

NJSBA

PANDEMIC TASK FORCE

Changes to Handbooks, Policies and Procedures



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YOU

The COVID-19 pandemic has caused many law firm leaders to reevaluate their handbooks, policies and procedures. Each law firm will need to determine whether it is appropriate to make permanent handbook, policy and procedure revisions or create an addendum or standalone handbook or set of policies and procedures to govern the COVID-19 pandemic. Regardless of format chosen, and most importantly, law firm leaders must be prepared to continuously revise or modify their handbooks, policies and procedures as Executive orders are issued and/or new “best practices” information or guidance becomes available from the U.S. Centers for Disease Control (CDC) or other state or federal agencies.

TIME AND ATTENDANCE/TELECOMMUTING

It is most critical to put in place a telecommuting policy, more commonly referred to as a work-from-home policy. This policy can easily serve as the foundation upon which multiple procedures, e.g., those pertaining to technology and confidentiality, are addressed. In addition, these policies often instruct how non-exempt employees without billable hour requirements are to track their workflows. For example, should you require a receptionist to provide a daily call log? Should you ask an administrative assistant to provide a daily to-do list or a summary of projects worked on and completed? Work from home policies should take into account hours work and overtime requirements and require that any overtime be preapproved in writing. In short, a firm needs to consider how it will monitor and supervise the work of staff when they are working remotely and clearly provide for same in a work from home policy.

When it is safe and permissible by law to return to the physical office, policies on sick time, attendance, medical accommodations, health screening and/or monitoring should be reviewed and revised as needed to take into account the unique challenges of COVID-19.

Consideration must also be given to indoor occupancy rates, workday start and end times, and meal and break periods. The more the firm can stagger start times, break and mealtimes, the better. For example, best practices suggest it is safer to have a rotation of in-office employees by week, not day. Adjusting start and end times prevents crowding and congregating in doorways, elevators, lobbies and other common areas. Meal and break periods may also require modifications to or implementation of a new schedule. Determinations must be made as to whether breakrooms and cafeterias will be open or closed and whether employees will be permitted to leave the office for meal and break periods. Note that if employees are told not to leave the office for meals or breaks, they may continue working exposing the firm to overtime claims. If you allow overtime, have employees submit requests in advance and provide accompanying details.

Though there are law firms that differentiate between vacation, sick and personal days, for purposes of this report, we will refer to days out of work as paid time off (PTO). Firms should develop a PTO policy that takes into account days out of work as a direct result of COVID-19 and/or the state's health emergency. The policy should take into account days out of the office which are mandated by law, encouraged by the firm, or taken as a result of some medical reason. Also consider if carryover and/or payouts will be offered and if unpaid time will be granted for those who may not have PTO days available or the opportunity to accrue enough PTO days to cover future plans. A PTO policy should also address how requests will be handled upon return to the office, when an uptick may occur in employees seeking time off. That is particularly important if there has been limited use of PTO days during the work-from-home months and carryover or payouts are not an option.

LEAVES OF ABSENCE FOR PROTECTED REASONS

The size of a law firm will dictate what laws apply related to leaves of absence for protected reasons. Laws that must be reviewed include:

- Families First Coronavirus Response Act (FFCRA);
- Family and Medical Leave Act (FMLA);
- Americans with Disabilities Act (ADA);
- New Jersey Family Leave Act (NJFLA);
- New Jersey Earned Sick Leave Law;
- New Jersey Family Leave Insurance Benefits Law, effective July 1, 2020;
- New Jersey Law Against Discrimination; and
- New Jersey Unemployment Insurance, Temporary Disability Insurance (TDI) and/or Workers' Compensation may also apply¹.

WORKPLACE DISCRIMINATION, HARASSMENT/RETALIATION AND CODES OF CONDUCT

Concerns about claims of workplace discrimination, harassment and retaliation specifically related to the COVID-19 pandemic primarily involve the New Jersey Law Against Discrimination, Title VII of the Civil Rights Act (prohibiting discrimination based on protected traits like race or national origin), the Age Discrimination in Employment Act (ADEA) the Americans with Disabilities Act

(ADA), and in the case of retaliation, the New Jersey Conscientious Employee Protection Act (CEPA).

