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# Have You Thought About ... Modifying Your Employment Policies Upon Reopening?

Many companies modified certain policies (whether formally or informally) during the initial COVID-19 crisis to address furloughs and reduced working hours, including those related to workplace safety, PTO usage and accrual, other leaves and remote work. As businesses begin to reopen, employers should examine whether these and other policies need to be revised due to changed work circumstances, and what new policies may need to be implemented. Keeping in mind that a resurgence of coronavirus is anticipated, employers should ensure that they maintain flexibility in their policies.

**Health and Safety:** At a bare minimum, employers must update health and safety policies to reflect applicable federal, state and local legal requirements, and current CDC and other applicable guidelines. These change frequently (Los Angeles, for instance, instructs employers to check the Los Angeles County Department of Public Health website *daily* for updates). Such policies should address expectations of employees as well as visitors and customers, and outline how employees should respond to noncompliance by such individuals. In addition, the policies should cover not just the employer's location, but third-party sites where employees perform work. If the employer wishes to retain the option to require employees to submit to a quarantine period or provide a negative test result upon return from travel or other potential exposure, that also should be expressly set forth in a policy.

Similarly, where employers are required or voluntarily elect to implement protocols like wellness attestations, temperature checks and/or COVID-19 testing, policies should be put in place detailing the process, ensuring that confidentiality of medical information is maintained, stating whether such time is compensable (in accordance with applicable law), and identifying specific protocols for the handling of symptomatic individuals, among other things. Some state and local laws impose particular notification and other requirements regarding suspected or diagnosed COVID-19 cases (whether employees or patrons), and employers must establish compliant protocols. Employees should be encouraged to report conditions they feel are unsafe, and procedures should be put in place to handle those reports in a manner designed to minimize liability.

**Leave Policies:** Ensure that leave policies have been updated to reflect the federal Families First Coronavirus Relief Act (FFCRA) (currently set to expire on Dec. 31, 2020) and other newly required leaves, whether paid or unpaid. (And note that many state and local laws expressly state that they are *in addition to* employer-provided or other legally required leaves, and do not run concurrently with or displace such leaves.) Much like Family and Medical Leave Act (FMLA) policies, these should detail the process for requesting leave, including eligibility, permitted uses and documentation requirements. ([Click here](#) to see our prior article on that issue.)

Employers may also wish to consider modifying PTO policies to allow them the flexibility to prohibit usage upon a

furlough, reduction in hours or business slowdown, when companies may need to preserve cash. This can be helpful in the event of a resurgence of coronavirus.

**Non-Discrimination and Accommodation:** Some jurisdictions, such as New Jersey, are granting protected status to individuals who test positive for or are perceived to have COVID-19; anti-discrimination policies should take this into account. Moreover, under the Americans with Disabilities Act (ADA) and applicable state law, employers also may have an obligation to provide reasonable accommodations to individuals with COVID-19. Even beyond that, some jurisdictions, such as Colorado, created new accommodation requirements for “vulnerable individuals” (e.g., the elderly and pregnant women) and encourage accommodations for those who reside with vulnerable individuals or who have elder care obligations, in each case, regardless of whether they have tested positive for COVID-19 or are symptomatic.

**Changed Working Conditions:** With the recent significant upheaval to the “normal” workplace and the potential for a resurgence of coronavirus, employers would be wise to review their remote work policies, including timekeeping practices and ensuring meal and rest periods for non-exempt employees. Expense reimbursement policies also are implicated, with some jurisdictions (such as California) requiring reimbursement of work-related expenses, which can include costs such as printer ink, paper and postage, internet and cellphone service charges, and equipment necessary to perform work remotely. If not already done, employers also should dust off and update policies related to protection of confidential and proprietary information, computer security, return/deletion of company information upon termination and related issues.

Employers may wish to consider adding “furloughed employee” to their list of employment classifications, and outline the implications of that classification with respect to things like PTO accrual, eligibility under company group health plans and other benefit programs, entitlement to protected leaves, etc. The descriptions of benefit plans and eligibility requirements also may need to be updated to address situations in which employees’ hours are reduced or they are placed on a furlough.

**Additional Considerations:** Note that there may be new posting requirements with which employers must comply (e.g., under public health orders and the FFCRA). Employers also would be well-advised to review and update policies regularly to ensure continued compliance with the changing legal landscape as the coronavirus situation evolves. Particularly for companies operating in multiple jurisdictions, keeping up with the near-daily changes can be a monumental task.

*Note that this is not meant to be an exhaustive list of all policies that should be considered; rather, it is intended to assist employers in issue-spotting.*

**For additional information or assistance with a particular issue, please contact a member of the [Brownstein Business Reopening Response Team](#).**

**[Click here](#) to read more Brownstein alerts on the legal issues the coronavirus threat raises for businesses.**

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