



*The Women's Bar Association
of the State of New York*

presents

Continuing Legal Education Series

**Workplace Policies and Procedures
Worth the Paper they Are Written On –
Updates in Light of COVID-19**

July 2, 2020
12:00 pm - 1:30 pm

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I. INTRODUCTION

- a. States are easing or phasing out of stay-at-home orders. Nonessential businesses are beginning to re-open and employees are returning to work slowly. Even essential businesses that have remained open and operating will likely see an increase in number of employees returning to the workplace. Concerns about COVID-19 remain, however.
- b. Although we are emerging from an unprecedented attack on our workplaces, many employers are looking to the future not only concerned about COVID-19 but potential future viruses and diseases which may require similar protocols to what had to be quickly put in place due to COVID.
- c. Now that we have all experienced COVID-19 and the impacts on our places or work and our businesses, we have hopefully learned what worked, what did not work and what might need to be changed in the future.
- d. In fact, for some companies and businesses, the work-from-home (WFH) model worked so well, the ownership is considering permanent changes to the workplace. For example:
 - i. Permanent work from home
 - ii. Staggering schedules
 - iii. Layoffs
 - iv. Smaller leased premises
 - v. Equipment leases

II. COVID-19 TIMELINE AND PHASES

- a. First cases of COVID-19 discovered
- b. Illness progression
- c. Stay-at-home orders
- d. Re-opening metrics
- e. Phase I
- f. Phase II
- g. Phase III
- h. Phase IV
- i. After Phase IV?

III. REOPENING CONSIDERATIONS

- a. There are many considerations which businesses must work through before deciding if/when they will re-open and what that re-opening will look like.
- b. Different types of businesses will have different considerations
 - i. i.e., Doctors/Vets/Dentists will differ from a bookstore

- ii. What are the considerations?
 - 1. Interaction with public
 - 2. Interaction with other employees (i.e., dancers)

IV. POLICIES AND PROCEDURES GENERALLY

- a. 2019/2020 updates
 - i. 2019/2020 saw a large number of changes to employment laws
 - ii. If a business or a company has not yet created a handbook or, if they still have not made necessary changes to an existing handbook, now is the time.
 - iii. Discussion of various changes

V. CONSIDER ALTERNATE TEMPORARY EMERGENCY POLICIES OR EMERGENCY PROTOCOLS FOR FUTURE PANDEMICS

- a. Can be a separate book – under times of emergency or pandemic, etc, company can circulate the temporary handbook or can add it as an appendix to existing handbook – Think outside of COVID-19.
 - i. Discuss
- b. Should include things such as:
 - i. Paid Sick Time
 - 1. Advanced use of Paid Sick Time
 - 2. Flexible use of Sick Time
 - 3. Flexible use of dependent care sick time
 - ii. Remote Work
 - 1. Computer policies
 - 2. Monitoring work
 - 3. Break periods
 - 4. Signing in and out
 - 5. Rules and procedures concerning personal electronic devices (and the potential to widen discovery obligations)
 - 6. Weekly reporting/meetings
 - iii. Employee Relations Considerations
 - 1. Some employees may have continued childcare issues; fear illness due to underlying health issues or vulnerable family members
 - 2. Must be prepared to handle such requests
 - iv. Return to Work (medical clearance is or is not required)
 - 1. Documentation of dependent care responsibilities (watch out for abuse of paid sick/dependent care time)
 - v. Essential Personnel – policies and procedures
 - vi. Pandemic Task Force

