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## TOP 10 TIPS FOR EMPLOYERS' LEGAL RISK MANAGEMENT DURING THE COVID-19 PANDEMIC

### **#1 – Develop and implement a safety plan consistent with OSHA's "Guiding Principles."**

Based on new guidelines issued by the Department of Labor's Occupational Safety and Health Administration (OSHA), employers should develop individualized strategies to implement "Guiding Principles" for workplace safety. To name a few, OSHA's principles include hazard assessment, social distancing, and safety controls.

### **#2 – Identify personnel cost savings that do not result in heightened legal risk.**

To be resilient during these unprecedented times, many businesses have had no choice but to resort to furloughs, layoffs, and reductions in work. Under the Worker Adjustment and Retraining Notification Act (WARN), job loss may increase costs by triggering notification obligations. With a carefully planned strategy, however, businesses may avoid WARN entirely.

### **#3 – Adopt a "telework" policy.**

Considering the increased reliance on remote work (also known as "telework"), employers should consider adopting a telework policy. A legally defensible telework policy should provide specific criteria to address legal challenges, including recordkeeping, expense reporting, data security, and workplace safety.

### **#4 – Avoid liability for hidden areas of risk.**

According to guidance released by the Equal Employment Opportunity Commission (EEOC), what employers may think of as proactive care and protection could be legally actionable under the Americans with Disabilities Act, the Age Discrimination in Employment Act, or Title VII of

the Civil Rights Act. Employers are best advised to stop and think through a plan of action that meets the EEOC's standards for legal compliance.

**#5 – Streamline the accommodations process.**

Under the Americans with Disabilities Act (ADA), employers must make reasonable adjustments to the workplace where necessary to accommodate employees with “disabilities,” as defined by the ADA. With workplace hazards on the rise, employers should develop a practical procedure to address requests for accommodations that includes an ADA Accommodations Packet.

**#6 – Approach temperature screening with careful planning.**

As employees reenter the workplace, the value of protective options must be weighed against the cost of disruption. For certain employers, temperature screening is one protective option. When taking temperatures, employers should avoid recordkeeping practices that may lead to legal liability. Additionally, all employers are best advised to consult state-specific requirements.

**#7 – Manage legal risk by applying a systematic approach to employee recall.**

Laid off or furloughed employees are eligible for \$600 weekly in federal unemployment compensation, in addition to state unemployment compensation. Not surprisingly, employees are pushing back against employers' attempts to recall. To manage legal risk, employers should follow a systematic strategy for effective and legally defensible recall protocols. Depending on state requirements, employees' refusal of an offer of employment may disqualify them from unemployment compensation.

**#8 – Review and revise employee leave policies.**

To manage risk in other areas, including OSHA compliance and workers' compensation, employers may wish to adopt more flexible policies that allow employees to either work from home or take leave if they are not feeling well. Leave policies should also address the appropriate procedure to isolate and remove employees who are believed to be infected. Considering agency guidance, including OSHA and the EEOC, all policy revisions must be approached with caution.

**#9 – Require employees to report safety violations.**

To comply with OSHA standards and manage legal risk, employers should adopt a safety violation reporting procedure. Under a comprehensive procedure, employees should have multiple options for reporting and protection from retaliation. For maximum legal protection, employees should receive appropriate training and sign acknowledgement forms in receipt of the procedure.

**#10 – Understand employee entitlements under the Families First Coronavirus Response Act (FFCRA).**

As required by the FFCRA, eligible employees are entitled to paid leave for qualifying reasons, including COVID-19 quarantines and COVID-19-related childcare needs. Although the law may sound relatively simple, the FFCRA is implemented by extensive regulations and recently issued guidelines from the Department of Labor. If properly implemented, the FFCRA may entitle certain employers to tax credits.