

Can you believe we are still talking about the coronavirus into the second quarter of 2021? There is some talk that we will have to deal with related matters for another year. Let's hope not! I'm sure I speak for all of us, that we all want

to return to the "old normal".

Since COVID-19 is such a prevalent concern, we want to address some of the more important issues that have arisen in the past year and issues we will have to manage going forward.



COVID VACCINATIONS

We have received many inquiries regarding requiring employees to get a COVID-19 vaccination. Based on the below, we are of the opinion that employers cannot require vaccinations as a term and condition of employment at this time. There is a fair amount of ambiguity from the EEOC (Equal Employment Opportunity Commission)

Below are a few bullet points:

- Employers requiring employees to take the vaccine may have various liabilities issues.
- EEOC's guidelines centers on employer EXCEPTIONS when considering a mandatory vaccination policy.
- EEOC's position regarding vaccination falls under the Emergency Use Authorization process of the FDA. This means the FDA has to disclose the benefits and risks of taking the vaccine in addition to giving employees the option of declining the vaccine.
- At this time, the EEOC guidelines are vague as to how employers can legally mandate covid vaccinations.
- EEOC does state employees with disabilities and those who object tak-



ing the vaccine due to religious beliefs could be exempt from the vaccine.

- Employers must determine if the employee will pose a direct threat to the workplace if that employee refuses to take the vaccine for reasons other than those stated above. Employers could allow other accommodations for those employees to alleviate the threat of legal action.
- EEOC notes mandatory vaccination policies could raise concerns regarding confidentiality of employees' medical information.
- At this time, OSHA, CAL/OSHA, CDC have not determined additional guidelines for employers. The Department of Fair Employment and Housing

has not provided clear guidelines for mandatory vaccines in the workplace.

- If employers start mandating vaccines to employees as a condition of employment, there is the possibility all costs of vaccines and time off for getting the vaccines will be at the employers' expense.

Currently, the vaccine remains unavailable for non-essential businesses. However, employers should continue to follow safety protocols and encourage their employees to take the vaccine rather than mandate it. Accordingly, employers should continue to keep current on EEOC's guidelines for employees' health and safety.

REMOTE WORK POLICIES

Many employers have responded to business and the Coronavirus Pandemic with remote work assignments. We received numerous inquiries about drafting remote work policies. Here are eight general rules every policy should address:

- **ELIGIBILITY:** Determine what positions are eligible to work remotely, and state them in your policy. If you have no remote-compliant positions state that from the beginning, eliminating any future requests or inquiries about remote work.
- **AVAILABILITY:** If you allow remote work, then availability expectations should be outlined in the policy. Whether it is establishing a blanket 9 a.m. to 5 p.m. work requirement, or letting employees set their own schedules, either should be put in a policy.

- **RESPONSIVENESS:** Define whether a remote employee is expected to respond to a co-worker immediately and specify what modes of communication should be used.
- **MEASURING PRODUCTIVITY:** Remote work policies should specify how an employee's productivity will be measured.
- **EQUIPMENT:** Remote workers need the right tools to complete their work. Therefore, companies need to state what equipment they are willing to offer to these employees. If employers expect employees to provide their own computers, for example, then they need to specify that.
- **TECH SUPPORT:** Specify what tech support will be offered to remote workers. Outline what remote employees are expected to do when having technical difficulties, so there is a plan of action.



- **PHYSICAL ENVIRONMENT:** For health and safety, some employers prefer or require an employee's physical environment to be approved prior to working remotely.
- **SECURITY:** When information is taken out of the office, security is not guaranteed. Employees need to be extremely careful when doing work in public and rules must be put in place to guarantee electronic security and proper disposal of paper.

POLITICS IN THE WORKPLACE

These past few months have been fraught with issues concerning politics in the workplace. Employees have different points of view and employers are faced with how to manage an environment where people have "heated" differences.

RESTRICTING DISCUSSION

As you consider options, it is recommended that you look at your workplace culture and understand what type of conversations employees were having before the COVID-19 pandemic. How active were political discussions in the workplace before all of this happened? Determining the

workplace culture will help you figure out what is going on with employees and where to draw the line.

Private sector employers may prohibit their workers from talking about politics or what the President is or is not doing. You should use caution in that these rules are very hard to enforce, especially since employees may be working from home, and can communicate with each other directly via Facebook or through text messaging.



If you decide to restrict political discussion, employers should keep a few things in mind:

First, if a topic is an issue of public concern, the discussion cannot be

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restricted. For example, it is hard to restrict conversations about President Biden having health issues because at the end of the day, he is our country's leader.

Second, you can ask to balance employee productivity and speech. The courts have ruled that free speech in the workplace is not an "unfettered right," and employers can ask workers to discuss politics only while on their meal and rest breaks.

Last, banning political discussion must be content neutral, for example, employers cannot ban talk about Democrats but allow conversations about Republicans, and vice versa.

HOW CAN YOU HEAD OFF PROBLEMS

How can you navigate such workplace situations and keep them from becoming toxic?

Ask your employees, "How many of you agree respect is important at work?" You can start that discussion and people will see that a good, respectful culture leads to a better work environment.

Getting things out in the open helps, since it can lift the tension and make people realize that there are co-workers who see things differently—and that's OK.

What's not OK is using "disagreement" as a shield for harassment or an inability to work cooperatively with others. One suggestion is to prepare a communicate spelling out the company's policy that everyone's opinions

are to be respected and that doing so is how to build a better work environment.

Here are some actions to consider:

- Establish office policies and hold training sessions on showing respect to co-workers, but don't focus specifically on politics, which can have the effect of fueling conflict.
- Clearly define what constitutes an "opinion" and what rises to the level of harassing another worker.
- Set an example at the top. If the boss talks openly about supporting one candidate or another, employees can feel intimidated or worry they'll be treated differently if they disagree. Managers should stay mum. Don't use social media to discuss politics.
- Consider keeping political programs off the televisions in the office, including those in the break room.
- Steer conversations in meetings away from politics or keep discussion to the more generic aspects of an issue.
- Limit or ban visual displays in the office, such as campaign buttons, bumper stickers, and posters.
- Be careful not to run afoul of federal and state laws that protect certain types of speech. The National Labor Relations Board protects workers discussing unionization and workplace conditions.

COMPLAINT PROCESS

Oversight of political conversation can be very difficult, so it's important that employers have a complaint process in place in case a conversation escalates or

goes beyond what the company's leadership team has set down in policy.

Employers should have an open-door policy where people can come in and bring forth an issue about something that is not just equal employment opportunity-related, not just about harassment, discrimination, or retaliation. It is important for someone in leadership to say, 'we want everyone to comfortable at work.'

Communicating this is especially important in places where most employees lean the same way politically, and some employees feel as though they are part of a minority. It is important to protect those in the minority as much as everyone else.

As we all look forward to a world post-pandemic, there will be issues that arise that you have not seen before. We want you to know that you are not on your own. We are here to help you through those issues and beyond.

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