

BUSINESS TACTICS

COVID-19 & the Workplace

featuring Hancock Estabrook, LLP





COVID-19 and Workplace Concerns

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OSHA Considerations

- As of right now, there are no OSHA standards/regulations specific to pandemics.
- General Duty Clause violations possible.
29 U.S.C. § 654(a)(1).
- Exists when:
 - Hazard exists to which employees were exposed.
 - Hazard is recognized.
 - Hazard is causing or likely to cause death or serious physical harm.
 - Hazard could feasibly be reduced.

OSHA Considerations

- Implement policies and procedures which detail precautions you are taking.
- Check CDC/WHO/OSHA websites regularly.
- Duty to record “work-related injury and illness.”
- Be cognizant of potential OSHA retaliation claims.
- If employees use PPE, even voluntarily, employers must comply with OSHA notice requirements.
- BREATHE: Cases you are seeing regarding employees suing for contracting COVID19 at work will be tough to prove



Workplace Considerations

- Things to consider when returning to “business as normal” – no such thing!
- Environmental controls: filters, ventilation, physical barriers, sneeze guards, temperature checks, masks, socially distanced work stations, hand-sanitizers
- Administrative controls: continue to stay at home if sick, minimize workplace contact, staggered shifts/days, reduce travel or worksite access for employees who must travel
- Emotional Intelligence: communication, employee appreciation, EAP or wellness



Face Masks

- Executive Order 202.16: Employers must provide and employees must wear face coverings at work if they are in “direct contact” with the public.
- Employers are prohibited from requesting/requiring medical documentation from employees who refuse to wear masks.
- Explore Reasonable Accommodations.

Face Masks

- Executive Order 202.17 – all individuals (age 2 and above) must wear masks in public when social distancing is not possible.
- We are seeing a business by business approach regarding public mask requirements
- Train employees
- Be Consistent



Employee Time Off

- NYS Paid Emergency Sick Leave eff. 3/18/20 – requires an “Order” of quarantine
- FFCRA Emergency FMLA eff. 4/1/20 – for childcare related absences only – max 12 weeks per employee
- FFCRA Emergency Paid Sick Leave eff. 4/1/20 – for absences directly related to COVID-19 self-care or care for others – max 80 hours per employee.



Employee Time Off

- NYS Unemployment Benefits - designed for people who are willing and able to work, but for whom no work is available.
- Federal Pandemic Unemployment Assistance (PUA) – generally for those who are not otherwise eligible for NYS UIB
- NYS Disability – benefits for people who are medically unable to work and are excused by a doctor

Employee Time Off

- Matilda's "Law" –NYS guidance for people age 70 or older or with heightened risk for complication
- ADA/NYS Human Rights Law – underlying conditions may be "disabilities"; consider reasonable accommodations and/or NYS disability
- Indefinite leaves of absence are generally NOT considered reasonable

Furlough v. Layoff

- Furlough: generally contemplates a layoff of 6 months or less; employees may be eligible to retain health insurance benefits
- Layoff: generally contemplates an employment separation; employee eligible for COBRA continuation coverage
- Both types of employees typically eligible for NYS UI



How to reach us.

*We are working remotely and will be available to service clients via phone and email throughout the duration of this crisis. You may contact us at:

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