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COVID-19 EMPLOYMENT LAW CONSIDERATIONS

With staff members coming from all over the country and all over the world, camps should be aware of certain employment law considerations related to COVID-19.

- The J-1 visa program has been put on hold for two months. The suspension may be extended following that time period.
- Many countries have enacted their own travel restrictions, so even assuming the J-1 suspension is lifted, camps should watch developments in the home countries of their international staff.
- The Americans with Disabilities Act (ADA) protects job applicants and employees from disability discrimination. Most relevant to COVID-19, the ADA regulates: employer-mandated medical examinations of employees; the disability-related questions employers can ask applicants and employees; exclusion of individuals with disabilities from the workplace for health or safety reasons unless they pose a “direct threat” or a significant risk of substantial harm; and the provision of reasonable accommodations to individuals with disabilities during a pandemic.
- In 2009, the Equal Employment Opportunities Commission provided the following ADA guidance for employers addressing pandemics:
 - You can ask questions about symptoms of COVID-19.
 - However, you can't ask questions related to disabilities, such as whether an employee has a compromised immune system.
 - You can conduct medical examinations if “all entering employees in the same job category are subject to the same inquiries and examinations.”
 - In other words, you can check every employee’s temperature before allowing them into camp.
 - You can send employees home if they have symptoms of COVID-19.
 - This is straightforward for American staff, but what about international staff? Without specific guidance from the Department of Homeland Security, we may reasonably assume that employees on temporary visas would be treated as if they are on approved, unpaid leave during the time when they are not working.
 - You can request that employees who recently traveled stay out of camp until a certain number of days pass without symptoms.
 - COVID-19’s incubation period is 14 days.
 - You can require employees to adopt infection-control practices, such as hand washing, wearing masks in the kitchen, and related measures.
 - You can require employees to supply a doctor’s clearance prior to returning to work.
- The Centers for Disease Control provides additional guidance to employers:
 - Delay start dates for employees who have respiratory illness, fever, or other symptoms until they’ve been symptom-free (without medication) for 24 hours.

- Ensure that all employees know your sick leave policies, and that such policies are flexible so that sick employees are encouraged to delay their start date.
- Do not require a doctor's note to validate symptoms, because that discourages employees from staying home.
 - This is different from requiring a doctor's note to *return* to work.
- Separate sick employees immediately and send them home.
 - As noted above, consider the implications for international staff.
- Employees who are well but have a sick family member with COVID-19 should stay home. Likewise, employees who are well but have been exposed to an individual with COVID-19 should stay home.
- If you send an employee home, keep the decision confidential. You can tell other staff that a co-worker was exposed to COVID-19, but you should not identify the specific staff member.
- If you send an employee home, you should also send home all employees who worked in close proximity to that employee.
- Whether you have to pay employees who are on sick leave depends on state and local laws, as well as your contractual relationship your staff.
 - In New York City, employers with five or more employees who work more than 80 hours a year must provide *paid* sick leave. Other NYC employers must provide unpaid sick leave.
 - By contrast, in New York State, payment is not required for time not actually worked, so employers have no obligation to pay employees who are out sick.
 - Note that the Family Medical Leave Act (FMLA) frequently comes up in this context.
 - The FMLA requires employers to give up to 12 weeks of protected, unpaid leave to employees with serious medical conditions.
 - However, the FMLA only applies to employers who employ 50 or more employees in 20 or more workweeks – so FMLA does not apply to most camps.
- Employers take a risk by terminating employees who have COVID-19.
 - Under the ADA, employers cannot terminate employees because they have a disability, which is defined as a physical or mental impairment that substantially limits one or more major life activities.
 - If COVID-19 rises to the level of a disability (*e.g.*, because the limited ability to breathe impairs major life activities), then firing an employee with COVID-19 would violate the ADA. This has not been tested.
 - As noted above, state and local laws may provide additional protections and further limit an employer's ability to terminate a sick employee.
 - Note, however, that a federal appeals court recently ruled that a business *did not* violate the ADA by firing a *healthy* employee who took a personal trip to a region where she risked exposure to a deadly virus.
- Unfortunately, COVID-19 fears have led to discrimination against the Asian community. Remember, it is illegal to discriminate on the basis of race, ethnicity, and national origin. Employers should make decisions based on recent travel and exposure to COVID-19.