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Employment law, made simple.

March 3, 2021 Employment Law Bulletin **TIPS TO AVOID THE PANDEMIC OF** **COVID-RELATED EMPLOYMENT LAWSUITS**

Business owners cannot be surprised to learn that there have already been hundreds of lawsuits filed in California decrying employers' pandemic-related practices. So far, the majority of these cases have focused on two theories: (1) perceived failure to provide a healthy and safe workplace, and (2) failure to reimburse necessary business expenses. This California Employment Law Bulletin provides tips for employers to avoid liability under these theories.

Health & Safety Claims

The California Labor Code provides employees with broad protections against avoidable dangers in the workplace. These include laws requiring employers to provide workers, at a minimum:

- A place of employment that is safe and healthful. (Cal. Lab. Code §6400)
- Safety devices and safeguards, as well as adoption of practices, means, methods, operations and processes that are reasonably adequate to render employment in the workplace safe and healthful. (Cal. Lab. Code §6401)
- An effective written injury prevention program. (Cal. Lab. Code §6401.7)

It is important to know these obligations. Employers should also know that violations of these laws are typically redressed through claims filed under the Private Attorneys General Act of 2004 (PAGA). PAGA permits an "aggrieved employee" to step into the shoes of the Attorney General and bring a "representative" action to recover civil penalties against employers on behalf of themselves and other "aggrieved employees." The penalties under PAGA are \$100 for each aggrieved employee per pay period for the initial violation and \$200 per employee per subsequent violation. This can quickly expand a limited event into a major lawsuit.

The cases alleging COVID-related health and safety violations so far include at least the following assertions:

- Failure to have a written Illness Prevent Program.
- Failure to provide washing facilities to maintain cleanliness.
- Failure to conduct a hazard assessment to determine if COVID-19 is a hazard in the workplace, necessitating Personal Protective Equipment (PPE).
- Failure to establish infection prevention measures such as encouraging sick employees to stay home, implementing social distancing protocols or establishing procedures to routinely disinfect and clean commonly used surfaces.

Tips to Avoid Health & Safety Claims

Employers can avoid exposure for health and safety claims by:

- Developing and publishing a written Illness Prevention Program, include COVID-related measures.
- Implementing COVID-related measures, including social distancing, face coverings, disinfection, pre-shift and visitor temperature checks and symptom screening.
- Developing and maintaining a clear reporting structure for reports of potential COVID exposure or cases; communicate suspected or confirmed COVID cases to the workforce.

Avoiding Claims for Failure to Reimburse Business Expenses

The second focus of COVID-related employment lawsuits so far is employers' obligations, under California Labor Code §2802, to reimburse employees for necessary business expenses they incur. Traditionally, when workers *elected* to work remotely and from home, costs incidental to this decision have not been subject to the reimbursement requirement. However, where businesses, in response to COVID, have *mandated* that employees work remotely, this triggers the reimbursement obligation.

To help avoid these claims, employers should keep in mind the following potential costs requiring reimbursement:

- Use of personal mobile phone for business purposes;
- Wi-fi internet connectivity;
- Utility bills; and
- Purchased furniture to enable working remotely.

Importantly, the duty to reimburse is not unlimited. Employers are only required to reimburse *necessary* expenses. A top-of-the-line ergonomic desk chair costing several hundred dollars is not necessary. Further, to the extent that an employee had mobile phone and Wi-fi connectivity before COVID, the case law has clarified that employers are only required to reimburse a percentage of existing services that approximates the *enhanced* use attributable to mandatory remote working.

Best practices dictate that employers should develop and implement a clear written expense reimbursement policy that is communicated to employees in a manner that permits a signed acknowledgment that a worker has received and understands the policy.

Conclusion

Employers with questions about these recommendations should consult their experienced employment counsel. We are here to help you.

The Law Offices of Alex Craigie helps employers throughout California prevent, address and resolve employment disputes in a logical and cost-effective manner. Reach us at (323) 652-9451, (805) 845-1752 or at Alex@CraigieLawfirm.com.