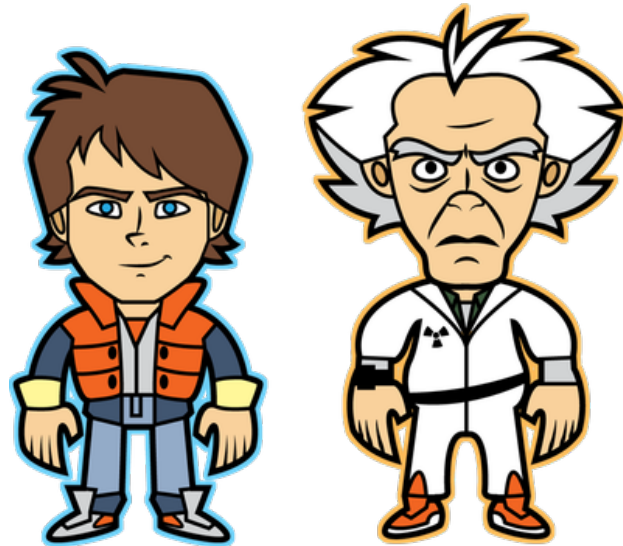
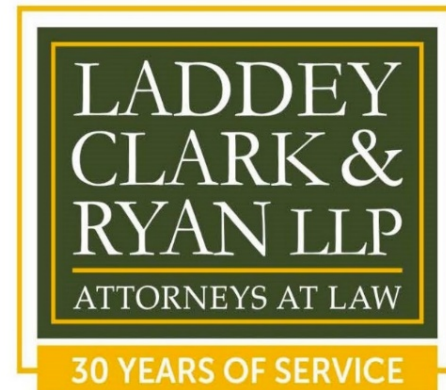


Back to the Future – What Workplace Life Will Look Like When the Pandemic Restrictions Ease



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LOCAL
FOOTPRINT.
BIG
IMPACT.

May 7, 2020

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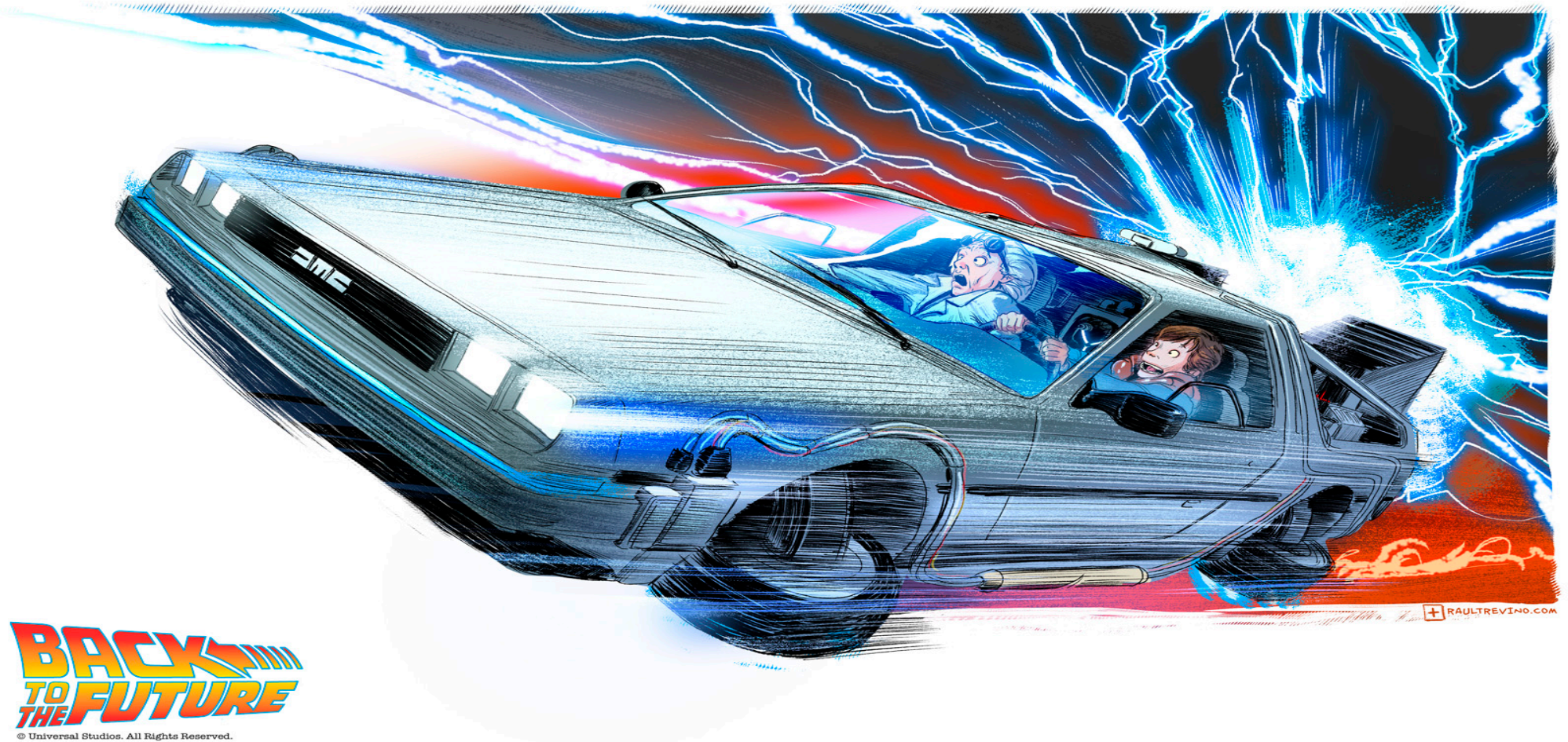
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We can do this ... SAFELY



