

RLG Employment Law Update

Policies, Performance Management and Planning (for the next six months)

[How to Create a COVID-19 Addendum for Your Employee Handbook](#)

One emerging best practice is creating an employee handbook addendum specifically built around modifications to work and workplace culture created by COVID-19. By including this information in your handbook, you create both a new level of clarity and a new level of accountability for employees and you will be able to easily revise, should the need arise.

1. Safety in the Workplace

Health, safety, and wellness should be the top priority. How do you want to communicate that priority and what are your expectations?

- a. Handwashing: You need to clearly communicate your expectations when it comes to employees washing their hands. Handwashing is key to preventing the spread of COVID-19, and if you're going to protect your workforce, you need an official enforceable policy.

Your policy needs to communicate which occasions should lead to an employee washing their hands:

- Should employees wash their hands immediately upon arriving at work?
 - Should employees wash their hands regularly on any set timeframe (i.e. every 30 minutes)?
 - Should employees wash their hands any time they exit and re-enter the building?
 - Should employees wash their hands at the start and/or conclusion of any breaks?
 - Should employees wash their hands immediately before or after any specific work task or processes?
- b. Surface/Workspace Disinfection: It's now believed that COVID-19 spreads on surfaces much more effectively than scientists originally thought. That means keeping frequently touched surfaces clean and disinfected is essential to community health in your workplace. Your policy should address the responsibilities individual employees have when it comes to cleaning and what are your corporate-wide policies:
 - How often are employees expected to clean and disinfect their individual workstations?
 - With what kind of cleaning materials should individual employees disinfect their workstations?
 - How will individual employees clean/disinfect shared surfaces and equipment after they use them (i.e. tools, office machinery, or appliances in communal spaces like the break room, etc.)?
 - What additional custodial/janitorial practices will your business adopt to protect your workers?

- c. Checking Employee Temperatures: Checking employee temperatures when they enter the building is quite commonplace but you'll want to address:
 - When and where regular employee temperature checks will occur
 - Procedures for employees who display a fever upon temperature check
 - Procedures for employees who feel they are developing a fever at work
 - When and where temperature checks for incoming members of the public will occur
 - Procedures for members of the public who display a fever upon temperature check
- d. Lunch: Your handbook must clearly establish the expectation that there will be no communal eating or sharing of food at this time and explain modified lunch protocols:
 - Modifying procedures and expectations in the cafeteria, breakroom, etc.
 - Modifying policies on free food from managers as a work incentive/reward
 - Providing employees with guidance on how they can eat in safe, compliant ways
 - Explicitly stating areas in which nobody should be eating
- e. Staggering Breaks: Community spaces are difficult to manage so you will want to stagger breaks with a strong policy on doing so:
 - How these modifications will be provided in ways that are compliant with labor laws, collective bargaining agreements, etc.
 - How supervisors/managers will release employees for breaks
 - Maximum number of employees on break at one time
 - Expectations for employees during breaks
 - Procedures for employees returning from break
- f. Social Distancing: Address how employees will maintain at least six feet of distance between each other at all times. How will you modify work areas and interactions? You will want a policy on elimination of in-person meetings and expectations for video/remote conferencing

2. FMLA & Paid Sick Leave Expansion Under FFCRA

You want an FFCRA policy which addresses the following:

- How much paid leave they are entitled to
- Procedures for application/approval of paid leave
- Procedures for communication/check-in during paid leave
- Procedures for returning to work at the end of paid leave

3. Telecommuting or Work-from-Home Policy

- a. Right now, safety is everybody's number one concern, but after that it is addressing the momentum of the company. Given the variety of regional stay-at-home orders, work

enablement for most businesses will require considerable expansion of telecommuting and work-from-home programs for the rest of the year.

- Who is eligible to work from home
 - How to apply for or request to work from home
 - General expectations for work-from-home continuity
- b. Anytime you transition an employee from the traditional office setting toward telecommuting, it's important to have a formal agreement in place. That document should effectively be a contract that communicates:
- The approximate length of the work-from-home engagement
 - The individual names and signatures of the employee and either their supervisor or an HR professional
 - Attendance, time-logging, and overtime expectations
 - Expectations for the use of company-owned devices and platforms from home
 - Official communication platforms and expectations in terms of check-ins
 - Procedures for expense reporting and reimbursement

4. Hour Reductions

Your COVID-19 addendum needs to address what will happen if your business cuts back employee hours or temporarily closes during this economic slowdown, including:

