

One Year Later: Planning for a Post-Pandemic Workplace

March 11, 2021

As we approach the one-year anniversary of the Coronavirus (COVID-19) pandemic and ensuing stay-at-home orders and social distancing mandates, there is light at the end of the COVID-19 tunnel. With the pace of COVID-19 vaccinations increasing across the U.S., employers should begin planning their post-pandemic workplace. In addition to evaluating if, when, and how, to bring employees back to the office, employers should review and revise employee handbooks and create new policies as necessary to address post-pandemic workplace changes. Specifically, employers should revise or create policies on remote working for those employees who will continue working remotely full time, or some of the time, and workplace health and safety policies for employees who will physically return to the workplace.

Policies on Remote Working

After spending most of 2020 working remotely many employers are considering not only when, but if, their employees will return full time to the office. While some employers may opt to remain all remote, many will implement a flexible or hybrid mixture of onsite and remote work. Employers who choose either the all remote or hybrid workplace model should develop remote work policies, or update their existing pre-pandemic policies, to address the protocols and expectations relating to remote work.

For employers implementing a hybrid workplace model, remote work policies should clearly articulate which positions are eligible for partial remote work and should set parameters for determining when work can be performed remotely versus when an employee must work in the office, including any minimum requirement for days or hours working onsite or guidelines for when an employee needs permission to work remotely. Remote work policies should make clear that employees working remotely are expected to be working, available and productive during core business hours and should define those hours. To the extent that non-exempt employees are permitted to work remotely, remote work policies should address how those employees will track and report their time, including procedures for requesting overtime authorization.

Employers also should address cybersecurity and electronic device usage in remote work policies. If an employer decides to allow employees to use personal electronic devices to access the employer's network to work remotely, then the employer should consider installing mobile device management software on any device that accesses the employer's email, document management system, etc., that will enable the employer to remotely terminate the employee's access to the employer's systems, and to delete or wipe the employer's information from the employee's device. Employers who utilize this software, or who use mobile device management software to monitor employee activity on devices, must inform their employees that the software is being installed on the employee's personal or employer-provided electronic device and of the consequences for misuse of the device.

Employers also should advise employees using employer-owned electronic devices that the employee should not save personal information, including documents and photos, on those devices because that information could be lost if the device is wiped upon termination of employment. With respect to cybersecurity, employers should include provisions in remote work policies:

1. reminding employees that they do not have an expectation of privacy when using devices that access the employer's systems;

2. clearly indicating that employees are not permitted to allow other members of their household to use or access employer-provided electronic devices;
3. prohibiting employees from emailing documents to their personal emails from the employer's system or locally saving the employer's documents or information; and
4. prohibiting employees from using public or unsecured Wi-Fi connections.

Employers who plan to continue to allow some or all of their employees to work remotely in the post-pandemic world will benefit from ensuring that they are prepared with comprehensive policies, whether stand alone or as part of their employee handbook, clearly defining the terms and expectations of remote working arrangements.

Workplace Health and Safety

Employers are responsible for providing a safe and healthy workplace free from recognized hazards for their employees. Indeed, the COVID-19 pandemic served to teach individuals and organizations alike the importance of prevention hygiene measures, such as frequently washing hands and wearing masks. Employers who did not have policies addressing workplace safety and health pre-pandemic should review guidelines from the Occupational Safety and Health Administration (OSHA), the Centers for Disease Control and Prevention (CDC) and their state and local governments and implement the guidance that applies to their particular industry.

In guidance issued on January 29, 2021 titled "Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace," OSHA recommended that employers identify a combination of measures, using a hierarchy of controls, that will limit exposure to COVID-19 in the workplace.^[1] Examples of such measures include:

1. Isolating and sending home infected or potentially infected employees;
2. Implementing physical distancing in all communal work areas;
3. Installing transparent shields or barriers where physical distancing cannot be maintained;
4. Providing and requiring use of face coverings;
5. Improving ventilation;
6. Providing the supplies necessary for good hygiene practices, including tissues and touchless trash receptacles, soap and warm water and touchless hand sanitizer stations in multiple locations;
7. Performing routine cleaning and disinfection; and
8. Requiring vaccinated employees to continue following protective measures, such as wearing face coverings and remaining physically distant.

In updated guidance on cleaning and disinfecting workplaces and businesses issued on March 1, 2021, the CDC continues to recommend that employers develop, follow, and maintain a plan to regularly clean and disinfect surfaces and objects that are frequently touched by multiple people, such as tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards and restroom fixtures, to reduce the risk of exposure to the virus that causes COVID-19.

The CDC also recently issued its first interim recommendations for people who have been fully vaccinated against COVID-19.^[2] The CDC interim guidelines indicate that it is safe for fully vaccinated people to spend time indoors with other fully vaccinated people without wearing a mask or social distancing and that vaccinated individuals can refrain from quarantine and testing after a known exposure to COVID-19 if the vaccinated individual is asymptomatic. Employers should note, however, that the CDC continues to recommend that fully vaccinated people wear masks and adhere to physical distancing guidelines in public and in the presence of unvaccinated people, and that they follow “guidance issued by individual employers.” Thus, while employers can anticipate that some of the more stringent recommendations relating to physical distancing and quarantine protocols will be revised as more employees are vaccinated, for the time being employers should continue to monitor CDC, state and local guidance and update their workplace health and safety policies accordingly.

Conclusion

As the increased pace of vaccinations helps usher in the post-pandemic workplace, employers should plan for the new normal for their individual organizations by determining whether, and when, teleworking employees will return to the workplace and having new or revised policies in place to set expectations for those who will continue to work offsite and mitigate risks for both employers and their employees as employees return to the workplace. Given the evolving guidance from OSHA, the CDC and state and local governments, employers are encouraged to consult legal counsel to assist in reviewing and revising their employee handbooks and policies in preparation for the arrival of the post-pandemic workplace.

* * *

[1] OSHA’s publication, “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace” is available here: <https://www.osha.gov/coronavirus/safework>.

[2] The CDC’s publication, “Interim Public Health Recommendations for Fully Vaccinated People” is available here: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>.

Carter Ledyard & Milburn LLP uses Client Advisories to inform clients and other interested parties of noteworthy issues, decisions and legislation which may affect them or their businesses. A Client Advisory does not constitute legal advice or an opinion. This document was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. © 2021 Carter Ledyard & Milburn LLP.

related professionals

Jeffrey S. Boxer / Partner

D 212-238-8626

boxer@clm.com

Judith A. Lockhart / Partner

D 212-238-8603

lockhart@clm.com