

## **COVID-19 Updates for Employers**

Paul Hilton, Paul Hilton Human Resources Consulting, LLC

Recently, the Equal Employment Opportunity Commission (EEOC) issued revisions to its COVID-19 pandemic questions and answers. The guidance addresses potential employment discrimination issues associated with returning laid off or furloughed employees to the workplace.

The EEOC repeats its earlier position allowing employers to take employee temperatures, ask questions, and otherwise try to keep symptomatic persons out of the workplace. Return-to-work scenarios based on such preventative measures will be permitted with individual employee identity and privacy safeguards in place.

Employers may also require employees to wear personal protective equipment such as masks, but the EEOC notes that such requirements may result in accommodation requests based on disability such as allergies, or religious objections. While such requests must be considered, the EEOC's classification of COVID-19 as a direct threat to employee health may mean that any such accommodation requirements will be limited. If this issue occurs, please contact your labor attorney for advice on how to proceed.

The guidance does not yet address issues that may be crucial to returning employees to work such as:

- Should employers return less vulnerable workers first?
- Can employers require COVID-19 testing of asymptomatic persons once such testing becomes widely available? If so, how often can such tests be administered?
- Can employers implement different terms and conditions of work and return to work for employees who have testing evidence of COVID-19 antibodies and some presumed degree of immunity?

Future guidance from the EEOC will likely address these and other legal concerns.

Additionally, as part of the CARES Act, all states were required to implement employer notification provisions in order to receive federal unemployment insurance funds. Effective April 16, the South Carolina Department of Employment & Workforce (SCDEW) has required employers to provide employees with **a new notice** about unemployment benefits upon separation of employment or a decrease in working hours. Employers must provide the notice to employees informing them that:

- Unemployment insurance (UI) benefits are available to workers who are unemployed and who meet the requirements of South Carolina's UI eligibility laws;
- Employees may file a UI claim if they are separated from employment or their work hours are reduced;
- Employees will need to provide DEW with their full legal name, Social Security Number, and authorization to work if the worker is not a US citizen or resident in order to process their claim; and
- Employees may visit the Department of Employment and Workforce's (DEW) website at [dew.sc.gov](http://dew.sc.gov) or call DEW at 1-866-831-1724 for assistance or more information.

Employers may provide this newly required notice by hard copy in-person or via mail, or electronically via email or text message. Though not clear from the information provided by SCDEW, this notification is presumably only required for employees who are separated due to COVID-19-related issues and may be eligible for unemployment, not employees terminated for cause

Lastly, as the state begins a gradual reopening, many employers are faced with the issue of employees who would rather continue receiving unemployment

benefits than return to work. It appears that SCDEW is attempting to facilitate the process for employers to bring employees back to work.

According to the agency, individuals who turn down offers of suitable work are not eligible for UI benefits during that week. All employers should already be aware that employees may be entitled to paid leave benefits under the Families First Corona Virus Response Act or company policy.