1

PROVIDING A SAFE OFFICE ENVIRONMENT



COMMUNICATE WITH YOUR EMPLOYEES & INSPIRE TRUST

- Written Plan
- Safety First
- Contact Person/COVID-19 Coordinator

CDC GUIDELINES FOR BUSINESSES AND EMPLOYERS

- Goals:
 - **Identify COVID-19 Risks** in the Workplace
 - **Reduce/Prevent Spread** of COVID-19 in the Workplace
 - **Educate Employees** about Reducing Spread of COVID-19
 - **Maintain Healthy Business Operations**
 - **Maintain Healthy Work Environment**

CDC-RECOMMENDED STEPS TO REDUCE TRANSMISSION AMONG EMPLOYEES

- Stay home except to obtain medical care
- Separate self from others
- Monitor symptoms and follow instructions of healthcare provider
- Wear a mask
- Cover coughs and sneezes
- Wash hands often
- Avoid sharing office supplies

CDC-RECOMMENDED STEPS TO REDUCE TRANSMISSION AMONG EMPLOYEES

- Actively encourage sick employees to stay home
 - Employees with symptoms should notify supervisor and stay home
 - Sick employees should follow CDC-recommended steps and not return to work until criteria to discontinue home isolation met
 - Employees with sick family members must follow CDC-recommended precautions

CDC GUIDELINES: IDENTIFYING COVID-19 EXPOSURE RISK IN THE WORKPLACE

- Be mindful that some employees are at higher risk than others and be receptive to concerns; but do NOT discriminate
- Minimize face-to-face contact and allow for social distancing (6 feet)
- Avoid large gatherings

CDC GUIDELINES: IDENTIFYING COVID-19 EXPOSURE RISK IN THE WORKPLACE

- Allow teleworking where possible
- Separate employees with symptoms from others and send them home
- When employees have confirmed COVID-19 infection, inform other employees of their possible exposure while maintaining confidentiality per the Americans with Disabilities Act (“ADA”)

EDUCATE EMPLOYEES ABOUT REDUCING SPREAD OF COVID-19

- Follow employer policies re: illness, cleaning and disinfecting, work meetings, and travel
- Stay home when sick except for medical care
- Inform supervisor if member of household infected with COVID-19
- Wash hands often with soap and water for at least 20 seconds and use hand sanitizer with at least 60% alcohol if soap and water not available
- Avoid touching eyes, nose, and mouth with unwashed hands

EDUCATE EMPLOYEES ABOUT REDUCING SPREAD OF COVID-19

- Cover mouth and nose with a tissue when cough or sneeze or use the inside of elbow
- Immediately throw used tissues in trash and then wash hands
- Clean and disinfect frequently touched objects and surfaces—workstations, keyboards, telephones, handrails, and door knobs
- Avoid using other employees' phones, desks, offices, or other tools/equipment whenever possible (if necessary, clean and disinfect before use)