- Procedures for communicating with employees about hour reductions
- Employee rights during their time of reduced hours
- Continuity of employee benefits during their time of reduced hours
- Procedures for re-expansion of work hours down the line
- How employees with reduced hours can connect with employee assistance programs and other resources
- Communication expectations for employees whose hours have been reduced

5. Furloughs & Temporary Layoffs

Your handbook also needs to address how furloughs and temporary layoffs will be conducted during this tough time. This section needs to help employees understand how furloughs or layoffs will be conducted and how they can protect themselves and their families, including:

- Timeline for reevaluation of furloughs and layoffs
- Continuity of employee benefits during their time of furlough or layoff
- How furloughed or laid-off employees can connect with employee assistance programs and other resources
- Expectations for employees during furlough or layoff
- Official communication platforms during furlough or layoff

- Reinstatement procedures for furlough's end

Performance Management in the COVID-19 Era

As shelter-in-place restrictions are being modified or lifted, we are facing the challenge of employees returning to the workplace. Managing performance, in the best of times, is often difficult and it is especially challenging as employees return to work.

Employers will need to focus on three characteristics as employees return to work from shelter-in-place: **clarity**, **flexibility**, and **patience**. This does not mean that managers cannot define deliverables, have reasonable expectations of accountability, and provide feedback if performance does not meet expectations. But it does mean that managers will need to step back and think about the workplace and workforce differently during this unusual time.

Clarity. Employees returning to work will be distracted by the unique circumstances presented by a COVID-19 world. Concerns about health and safety will be present in a way that never occurred previously. The employee's home life, including children not in school, may also take attention away from the work at hand. As a result, it is important to provide specific direction with clarity about what is needed at work. It is not enough to rely on oral instructions. Follow that up with an email to avoid an unambiguous understanding of what is expected.

Flexibility. Employers now have to be more adept at being creative in this teleworking world. They must be flexible in listening to new ways to manage performance in the new [home] workplace. Great managers will be open to getting things done differently. The focus will be on completing the project well by a deliverable date, but with flexibility on how those results are achieved.

Further, managing the performance of remote workers requires heightened planning, greater connectivity, and closer scrutiny of work/deliverables to be successful. That will need to continue, post shelter-in-place.

Patience. Many managers will want to have employees go back to the usual manner of working as they were before COVID-19. Employees will struggle with that change. Remind managers to be patient in tolerating a different feel to the workplace, especially in the first month back at work, although holding the employees accountable for deliverables does not have to be compromised.

Finally, make growth the focus of performance management. Many people overestimate the motivating effects of money and underestimate the impact of a manager who helps employees to grow. Progression is what motivates employees the most. They want a manager who helps them to grow. Performance management is about growth, in terms of both knowledge and career path. You can help your employees to grow by simply talking to them: How do they see themselves in the future? What training and skills do they need to achieve this? And how can you support them in this?

Planning

Consequences for Failure or Refusal to Comply with the Business Continuity or Return to Work Plan

Consider what disciplinary or other consequences will be applied to employees who fail or refuse to comply with the business continuity or return to work plan. For example, will employees be sent home in these circumstances, and if so will they be paid or unpaid while they are away? When considering the issue of discipline, take into consideration whether the employee's action constitutes misconduct, or if it reflects a legitimate concern involving human rights, privacy, or the right to refuse unsafe work under occupational health and safety legislation. Also consider what steps will be taken where a third party or contractor employee fails or refuses to comply with the business continuity or return to work plan.

Response to a Positive Diagnosis or Potential Exposure to COVID-19 in the Workplace

Consider in advance what steps you will take if an employee or their family member tests positive for COVID-19, or is exhibiting symptoms of possible COVID-19, or has been exposed to someone else with COVID-19. Will self-quarantining or testing be required in these circumstances, and what happens if the test result comes back positive or negative? What steps will be taken with respect to contact tracing among other employees, and who will be responsible for that? Will the business remain open while these steps are taken, or are there any additional protective measures that will be implemented in these circumstances? How will a positive test result in the workplace be communicated to other employees, bearing in mind the privacy rights of the employee with confirmed or suspected COVID-19?

Response to Employees Who Believe that Returning to Work will Cause or Exacerbate a Disability or Health Risk

Some employees may believe that returning to work at this time will cause or exacerbate an existing disability such as anxiety, an autoimmune disorder or respiratory problems, or lead to some other increased risk to health and safety. Consider in advance how you will handle these concerns, including who such concerns should be directed to, what medical information will be required from the employee, whether any job protection exists under applicable employment standards legislation and whether the employee would qualify for short- or long-term disability benefits in these circumstances. Also consider whether any human rights issues arise and, if so, whether the employee can be accommodated by working from home.