Employers need to be aware of potential claims by employees that they are being discriminated against because of a medical condition or disability, or their national origin or age, or that they are being harassed because of their medical condition, national origin, disability or age. Harassment may also occur if there is an employee who refuses to wear PPE or who takes a leave for COVID-19-related reasons. Claims for retaliation could be asserted by employees who take COVID-19-related leave or who report unsafe working conditions.

Any complaint of discrimination, harassment or retaliation should be carefully investigated, and prompt effective remedial action should be taken.

COMPENSATION AND BENEFITS

Numerous issues related to compensation must be considered in the context of COVID-19. For example, does the firm intend to adjust billable hour requirements, origination percentages, bonuses and/or raises to combat reduced intake and/or collections? Will adjustments cover 2020 or beyond? If forecasting suggests that the impact of COVID-19 may extend beyond the firm's current fiscal year, will the firm consider making these adjustments permanent to lengthen the period in which to recoup lost business and/or revenue? Whatever the decision the firm makes on all of these issues, it is imperative that the firm promptly and effectively communicate changes to compensation and benefits policies to employees. Employees need to understand what they need to do to earn compensation and benefits. Importantly, if the rules of the game have changed given COVID-19, that must be effectively communicated to avoid claims.

With regard to benefits, employers need to consider whether they may want to deploy an off-cycle open enrollment period to allow employees who may have previously declined coverage the opportunity to reconsider their decision. If new employees are brought on board, the firm should consider reducing or eliminating the waiting period for benefits enrollment. Firms can also consider reducing or eliminating the employer contribution amount or percentage. If not already in place, firms can also consider offering supplemental insurance coverages like short- and long-term disability or long-term care insurance. Finally, given the impact of COVID-19, firms may want to consider reducing or eliminating the firm's employer contribution amount or percentage to your law firm's retirement plan. Benefits laws are complex. These are all issues that require serious consideration and evaluation to ensure that whatever steps are taken are compliant with the law and consistent with best practices.

TECHNOLOGY AND CONFIDENTIALITY; BYOD POLICIES

The issues concerning technology and confidentiality in the remote work environment primarily fall into two categories. The first is equipment the firm provides and the use and protection of that equipment. The second is the use of employees' personal devices for firm business and the protection of confidential firm information in that context.

To the extent it is feasible, it is best for the firm to supply each employee with a desktop computer or laptop and telephone for remote work. Printers, desktop scanners or compact multifunction devices can also be distributed to minimize workflow disruptions. Though allowing law firm-issued equipment to leave the office may occasionally result in damage, loss or theft, the benefits far outweigh such risks. Firm-issued equipment makes it easier to track employee productivity, ensure proper security measures are in place and allow the firm to gain access when troubleshooting is necessary.

If it is not possible to provide each employee with a firm-issued desktop computer or laptop and/or telephone, additional protocols must be enacted to ensure law firm and client data is not compromised. The firm should consider implementing a "Bring Your Own Device" (BYOD) policy. These policies can be complex. Because the firm wants to ensure it properly protects confidential and privileged information, the firm should seek advice from a practitioner familiar with these policies and best practices.

Here are some initial considerations for such a BYOD policy:

- A. **No Expectation of Privacy.** All materials, data, communications and information, including but not limited to email (both outgoing and incoming), telephone conversations and voicemail recordings, instant messages, and internet and social media postings and activities (content) created on, transmitted to, received or printed from, or stored or recorded on the device for the company's business or on behalf of company is the property of the company, regardless of who owns the device(s) used. The company should reserve the right to monitor, intercept, review and erase—without further notice—all content created on, transmitted to, received or printed from, or stored or recorded on the device for the company's business or on behalf of the company.
- B. **Security Requirements for Personal Devices Used to Conduct Company Business.** All devices used for or on behalf of the company must be registered with and authorized by the company. To protect the company's confidential business information from being lost or becoming public, the employee must immediately report any device used to conduct company business or on behalf

of the company that is lost, stolen, accessed by unauthorized persons or otherwise compromised so the company can assess the damage and, if necessary, remotely erase the entire device. An employee must also promptly provide the company with access to the device when requested or required for the company's legitimate business purposes, including in the event of any security incident or investigation. Employees should also password protect the device and change passwords regularly, prohibit the use of the device by anyone not authorized by the company, including family, friends and business associates, and not back up the device locally or to cloud-based storage or services without the company's consent.

