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COVID-19 UPDATE

Avoiding the Legal Pitfalls of Reopening Your Business During the COVID-19 Pandemic

For Today's Session



- Webinar will be recorded
- All Attendees will be placed on mute
- Questions may be input into the Questions Box within the GOTOWEBINAR
- Survey will be sent after the webinar



Our Presenters



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Legal Disclaimer



The information presented today is provided for educational purposes and should not be considered legal advice.

Employment Claims on the Rise due to COVID-19:

1. Worker's Compensation Woes
2. Workplace Safety Complaints
3. FFCRA Frustrations
4. ADA Failures to Accommodate
5. Wage and Hour Complexities
6. Surprise Claims
7. Q & A



Worker's Compensation Woes

Rebuttable Presumptions for Front-Line Workers

- Completely changes the analysis of work comp claims
- If an employee must report to employer location for work, then got COVID-19 at work and presumption of compensability
- Makes qualifying for work comp exceedingly easy
- Alaska, Illinois, Michigan, Minnesota, among others, with still others pending legislation

Worker's Compensation



Expect an overall increase in claims

- Impacts won't be felt equally as many unemployed
- Telework is recommended, if possible
- Compliance with OSHA guidelines for environmental and administrative controls can also mitigate exposure
- <https://www.osha.gov/Publications/OSHA3990.pdf>

Workplace Safety Complaints



These claims involve actions alleging that employers failed to adequately protect employees from on-the-job coronavirus transmission.

Include allegations that the employer failed:

- To enforce physical distancing
- Effectively clean the workplace
- Provide masks or other PPE
- Safeguard employees from obviously sick employees

Workplace Safety



Establish a COVID-19 task force

Allow anonymous reporting of employee concerns

Adopt a Pandemic Response Plan (“PRP”) and adopt coronavirus workplace safety protocols

Continue monitoring public health developments



FFCRA Frustrations

Employees are regularly filing actions alleging violations of FFCRA and other leave laws

Include allegations that the employer:

- Wrongfully denied EPSL or EFMLA
- Failed to provide standard PSL under state/local laws
- Denial of FMLA or state versions like the California Family Rights Act
- Employees being fired for requesting leave

Be sure you understand the parameters of ALL possible forms of leave

Pay attention to the “human” part of HR

ADA Failures to Accommodate

A microscopic view of several coronavirus particles, characterized by their spherical shape and numerous spike-like protrusions. The particles are rendered in a glowing blue color against a dark blue background, creating a sense of depth and focus on the central text.

ADA Failures to Accommodate



ADA requires that employers accommodate qualified employees with a disability unless it would be an undue burden on the employer

Include allegations that the employer:

- Failed to consider accommodating at risk employees
- Denied work from home arrangements, even though telework possible
- Significant number of pregnant employees filing claims for failure to accommodate
- Retaliation for requesting accommodations

ADA Failure to Accommodate



Engage openly and honestly in the ADA interactive process to determine all possible accommodations

Get creative in considering all possible accommodations.

For help in considering possible accommodations, see <https://askjan.org/>

Wage and Hour Complexities



A number of wage and hour lawsuits are being filed

Include allegations that the employer:

- Failed to pay employees for all working time while remote
- Employers cut wages without proper notice
- Failure to pay employees for increased donning/doffing time
- State law differences for employees working from home

Wage and Hour



Be sure you understand all laws in the jurisdiction where your employees are working

Ensure proper classifications of employees as exempt/nonexempt

Surprise Claims



Additional claims are being tacked onto COVID-19 related lawsuits that probably wouldn't have come to light but for the COVID-19 claim

A server at a South Carolina restaurant was having a hard time breathing – told his manager he was leaving to get tested for COVID-19.

General manager texted after employee left saying he was terminated because he left without permission.

Suing restaurant for violating anti-retaliation provision of FFCRA **AND** for FLSA tip pool violations



Q & A

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