CDC GUIDELINES: MAINTAIN HEALTHY BUSINESS OPERATIONS

- Identify workplace coordinator who will be responsible for COVID-19 related issue and their impact on workplace
- Implement flexible sick leave and supportive practices and policies
 - i.e. Consider advances on future leave; donate sick leave to other employees
- Prepare emergency sick leave policies

CDC GUIDELINES: MAINTAIN HEALTHY BUSINESS OPERATIONS

- Do not require a positive COVID-19 test result or doctor's note for employees to take sick leave (contrast with EPSLA)
- Ensure policies and practices consistent with public health recommendations and existing state and federal employment law
- Connect employees to employee assistance program ("EAP") resources if available

CDC GUIDELINES: MAINTAIN HEALTHY BUSINESS OPERATIONS

- Assess essential functions of your business
- Be prepared to change business practices where necessary to maintain critical operations
 - Identify alternative suppliers
 - Prioritize existing customers
 - Temporarily suspend some operations

CDC GUIDELINES: MAINTAIN HEALTHY BUSINESS OPERATIONS

- Implementing social distancing:
 - Flexible worksites (teleworking)
 - Flexible work hours (staggered shifts)
 - Increased physical space between employees at worksite
 - Increased physical space between employees and customers

CDC GUIDELINES: MAINTAIN HEALTHY BUSINESS OPERATIONS

- Implementing social distancing:
 - Flexible meeting and travel options (i.e. postpone non-essential meetings/events)
 - Downsize operations
 - Deliver services remotely where possible (i.e. phone, video, web)
 - Deliver products through curbside pickup or delivery

CDC GUIDELINES: MAINTAIN HEALTHY WORK ENVIRONMENT

- Consider improving engineering controls using building ventilation system (i.e. increase ventilation rates and percentage of outdoor air circulating in system)
- Provide PPE to employees
 - Masks
 - Gloves
 - Shields

CDC GUIDELINES: MAINTAIN HEALTHY WORK ENVIRONMENT

- Support respiratory etiquette and hand hygiene for employees, customers and worksite visitors
 - Hands-free/no-touch trash disposal and hand washing
 - Discourage handshaking
 - Posters re: hygiene practices

CDC GUIDELINES: MAINTAIN HEALTHY WORK ENVIRONMENT

- Perform routine environmental cleaning and disinfection
- Enhanced cleaning and disinfection after workplace exposed to COVID-19
- Advise employees who travel to take additional precautions

NJ Executive Order 122 (4/8/20): To Whom Does it Apply?

- Owners of buildings used for commercial, industrial or other enterprises, including but not limited to facilities for warehousing, manufacturing, commercial offices, airports, grocery stores, universities, colleges, government, hotels, and residential buildings with at least 50 units
- MUST adopt policies that—at minimum—implement certain cleaning protocols in areas where operations are conducted

NJ Executive Order 122 (4/8/20): Cleaning Protocols

- Clean and disinfect high-touch areas routinely in accordance with CDC guidelines, particularly in spaces that are accessible to staff, customers, tenants, or other individuals, and ensure cleaning procedures following a known or potential exposure in a facility are in compliance with CDC recommendations;
- Otherwise maintain cleaning procedures in all other areas of the facility; and
- Ensure that the facility has a sufficient number of workers to perform the above protocols effectively and in a manner that ensures the safety of:
 - Occupants
 - Visitors
 - Workers

NJ Executive Order 122 (4/8/20): Required Policies

Manufacturing businesses, warehousing businesses, and businesses engaged in essential construction projects must adopt policies that include, at minimum, the following requirements:

- Prohibit non-essential visitors from entering the worksite
- Limit worksite meetings, inductions, and workgroups to groups of fewer than ten individuals
- Require individuals to maintain six feet or more distance between them wherever possible

NJ Executive Order 122 (4/8/20): Required Policies

- Stagger work start and stop times where practicable to limit the number of individuals entering and leaving the worksite concurrently
- Stagger lunch breaks and work times where practicable to enable operations to safely continue while utilizing the least number of individuals possible at the site
- Restrict the number of individuals who can access common areas, such as restrooms and breakrooms, concurrently

