

Top Issues in 2021: Employment in the COVID Era

THE OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Prior to March 15, 2021, OSHA intends to issue a Temporary Emergency Standard for COVID-19 safety compliance. This standard is expected to contain 10 to 12 elements, including risk assessment, written policy, training, screening, notification, testing, face covering, contact tracing, distancing, engineering controls, and leave policies.

These elements will each involve their own action items and expenses. For example, OSHA may require employers to acquire and pay for sufficient face coverings (and replacements) for workers; and to have systems to screen for symptoms, contact trace, provide testing, and quarantine infected/exposed workers. This new standard will likely compel even the most prepared employers to change their existing procedures. Expect to be bombarded with announcements about it in the coming weeks.

REMOTE WORK POLICIES

As employers look ahead to a post-pandemic world, many have decided to implement some version of a permanent remote work policy. Whether designed to allow employees to work remotely or on a hybrid model, these policies give employees the flexibility to work from anywhere they choose but can create legal and practical challenges for employers.

For instance, when employees shift to a remote work environment, taking adequate steps to safeguard confidential information and trade secrets becomes even more imperative. Many states also have strict reimbursement laws that likely cover a number of remote work expenses (e.g., cell phone and internet bills). Further, remote work arrangements can disparately affect different groups of employees, thus creating legal and employee relations issues. Therefore, employers should be prepared to assess the benefits and risks of adopting a remote work model that responds to the “new normal” and minimizes legal and financial risks.

MANDATORY & VOLUNTARY VACCINE PROGRAMS

As the national rollout of vaccines progresses, employers must now determine their own “vaccine plan.” This will involve answering several questions and making individual strategy decisions. For example:

- Will the employer require its employees to be vaccinated? If so, how will the employer handle religious and disability accommodations?
- If the program is voluntary, what steps can the employer take to encourage employees to get the vaccine?
- How will the employer ensure its employees receive the vaccine, particularly if the employer is deemed an essential industry by the state’s or municipality’s rollout guidance?
- Is there an opportunity to advocate for the employer to be higher in the vaccination rollout queue?

Recent OSHA guidance indicated that employers should arrange vaccinations free of charge and educate employees on the vaccine. It is essential to evaluate these issues now and reevaluate as the vaccine becomes more readily available. Employees will be looking to employers for guidance on these issues.

EMPLOYEE BENEFITS & TAX CONSIDERATIONS

COVID-19 legislation in 2020 gave employers relief opportunities in various forms, with different deadlines and tax considerations. These include:

- Giving participants access to their retirement plan assets through suspension of ongoing loan repayments and hardship-like distributions. These provisions expired at the end of 2020. Plan sponsors who made relief available should be sure to adopt appropriate plan amendments and administrative provisions.
- Year-end relief created flexibility in the use of Health FSA and Dependent Care FSA funds through expanded carryover and grace periods, optional spend-down for terminated participants, and other provisions. Plan sponsors will need to balance the desire to offer more flexibility to participants during this pandemic with the administrative hurdles of implementing this temporary relief.
- Employers that suffered a suspension of operations or a large decrease in gross receipts should assess whether they can claim an employee retention tax credit (ERTC), which is available through Q2 2021. Employers who received Paycheck Protection Program (PPP) funds were previously ineligible for the ERTC, but the year-end law expanded access.

HOW WE CAN HELP

Michael Best's Labor & Employment Relations Team helps clients throughout the country make employment-related decisions and plan for the future. Please reach out to one of the members of our Labor & Employment Relations Team for additional information regarding the topics referenced above or for any questions related to our labor and employment services.

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