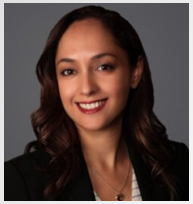
Guidelines for Returning Employees Back to Work During the COVID-19 Pandemic

Hanna B. Raanan



Webinar for BHCOE Members
April 30, 2020
10 a.m. PT

Ogletree Deakins

Employers & Lawyers, Working Together

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Agenda

- Introduction
- Deciding Which Employees to Return
- Address Seniority, Leave, Compensation, etc.
- Ensure Update Policies and Agreement
- Develop and Implement Safety Protocols
- Prepare Return to Work Notice
- Reporting to State Unemployment Agencies
- Responding to Employees Who Refuse to Return

Introduction

- There's a lot to keep in mind
- Highlighting only some of the issues
- Ogletree Deakins **Comprehensive Return to Work Guide**
  - includes a 30-minute consult with an attorney.
  - Email hanna.raanan@ogletree.com if you are interested in purchasing this guide and getting your free 30-minute consult that comes with the Guide.

- These are General Guidelines

Decide Which Employees to Recall

- Return of all furloughed/laid off employees to full duty;

v.

- Return of Some, but not all, furloughed/laid off employees to full or partial duty/schedules
- CARES Act/PPP: If you've received funds through the PPP, be aware of reinstatement requirements.

Ensure Updated Policies and Agreements in Place

- Prior to Recall
- “Never Let a Good Crisis Go to Waste” – Winston Churchill
- General policies
- COVID-19 Specific policies: EFML/EPSL policies
- DOL-Promulgated FFCRA Poster
- Flexible Leave/attendance policies
- Additional Resources for Employees
- Restrictive Covenant Agreements
- Arbitration Agreements
- New or Revised Compensations/Incentive Agreements
- E-Signatures

Develop and Implement Safety Protocols

- What does OSHA Require?
- Steps to Reduce Transmission among Employees
  - Social distancing protocols where appropriate or possible
  - Make PPE and other supplies available
- Employee Screening
  - Temperature checks or other screening for COVID-19 symptoms
  - Sending Employees home if exhibiting symptoms of COVID-19

Develop and Implement Safety Protocols

- How to Handle Sick, Symptomatic and/or Exposed Employees
  - Have a plan in place
  - Who to Notify, How

- Educate Employees on Safety Protocols
  - Consider getting acknowledgments of any written safety protocols from employees

Prepare a Return to Work Notice

Notice should include:

- *Return to Work Date*
- *Any special return to work instructions*
  - *New policies or new documents*
  - *Revised policies*
- *Notice of changes to wages, hours or deductions from pay*
- *Language reminding employees that employment is at-will and may be terminated at any time as applicable.*
- *Emphasis on the safety of the work environment*

Other Steps

- Ensure proof of delivery of notice
- Prepare “authorization to travel” notice if your jurisdiction remains subject to shelter-in-place order.
- Consider predictive scheduling Laws if applicable.
  - Several cities have predictive scheduling laws that require certain employers in certain industries to give advance notice of their work schedules. Would need to specifically evaluated.

Reporting to State Unemployment Agencies

- All state require employers to report re-hires and new hires.
- Some states require notification that an employee on furlough has returned to work.
- Reporting obligations will vary by jurisdiction (including the time period the employee must have been out of work in order to subject the employer to reporting obligations)

Responding to Employees Who Refuse to Work

- Can an Employee refusing to return to work collect unemployment benefits?
  - Probably not. If Job available, then employee not eligible for unemployment benefits.
  - COVID-19 related revisions: States generally will make an exception if the employee has a good faith belief that they are at risk.
- DOL issued guidance
  - Individual only entitled to benefits if unable to work due to no fault of their own.
- CARES Act benefit and its effect on employees willingness to return to work

Other Topics

- Ogletree Deakins' Comprehensive "Return to Work" Guide

  Over 100 pages of information, including sample forms, policies, notices and a complimentary included 30-minute consult with an OD attorney
  Flyer with information will be available and you can contact me to order a copy.

