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EMPLOYER NEWSLETTER

RETURNING TO WORK: THE U. S. DEPARTMENT OF LABOR AND EEOC PROVIDE GUIDANCE

April 27, 2020

In the last few weeks, the President and state Governors have announced plans to re-open businesses. This means that employers will slowly begin to reintegrate employees into the workplace. Anticipating employees returning to work, the United States Equal Employment Opportunity Commission (“EEOC”) recently issued new rules to guide employers reintegrating their work forces.

The EEOC enforces existing “equal employment opportunity” laws, which prohibit discrimination based on a person’s race, color, religion, sex (or gender), national origin, age, and/or disability. Because employers and employees alike worry about exposure to COVID-19 in the workplace, the new rules focus on how returning employees will be treated under the existing framework of disability discrimination laws.

Regarding “disability” discrimination, federal and state laws (1) prohibit discrimination against individuals with disabilities; and (2) require employers to consider and provide reasonable accommodations to individuals with disabilities who are otherwise qualified to perform the essential functions of their jobs. The guidelines apply those principles to the current reality of the COVID-19 pandemic.

If you want relevant details, then read the rules [here](#).

If you prefer a “Cliff Notes” version, then “**YES**” is the answer to every bullet-listed question below:

“CLIFF NOTES”

- Can I ask an employee for supporting documentation from a health care provider?
- Do I need to discuss and explore “accommodations” with employees who have disabilities and/or are concerned about COVID-19 exposure?
- Can I deny a requested accommodation that is “unreasonable” or would pose a substantial economic hardship on the business? (Tip: Be sure to document the hardship with objective data/information.)
- Can I take employees’ temperatures?
- Can I require employees to self-disclose COVID-19 related symptoms?

- Can I require employees to wear gloves and masks?
- Should I listen, show concern, and explore options (such as telework, flexible schedules, staggered shifts) when employees have concerns about their health and exposure to COVID-19?
- Should I pay attention to OSHA, CDC and government agency guidelines about best practices in the work place?

ENFORCEMENT BEGINS: US DOL BEGINS TO ENFORCE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Throughout the COVID-19 pandemic, the U.S. Department of Labor (“DOL”) and the U.S. Equal Employment Opportunity Commission (“EEOC”) have provided guidance to help employers navigate issues in the workplace related to the COVID-19 pandemic. Both agencies have shown flexibility in interpreting existing laws and allowed “grace periods” for new ones. However, the honeymoon may be ending.

A [recent press release](#) reported that the DOL investigated and fined a Tucson, Arizona employer for failing to pay leave benefits under the Families First Coronavirus Response Act (“FFCRA”), which went into effect April 1, 2020.

Thus, it is important for employers to (1) post notices of employee rights under the FFCRA; (2) adopt appropriate policies and practices; and (3) train supervisors and managers to recognize and appropriately deal with employee requests for leave for COVID-19 related reasons.

Conclusion

In short, employers to have the right to ask questions, to request documentation and, in some circumstances, to test employees to confirm that it is safe for them to return to work. However, this flexibility does not alleviate the employer’s obligation to consider and/or provide accommodations as needed and re-evaluate accommodations as the situation evolves. It is also important that employers allow their employees to ask about and to use the new paid family leave and paid sick leave benefits under the FFCRA.

We will continue to monitor important legal developments related to the COVID-19 emergency. If we can provide you with advice or support, please contact us at 480-844-0039 or email: etc@clarkfirm.com or cassandra@clarkfirm.com.

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