1. Can include individuals to whom inquiries should be addressed to ensure that questions are being answered consistently throughout the organization.
 2. Should include HR, executive board/committee member/one supervisor per department
 3. Should also include compliance officers (i.e., to whom should complaints be addressed should items not be properly sanitized or if social distancing protocols are not followed or working)
- vii. Return to Work Plan
- viii. Discrimination and Harassment
1. Ensure employees are educated on correct and incorrect terms (i.e., Chinese Virus)
 2. Ensure that employees are aware that any changes to shifts/schedules/pay are handled in a non-discriminatory fashion
 3. Updated complaint procedures for complaints of harassment and discrimination
 4. Communicating via Zoom can open the company to complaints
 - a. Examples
- ix. Safety Protocols Policy
1. Screening procedures
 2. Steps to take if an employee is symptomatic or tests positive (this could include illnesses other than COVID-19)
 3. Questions about safety measures
 4. Sanitization of the workplace
- x. Employee Assistance Programs (EAP)
1. Check with insurance broker to determine if such benefits are covered in current insurance offering or check into the option of adding such a benefit
 2. Employees have possibly lost loved ones
 3. Financial issues
 4. Substance abuse
- xi. Updates to ADA Policies
1. Because COVID-19 or some other possible future pandemic symptoms are of a short duration, it typically will not be considered a disability under the ADA, as amended. (However, consideration should be given to the NYCHRL, and NYSHRL). Underlying health conditions and complications from COVID-19, however, may qualify as ADA disabilities. Guidance issued by the EEOC allows employers to screen employees entering the workforce for COVID-19 symptoms. If an employee shows symptoms, they may be sent home and required to present a fitness for duty note before returning to work.

2. If an employee requests an accommodation for a medical condition that is not obvious or already known but puts the employee at higher risk for severe illness from COVID-19, an employer may ask questions and request medical documentation to determine if the employee has a “disability” as defined by the ADA and whether the employee’s disability necessitates an accommodation. As with any request for accommodation, employers must engage in the interactive process.
 3. If an employee does not request an accommodation, an employer cannot prevent the employee from working solely because the employee has a disability that the CDC has identified as placing someone at a higher risk. Under the ADA, employers cannot prohibit employees from working unless the employee’s disability poses a “direct threat” to the health of the employee that cannot be eliminated or reduced by reasonable accommodation (absent undue hardship), which is a high standard to meet.
- xii. Configuration of Physical Work Spaces
1. Teams
 2. Bathroom use
 3. Kitchen/cafeterias
 4. Conference rooms
 5. Cubicles
 6. Narrow hallways
 7. Frequently touched surfaces (i.e., cash registers, garbage cans, water coolers, coffee machines, vending machines)

VI. TRAINING ON POLICIES

- a. When COVID-19 began and the shutdowns started, many companies had to scramble to put together work from home capabilities and really did not have in place any policies. Many employers are now finding out what worked (and who worked) and what (or whom) did not. Employers are now in a better position to plan ahead should something like this happen again in the future.
- b. Because everything happened so fast, employers were unable to hold training seminars on policies that many employers did not even have in place. So, the first few weeks of working remotely raised many questions by employers and employees, IT personnel were extremely busy, and employees were unsure of what was expected of them. Think of the following scenario:
 - i. Legal Assistant works for an attorney. The assistant typically sits outside of the office of the lawyer he works for. When the phone rings, typically, if the attorney is in her office, he will not answer the phone as his boss typically likes to answer her own calls if she is available. Working from home, the assistant now does not know if he should or should not be

answering the phone. Also, because the setup is different, can the assistant tell if his boss is on the phone or not.

VII. POLICIES DO'S AND DON'T'S

- a. In discussing the art of communication, Winston Churchill once remarked, “this report, but its very length, defends itself against the risk of being read.”
- b. Conflict provisions between regular policies and emergency policies
- c. Do's
- d. Don'ts

VIII. OTHER CONSIDERATIONS

- a. Wage and Hour
 - i. In some cases, employee's wages may need to be adjusted to off-set financial challenges that the business is facing.
 - 1. Ensure that non-exempt employees are paid at least minimum wage for all hours worked and salaried employees must still receive the minimum salary for their applicable exemption.
 - 2. If you change wages, make sure you provide updated Wage Theft Protection Act notice if an employee's wages are decreased or changed.
- b. Furloughed and employees subject to layoff
 - i. If returning only to partial work on a trial basis may impact employee eligibility for unemployment benefits and the enhanced relief under the CARES Act.
- c. Paycheck Protection Program Loans
 - i. Loan recipients must comply with loan use requirements to obtain forgiveness as permitted under the CARES Act.
- d. Bringing back employees previously formally separated from employment
 - i. Check severance agreements
 - ii. Re-enrollment in insurance plans
- e. Employees who refuse to return to work
- f. Posters and signage concerning social distancing, mask usage, and hand washing requirements

IX. CONCLUSION

- a. Q&A