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Planning for the 'New Normal': 19 Effective Measures that Employers Should Consider in Light of COVID-19

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By: Marc R. Engel

The COVID-19 pandemic has understandably unleashed all manner of articles, seminars, webinars and the like with advice for employers on a myriad of employment issues associated with COVID-19.

How are employers to make sense of all of this seemingly disconnected information and begin to chart a successful path out of this chaos? One constructive way for employers to do so is to create -- and then continue to refine -- a list of cost-effective, clearly defined, actionable items. To that end, employers would do well to consider the following:

1. Create an Emergency Paid Sick Leave and Family Leave Policy that complies with the Families First Coronavirus Response Act (FFCRA).
2. Create appropriate forms and procedures in connection with leave requests under the FFCRA.
3. Create (or, as the case may be, update) a Remote Work Policy which is suitable for use both during and after the conclusion of the pandemic. The new normal will almost certainly result in an increase in remote work alternatives; employers should start planning for that new reality *now*.
4. Consider requiring employees to execute a Remote Work Agreement for use in concert with a (new) Remote Work Policy. In many, if not most instances, working remotely will remain a privilege and not a right.
5. Confirm that existing insurances, specifically including Employment Practices Liability Insurance (EPLI), extend to the remote work arrangement. Issues such as workers compensation, loss of data, and coverage for wage and hour (including overtime) are among those that employers should discuss with their insurance brokers and agents.
6. Review job descriptions to ensure that they accurately reflect the new manner in which employees work.
7. Review job descriptions to ensure that employees are properly classified as exempt or non-exempt (and make any necessary changes to job descriptions).
8. Establish schedules for remote work employees and require that employees adhere to such schedules.

9. Carefully review overtime rules and other compensation requirements. Specifically, remind non-exempt employees that they may not work outside of scheduled hours, work overtime, or exceed limitations on newly established reduced-hour arrangements without proper authorization.

10. Require that non-exempt employees complete a form known as a Time Sheet Certification whereby employees report all of the hours that they work in a workweek and represent that they have fully and accurately reported all such hours. Such a form can be effective in preventing so called "off the clock" overtime claims.

11. Train managers how to effectively manage remote employees. Establish regular times for conferences between supervisors and employees to discuss remote work issues. Prepare agendas for such conferences so that key work issues (e.g., deadlines, project roles, etc.) are addressed.

12. Create letters to give to employees who are deemed "essential" in order to comply with any government imposed "stay at home" orders.

13. Establish "gatekeeper" procedures which must be followed before employees who have had COVID-19 symptoms (or been exposed to family members who have had such symptoms) can return to work. Employers often have human resources assume the primary gate-keeping role.

14. Establish workplace policies and procedures that comply not only with governmental requirements on return to work, but also address social distancing and other strategies for preventing the spread of infection.

15. Manage client/customer expectations with respect to employees who work remotely. Specifically, determine whether client/customer approval is necessary or appropriate in connection with work performed by remote employees.

16. Review and, as appropriate, modify data security policies and procedures to address remote work arrangements.

17. Fortify the protection of trade secrets and other confidential, proprietary, and sensitive employer information by, among other things, limiting access to key documents, password protecting files, etc.

18. Review and, as appropriate, modify non-compete and non-solicitation agreements to address remote work arrangements.

19. Last, but by no means least, prioritize employee engagement. Remote work arrangements can alter an organization's culture. Regular, scheduled communication between supervisors and remote work employees; clarity in job assignments and expectations; encouragement of employee feedback; and meaningful formal and informal review of job performance are measures that promote healthy, effective, and efficient remote work arrangements.

It is never too early for employers to begin preparing for what almost certainly will be a "new normal" in the workplace. Employers that engage in a careful planning process, establish achievable and measurable tasks (such as those outlined above), and relentlessly evaluate and refine employee engagement strategies are likely to reap the benefits of doing so.

Marc Engel is an employment attorney experienced in providing successful strategies for managing employees and preventing employment claims. For more information on what your company should

consider when it comes to coronavirus in the workplace, contact Marc at 301-657-0184 or mrengel@lerchearly.com.

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