

Managing Your Workforce During a Pandemic



Ashley Z. Hager, Esq.
ashley.hager@troutman.com
404-885-3428
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Troutman Sanders LLP
600 Peachtree Street
Suite 3000
Atlanta, GA 30308

Goals of Pandemic Planning

Goal: Continue the business to the extent possible

- Develop a workforce plan for continuing the essential functions of the business with a workforce that is dramatically reduced in size
- Encourage healthy employees to come to work
- Minimize costs if employees are not needed

Goal: Keep employees healthy

- Implement social distancing restrictions and other safe and healthy work practices that are designed to reduce the spread of the virus
- Restrict access to facilities for individuals who are sick or who may have been exposed to the virus
- Encourage sick or exposed employees to stay home
- Send healthy employees home if they do not perform critical functions
- Sequester employees who perform critical functions to reduce the likelihood they may be exposed to the virus

Goal: Support employees during a difficult time

- Provide information about the coronavirus and methods for protecting and preparing themselves and their families for a pandemic
- Provide supplies and possibly antivirals/medicine
- Consider continuing pay while an employee or family member is sick

First CLE Code - Workforce

Workforce Planning

Not Enough Employees

- 1. Identify core tasks that must be performed to continue the business**
- 2. Develop a plan for carrying out these core tasks during a pandemic**
 - Number of employees needed to perform these core tasks
 - Different schedules needed to accomplish core task with reduced workforce
 - Alternate locations of work
 - Backup plans
- 3. Consider how current employees can be allocated to implement the plan**
 - Identify current core and marginal job responsibilities of employees
 - Determine how to use current employees to perform the core tasks
- 4. Develop policies needed to effectuate the plan**
- 5. Bargain over the plan with labor union, if necessary**

Too Many Employees

1. Furloughs

- FLSA requirements for exempt employees
- Effect on benefits
- Bargaining with union

2. Reductions in pay

- FLSA and state law minimum wage requirements (and salary level to maintain exemption)
- Effect on entitlement to severance

3. Layoffs

- Selection of employees
- Severance
- Federal and state WARN Act obligations

HR Policies and Practices

General Issues Concerning Implementation of Pandemic-Related Policies

- What are the goals that the company is trying to achieve?
- Should policies replace or supplement existing HR policies?
- What and who will trigger implementation of temporary policies?
- Will there be different phases of implementation of the policies?
- Should there be different policies for critical and non-essential employees?
- How will temporary employees and independent contractors be treated?
- How much discretion should be given to managers?
- What stakeholders need to be involved in the development or approval of the policies?
- Will the company have to bargain over any changes for union employees?
- What is the backup plan for approval on decisions?

Policy: Access to Facilities

- Under what circumstances will individuals be denied access to Company facilities?
 - Having the coronavirus?
 - Being exposed to the coronavirus?
- How will you know if an individual has the coronavirus?
- What screening process should an employer use to determine whether individuals have the coronavirus?
- When should screening be conducted?
- How will you define “exposure” to the coronavirus?
- How will individuals who have the virus or who have been exposed to the virus be removed from the property?
- When should employees be permitted to return to the property?

Policies: Encouraging healthy employees to work during a pandemic

May want to consider:

- Taking steps to make the workplace as free from the coronavirus as possible, and communicating these efforts to employees
- Offering financial incentives for coming to work
- Restricting employees' ability to use vacation during a pandemic
- Disciplining employees up to and including termination for failure to come to work

Policy: Sick Time

- Do state or local laws require paid sick time?
- Will sick time be provided under the employer's existing sick time policy, or will a separate bank of time be created?
- If a separate bank of pandemic sick time is created:
 - How much time off will be given?
 - Will it be paid?
 - What can it be used for?
 - How will employees to certify or verify that they or their family members are ill with the coronavirus?
- What should be required of employees before they may return to work?

Policy: Vacation

- Do you want to require employees who need time off for illness due to the pandemic after all sick time has been exhausted to use their vacation?
- Do you want to consider limiting the use of vacation during a pandemic?

Policy: Paid Time Off

- Same issues as under sick time and vacation policies.
- But employees even more likely to use up all accrued PTO.

Policy: Attendance

- Consider relaxing attendance requirements during a pandemic
- Decide whether to require a doctor's note for employees who are sick
- Note applicable state and local laws:
 - Prohibiting discrimination against employees who use paid sick time
 - Protecting employees who are subject to a state-ordered quarantine
 - Providing job protection to employees who are deemed a risk to public health or who have a family member who has been deemed a risk to public health

Policy: Family and Medical Leave

- Most absences due to coronavirus will be “serious health conditions” under FMLA and state laws
- Option of furloughing or terminating employees on FMLA leave due to downturn in business

Policy: Bereavement Leave

- Will time off be provided just for the deaths of family members, or also for close friends?
- How will “family member” be defined?
- How much time off will be provided?
- Will all employees be provided time off with pay, or only full-time, regular employees?
- Will employees be required to provide some sort of certification that they have had a death in the family?

Policy: Holidays

- Ensure that Holidays policy gives employer the right to require employees to work on a holiday.

Policies: Work Assignments, Scheduling and Locations

- Different work assignments
- No work assignments
- Different work schedules
- Sequestering
- Telecommuting

Policy: Social Distancing and Other Work Practices

- Travel
- Meetings
- Commuting
- Hygiene

Policy: Discipline

Consider whether you want to discipline for:

- Poor attendance
- Insubordination
- Coming to work while sick

Policies: Hiring Practices / Drug and Alcohol Testing

- May not be able to require pre-employment medical exams
- May not be able to process off-site drug testing

Policies: Workplace Transmission

- OSHA general duty clause
- OSHA hazard-specific standard
- Workers' compensation benefits

Second CLE Code - Policy

Benefit Plan Issues

Benefit Plan Issues During a Pandemic

- Preparation of third-party benefit providers
- Access to healthcare and prescription medications
- Consequences of workforce plans under existing benefit plans
- Mid-year suspension of 401(k) match

Questions?

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