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【新型コロナウイルス感染症（COVID-19）】雇用主における対応と従業員の権利に関するQ&A

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As every company confronts the coronavirus, their owners, officers, and human resource professionals are confronting a new landscape. Fortunately, there are a number of laws from which employment lawyers and human resource professionals may draw lessons and direction. As Congress negotiates the Families First Coronavirus Response Act, enacted by the House of Representatives and awaiting debate in the U.S. Senate, here are the most frequently asked questions and answers.

In general, most employees have an at-will employment relationship with their employers. Therefore, employers may take many actions, so long as those actions do not violate a statute, regulation or judge-made law. When considering actions, decision makers need to know and apply those laws. When applying those laws, employers must temper their decisions by applying common sense, practical considerations and “do the right thing.”

PART 1 – TRAVEL

Q1: May the company limit or end international business travel?

A1: Yes. Companies may decide when and how employees travel for business.

Q2: May the company limit or end business travel within the U.S.?

A2: Yes. As with international travel, companies may assign employees to travel or limit or end their travels.

Q3: May a company limit or end personal travel within the U.S. or outside of the U.S.?

A3: No. Personal travel is an employee’s right. For example, in Illinois and other states, employees have the right to engage in lawful activities and companies may not discipline or discharge employees for engaging in lawful activities. Traveling is a lawful activity.

Q4: May a company take steps, if an employee travels?

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A4: Yes. Companies have the right to assign work or to require employees not to work. The trends we are seeing include requiring employees to either work from home or stay at home with or without pay. An employer may also tell the employee that he or she must stay at home (self-quarantine) for 14 days after returning from personal travel and/or business travel.

PART 2 – WORKING OR STAYING AT HOME

Q1: May a company require employees to work remotely?

A1: Yes. Companies have the right to determine where employees work. Companies should review and modify their telecommuting policies to address the coronavirus and directions from government agencies requiring or recommending that employees work or stay at home.

Q2: May a company send an employee home who has symptoms of the flu or the coronavirus?

A2: Yes. Companies have the right to send employees home. The company's sick or other leave policies will apply.

PART 3 – PRACTICING GOOD HYGIENE

Q1: Does the Occupational Safety and Health Act apply to companies' actions regarding the coronavirus?

A1: OSHA's General Duty Clause requires every company to provide a healthy and safe work environment for its employees. Employees have the right to complain to OSHA if they believe that the company is not taking proper steps in response to the coronavirus.

Q2: Does OSHA protect employees when they complain about safety issues?

A2: Yes. OSHA, as well as several other federal laws, protect employees from being disciplined or discharged in retaliation for complaining about safety and health issues.

Q3: May a company require employees to wash their hands, practice social distancing and take other steps recommended by the Centers for Disease Control to prevent or mitigate the spread of the virus?

A3: Yes. Companies have the right to control the behaviors of their employees.

Q4: Does OSHA have special safety and health standards for employees?

A4: Yes, OSHA's standards are based upon the type of job the employee is performing. For some jobs, OSHA requires employees to wear personal protective equipment. The U.S. Department of Labor has published its Guidance on Preparing Workplaces for COVID-19, OSHA 3990-03 2020. This publication is available on the Department of Labor's website. Employers could also contact their local OSHA office for advice.

Q5: May a company require employees to take vaccinations?

A5: No. Employees may have a disability or a sincerely held religious belief which prevents the employee from being vaccinated. A company may encourage employees to become vaccinated.

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A6: May a company require employees to take their temperatures?

A6: Yes, but under certain limited situations where there is a direct threat of harm to the employee or to other employees. Companies should take direction from the Equal Employment Opportunity Commission's ("EEOC") Publication OLC Control No. EEOC-NVTA-2009-3, which is available on the EEOC's website. This publication is entitled "Pandemic Preparedness in the Workplace and the Americans With Disabilities Act."

Q7: May an employer require employees to wear personal protective equipment?

A7: Yes.

PART 4 – PAY TO EMPLOYEES

Q1: Does the company have to pay the employees whom the company orders to stay at home without working?

A1: No. The federal Fair Labor Standards Act and state laws require companies to pay employees only if they are performing work. However, many companies have decided to pay employees all or a portion of their regular wages, because these employees must stay at home without working because of the virus. We expect Congress to enact laws regarding the payment of employees who are staying at home without working.

Q2: Will unemployment compensation be available for employees who are ordered to stay at home without pay?

A2: The answer depends upon the laws Congress is now considering, as well as state laws. Congress may also amend the federal Family and Medical Leave Act to apply to situations relating to the coronavirus.

Q3: Must the company pay employees who are working from home?

A3: Yes. Both the federal Fair Labor Standards Act, as well as state and local laws apply. Exempt employees continue to receive a salary if they work during a workweek. Non-exempt employees receive an hourly rate of pay for every portion of an hour they work. Companies must comply with state and local laws regarding the payment of wages, the frequency of those payments, as well as minimum wage and overtime laws.

Q4: Does the company have to keep track of the hours the employees work and how should the companies keep track of those hours worked?

A4: Yes. Companies must keep track of hours to prevent or limit liability for not paying exempt or non-exempt employees for working. The method by which companies keep track of hours depends upon each company's timekeeping system. As a last resort, employees could keep track of their own time on paper with supervisors signing off on the reports submitted by the employees. Many companies have policies preventing the false reporting of hours worked, which companies may enforce.

PART 5 – ATTENDANCE POLICIES

Q1: Don't the company's attendance policies apply?

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A1: Yes. Companies have flexibility in drafting their vacation, sick leave and other policies. For those companies in jurisdictions which require paid sick leave, those laws are minimum requirements. Therefore, companies may extend the number of paid vacation and sick days they have given to employees. Companies may require employees to borrow against unearned vacation and sick days. Companies may also suspend their no-fault attendance policies.

Q2: What if an exempt employee uses up all his or her sick and vacation leave?

A2: If an exempt employee has exhausted all paid time off, the company may make deductions from the weekly salary of an exempt employee in full-day increments. Employers are prohibited from making partial-day deductions from the salary of exempt employees.

Q3: May employees give each other their sick days?

A3: Yes. Companies may allow this practice. However, state, county and city laws requiring paid sick days may not allow employees to lose the paid sick days they have accrued.

PART 6 – QUESTIONS FOR EMPLOYEES

Questioning employees falls within the parameters of the federal Americans With Disabilities Act and similar state disability laws. In general, companies may not ask disability-related questions with some limited exceptions. Companies should refer to the EEOC's Guidance entitled "Pandemic Preparedness in the Workplace and the Americans With Disabilities Act."

Q1: May a company ask an employee if he or she is sick?

A1: Yes. However, a company may not ask an employee if he or she has the COVID-19 virus or any medical condition, such as cancer, which may make the employee more susceptible to contracting the virus.

Q2: May a company ask an employee if he or she has symptoms?

A2: Yes. Asking about symptoms is not the same as asking questions which may reveal an employee's disability.

Q3: May a company ask an employee why he or she is absent?

A3: Yes. If the employee volunteers that he or she has a disability, the company may engage in an interactive dialogue to determine if the employee needs an accommodation and then determine if the accommodation is reasonable or an undue burden.

Q4: May the company require a doctor's note as a condition of an employee returning to work?

A4: Yes. This is not a disability-related inquiry.

These are just some of the questions clients are asking. Every company has its unique set of issues. Clients needing additional guidance should contact their employment attorney, relationship attorney or human resource consultant.

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