

TOP LEGAL CONSIDERATIONS OF COVID-19 FOR EMPLOYERS

There are legal considerations employers should be aware of during the coronavirus (COVID-19) pandemic that affects both their employees and business.

DISCRIMINATION



Both federal and state law may prohibit discrimination and harassment based on having a disabling illness.

FAMILIES FIRST CORONAVIRUS ACT (FFRCA)



The FFRCA went into effect April 2 to address the immediate public health crisis of the COVID-19 pandemic. Among other things, the Act establishes a federal emergency paid leave benefits program to provide payments to employees taking unpaid leave due to the COVID-19 outbreak, expands unemployment benefits and provide grants to states for processing and paying claims, requires employers to provide paid sick leave to employees, and establishes requirements for providing coronavirus diagnostic testing at no cost to consumers.

WORKERS' COMPENSATION



Employees who contract an illness through work are usually entitled to coverage under workers' compensation.

UNEMPLOYMENT COMPENSATION



The spike in unemployment has swamped state agencies and prompted a massive federal expansion of unemployment benefits. While COVID-19-related claims generally shouldn't affect employers' ratings, some states may raise unemployment taxes—and given the stress on the system, employers should monitor their accounts for erroneous or fraudulent payments.

MEDICAL EXAMINATIONS



Workers' compensation laws, the ADA, GINA, and the FMLA may restrict your ability to require a medical examination, but on the other hand may change when a communicable disease poses a danger to others.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)



OSHA requires employers to provide a safe workplace. This may mean employers may not retaliate against employees who raise concerns about safety and health issues at work, including those related to COVID-19 exposure. Also note that if an employee contracts COVID-19 at work, OSHA considers it to be a recordable illness.

FAIR LABOR STANDARDS ACT (FLSA)



FLSA may require an employer to pay for the time an employee travels to and from a medical examination or treatment.

NATIONAL LABOR RELATIONS ACT (NLRA)



NLRA protects employees from being fired for engaging in concerted activity to protest unsafe work conditions. Accordingly, if a group of employees refuses to work with an employee with a contagious disease, and the group's refusal is reasonable, group members may be protected from any discipline by the NLRA.

CONFIDENTIALITY



All medical information should be maintained in confidence. Unauthorized disclosure can be a violation of HIPAA, the ADA, GINA, and/or the FMLA.

DISCHARGE



Firing an employee because of a communicable disease may violate a variety of laws such as the FMLA, ERISA, GINA, WARN Act, or workers' compensation.

DECLARATION OF EMERGENCY



Public Health Service (PHS) Act authorizes the Secretary of Health and Human Services (HHS) to declare a public health emergency and "take such action as may be appropriate to respond" to that emergency.

QUARANTINES



Diseases for which individuals may be quarantined are specified by federal Executive Order to establish quarantine stations, provide care and treatment for persons under quarantine, and provide for quarantine enforcement.

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