HUMAN RESOURCES AND COVID-19

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Outline

- Introduction- COVID-19
- Employee Wellness
- COVID-19 and the ADA, Rehabilitation Act, and the EEO
- Furloughs and Layoffs
- FLSA
- Vaccinations
- Conclusion

COVID-19

- Pandemic- aerosol driven illness with symptoms ranging from mild (or no symptoms) to severe illness with long-term impacts, and death.
- 2.5 million cases in the U.S.
- 212,000 U.S. deaths and growing

CITY ATTORNEY & COVID

- Temperature checks
- Masks?
- Leave? Sick, vacation
- Telecommuting?
- Furloughs?
- The one word we use too often?

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ATTORNEY/COUNSELOR AND TEACHER?



Who is affected by COVID-19?

- Everyone, but the CDC says the following are more at risk for COVID-19:
 - Adults over 65
 - People with pre-existing medical conditions
 - Diabetes
 - Obesity
 - Lung and Heart Disease (asthma)
 - Racial and Ethnic minorities
 - Pregnancy and Breastfeeding

ADA and EEO Challenges

- Can and should the At-Risk groups be treated differently?
- NO!
- COVID-19 does not waive the ADA and EEO laws that protect employees from discrimination and harassment.

Employee Wellness

- Screening
- Taking Temperatures (Wello)
- Washing hand
- Masks and Protective Clothing
- What do we do if protective measures fail?
 - Close Contact?
 - Exposure, Quarantine, and Isolation
 - Notice (HIPAA)

COVID-19: Quarantine vs. Isolation

QUARANTINE keeps someone who was in close contact with someone who has COVID-19 away from others.





If you had close contact with a person who has COVID-19



 Stay home until 14 days after your last contact.



 Check your temperature twice a day and watch for symptoms of COVID-19.



 If possible, stay away from people who are at higher-risk for getting very sick from COVID-19. ISOLATION keeps someone who is sick or tested positive for COVID-19 without symptoms away from others, even in their own home.





If you are sick and think or know you have COVID-19



- Stay home until after
 - At least 10 days since symptoms first appeared and
 - At least 24 hours with no fever without fever-reducing medication and
 - Symptoms have improved



If you tested positive for COVID-19 but do not have symptoms



- Stay home until after
 - 10 days have passed since your positive test



If you live with others, stay in a specific "sick room" or area and away from other people or animals, including pets. Use a separate bathroom, if available.



cdc.gov/coronavirus

COVID-19 and the ADA, the Rehabilitation Act and other EEO laws

- ADA (Americans with Disabilities Act), 42 U.S.C. § 12101 *et seq.*; enforcing regulations at 29 C.F.R. Part 1630.
- ADA Amendments Act of 2008.
- Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, procedural regulations at 29 C.F.R. Part 1614.

- Section 504 of the Rehabilitation Act of 1973, Fair Labor Standards Act-Department of Labor
- Family Medical Leave Act
- Age Discrimination Employment Act
- Whistleblower Act
- Equal Pay Act of 1963
- FFCRA: Families First
 Coronavirus Response Act
 –Employee paid leave
 rights

FFCRA

- Families First Coronavirus Response Act: Employee Paid Leave Rights:
 - Covered Employers
 - Qualifying Reasons for Leave
 - Duration of Leave
 - Calculation of Pay

ADA

- Disability-Related Inquiries and Medical Exams
- Confidentiality of Medical Information
- Hiring and Onboarding
- Reasonable Accommodations
- Pandemic-Related Harassment
- Return to Work
- Age
- Caregivers/Family Responsibilities
- Pregnancy

WHAT IS A DISABILITY?

- Physical or mental impairment that substantially limits one or more Major Life Activity
- Record of having such impairment
- Being regarded as having such an impairment

DEFINITIONS

- Physical or mental impairment- any physiological, mental, or psychological medical condition or disorder
- Major Life Activity- self care, seeing, hearing, walking, eating, sleeping, working, reading, concentrating, thinking, communicating, and interacting with others (and all bodily systems and functions)

WHO IS A QUALIFIED INDIVIDUAL?

- With or without accommodation can perform all <u>Essential Job Functions</u>
- EJF= fundamental job duties of the employment position, excluding any "marginal functions"
- Attendance, stress, professionalism, temper control, rules adherence?

WHAT DO YOU HAVE TO DO?

- Reasonable accommodation to perform EJF's
- Reasonable?
- Undue burden?
- Interactive Process
- Cannot discriminate
- Or retaliate

REASONABLE ACCOMMODATION?

- Modification of the work environment
 - Manner in which job duties are performed
 - Characteristics of the work
- Adjustments that enable employee to enjoy equal benefits and privileges as non-disabled employees
- E.g. move office, accessibility, schedule, reassignment, telecommuting, "stress-free" work

ADA

- The pandemic is not an excuse to discriminate.
- Employers cannot discriminate against High-Risk employees
- Harassment is prohibited, even if done out of fear of COVID-19
- Protected classes include age, disability, family, GINA, race, or other prohibited bases.

ADA and EEO

 Best way to avoid any problems with the EEOC or ADA?

• TREAT EVERY EMPLOYEE THE SAME!!!!!

Furloughs and Layoffs

- Policy?- Select Employees for Layoff
- Avoid Adverse Action/Disparate Impact
- Older Workers Benefit Protection Act (OWBPA)
- Determine Severance Packages and Additional Services
- Alternative to Layoffs
- Law providing for Reinstatement: FMLA and USERRA

FLSA

- Fair Labor Standards Act:
 - Opportunities
 - Challenges
 - Schedule Flexibility
 - Telecommuting
 - FLSA Wage and Hour Compliance
 - EEO

Vaccinations

- Can they be mandatory?
- Should they be mandatory?
- COVID-19 test vs. Antibody test
- Authority of Employer to require vaccine
- Economic Pressures
- Texas atmosphere towards vaccines

Lucy the Libarian



Steve the Scaredy Cat



Harry the HR Specialist







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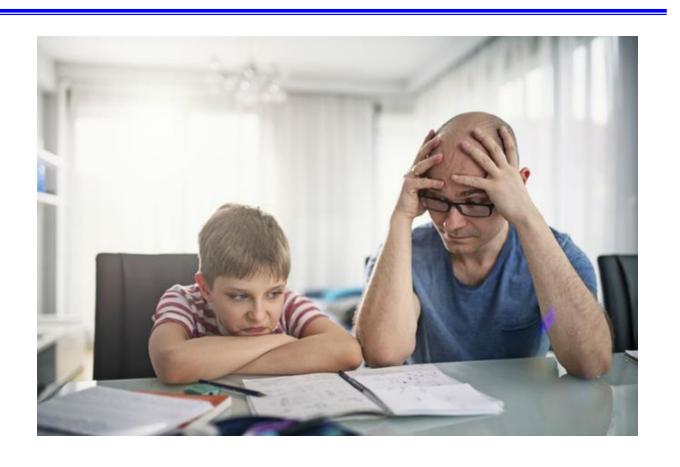
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CONCLUSION

- Be reasonable
- Balance positive and negative
- Be consistent

Thank you!



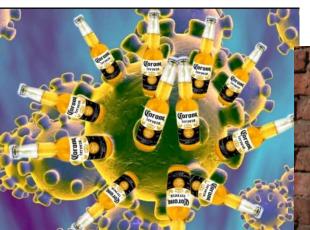


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Corona Extra

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