

Four key considerations for employers when the lockdown ends

In the coming weeks and months, employers across the state will begin to reopen their doors consistent with guidance and restrictions provided by federal and state authorities. With that comes a series of questions with respect to how that will be done, and what it means for employers and the “re-onboarding” process.



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COMMENTARY

Form I-9s

With respect to the Form I-9, the employment authorization required by the federal government, the first thing employers should do is to review their forms for employees to be rehired, and identify whether those forms were completed within the past three years.

Consistent with federal law, employees who are rehired within three years from the date of completion of their previous Form I-9 need not complete a new one unless the work authorization needs to be reverified for some independent purpose, such as expiration of a work authorization document. If the employee remains authorized as indicated on the previous Form I-9, he or she does not need to complete any additional documentation. In Section 3 of the previous Form I-9, simply provide the employee’s rehire date and sign and date the form.

In the event that the previous Form I-9 was completed longer than three years prior to the date of rehire, employers should go through their normal process to obtain a new Form I-9, along with the accompanying documentation with respect to work authorization. This may

be a great time for employers to also perform a thorough review of their existing Form I-9s to check for any substantive or technical errors that might be subject to scrutiny in the event that an audit is performed by the U.S. Citizenship and Immigration Services.

Oregon sick time

Absent an internal policy to the contrary, employers do not have a statutory duty to pay out accrued but unused time off under Oregon Sick Leave laws upon layoff or any other employment separation. However, in the event that an employee was laid off and not paid out for that time upon the layoff, Oregon employers are required to reinstate the employee’s sick leave balance in the event that he or she is rehired within 180 days; while Washington employers are required to reinstate the sick leave balance in the event that the employee is rehired within 365 days.

Employer policies

Now is a perfect time for employers to revisit their existing employment policies. New legislation, including Oregon’s

Workplace Fairness Act and the federal Families First Coronavirus Response Act (FFCRA), require employers to adopt and distribute new workplace policies.

For example, in Oregon, employers are required to adopt new written policies containing procedures and practices intended to reduce and prevent workplace discrimination and sexual assault.

With respect to the FFCRA, employers are required to post a specific notice providing employees with notice of their rights, including their potential eligibility for paid leave. Given the large number of employees who are working remotely, a copy of the notice, which is provided by the U.S. Department of Labor’s Wage and Hour Division, should be emailed to employees as well as posted in a conspicuous place at any physical work location. Employers should do this immediately if they haven’t already. The notice should be kept up until the anticipated end date of available benefits under FFCRA at the end of 2020.

With respect to more ordinary policies, such as those typically included in an employee handbook, employers should use this opportunity to present employees with a new copy of the handbook and any other applicable policies as part of the “re-onboarding process.” Keeping these policies in the forefront goes a long way toward employees’ understanding of the internal policies that govern their employment and in turn often mitigates the employer-side risk that arises as a result of internal policies that are unknown,

unclear or confusing.

Virus-related accommodations

As many individuals return to work, employers should continue to ensure that they are closely tracking federal and state guidance, as well as the statutory laws surrounding medical leave and reasonable accommodations. In addition to leave that might be available to employees under FFCRA for circumstances that include an employee’s need to stay home and care for a child whose school is closed, many employees (including those who are particularly vulnerable) may continue to request to work remotely even if the business decides to open its physical offices.

Although the question of whether an employer must accommodate an employee’s request to continue to telework after the physical office reopens is a fact-intensive inquiry that should be considered on a case-by-case basis, employers should err more than ever on the side of accommodation. Federal and state guidance suggests that employees should be allowed the option of remote work, if possible, into the foreseeable future.

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