NJ Executive Order 122 (4/8/20): Required Policies

- Require workers and visitors to wear cloth face coverings, in accordance with CDC recommendations, while on the premises, except where doing so would inhibit the individual's health or the individual is under two years of age, and require workers to wear gloves while on the premises.
 - Businesses must provide at their expense
 - If person refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided by business at the point of entry → decline entry
 - If person declines to wear a face covering on the premises due to a medical condition that inhibits such usage → no documentation required, permit entry

NJ Executive Order 122 (4/8/20): Required Policies

- Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal
- Limit sharing of tools, equipment, and machinery
- Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to workers and visitors
- Require frequent sanitization of high-touch areas (i.e. restrooms, breakrooms, equipment, and machinery)

WHAT TO DO NOW (AT MINIMUM)

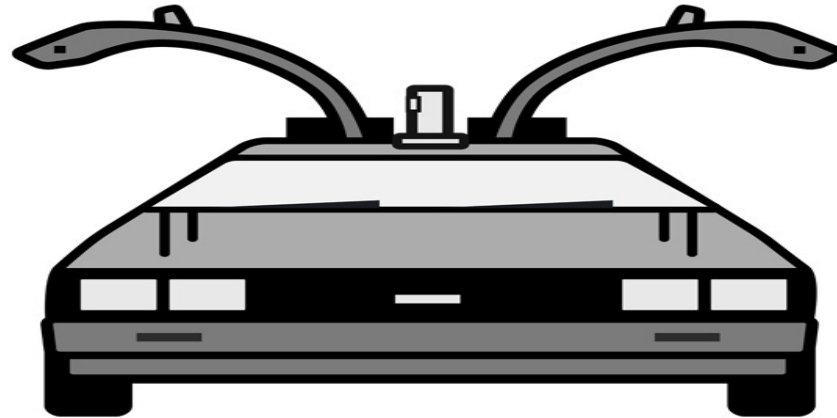
- Consider following EO 122 suggestions for all types of businesses
- Further Executive Orders may dictate additional or differing required practices

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION (“OSHA”)

- May have additional rules applicable to your workplace
- Review and document
- Ensure your policies protect employees and third parties as much as possible

2

EMPLOYMENT POLICIES



CAN YOU REQUIRE EMPLOYEES TO WORK?

- You can!
- Be consistent
- Document responses
- Fear is not inability to work
- Know the leave options

MONITORING EMPLOYEES

- Survey questions
- Close contact
- Household member
- Positive test results
- Keep private
- Consistent questions
- Same person

NEW POLICIES AND REVISIONS

- Attendance Plans
 - Staggered Work Schedules
 - Days
 - Shifts
- Work from Home/Telework
- Hours and Pay

NEW POLICIES AND REVISIONS

- Vacation
- Travel
- Mail
- Leave
 - FMLA → Emergency Family and Medical Leave Expansion Act (“EFMLEA”)
 - Emergency Paid Sick Leave

Families First Coronavirus Response Act ("FFCRA") Leave

Requires employers with fewer than 500 employees to provide employees with enhanced sick leave through Emergency Family and Medical Leave Expansion Act ("EFMLEA") and Emergency Paid Sick Leave Act ("EPSLA"):

*Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or*

*Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and*

*Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.*

MONITORING EMPLOYEES

- Employees with symptoms or who have been in close contact with person with symptoms will go home
- Temperature and Symptom Checks
- Privacy Controls/Confidential Information

MONITORING EMPLOYEES

Symptoms of COVID-19

- Fever in excess of 100.4 degrees Fahrenheit
- Fatigue
- Runny nose
- Sore throat
- Dry cough
- Shortness of breath
- Chills, muscle aches, or stomach cramps with diarrhea
- Persistent pain or pressure in the chest
- Bluish lips or face
- Inability to taste or smell

CDC GUIDELINES: RETURNING TO WORK AFTER ILLNESS

- **Employees with COVID-19 who have stayed home (home isolated)** can return to work under the following conditions:
 - **If employee has not had a test** to determine if still contagious, can return to work after these 3 things have happened:
 - Employee has had no fever for at least 72 hours (that is 3 full days of no fever without the use of medicine that reduces fevers)
AND
 - other symptoms have improved (for example, when employee's cough or shortness of breath has improved)
AND
 - At least 10 days have passed since employee's symptoms first appeared

CDC GUIDELINES: RETURNING TO WORK AFTER ILLNESS

- **If employee has had a test** to determine if employee is still contagious, employee can return to work after these 3 things have happened:
 - Employee no longer has a fever (without the use of medicine that reduces fevers)
AND
 - Employee's other symptoms have improved (for example, cough or shortness of breath)
AND
 - Employee has received two negative tests in a row, at least 24 hours apart by doctor following CDC Guidelines

