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Guidance for Employers on Responding to the Coronavirus Pandemic

Session 8

Webinar – April 30, 2020

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Overview

- What Has Happened Since Last Week?
- Unemployment Benefits/Bringing People Back To Work
- Your Questions

What Has Happened?

- Discussion shifting from “work from home” to “return to work.”
- In New York, Un-PAUSE with a regional focus and phased approach (two week increment proposal).
- First phase (May 15) likely to focus on manufacturing and construction; dependent on continued decrease in infection and hospitalization rate, low transmission rate.
- Businesses should prepare return to work plans; must be flexible as we await information; think about staggered shifts, layout of work spaces; start looking for face coverings; PPE, sanitizer, etc. yesterday.
- Think about potential litigation. Government will be looking to make examples.

What Has Happened?

- Waiting on Trump Administration's response to lawsuit by NYS regarding FFCRA regulations' exclusion of health care workers, limitation on intermittent leave and documentation requirements.
- PPP recipients must "certify in good faith" need for financing and has threatened audits.
- Trump invokes Defense Production Act to keep meatpacking plants open.
- Proposals regarding limitations on liability for employers that bring back employees.

Unemployment Benefits

- How can we get employees to come back? What if they refuse?
- In general, a refusal to return to work without good cause disqualifies an individual for benefits. Offer to return must be reasonable.
- Under current expansion law, “good cause” is significantly expanded (e.g., quit job as direct result of COVID-19) and agencies are overwhelmed. Remember that when you get angry/frustrated.
- Individual circumstances matter. Difference between “I want to keep receiving unemployment” and “I have a health condition that keeps me from returning.”

- Prepare written recall notices that set forth specific return date and work schedule. Ambiguous recall may not be viewed as “reasonable.” If possible, try to mimic prior schedule.
- If employee refuses, you may need to ask follow up questions. Remember, individual circumstances matter. Document employee’s response.
- Explain consequences of actions to employee. Do not threaten or speak in absolutes, but do explain your understanding of the situation and your next steps.

- Consider letting it go.
- Contact the applicable agency.
- Report fraud.

To report unemployment insurance fraud

- **Online:** Go to labor.ny.gov. Click on "Report Fraud" near the bottom of the screen.
- **Call:** 888-598-2077 (Claimant Fraud) OR 866-435-1499 (Employer Fraud)

Questions

Question

- **As employers start to plan for bringing employees back onsite, what should they be thinking about - e.g. temperature checks, face masks, social distancing, ADA/accommodation requests etc.**

All of the above. Be prepared for an onslaught of accommodation requests. If you have treated requests haphazardly in the past, think about updating your process.

Question

- **As staff returns to work, is it better to advise them to "self check" their temperature before work, or is it better from a risk management perspective to take it directly at the workplace? If better to take it at the workplace, what's the best practice for accomplishing that so the company-designated "temperature taker" doesn't get put at risk?**

Safety, Accuracy and Confidentiality (SAC).

Question

- **We have been receiving a plethora of notices from unemployment. The deadlines to respond by the time we receive the notice in the mail is either past or is the next day. Makes responding in a timely manner unrealistic. It is though we are set up to fail! Has anyone else been experiencing this?**

Common experience. Document when the notice was received. Respond as quickly as possible.

Question

- **If an employer received a PPP loan and needs to maintain employment levels for forgiveness, can they still terminate for performance/cause?**

Yes, but amount of forgiveness may be reduced.

Question

- **Any specific guidance on the forgiveness piece of the PPP loans?**

More to come.

Question

- **What can be done help with cash flow problems with combinations of furlough, forced unpaid vacation, reduction in salary (maybe make it up later when cash comes in), etc. Can management and salaried employees work for low or no wages to save the company and their jobs?**

Lots of options. Depends on your specific business. Remember FLSA/Labor Law requirements; WARN Act; FMLA/PFL. Earned wages must be paid!

Question

- **Can you please address work related injuries while employees are working remotely?**

Workers' compensation likely applies (which is not necessarily a bad thing). Remember that you are still responsible for providing a safe work environment. Be clear about work expectations and schedules.



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