

Q&A from Webinar: How to Develop a Return to Work Plan that Protects Your Employees and is Legally Compliant

- 1. Under our current Employee Manual part time employees do not have PTO. Do we need to consider revising the manual to allow part time to have PTO if they contract the COVID-19 virus?**

Answer: There is no legal requirement to do this, but it is a good idea. Consider having a temporary COVID-19 PTO policy providing paid time off if an employee needs it during this pandemic time.

- 2. Is it ok for an employer with critical infrastructure workers to only take the temperature of those employees that have been exposed to COVID-19, but showing no symptoms?**

Answer: This would be permissible under CDC guidance. Also, this practice would be a defensible practice from a discrimination standpoint because there would be a non-discriminatory basis for testing specific employees. However, it is difficult to know who all has been exposed. Taking temperatures on a broader basis provides greater protection from infection and engenders more confidence in your employees that the workplace is safe from the virus.

- 3. Can an employer have employees report temperatures instead of the employer taking them?**

Answer: Yes. For example, an employee could take their own temperature at home and then report their temperature to their employer.

- 4. Is it necessary to keep a log of temperatures taken?**

Answer: It is not necessary, but this is a good practice. An employer may choose to keep a full log of all temperatures taken or a limited log of only employees with a temperature over 100.4 degrees Fahrenheit.

- 5. Should salaried employees that work from home, but taking care of their kids, get paid their full salary or do those employees need to receive leave under the Families First Coronavirus Response Act?**

Answer: Typically, if an employee is salaried, they are entitled to their full weekly salary if they work any part of that week. However, where a salaried employee is working from home and taking care of their children, they may be eligible for leave under the FFCRA. FFCRA leave may be taken intermittently without affecting an employee's exempt status under the Fair Labor Standards Act.

6. What obligation does a business have to honor vacation time given the fact they have already provided pay during business closures via remote working? Or what recommendations do you have?

Answer: None. The extent to which you allow employees to use vacation while they are unable to work due to COVID-19 is up to you. In Alabama, there is no right to vacation time. It is a benefit. We recommend allowing employees to use any paid time off that is available to them under existing policy.

7. Are there specific steps or certifications needed to take employee temperatures?

Answer: There is no current guidance that suggests an employee that takes temperatures have any specific certification(s). Under the current guidance, any employee can take temperatures. An employer should consider having one person or a small group of people in charge of taking temperatures to ensure process consistency. Remember, taking an employee's temperature is a medical exam under the ADA and, therefore, the results must be kept confidential.

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