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Returning to the Office: A Checklist for Law Firms

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Things you should be thinking about now

- Preparedness Plan
 - OSHA COVID-19 guidance, CDC guidelines, Open Texas booklet and San Antonio COVID-19 Economic Transition Team report
 - Best practice
 - Written plan
 - What protections should you consider – employees, visitors, travel, one lane walkways,
 - Retaliation issues
- OSHA General Duty Clause
 - Is there a duty to report positive case(s)
- Recall/rehiring bias
 - What are your objective criteria
 - Do you need new paperwork – did you furlough or layoff
- Employees “choosing” to stay home
 - Do you have to accommodate
 - Do you have 15 or more employees
 - The interactive process
 - Employees want to continue being furloughed/laid off to collect unemployment comp
- Compliance and discipline

FFCRA - Paid Employee Sick Leave and Extended Family Leave

- Both in effect until 12/31/20
- Employee Paid Sick Leave
 - 2 weeks (usually 10 days) for qualifying reasons
 - No requirement to be employed any length of time
 - Capped at \$511 a day or \$200 a day depending on reason
- Extended Employee Family Medical Leave
 - Applies if have less than 500 employees
 - Employee only has to work 30 calendar days to be eligible
 - Only available for certain child care related reasons
 - 10 weeks at 2/3rds pay – capped at \$200 per day
- Document the need for the leave – employee attestation
- Poster requirement –
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

”Small” Employer Exceptions to FFCRA

- Less than 50 employees
- Only applies for leave to care for child when school or place of care is closed or child-care provider unavailable due to COVID
- **IF**
 - would cause your expenses/financial obligations to exceed available business revenue and cause you to cease operating at a minimal capacity
 - absence of the employee(s) requesting leave would pose a substantial risk to your financial health or operational capacity because of the employee’s specialized skills, knowledge of the business, or responsibilities; **or**
 - you cannot find enough other employees who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services the employee(s) requesting leave provide, and these labor or services are needed to operate at a minimal capacity
- ***Not automatic – must document in advance and must still post notice***
- Less than 25 employees – return to work hardship exception

Health Screening Issues and National Origin Bias

- Americans with Disabilities Act – remember: 15 or more employees
- Are you going to require the employee to self screen at home or are you going to check the temperatures?
 - If you check, how are you insuring maintaining confidentially
 - Logs – only of positive readings
 - You may ask employees if experiencing symptoms of COVID-19, including
 - fever (100 and above), chills, cough, shortness of breath, or sore throat
- An employee is returning to work, can you require a doctor's note certifying fitness to return to duty?
- National origin discrimination issues - "Chinese" virus

Speaker



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Donna is a trial lawyer and a problem solver. She focuses on quick, common-sense resolutions of everyday challenges and creative, timely resolution of more complex issues. She seeks practical solutions which are aligned with the goals and objectives of the employers she represents. Sometimes solutions require litigation and as a trial lawyer, when litigation is necessary, she effectively and aggressively advocates for the firm's clients. Donna works with clients to develop effective EEO, OSHA and NLRB policies, designs noncompetition and non-solicitation agreements and troubleshoots day-to-day employer concerns – including dealing with social media and its growing impact on the work place. However, sometimes solutions require a trial lawyer.