



fei financial executives
international
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A Primer on COVID-19 in the Workplace for Financial Professionals

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Your questions answered on...

American Rescue Plan Act

Vaccines

Returning v. Telework

Taxing Teleworkers

Where are we now?

- ▶ President signed 3/11/21.
- ▶ 1.9 trillion (vs. 1.8 trillion CARES Act).
- ▶ Dollars spread wide.
 - ▷ Vaccine funding; stimulus payments; pension stabilization; healthcare subsidies; unemployment; and more.

Key Questions

1. Does ARPA provide additional employee leave benefits?
2. Did ARPA extend enhanced UI benefits?
3. Did a COBRA subsidy make the final bill?

Polling Question #1

1. Did your company voluntarily provide paid COVID-19 related leave after expiration of Families First Coronavirus Response Act (FFCRA)?

YES

NO

UNSURE

Don't forget
documentation
requirements.

Key Questions

- ▶ **Does ARPA provide new leave benefits?**
- ▶ No new leave for private sector.
- ▶ Can reset sick leave 4/1/21, but not required.
- ▶ Extended payroll tax credit for voluntary paid leave through 9/30/21.
 - ▷ Caps remain \$511 (self)/\$200 (care).
- ▶ Leave for vaccine now covered.

ARPA

Key Questions

- ▶ **Does ARPA extend enhanced UI benefits?**
- ▶ Extends \$300 enhancement through 9/6/21.
- ▶ Increases benefit period to 79 weeks (from 50).
- ▶ Extends PUA program.
- ▶ First \$10,200 paid in 2020 not subject to federal income tax (lost if AGI >\$150k).

Plan now for
notice
requirements!!!

Key Questions

- ▶ **Did a COBRA subsidy make the final bill?**
- ▶ 100% subsidy for premiums 4/1/21 - 9/30/21 for AEI.
 - ▷ Ends earlier if hit 18 months or obtain other coverage.
- ▶ Employers pay for coverage and recoup via credit against quarterly taxes; refund if excess credit.
- ▶ Special enrollment period 60 days post 4/1.
- ▶ New notice requirements; models expected.

VACCINES

Where are we now?

- ▶ Pfizer, Moderna, and J&J received EUA and being distributed to priority populations.
- ▶ As of 3/15/21:
 - ▷ 21.6% received one dose
 - ▷ 12.3% fully vaccinated
- ▶ Phase 1C (3/29) will include certain pre-existing conditions (asthma, cancer, overweight or obese, diabetes, high blood pressure).
- ▶ General public: eligible 5/1, but access?

VACCINES

Key Questions

1. Can we require that employees be vaccinated in order to return to the office?
2. What are most employers doing with respect to vaccinations?
3. If employee has an adverse reaction to vaccine, is the employer liable?
4. Can we offer incentives to encourage employees to get the vaccine?

VACCINES

Key Questions

- ▶ **Can we require that employees be vaccinated in order to return to the office?**
 - ▷ **Yes**, so long as you make exceptions for:
 - ▶ Disabilities (ADA); and
 - ▶ Religious beliefs (Title VII).

VACCINES

Remember to...

- ▶ Check state and local law to ensure no prohibition on mandatory vaccines.
- ▶ If mandating, recommend written policy.
- ▶ Establish process for reviewing exception requests and communicate it to employees.
- ▶ Can get proof of vaccine but no medical info.

VACCINES

Polling Question #2

- ▶ What is your company's policy on employees getting the vaccine?

REQUIRED

ENCOURAGED

NEUTRAL

VACCINES

Key Questions

- ▶ **What are most employers doing with respect to vaccinations?**
 - ▷ **Encouraging or neutral**, but not requiring.
 - ▷ Rationale:
 - ▶ Legal pitfalls of navigating accommodation requests.
 - ▶ Avoid info on disabilities and religious beliefs.
 - ▶ Questions on safety and efficacy of vaccine.
 - ▶ Staffing/labor concerns.

VACCINES

Check with your
carrier about
coverage.

Key Questions

- ▶ **If employee has adverse reaction to vaccine, is employer liable?**
 - ▷ If mandated, likely work comp coverage.
 - ▷ If encourage or neutral, low risk.
 - ▷ Don't assume WI civil liability shield applies.
 - ▶ Shields liability for death, injury, or damages related to a COVID-19 infection.

VACCINES

Don't forget to add incentives to regular rate.

Key Questions

► Can we offer incentives to encourage employees to get the vaccine?

▷ Legal risks:

- Discrimination claims by those unable to get vaccinated for health or religious reasons.
- Proposed EEOC regulations only permit de minimis incentives.

▷ Recommendations: until EEOC issues further guidance, offer PTO or nominal value (<\$25).

RETURN VS. TELEWORK

Where are we now?

- ▶ Different experiences for manufacturing/food production vs. others.
- ▶ More employees and functions returning to office in phased approach.
- ▶ Early fall common target for “full return.”
- ▶ Permanent telework or hybrid now options for many, including non-exempt.

