sick leave policies in place in the event an employee tests positive or requires time off due to COVID-19.

### **TELECOMMUTING**

- Set clear expectations about the timeframe and conditions.
- Compensate employees for expenses for their at-home, including Internet, cell phone, paper, equipment, etc.
- Create a telecommuting policy and agreement
  - o Be aware of possible risk of workers' compensation claims and set up ergonomic workstations at home.
  - o Remind employees that the company policies apply at home, in particular, confidentiality, harassment and performance expectations.
  - o Be aware that incidents between employees, on Slack, Zoom or other telecommuting or social media outlets can be harassment which would require appropriate investigation.

### **EMPLOYMENT LAW CONSIDERATIONS**

- Document all employment decisions, including:
  - o Timing of return-to-work
  - o Why certain employees are permitted/selected to return (or aren't)
  - o Safety protocols and employee expectations around these
  - o Employee complaints
- Consider how to handle employee claims they have contracted COVID-19 from a co-worker, customer or some other way in the workplace?
- Consider how to handle employees who advise you they contracted COVID-19 outside of the workplace. How will you communicate this to employees and/or customers?
- What do I do if an employee resists returning to work?
- What do I do if employees ask to stay on unemployment because the payments are higher than their regular pay?
  - o Employees will then be ineligible for unemployment.

As always, please feel free to reach out with any questions.

All the best,

Leiann Laiks

**Be advised that the information contained herein does not constitute legal advice and does not create an attorney-client relationship; instead, all information, content, and materials for general informational purposes only.**



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