

Returning to Work

What Employers Need to Know and Do as Workplaces Reopen

As some States are contemplating measures to ease the stay at home restrictions in place due to the coronavirus pandemic, employers need to prepare for reopening their businesses and/or moving their remote workforce back into the office. Employers must be proactive in addressing the new risks and challenges brought by the coronavirus to the workplace. We have set forth some questions and answers below regarding specific issues employers may face. Please keep in mind that guidance governing these topics is constantly developing and changing.

Q: Do I need to create new policies to deal with employees returning to the office?

A: Yes, this is a good idea. Now is the time to draft policies to have them in place before employees return to the office. Employers should consider creating policies to govern expectations regarding social distancing obligations as well as personal protective equipment. Employers, to the extent they have not done so already, need to update and/or create their paid sick leave policy and Family Medical Leave Act policy based on the recent changes in the law. In addition, employers should specifically spell out the policy that employees should not come to work when experiencing certain symptoms. The more employers can get ahead of getting guidelines in place before employees return, the smoother the transition.

Q: Am I required to provide my employees with personal protective equipment (PPE)?

A: It depends on what type of business you are operating. OSHA requires employers to protect employees from known workplace hazards that can cause injury or illness. Potential exposure to the coronavirus is arguably now a known workplace hazard. If your employees are in customer facing position, or work closely with co-workers, making facemasks and gloves available may be necessary to meet the standards of providing a safe working environment for employees. The CDC is now recommending that cloth masks be worn. Employers should be prepared to either provide such masks or reimburse employees for the costs of such masks, as well as making sure that hand sanitizer and wipes are readily available. Employers should continue following all CDC guidelines in terms of office cleaning and sterilization (<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>). To the extent information regarding what steps are being taken has not been made available to employees, employers should consider making this information available.

Q: My employees have been working remotely and do not want to return to the office. Do I have to continue to allow them to work remotely?

A: Under most circumstances, no. Employers have the right to determine how their businesses should be run, including where and when employees should be working. However, there are exceptions, including but not limited to, whether the employee has a disability and may need to

Mallor Grodner Legal Alert

Returning to Work – What Employers Need to Know and Do as Workplaces Reopen

April 27, 2020

Page 2

continue to work remotely as an accommodation. Requests for accommodations based on a disability must be based on the factual circumstances of each individual case, but employers should be aware that at times remote work may be a reasonable accommodation for some employees with disabilities. Also, a new wrinkle to this analysis is if an employee has specifically been ordered to self-isolate/quarantine by a medical care professional due to risks associated with COVID-19, they would likely be allowed to continue to work remotely at least for a certain period of time.

Q: My business was closed and there was no work for employees, so they applied for and are receiving unemployment benefits. I am now ready to bring them back to work, but if the employees prefer to continue receiving unemployment benefits, are they able to do that?

A: Probably not. Generally, in order to be eligible for unemployment benefits a worker needs to be available and ready to work and attempting to secure full-time employment. Governor Holcomb has relaxed this requirement due to the coronavirus. However, according to the Indiana Department of Workforce Development, workers who decide to remain at home because of COVID-19 with no directive from a medical professional or from their employer to do so, will in most cases not be eligible for unemployment benefits.

Q: One of my employees has asked that her desk be surrounded by plexiglass. Do I have to accommodate her request?

A: Employers may be required to accommodate employees who have certain pre-existing conditions that are disabilities which make them more vulnerable to COVID-19. Keep in mind that all accommodation requests should be handled through the interactive process. An employee with a disability is not necessarily entitled to their first choice of accommodation, but the employer needs to work with them to find an accommodation that meets the employee's need while not creating an undue hardship to the employer.

Q: I had to layoff certain employees while our business was shut down. Can I choose which employees I bring back?

A: Generally, yes. Technically, an employee that is laid off, is terminated, and an employer has no obligation to hire them back even when the business starts up again. However, employers often prefer to bring back employees who already have knowledge of the business and will need no training to get back to work. Employers need to be mindful to have a legitimate business reason for why they may be selectively rehiring some employees and not others, and that this reason is applied consistently. Excluding certain employees for rehire may trigger issues related to protected categories and can increase the risk for potential claims of discrimination without a corresponding legitimate business reason for who was selected for rehire.

Mallor Grodner Legal Alert

Returning to Work – What Employers Need to Know and Do as Workplaces Reopen

April 27, 2020

Page 3

Q: One of my employees made an anonymous report to OSHA about an alleged unsafe work environment. Can I terminate them?

A: No. Employees have the right to report claims of hazards and/or unsafe working conditions. Employers should respond to the complaint by providing necessary information to counter any of the allegations in the complaint. Unless an employee has specifically told an employer that they made the complaint, employers cannot be certain who made the complaint. Regardless, employers should never take adverse action against any employees for engaging in protected activity.



Please contact Kathryn Cimera (kcimera@lawmg.com) in our firm's Indianapolis office with questions on these issues and for any other employment law matters.