

Legal Overview of COVID Employee Issues without Cares Act Leave



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Disclaimer

- The information and materials herein are provided for general information purposes only and are not intended to constitute legal or other advice or opinions on any specific matters and are not intended to replace the advice of a qualified attorney.
- If you would like to reach me for legal advice regarding the application of these laws to your workplace or another legal matter I am available at:

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Scenario 1

- Bruce calls in to work to report he has COVID

Best Practices

Confirm

Confirm that you have written policies addressing when and whether employees may work in person if they have COVID or have been exposed to COVID



Advise

Advise your Human Resources “expert” or counsel of the situation



Determine

Determine what internal policies apply



Its only February and Bruce has no
vacation or sick leave available



Families First Coronavirus Response Act

It expired December 31, 2020

FAMILY AND MEDICAL LEAVE ACT - FMLA

- incapacitated by a “serious health condition” where complications arise, or who are needed to care for covered family members who are incapacitated by a serious health condition.
- up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons.
- entitled to the continuation of group health insurance coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period.

Serious Health Condition

- an illness, injury, impairment, or physical or mental condition that involves:
- inpatient care in a hospital, hospice, or residential medical care facility;
- or, continuing treatment by a health care provider.”

Questions

What is your FMLA policy?

Do you have an obligation to tell the employee about FMLA or do they have to ask for it?

What is the procedure for that?

Scenario 2

- Bruce calls to say he can't come in because he has to take care of his **child** who has COVID and he has no sick leave available?
- Is this a **serious health condition**?
- What if the child has been diagnosed with COVID but is **asymptomatic**?
- **Do you have a policy** addressing whether employees are permitted to work on site if they have COVID or if they have been exposed?

What
About
EFMLA
under the
Cares Act?

Can't Parents get leave under
the Cares Act to be with their
children?

Leave for parents who did
not have child care for their
children under the EFMLA
expired December 31, 2020



DAISY IS OBVIOUSLY NOT HIS REAL CHILD

A biological or adopted child, but also a “foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.”

Test:

The level of dependence the child has on the individual,
the age of the child,
the amount of support provided to the child by the
individual, and
the extent of parental duties exercised by the individual.

Scenario 3

- Bruce calls in to say he can't come to work because he has an underlying health condition and he is afraid of getting COVID



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- What do you know about Bruce's health condition?
 - What do you know about exposure at the office?

FMLA

- Leave taken by an employee for the purpose of avoiding exposure to COVID-19 **would not be protected under the FMLA.** Employers should encourage employees who are ill with COVID-19 or are exposed to ill family members to stay home and should consider flexible leave policies for their employees in these circumstances.

ADA – Americans with Disabilities Act

- Is the employee someone with a “disability”?
 - Has a physical or mental impairment that substantially limits one or more major life activities;
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment
- An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business.

Best Practices

- Confirm that you have written policies addressing when and whether employees may work in person if they have COVID or have been exposed to COVID
- Advise your Human Resources “expert” or counsel of the situation
- Determine what internal policies apply
- Determine whether the FMLA or ADA applies to your scenario
- Review the procedures to use under the FMLA or ADA to address the needs of the Employee
- If the ADA applies consult with the employee to explore any desired accommodation and determine whether the requested accommodation is feasible or whether it would impose an undue hardship

Helpful Links

- <https://www.dol.gov/agencies/whd/pandemic>
- <https://www.dol.gov/agencies/whd/fmla/pandemic>
- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

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