

EMPLOYER LAW BLOG

COVID-19: What Employers Need to know About Employee Privacy & Time Off

AUTHOR: CHRISTI COLEMAN

CONTRIBUTOR: JOHN GILBERT, NARCISA PRZULJ

In light of the recent COVID-19 epidemic, more employers are getting requests from employees to be able to work remotely, in fear of contracting the disease. As with any request for time off, employers must be mindful that there are state and federal laws that may govern such requests, such as the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA). These federal laws apply to employers with 50 or more employees, and 15 or more employees, respectively, and in addition to prohibiting discrimination and retaliation on the basis of a medical condition or related leave, they can provide for unpaid leaves for employees.

The FMLA allows for up to 12 weeks of unpaid time off to eligible employees in order to care for an employee's serious health condition or to care for an immediate family member with a serious health condition. These serious health conditions must be present, however – the mere threat of a serious health condition will not be enough to trigger an employee's rights under the FMLA.

Similarly, the ADA requires employers to make reasonable accommodations for employees with disabilities. Such accommodations may include job restructuring or working from home, but the accommodation is based on the existence of a disability, and not the threat of contamination or exposure to illness. Employees with pre-existing conditions which may weaken their immune system may be eligible for accommodations based on their suppressed immune system, but such requests should be verified by a physician and examined on a case-by-case basis.

Finally, employers should be mindful that, when requesting medical certifications, many healthcare providers are limiting access to patients with non-emergent situations, and thus, employers should be flexible on the timeliness of such certifications. Further, despite the widespread flow of information within the general public, employers should maintain the privacy and confidentiality of employee health information, distributing such information only to the individuals within the organization who have a need to know it for workforce planning purposes, and also potentially to local health authorities in the event of a COVID-19 diagnosis within the workforce.

For more information on how to evaluate employee requests for time off or remote working situations, please contact your labor and employment counsel.