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Benefits**Employment Question of the Day: April 16, 2020****Legal Update**

04.16.2020

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Question

How will the post-COVID workplace be affected by current work situations, and what should I do now to prepare?

Answer

As discussions of reopening the economy begin, employers should be considering what to do now to prepare for the post-COVID workplace and how to set employee expectations accordingly. I have highlighted some of these issues here, though each of them could individually warrant their own article, so that employers can explore them more in depth as may be fitting for their respective workplaces.

1. Remember that the Families First Coronavirus Response Act (FFCRA) remains in effect through December 31, 2020.

While we all hope that we can return to “normal,” whatever that might be after the peak of COVID-19, as soon as possible, experts have consistently predicted a resurgence of COVID-19 in the fall or winter (much like we see with the seasonal flu). This means that employers should proceed with caution, continuing the safe workplace practices implemented due to COVID-19 (like more frequent or thorough sanitizing and even physical distancing) where possible and recognizing that certain obligations like providing FFCRA leave and personal protective equipment (where required or encouraged to do so) may continue for the foreseeable future.

2. Expect to face questions or requests from employees to work from home more frequently and consider how you are going to respond.

As employers communicate periodically with employees who are working remotely during this shutdown, they should remind employees that this is a temporary stopgap measure done only out of necessity to survive the current COVID-19 situation. Be clear about your expectation regarding employees returning to the office once reopened while also assuring employees that you will continue prevention

measures to protect their health and safety in the workplace. Update your remote work policy accordingly to address your expectations and set an approval process if appropriate, and consider implementing such a policy if you do not already have one. In addition, draft job descriptions to emphasize the importance of in-person attendance where it is truly essential for the respective position.

3. Similarly, prepare for future requests that employees be allowed to work remotely as a reasonable accommodation of any disability.

We are undoubtedly living in a different time—and with vastly improved technology—than when remote work was first requested as a reasonable accommodation. These changes, and the widespread implementation of remote work during COVID-19, will undoubtedly be used in future interactive processes and litigation by employees to argue that remote work arrangements are a reasonable accommodation. Be prepared and do what you can now to document how such accommodations are different, and potentially unreasonable, from the current situation. Document the difficulties and challenges with remote work (who among us has not had a Zoom call interrupted by a family member or pet?), but recognize that these arguments will likely be met with rebuttals about how remote work situations can be more efficient. In the end, employers must stress where there is simply no substitute for personal interaction among coworkers and between supervisors and their employees.

4. Consider what changes should be made to employment agreements and other contracts for future situations.

As we have progressed through the unprecedented challenge that is COVID-19, employers have been faced with many difficult choices that have often included furloughing or laying off employees, as well as reducing compensation. For those employees with contracts, employers may have found that there were no applicable exceptions allowing for the kind of action they needed to take to address financial challenges. Where possible, take action to (1) amend existing agreements and (2) draft future agreements accordingly to allow for greater flexibility to address any resurgence of COVID-19 or similar future situations without risking a breach of contract claim.

While COVID-19 has presented unprecedented challenges, it also presents employers an unprecedented opportunity to showcase their values and shape their ongoing relationship with employees through efforts like those described here.

If you have questions regarding these obligations or others related to COVID-19, contact your Fredrikson & Byron Employment & Labor attorney.