



News & Types: Client Advisories

Opening Up Your Workplace Again - Part 5

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Practices: Employment, Labor & Benefits

EXECUTIVE SUMMARY

On Thursday April 16, 2020, President Trump unveiled his "Guidelines for Opening Up America Again" (the "Guidelines"). The Guidelines are designed to help state and local officials reopen their economies, get people back to work, and provide some initial topics for employers to consider prior to reopening. Masuda Funai is publishing a series of articles addressing the business, human and safety aspects that employers will need to consider as part of each company's individualized reopening plan.

Today's article will discuss the "Returning to Work" considerations with respect to "Special Accommodations for Vulnerable Employees." Please reach out to your relationship attorney with any questions.

Special Accommodations for Vulnerable Employees: As employers begin planning to return employees back to work, the Guidelines strongly suggest that employers provide special considerations for those employees who may be considered part of a "vulnerable population." According to the Centers for Disease Control ("CDC"), employees who are at high-risk for severe illness from COVID-19 are:

1. Employees 65 years and older, and
2. Employees ***of any age*** who have serious underlying medical conditions, such as:
 - moderate to severe asthma;
 - serious heart conditions;
 - immunocompromised from cancer treatments, smoking, bone or organ transplants, and other immune deficiencies;
 - severe obesity (body mass index of 40 or higher);
 - diabetes;
 - chronic kidney disease undergoing dialysis; and
 - liver disease.

Continuing to Work Remotely: As employees request various return-to-work accommodations, employers should evaluate each employee's request on an individual basis and with an awareness of any obligations

under a state or federal disability accommodations act. If a vulnerable employee does not feel comfortable returning to work after being informed of the safety procedures that an employer has implemented, the ability to continue to work remotely for an additional period of time may be a proper accommodation. Although many of the upcoming accommodation requests and employer responses will be grounded in applicable state or federal law, many requests will also be "first-time experiences" for HR professionals. As a result, in addition to the applicable law, an employer's culture and future-focus will help guide many employer decisions regarding a vulnerable employee's request to continue remote work.