**Employer Guidelines for Today's Workplace & the Coronavirus/COVID-19**

With the current national emergency involving the coronavirus, there is an ever-changing status of an employer's duty and obligations related to its current workforce. In follow up to our communication sent yesterday, we offer the following.

The Americans with Disabilities Act, the Rehabilitation Act, and state discrimination rules continue to apply, as amended for a pandemic situation, but they do not interfere with or prevent employers from following the guidelines and suggestions made by the Centers for Disease Control and Prevention (CDC) or federal, state, or local public health authorities about steps employers should take regarding COVID-19. Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.

Two factors are used to determine the impact of a pandemic – first, the clinical severity, and second, transmissibility. The CDC uses these factors to determine which actions to recommend at a given time during the pandemic. It will be important to monitor the Centers for Disease Control’s (CDC’s) notices, as the severity level greatly affects the actions that an employer may take during a pandemic.

Equal Employment Opportunity Commission Guidelines

The EEOC has issued its "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act" guidelines that can assist employers to implement strategies regarding the impact of COVID-19 in the workplace. These guidelines are now applicable since the World Health Organization has declared COVID-19 to be an international pandemic.

And while the EEOC guidelines now allow employers to make more direct inquiries about an employee or applicant's health, any medical information obtained must remain confidential and be kept separate from an employee's personnel file. However, federal, state, or local public health authorities may in the future require some reporting related to the coronavirus and your employees.

Permissible Inquiries/Policies Concerning Employees

1. During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat.

2. You can ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 coronavirus or the flu. An employer is permitted to ask an employee to seek medical attention and get tested for COVID-19. The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace.

3. You can require that any employee must inform you if they test positive for COVID-19.

4. You can require an employee who tests positive for COVID-19 to immediately leave the workplace. In addition, you should send home all employees who worked closely with that employee for a 14 day period of time. Ask any infected employee to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. Do not identify by name the infected employee or you could risk a violation of confidentiality laws.

5. You may require that any employee must report to you that they came into contact with someone who had a presumptive positive case of COVID-19. Then, you can require that suspected case to leave the workplace and go home.

6. You may inquire whether an employee has recently traveled to an affected area or otherwise may have been exposed to the COVID-19 coronavirus. During a pandemic, an employer does not have to wait until an employee develops symptoms to ask questions about exposure to a pandemic influenza during recent travel. If the CDC or state or local public health officials recommend that people who visit specified locations remain at home after traveling, an employer may ask an employee what locations they have traveled to, even if the travel was for personal reasons.

7. Generally, you do not have to keep paying employees who are not working, though there are exceptions, especially with the recently-enacted Families First Coronavirus Response Act. Under the Fair Labor Standards Act (FLSA), minimum-wage and overtime requirements attach to hours worked in a workweek, so employees who are not working are typically not entitled to the wages the FLSA requires.

However, as to employees treated as exempt FLSA, who are paid on a salary basis, if such an employee performs at least some work in the employee's designated seven-day workweek, the salary basis rules require that they be paid the entire salary for that particular workweek.

8. Upon an employee's return to work, you can require a doctor's note certifying their fitness for duty. Such inquiries are permitted under the ADA either because they would not be disability-related or, they would be justified under the ADA standards for disability-related inquiries of employees.

9. You may screen applicants for symptoms of COVID-19. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job.

10. It is highly recommended that all employers immediately notify all employees of obligations to self-report: any positive test for COVID-19, any symptoms which are associated with COVD-19, any travel in restricted areas, and any potential exposure to someone who has tested positive for COVID-19.

Important Compliance Guidelines

It is important for employers to monitor whether federal, state or local governments issue new workplace laws/regulations.

Likewise, in this rapidly-changing environment, employers ought to pay close attention to, and follow, any new directives or mandatory instructions from federal, state or local authorities related to COVID-19.

For further assistance with how your workplace and policies are impacted by the current coronavirus/COVID-19 pandemic, please contact any of the following Heyl Royster attorneys:

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