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COVID Commotion: How to Navigate the Work from Home Waters

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As COVID-19 creates a temporary (or even more permanent) exodus from the traditional office environment, many employers are scrambling to either institute or refine existing work from home policies.

Employers might be tempted to quickly institute temporary work from home policies—often by utilizing boilerplates or templates that they find on the internet. But providing employees with a short, hasty work-from-home policy can create a host of potential issues.

Having a detailed, well thought out telecommuting policy or arrangement can go a long way towards setting expectations and mitigating potential risks.

Crucial Nuts & Bolts of a Comprehensive Temporary Work-From-Home Policy:

Remember, employers' telecommuting policies can be updated and changed at any time absent a contractual agreement that states otherwise. While there are several key considerations, employers can and should craft a policy unique to their companies. Some crucial components include the following:

1. Purpose

If the telecommuting policy is in direct response to COVID-19, it should say so. The policy should begin by stating that it is a *temporary* change made to comply with social distancing and other federal and state health guidance. This helps in ensuring that employees do not have an expectation that this policy will be in place forever, and that the company can change or alter the policy at their discretion. The policy should also state that telecommuting is not an entitlement and does not change any terms of employment, including the at-will nature of employment.

2. Who is Eligible?

It's important to state that telecommuting may be appropriate for some roles, but not others. The reality is that some people cannot perform the essential functions of their job from home, and absent a protected reason to request or be granted a telework accommodation, an employer has the discretion to determine that an employee cannot work from home. This is why it is critically important for employers to distinguish between telework arrangements being offered simply as a matter of internal policy, and arrangements being offered as a reasonable accommodation under the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA), and/or the Families First Coronavirus Response Act (FFCRA). Also be sure to include an approval process, designating who will approve the requests.

3. Requirements

The policy should outline the requirements for working from home. How will the work schedule be affected? Remember to note that non-exempt employees are still required to comply with meal periods, rest breaks, and all applicable wage and hour laws, including overtime policies. How will employees be supervised and evaluated while working from home? How will productivity be measured? Make sure to state that all job responsibilities and duties remain in place while working remotely. Lastly, the policy should include clear expectations for employees so that they maintain the same security and confidentiality standards they would adhere to in the office.

4. Office Space & Workers' Compensation

Workers' compensation laws are still implicated while employees are working from home. Accordingly, employees should be required to have a safe and suitable space prior to beginning remote work. This space should be defined, and employees should be required to maintain the space in a safe condition. The policy should specify that liability is limited to injuries resulting directly from work and injuries that occur in the designated workspace during scheduled work hours.

If at all possible, and if arrangements differ amongst different employees, have individual employees review, acknowledge, and sign the arrangements. Finally, as always, consult an experienced employment attorney with any specific questions.

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