	Decisions on employees to recall		Privacy and medical records
☐	Written RTW notices	☐	Positive employee relations plan
☐	Seniority, compensation, and benefits	☐	Diversity and inclusion considerations
☐	Updated policies and agreements	☐	Pay equity in the RTW process
☐	Unionized employer RTW issues	☐	RTW drug testing/background checks
☐	Safety protocols	☐	Federal/state WARN Act implications
☐	Health screening procedures	☐	OFCCP/AAP requirements
☐	Reporting to unemployment agencies	☐	Preparing for terminations if needed
☐	Employees who refuse to work	☐	Challenges unique to global employers
☐	Payroll deductions/garnishments	☐	Immigration solutions
☐	Trade secrets/restrictive covenants		
	23 Separate Templates, Checklists, Surveys, and Flowcharts:		
☐	Guidance for RTW selection process	☐	Detailed employee screening protocol
☐	Summary of state mini-WARN acts	☐	Infection/exposure response flowchart
☐	Template RTW notice	☐	Safe work environment checklist
☐	“Authorized to travel” letter	☐	Acknowledgment of safety measures
☐	Accommodation request flowchart	☐	Questionnaire/Disclosure form
☐	State/local paid sick leave requirements	☐	Checklist for healthy work environment
☐	Template EFMLA and EPSL policies	☐	Unemployment agency requirements
☐	Template Work from Home policy	☐	Requirements for paycheck deductions
☐	Summary of cybersecurity measures	☐	Checklist for global employers
☐	Sample employee health screen log	☐	Sample termination notice
☐	Template questionnaire/disclosure		

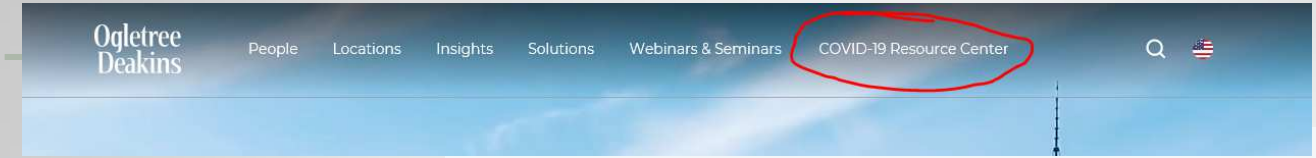
Wrap-up… For Now

Recommendations

- Monitor the latest guidance.
- Communicate regularly with your employees.
- Be flexible, but consistent.
- Communicate and analyze individual issues with HR and Legal.

