CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: Q&As Based on EEOC COVID-19/Pandemic Guidance

MARCH 25, 2020

Authors: Margo Wolf O'Donnell, Margarita S. Krncevic

The Equal Employment Opportunity Commission (EEOC) has updated its guidance on dealing with pandemics in the workplace and the Americans with Disabilities Act to address the coronavirus disease 2019 (COVID-19). In addition to following the EEOC's guidance, which is summarized in a question and answer format below, employers also should continue to follow guidance from the Centers for Disease Control and Prevention (CDC) and state and local health departments. For more specific guidance, consult your legal counsel.

Q&As Based on EEOC COVID-19/Pandemic Guidance

Question: May employers send employees home if they display influenza-like symptoms during a pandemic?

- Answer: Yes. Employers can send employees with COVID-19, or symptoms associated with it, home. Currently, these symptoms can include fever, chills, cough, shortness of breath, or a sore throat.

Question: How much information can employers request from employees who report feeling ill at work or who call in sick?

- Answer: Employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19.

Question: Can employers take employees' temperatures to determine whether they have a fever?

- Answer: Employers may take their employees' body temperatures, but must maintain the medical information about fevers or other symptoms confidential.

Question: Can employers ask employees about their exposure to COVID-19 during travel?

- Answer: Yes, employers may follow the advice of the CDC and state/local public health authorities about information required to permit their employees' return to the workplace after visiting a specific location, whether for business or personal reasons.

Question: Can employers

encourage employees to telework (i.e., work from an alternative location such as home) as an infection-control strategy during a pandemic?

- Answer: Yes.

Question: Can employers require employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of pandemic infection?

- Answer: Yes.

Question: Do employers have to continue to provide reasonable accommodations for employees with known disabilities that are unrelated to the pandemic, barring undue hardship?

- Answer: Employers and employees should use interim solutions to enable employees to keep working as much as possible, realizing that the extraordinary circumstances of the COVID-19 pandemic may result in delay in discussing requests and in providing accommodation where warranted.

Question: If an employer suspects that an employee has been absent from work for medical reason, can the employer ask an employee why he or she has been absent from work?

- Answer: Yes. An employer is always entitled to know why an employee failed to report to work. And, asking why an employee did not report to work is not a disability-related inquiry.

Question: Can employers screen applicants for symptoms of COVID-19?

- Answer: Yes. Employers can screen job applicants for symptoms of COVID-19 after making a conditional job offer (but not pre-offer) if it is a consistent practice for all entering employees in the same type of job.

Question: May an employer withdraw a job offer when it needs the applicant to start immediately, but the individual has COVID-19 or symptoms of the virus?

- Yes. Because the person cannot safely enter the workplace, an employer may withdraw the job offer.

Question: Can employers require employees who have been away from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work?

Answer: Yes. However, current CDC guidance discourages employers from requiring a doctor's note, or a positive test result, for employees who are sick to validate their illness, qualify for sick leave, or to return to work, so as not to overburden healthcare providers dealing with the COVID-19 pandemic.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

Margo Wolf O'Donnell at modonnell@beneschlaw.com or 312.212.4982; or

Margarita S. Krncevic at mkrncevic@beneschlaw.com or 216.363.6285

***

Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