C. Appropriate Use of Personal Devices. The employee should agree not to use any device in a manner that may be construed by others as harassing or offensive based on race, national origin, sex, sexual orientation, age, disability, religious beliefs or any other characteristic protected by federal, state or local law. In addition, nonexempt employees using their own devices under the policy should be prohibited from using their devices for work purposes during nonworking hours without prior authorization from the company.

After the work-from-home period has ended, remember to restore restrictions to email accounts and/or software that non-exempt employees should not be accessing outside of the office.

HYGIENE AND DRESS CODE

When it is safe and permissible by law to bring workers back to the office, hygiene, and by extension, dress code, will be of utmost importance. Prepare and post the proper signage to remind employees to wash their hands and cover their faces when coughing or sneezing. Provide PPE like face masks or face shields, gloves, and head and/or feet coverings. Require personnel to wear such PPE when visiting common areas or a work area other than their own. Administer or arrange for training on how to properly wear and dispose of PPE and hold your employees accountable for compliance.

FACILITIES

In addition to the mandate of wearing PPE in common areas, determinations regarding occupancy and cleaning of those areas must also be made.

Any common areas, like cafeterias and bathrooms, that remain open should operate at a reduced capacity. No matter the frequency with which these areas are cleaned, they should also be stocked with cleaning supplies like disinfecting spray or wipes and paper towels.

Prepare and post the proper signage to remind employees to wipe down shared equipment before and after use. If possible, limit use of shared equipment to only those residing on the floor where the equipment is located. This is recommended for common areas, as well. Remove staplers, staple removers, hole punchers, tape dispensers, letter openers, etc. from common areas.

VISITORS

The best and most obvious practice regarding visitors to the office is to ban them during the pandemic. That will minimize exposure and make it easier to track and inform those who have been exposed if there is an infection. Some other options to consider are:

- Discontinue walk-in appointments.
- Continue to conduct client meetings virtually.
- Strongly recommend the continuation of interoffice meetings virtually.
- Depending on your office location, consider holding necessary in-person meetings outdoors.
- If outdoor space is unavailable, require clients to wear PPE and stage the meeting location. Reduce the number of chairs available; eliminate pens and notepads, and strictly limit the number of attendees. Consider asking visitors to sign COVID-19 acknowledgements and to sign waivers.
- Vendors delivering supplies or mail should leave those deliveries outside the office whenever possible. Ask staff who receives deliveries to use gloves and wipe down packages thoroughly before disseminating them to others or stocking shelves.
- If any employee works in more than one office location, ask that employee to remain in a single office location during the pandemic.

TRAVEL

Restrict business travel as much as possible. When business travel is required, consider imposing a quarantine (as a supplement to those required by law² and/or health screening condition before the employee is allowed to return to the physical office.

Personal travel is much harder to govern. Given the unique circumstances presented by COVID-19, consider asking employees to provide details of their

intended travel. Employees who choose to travel to “hot spots” or out of the country should be advised that they will be required to self-quarantine for at least 14 days upon their return and take part in a health screening before returning to the office. The firm will have to determine if the quarantine period will be covered by the employee’s use of additional PTO days, or if the firm will not count that time as out-of-office time.

Finally, consider how you plan to handle employees with secondary employment. Uniformity and consistency are also critical here. Note that an employee who works as a volunteer paramedic presents different challenges than an employee who works in a retail store.

EXPENSE REIMBURSEMENT

Firms should consider whether they want to develop and/or revise an expense reimbursement policy to cover costs related to working from home, like printer ink or toner or increased telephone bills. That decision should be communicated to the workforce. Also, consider extending the time for the submission of expense reimbursement requests given the current circumstances.

Endnotes

1. <https://protect-us.mimecast.com/s/NooxC9rAqWiA8MEH0dtrS>.
2. <https://protect-us.mimecast.com/s/Mp7WC0Ro5KiQjMwHrVA66>