CDC GUIDELINES: RETURNING TO WORK AFTER ILLNESS

- **Employees who DID NOT have COVID-19 symptoms, but tested positive and have stayed home (home isolated)** can return to work under the following conditions:
 - **If employee has not had a test** to determine if still contagious, employee can return to work after these 2 things have happened:
 - At least 10 days have passed since the date of employee's first positive test
 - AND**
 - Employee continues to have no symptoms (no cough or shortness of breath) since the test.
 - **If employee has had a test** to determine if you are still contagious, employee can return to work after receiving two negative tests in a row, at least 24 hours apart, by a doctor following CDC guidelines.

WHEN EMPLOYEES COME IN CONTACT WITH A COVID-19 POSITIVE PERSON

- CDC recommends remaining at home for 14 days after last exposure
- If symptoms develop, stay home for at least seven (7) days from the initial onset of the symptoms, three (3) days without a fever (achieved without medication), and improvement in respiratory symptoms (e.g., cough, shortness of breath)

CDC GUIDELINES: NOTIFYING EMPLOYEES OF CONTACT WITH COVID-19

- Following a confirmed COVID-19 case, notify all employees who were in close contact with the employee **without revealing employee's identity**
- Once employer learns of COVID-19 positive test, ask the infected employee to identify all individuals who:
 - Worked in close proximity (within 6 feet);
 - For a prolonged period of time (10 to 30 minutes or more);
 - During the 48-hour period before the onset of symptoms

COMMUNICATION IS KEY

- Ease Anxiety
- Offer Help
- Don't Let Others
Unnecessarily Stoke Fears
- Communicate

DEALING WITH EMPLOYEE COMPLAINTS

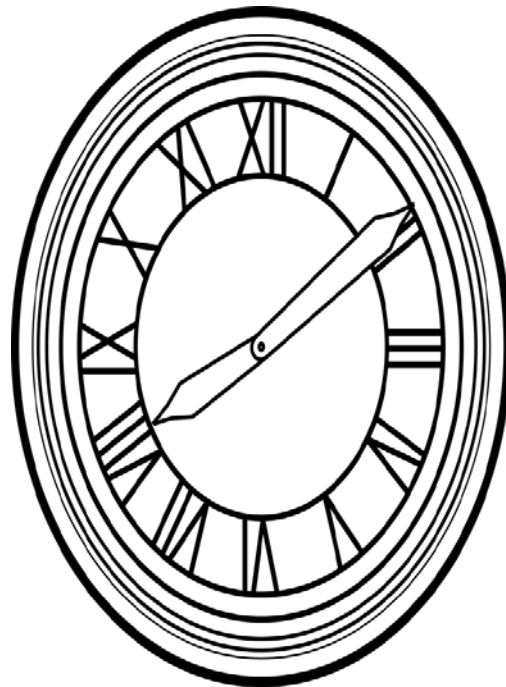
- There is usually that one person...
- Identify lead contact person
- Act quickly
- Be uniform and consistent

DEALING WITH EMPLOYEE COMPLAINTS

- Communicate any changes made
- Document it!
- Discipline for failure to cooperate
- Termination

3

PROTECT YOUR COMPANY



EMPLOYEE ACKNOWLEDGMENTS

- Confirm, to the best of knowledge, no close contact [within six (6') feet of an individual for ten (10) minutes or more] with an individual diagnosed with COVID-19 in the past 14 days.
- If employee or anyone who lives with employee is undergoing testing for COVID-19, or if have close contact [within six (6') feet of an individual for ten (10) minutes or more] with anyone who positive for COVID-19, immediately advise employer and self-quarantine
- Quarantine in accordance with the most recent guidance issued by the CDC and/or health care provider

EMPLOYEE ACKNOWLEDGMENTS

Understand and accept the employer reserves the right to:

- 1- screen for symptoms of the coronavirus prior to every shift worked (to the extent allowed by applicable federal, state and local laws, including taking my temperature) in order to protect employees and clients from possible infection of the coronavirus; and
- 2- immediately send employees home if appear to have any symptoms; and
- 3- not allow return to work until cleared by a physician or other qualified healthcare provider to return to work.

