Employer Alert: Are You Prepared for the Coronavirus?

Friday, March 6, 2020

By now, we have all read plenty about what the Coronavirus, COVID-19, is, where it originated, how much it has spread and how we can all try to avoid it.

But one of the more drastic steps being taken by businesses is to instruct some or all employees to work from home, a practice commonly referred to as WFH. How many businesses, though, are truly prepared for a large population of employees working from home?

Here are just a few questions and issues, in no particular order, that come to mind when considering a WFH population.

**Equipment.** Are the WFH employees properly equipped at home to do the job effectively? Do they have a company computer or laptop? High-speed and secure wi-fi? Proper spam filter/security to ensure a computer bug/virus is not spread throughout the corporate server? Security/fire wall/encryption to prevent a hack and to ensure confidentiality of business records? Proper setups for video conferencing/telepresence? Simple items like a scanner/printer, office equipment, etc.?
Costs. If an employee is instructed to work from home, who pays for all the WFH equipment and supplies? Should an employee be forced to work from home, yet use his/her own personal computer/laptop to create work product? How does an employer protect confidential and proprietary information if work is being done on a family-owned/shared computer? Should an employee incur the costs associated with data usage or wi-fi and cell service when that equipment is being used for work purposes? Should an employee pay for all the paper and ink cartridges used up on the family printer, or is that something the company will reimburse?

Insurance. What happens if an employee working from home suffers a work-related injury? Would that injury be covered under the company’s worker’s compensation policy, or is the employee forced to file a claim under his/her own general liability/homeowner’s policy? And further, is the employee covered under the company’s short- or long-term disability plan if an injury is suffered at home but while performing work? Has the employer checked with its business insurance agent to discuss a WFH scenario?

Wage-and-hour issues. Are companies equipped to address wage-and-hour issues normally associated with a WFH workforce? Is a mechanism in place, such as a recordkeeping and time-management program, to account for overtime for non-exempt employees working from home? How does an employer address wage-and-hour/time-clock abuse in a WFH scenario? What if a non-exempt employee typically has a commute to/from work that is generally an hour or so, but now that employee puts the commuting time into his/her work, meaning he/she is actually working two hours more every day (or claims to be anyway)? Will that OT disrupt budgets and work schedules, creating a fiscal dilemma?

Compliance with other workplace laws. Is the employer familiar with applicable state and federal law governing paid sick time, anti-discrimination and disability-related leave laws with respect to WFH employees? What about the OSHA requirement that every employer must provide a safe and healthy work environment? If an employee is instructed to work from home, does the OSHA safe and healthy workplace requirement apply to one’s home (which is now the workplace)? Pretty far-fetched to think so, but if an employer orders an employee to work from home, shouldn’t the employer have a duty to ensure that the employee is safe in his/her new work environment? And if so, is an employer thus obligated to conduct an inspection of the home to confirm that it is a healthy place to work? What right does an employer have to demand changes be made in the home to make it a safe and healthy workplace?

Productivity. As an employer, should you expect the same type of productivity from someone working from home as you do if that person was in the office? What about typical distractions ordinarily found at home, such as children, pets, television/radio, internet, and the worst offender, the kitchen (refrigerator, liquor cabinet, etc.)? What about background noise (kids, pets) while conducting business on the telephone or by video? Would you have a personal appearance/dress code requirement when working from home but conducting business by telepresence, or is it OK for the employee to be in pajamas, or shorts and a T-shirt?

In the event you find yourself with even just one employee forced to work from home, it is prudent to have a WFH policy in your Employee Handbook/Policy Manual,
addressing the issues above, and outlining the employer’s reasonable expectations with respect to each.

It has been almost 19 years since 9/11, almost 12 years since the financial crisis of 2008, and almost 8 years since Superstorm Sandy—really the last three times when there were dramatic disruptions in the workplace requiring employees to work remotely. Businesses were forced to make emergency contingency arrangements back then, and here we go again. What have employers learned since then? Are employers current on crisis management situations and business continuity plans, or did COVID-19 catch them off guard again?

Should you wish to discuss any of the issues raised above, or any other labor and employment law matter, please do not hesitate to contact any member of the GH&C Labor and Employment Law Department.

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