Managing Your Workforce during the COVID-19 Pandemic

For the Home Care Alliance of Massachusetts
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Agenda

• Massachusetts State of Emergency

• Common employment issues for a pandemic
  • Hiring
  • Managing the workforce-screening employees, sending employees home, wage and hour, call-outs

• Families First Coronavirus Response Act
  • Paid sick leave
  • Paid family leave
  • New Poster of Employee Rights
Background

• The federal CDC has declared COVID-19 to be a pandemic and is requiring those who test positive to self-quarantine.

• As of Tuesday afternoon, Massachusetts had more than 1,100 coronavirus cases and more than 13,000 people had been tested in the state.

• Effective Tuesday, March 24, Massachusetts Governor Baker issued a stay at home advisory until April 7.
Massachusetts State of Emergency

• On March 23, Gov. Baker ordered businesses and organizations that do not provide “COVID-19 Essential Services” to close their physical workplaces and facilities to workers, customers and the public as of Tuesday, March 24th at noon until Tuesday, April 7th at noon.

• These businesses are encouraged to continue operations remotely.

• Home care workers expressly recognized as providing “essential services.”
Hiring During the Pandemic

• Q: Can I ask an applicant whether a household member has tested positive for the virus?
  • *Answer:* Yes, but proceed with caution.

• Q: An applicant I want to hire has symptoms of COVID-19. Can I delay the applicant’s start date based on that?
  • *Answer:* Yes.

• Q: If I need an applicant to start immediately, and cannot hold the position open, am I allowed to withdraw a job offer if the applicant has COVID-19 symptoms?
  • *Answer:* Yes. Because under current CDC guidance an applicant with COVID-19 or symptoms of COVID-19 would not be able to safely enter the workplace.
Hiring During the Pandemic

• Q: May I screen job applicants for COVID-19, and if so, how can I screen them?
  • Answer: Yes, but only if screening takes place after a conditional job offer is made.

• Q: May I test applicant’s temperatures as part of the post-offer screening test?
  • Answer: Under federal law, yes; but proceed with caution.

• Q: Can I ask an applicant about recent travel to areas affected by a COVID-19 outbreak?
  • Answer: Yes, but as with other types of screening, this inquiry should occur after a conditional job offer.
Managing the workforce during a pandemic

• Employers can exclude employees from the workplace when:
  • Employee returns from travel
  • Employee has been in close contact with person infected with COVID-19
  • Employee showing symptoms of COVID-19

• Q: Can employers cancel scheduled vacations?
  • Answer: Yes.

• Q: Can employers mandate overtime?
  • Answer: Yes.

• Q: Discipline employees for calling out?
  • Answer: Possibly, but must consider OSHA anti-retaliation risk and other ADA and FMLA factors.
Managing the workforce during a pandemic

• Q: Can the employer inform the workforce of COVID-19 cases in workplace?
  • Answer: Generally allowed; beware privacy rights.

• Q: What if an employee claims they got COVID-19 from work?
  • Answer: It could be covered by workers’ compensation. But meeting the burden of proof could be difficult.
Managing the workforce during a pandemic

• The remote workforce
  • Computers, cell phones and other supplies
  • Ergonomic work stations
  • Compensation – on-call
  • Child care
  • Overtime
  • Cyber security

• “Checking in” - Waiting to work versus working to wait
Families First Coronavirus Response Act (FFCRA)

• (1) expands the FMLA temporarily to provide 12 weeks of leave needed for the care of children out of school because of COVID-19 and also makes weeks 3 through 12 paid leave at 2/3 of regular rate;

• (2) creates 2 weeks (80 hours) of paid sick leave for childcare and other leave related to the coronavirus at 100% regular rate; and

• (3) provides for tax credits related to the paid leave provisions created by FFCRA.

• Effective April 1, 2020—NOT retroactive
Families First Coronavirus Response Act

• Applies to private employers with fewer than 500 employees.

• Businesses with fewer than 50 employees can seek an exemption if leave requirements would jeopardize the viability of the business.

• Employers of healthcare providers or emergency responders may elect to exclude such employees.
  • But the definition will likely be limited to licensed providers, not most home care workers.
Families First Coronavirus Response Act

• Qualifying Reasons for Leave Related to COVID-19:
  1. Is subject to a Federal, State, or local quarantine or isolation order.
  2. Has been advised by a health care provider to self-quarantine.
  3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
  4. Is caring for an individual subject to an order described in (1) or quarantine as described in (2).
  5. Is caring for his other child whose school or place of care is closed (or child care provider unavailable) due to COVID-19 reasons.
  6. Is experiencing any other substantially similar condition specified by DHHS.

Note: Reason 5 is the only basis for extra 10 weeks of paid family leave
Families First Coronavirus Response Act

• **Tax Credit**: Each quarter, employers are entitled to a refundable tax credit equal to 100 percent of the qualified emergency sick leave paid to eligible employees.

• Posting requirement- published March 25, 2020
  • [https://www.dol.gov/agencies/whd/posters](https://www.dol.gov/agencies/whd/posters)

• **Q**: What about the Massachusetts Paid Family Medical Leave Law?
  • **Answer**: Not applicable. No benefits payable until January 1, 2021.
Visit www.verrill-law.com/covid-19-resources for more information and insights.
Questions?

Please contact me with any additional questions:

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