



Takeaways from MHA Webinar:

COVID-19: What Healthcare HR Professionals Need to Know Part 2

April 6, 2020

Overview

In every healthcare facility in the US, human resources should be up-to-date on current legislation and policies that guide us in making important decisions related to our employees during this COVID-19 pandemic. In this webinar, Sommer Wiss, Associate at Foley & Lardner LLP, and Don Schroeder, Partner at Foley & Lardner LLP, detail current “need-to-knows” of HR professionals during these trying times. This includes the Temporary Rule for the Families First Coronavirus Response Act, recent FAQs on the ADA Reasonable Accommodation Requests, what to do when an employee refuses to come back to work because of COVID-19, and what to do if your employee has been exposed to COVID-19.

Need to Know

Temporary Rule for the Families First Coronavirus Response Act (FFCRA). There are 6 qualifying reasons for employees to take leave under the FFCRA. The 6 reasons are:

- The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a healthcare provider to self-quarantine due to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
- The employee is caring for an individual who is subject to a federal, state or local quarantine order, or is caring for an individual who has been advised to self-quarantine due to concerns related to COVID-19;
- The employee is caring for the employee’s son or daughter, if the child’s school or childcare facility has been closed or the child’s care provider is unavailable due to COVID-19 precautions;
- The employee is experiencing any other substantially similar condition specified by Health and Human Services in consultation with the Department of the Treasury and the Department of Labor.

However, under the FFCRA, employers may elect to exclude individual healthcare providers and emergency responders from the paid leave provisions. These individuals are specifically defined in the FFCRA. Employers are required to post a notice informing employees of their rights under the FFCRA. Under the Emergency Family & Medical Leave Expansion Act, employees are allotted up to 12 weeks of paid leave. Under the Emergency Paid Sick Leave Act, employees are allotted 80 hours of paid leave.

EEOC-Recent ADA Guidance. At this time, it is unclear whether COVID-19 is or could be considered a disability under the ADA. Employers should continue to engage in the reasonable accommodation analysis and in the interactive process with employees if they request a reasonable accommodation.

What to Do When an Employee Refuses to Come Back to Work. It is important that the employer remains sympathetic and investigates remote work capabilities. However, a “generalized fear” of contracting the virus is not an excuse for an employee not coming to work. If an employee is in a healthcare setting, the reasonableness of the refusal is dependent on the likelihood of exposure and if the hospital was unable to procure the necessary PPE. This must be balanced against the fact that patients need continuous care. Consider allowing use of vacation time, sick leave or other PTO benefits or unpaid non-medical leave, while keeping in mind

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staffing needs. Employers should exercise caution in determining how to handle refusal.

What to Do When Your Employees Have Been Exposed to COVID-19. Test-based strategies and non-test-based strategies may be used as guidance to determine when an employee may return to work after being excluded. Make sure to follow the CDC's latest guidance for your workplace on return to work criteria, available at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>.