RETURN VS. TELEWORK

Key Questions

1. Do we have to continue to follow COVID-19 safety measures in office?
2. Can we discipline or fire employees who won't return to the office?
3. How do I manage FLSA risk from teleworking non-exempt employees?
4. Do we have to reimburse teleworking employees' office expenses?

RETURN VS. TELEWORK

Trending:
COVID-19 safety
measures as a
topic of due
diligence in
deals.

Key Questions

- ▶ **Do we have to continue to follow COVID-19 safety measures in office?**
 - ▷ YES! Expected through 2021.
 - ▷ Requirements under state/local orders.
 - ▷ Civil liability shield incomplete.
 - ▶ Does not bar OSHA enforcement.
 - ▶ Exclusion for reckless and intentional conduct.
 - ▷ OSHA Emergency Temp Standard expected any day.
 - ▷ Enterprising plaintiffs' bar (public policy; nuisance).

RETURN VS. TELEWORK

Individuals who refuse to return based on COVID-19 may be eligible for PUA.

Key Questions

- ▶ **Can we discipline or fire an employee who won't return to the office?**
- ▶ Tread carefully and explore reason.
 - ▷ Medical condition (self) – explore accommodations under ADA (continued telework, leave).
 - ▷ Medical condition (household) – accommodation not required, but many employers are trying.
 - ▷ Specific, valid concerns about employer's COVID-19 safety measures – investigate and address or risk retaliation/ULP.
 - ▷ Generalized fear of virus – discipline, including term, may be appropriate. But consider staffing/labor market challenges.

RETURN VS. TELEWORK

Polling Question #3

- ▶ As a consequence of the pandemic, my company is considering allowing at least some employees permanent telework or hybrid options.

YES

NO

UNSURE

RETURN VS. TELEWORK

Key Questions

- ▶ **How do I manage FLSA risk from teleworking non-exempt employees?**
- ▶ **Standard:**
 - ▷ Employer must pay for all work it knows or has reason to know is being performed, even if not requested.
 - ▷ May have constructive knowledge of additional, unscheduled hours if should have known through reasonable diligence.
- ▶ **[DOL Field Assistance Bulletin 2020-5](#)**
 - ▷ Reasonable reporting procedure for non-scheduled time + pay for such time, even if not requested.
 - ▷ If employee fails to use, employer not required to use “impractical efforts to investigate further to uncover unreported hours of work...”

RETURN VS. TELEWORK

Remember to...

- ▶ Invest in timekeeping software or application.
- ▶ Revise or reiterate policies to include:
 - ▷ Employee will use system to contemporaneously record all hours.
 - ▷ Expectations for tracking and record breaks and meals.
 - ▷ Employees will not work outside their scheduled hours (including unpaid breaks) without authorization.
 - ▷ Company will pay for all reported hours, even unauthorized, but employee may be subject to discipline.
- ▶ Train on, monitor, and enforce these rules.
- ▶ Periodic audit/cross-reference of other systems.

RETURN VS. TELEWORK

Key Questions

- ▶ **Do we have to reimburse teleworking employees' office expenses?**
- ▶ Wisconsin: not a legal requirement, but some expenses commonly reimbursed.
- ▶ At least 10 jurisdictions have statutes or case law on employer's requirement to reimburse necessary business expenses (**CA**, IA, **IL**, MA, MT, NH, ND, SD, D.C., Seattle).
- ▶ Risks: claim under state law; FLSA if failure to reimburse dips employee below minimum wage.

RETURN VS. TELEWORK

Remember to...

- ▶ Explore whether employer owned equipment is more cost effective and/or secure.
- ▶ Written policy that:
 - ▷ Clearly outlines home office standards.
 - ▶ What is necessary for job and what is not.
 - ▶ Cost limitations.
 - ▷ Pre-authorization for expenses that are non-routine or over \$ threshold.
 - ▷ Process for requesting reimbursement.
 - ▷ Substantiation requirements (mixed use items).
- ▶ Monitor for further developments.

TAX

Where are we now?

- ▶ Employees choosing to work remotely in new state or no fixed location.
- ▶ Gaps in notice and/or reporting.
- ▶ Consequences for work comp coverage, unemployment, business registration, and taxes (for business and employee).
- ▶ States' responses all over the map.

TAX

Key Question

- ▶ **What are risks of employee teleworking in state employer doesn't operate?**
- ▶ Penalties for improper withholding.
- ▶ New (and unexpected) state/local tax burden.
- ▶ Subject company to new state laws (wage/hour; sick leave).
- ▶ Higher work comp premiums.

TAX

Remember to...

- ▶ Review state law for guidance on withholding or wavier of business nexus due to COVID-19.
- ▶ Require advance notice of work in another state.
- ▶ Limit telework to states in which employer is located and/or operates.
- ▶ Evaluate whether location changes are temporary.
- ▶ Check work comp policy to ensure appropriate and/or flexible coverage.



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