Resources

Coronavirus Resource Center



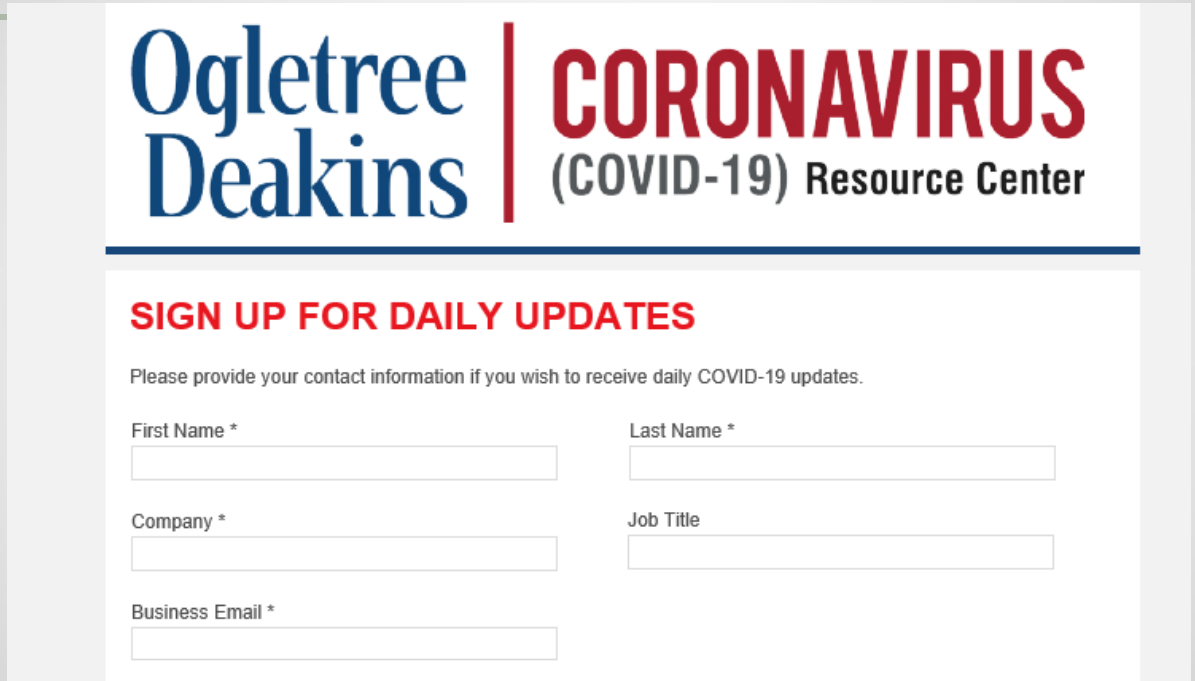
Ogletree Deakins | CORONAVIRUS (COVID-19) Resource Center

Coronavirus (COVID-19) Resource Center for Employers.

The Ogletree Deakins Coronavirus (COVID-19) Resource Center delivers the information and resources that employers need to minimize risk and remain informed about the many workplace issues related to the virus. During the outbreak—and the international response to it—employers must make critical decisions to ensure the safety and well-being of their workforces while accomplishing their goals.

https://ogletree.com/solutions/coronavirus-covid-19-resource-center/

Coronavirus Daily Update E-mail



Client Resources

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Complimentary:

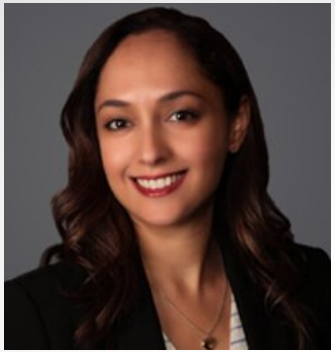
- Coronavirus Resource Center (includes numerous blog posts, podcasts, etc.)
- Detailed FAQs on federal labor and employment laws implicated by COVID-19
- On Demand Webinar Recording: Coronavirus (COVID-19) Update for Employers: Planning for the Potential Impact on Your Workplace
- Your Daily COVID-19 Update email (attorney-client privileged communication featuring the latest developments and recommendations). ***Available only to Ogletree Deakins clients.***
- Chart of Closure Orders for All States and Major Municipalities in the United States

Client Resources

Additional Resources:

- Template Documents ($250 each or $1,750 for all)
  - ✓ Pandemic response plan for employers
  - ✓ Manager communication guide
  - ✓ Sample employee and manager communications addressing common situations
  - ✓ Questionnaire/disclosure form for employees
  - ✓ Questionnaire/disclosure form for visitors to a company's facility
  - ✓ Travel risk acknowledgment
  - ✓ COVID-19 leave of absence policy
  - ✓ COVID-19 remote work policy
  - ✓ Sample remote I-9 guidelines
- Legal Research Surveys ($750 each or $1,000 for both)
  - ✓ 50-State Survey of Notice Requirements for Changing Pay or Hours
  - ✓ 50-State Survey of Predictive Scheduling Laws
- Legal Review and/or Customization of Client's Documents (hourly)
- Advice and Consultation (hourly)

Thank You



Hanna B. Raanan
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Phone: 714-800-7988
hanna.raanan@ogletree.com

695 Town Center Drive, Ste. 1500
Costa Mesa, CA 92626
714-800-7900
www.ogletree.com

linkedin.com/in/hraanan