

Taking Care of Business During COVID-19

On Wednesday, March 18, attorneys at law Freeman Mathis & Gary, LLP delivered the first in a series of informative webinars regarding the conduct of business during the COVID-19 pandemic. The first webinar tackled employment issues, because governmental restrictions and employer decisions affect *people*. So, let's be practical and focus on business.

A savvy employer is concerned with keeping employees healthy, which means taking prudent precautions and actions to limit their (and your) exposure to disease. Such actions may include providing face masks, hand sanitizer, facial tissues, using teleconferencing, freezing travel, and allowing employees to work on a remote basis.

Exposure to the virus--no, antibiotics will *not* work to cure an illness caused by a virus--may or may not result in infection. In fact, someone who's infected may not exhibit all or any of the usual symptoms. Conversely, someone who exhibits any or all of the symptoms may not have the disease. Regardless, anyone who comes into work exhibiting respiratory problems, fever, and a cough should be sent home as a general, common sense practice of "keep your germs at home." Although Coronavirus is scary, the CDC attributes a total of 22,000 to 55,000 deaths *in just the USA to seasonal influenza* from October 1, 2019, through March 7, 2020.

If an employee either tests positive for COVID-19 or exhibits symptoms of illness, alert coworkers and any vendors or contractors with whom that employee likely came into contact so they can take appropriate measures. HIPAA requires you maintain an employee's confidentiality in such a circumstance, so be careful. The same goes for an employee who's caring for someone in his or her household who is ill. Current recommendations specify a 14-day quarantine for those who exhibit symptoms, are confirmed infected with the virus, or who are exposed to the contagion (e.g., caring for a sick family member). That length of time is deemed adequate for the disease to manifest after exposure and run its course.

For those employees who travel, consider canceling or postponing any unnecessary trips. State laws govern whether employers can restrict

employees who travel on their own time and budgets, as such activity falls under “off-duty lawful activity” statutes. In other words, you can’t tell your employees what to do or not to do outside the parameters of the job during working hours.

People being people, the matter of protecting your employees while protecting your business gets sticky. If an employee wants to wear a respirator or face mask, exercise emotional intelligence and discretion. What will it hurt to allow him or her that comfort? If an employee expresses a general fear of contagion and refuses to come to work, then you need to do a little more digging. Does the employee have an objective and reasonable belief that he or she has been exposed to COVID-19? If not, you may choose to discipline that employee or require that employee to take leave (paid or not).

Despite reports that older people are more susceptible to the virus, do not send your senior citizen employees home. No matter how good your intentions, singling out any group smacks of discrimination and can result in legal consequences. Although it’s generally not a good idea to take the temperatures of your employees, the EEOC has approved the action provided employers treat *all* employees the same. What’s good for the goose is good for the gander.

Legislators are working to respond to business concerns even as they close schools and impose restrictions on the constitutional right of assembly to limit the spread of disease. The U.S. Congress is adding specific, limited amendments to the Family Medical Leave Act called the Coronavirus Response Act (HR 6201). (As of writing this article, the bill had not yet been passed into law.) State legislators may enact even more severe or specific legislation. Make sure to keep current with legal updates at both federal and state levels.

Additionally, review FSLA and state laws governing paid and unpaid leave for exempt and non-exempt employees, telecommuting to work, and worker’s compensation. You may decide to close your business on a temporary basis, reduce hours worked, or furlough employees, in which case encourage them to apply for unemployment benefits. Legislators are rushing to answer the very real and immediate financial needs of those suddenly without an income. They aren’t neglecting the very real and immediate financial ramifications to employers either, with employer costs associated with the FMLA Amendment Act and the Emergency Paid Sick

Leave Act being covered by credits against the employer's portion of Social Security taxes.

Again, people being people, some will complain about how your company responds to the latest health crisis. Comments on social media might sting or offend, but they are seldom actionable. In other words, it's likely you have no legal recourse to discipline or fire an employee. Sure, check it out, but be prepared to take a deep breath and tell yourself that this, too, shall pass.

IMAGES:

Handwashing.jpg - *Courtesy of the National Cancer Institute via Unsplash.com.*

Cleaning products.jpg - *Disinfect surfaces and hands regularly to prevent transmission of contagion. Photo by Kelly Sikkema via Unsplash.com.*