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LAW GROUP

**Reducing Legal Risk:
Protecting Against Claims Stemming
From the Impact of Covid-19**

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Today's Agenda

- I. Background
- II. Employment Agreements And Compensation
- III. Adverse Employment Action
- IV. Reasonable Accommodations
- V. Privacy
- VI. Proactive Steps, A Top Ten List

I. Background

- Legal Trends: The greater the economic uncertainty, the greater the risk of litigation.
- Counter cyclical patterns revealed themselves following the last 2008-2009 recession, and they are likely to repeat themselves.

II. Employment Agreements And Compensation

- Review offer letters and agreements.
- Properly tracking time worked.
- Managing communication.
- Review employee classification.
- Know the law where the employee works.

III. Adverse Employment Action

- Tips to avoid claims of **disparate treatment**
 - Layoffs, furloughs, or termination selection criteria.
- **Hostile Work Environment**
 - Fear should not be misdirected against individuals because of a protected characteristic, including their national origin or race.
 - After hours communication to non-exempt employees. Also ties in to potential wage and hour claims.

IV. Reasonable Accommodations

- The EEOC recognizes that allowing an employee to telecommute can be a reasonable accommodation.
- Review of who is protected.
- What employers should do.
- Engage in the interactive process.
- Document.

V. Privacy Violation Claims

- COVID-19 and health information
 - All medical information collected about employees must be stored **separately** from the employee's personnel file.
 - Similarly, if an employer requires **all** employees to have a daily temperature check before entering the workplace, the employer may keep a log of the results but must store the information to maintain confidentiality.
 - Employers cannot share employee COVID-19 status among colleagues.

V. More Privacy Consideration

- Even if your organization is not a HIPAA covered entity, ERs that sponsor self-funded group health plans may be covered entities.
- Teleworking: there are privacy concerns involved in the security of video conference platforms, cyber security, malware attacks, and phishing scams.

VI. Proactive Steps

1. Develop contingency plans for 2020 and beyond.
2. Review employee manual and employment agreements.
3. Communication with the team.
4. Educate and train the team for the way business is being conducted now.
5. Steps regarding employee engagement and retention.

VI. Proactive Steps Continued

6. Employee classification and wage and hour audits.
7. Traditional training.
8. Health and benefit plans.
9. Centralize decision-making.
10. Documentation.

THANK YOU AND QUESTIONS

Thank you!

Please feel free to reach out to us at The Wagner Law Group with any questions.

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