Employees should acknowledge has read, understands and will abide by the Pandemic Response/Return-to-Work/Office Safety Policy.

No effect on at-will nature of employment relationship.

SAFETY AND VIRUS FEARS

- Share with employees: What being done
 - Disinfecting; Customer notification
- Identify contact person
 - Concerns and questions
- Supply information and safety gear

CEPA: WHISTLEBLOWERS AND RETALIATION

1. Reasonable belief of violation of law, rule, regulation, or policy
2. Protected activity, as defined in the statute;
3. Adverse employment action; and
4. Causation.

CEPA: WHISTLEBLOWERS AND RETALIATION

- Distinguishes between illegal or unethical conduct (protected under CEPA) from internal disputes regarding workplace policies and procedures (not protected under CEPA)
- No retaliation allowed for reporting illegal/unethical conduct
- **DOCUMENT** all employee action

EMPLOYEES TALK: CONCERTED ACTIVITY

National Labor Relations Act (“NLRA”), Section 7:

- Permits employees to engage in protected concerted activities to improve working conditions
- Protections apply even if there is NO UNION at your workplace

AVOIDING DISCRIMINATION CLAIMS

- Inform all employee of zero tolerance for discrimination
- Monitor workplace
- Maintain confidentiality

AVOIDING DISCRIMINATION CLAIMS

- *Disability* → Leave Requests
- *Race/National Origin* → Bullying
- *Age* → Sensitivity
- *Perceived conditions* of all above

AMERICANS WITH DISABILITIES ACT (“ADA”)

- Prohibits discrimination against qualified individuals on the basis of disability in:
 - Job applications
 - Hiring
 - Firing
 - Advancement
 - Compensation
 - Job training
 - Other terms, conditions and privileges of employment

NEW JERSEY LAW AGAINST DISCRIMINATION ("NJLAD")

- NJLAD applies to employers who have only one employee
- Both the ADA and the NJLAD apply to public employers
- ADA applies to all private employers with 15 or more employees

REASONABLE ACCOMODATIONS

- A modification to:
 - Job
 - Employment Practice; or
 - Work Environment
- That makes it possible
- For applicant or employee
- To perform essential functions of job

REASONABLE ACCOMODATIONS

- DOES NOT require any magic words, but does require employer/employee communication
- Document!
- Not required to create new position
- Intermittent leave IF agreed to by employer only
- Be uniform and consistent
- No discrimination

EEOC-AUTHORIZED ACTIONS BECAUSE COVID-19 IS A “DIRECT THREAT”

- Withdraw a job offer from a job applicant if he or she has COVID-19 or symptoms of the virus
- Delay an incoming employee’s start date if that employee has either been diagnosed with COVID-19 or presents with symptoms of the virus
- Screen incoming employees for COVID-19 during the onboarding process so long as all incoming employees are screened

EEOC-AUTHORIZED ACTIONS BECAUSE COVID-19 IS A “DIRECT THREAT”

- Inquire why employees are absent from work if a medical reason is suspected
- Encourage employees to work from home/telework
- Require sick employees to stay at home
- Take employees’ temperatures (although persons infected with COVID-19 do not always present with a fever)

FAQS RE: COVID-19

- Can I send an employee home if they display COVID-19 symptoms or symptoms associated with it?
 - Yes, because the illness is serious enough to pose a “direct threat.”
- What information can I request from employees who feel ill at work or call out sick?
 - Information about symptoms to determine if they have or may have COVID-19

FAQS RE: COVID-19

- May I delay the start date of a job applicant who has COVID-19 or related symptoms?
- May I withdraw a job offer when I need the applicant to start immediately, but they have COVID-19 or related symptoms?
 - Yes—this individual cannot safely enter the workplace

FAQS RE: COVID-19

- May I encourage employees to telework as an infection-control strategy?
 - Yes, and employees with disabilities may request teleworking as a reasonable accommodation to reduce chances of infection
- May I require employees to wear PPE?
 - Yes, but if employees need a reasonable accommodation under the ADA (e.g. non-latex gloves), **must** provide absent undue hardship

FAQS RE: COVID-19

- May I require employees who have been away from the workplace during the pandemic to provide a doctor's note certifying fitness to return to work?
 - Yes, this inquiry is permitted under the ADA because it is not disability related
 - Practically speaking, this may not be feasible



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