



## Reshaping HR During a Pandemic: Now, Next & Beyond

By Amy Angel

In March 2020, in response to COVID-19, businesses were being ordered to close, office employees were required to work from home, and schools were pivoting to distance learning. With everyone scrambling to adjust, HR leaders were trying to take care of the “now,” which included quick decisions on layoffs, furloughs, teleworking arrangements, hazard pay, permissible wellness checks, social distancing protocols, protected leave, and more. It is six months later and employers are still grappling with an ever-changing legal landscape of employment laws.

To help manage the balancing act of stabilizing operations and supporting employees, we look at Now, Next & Beyond. That is, what do you have to do to care of the now, what’s next, and how do you look long-term to prepare for the beyond? This structure can help you manage immediate needs, but also provide capacity to reshape your business, make key changes, and think strategically about where you want your business to be in the long run.

### **NOW**

With schools ramping back up online, the “now” continues to be about compliance with shifting leave requirements and shoring up teleworking arrangements.

#### *FFCRA Leave Updates*

The Families First Coronavirus Relief Act (FFCRA) has been in effect since April 1 and is scheduled to sunset on December 31, 2020. FFCRA requires public agencies and private employers with fewer than 500 employees to provide paid protected leave to employees for qualifying reasons, including employees who are required to quarantine due to a governmental order or upon advice of a health care provider, employees who are experiencing symptoms of COVID-19 and are seeking a diagnosis, employees who are caring for a family member in either of the two prior categories, and employees who are caring for a child whose school or place of care has been closed due to COVID-19.

In August, a federal court in New York ruled that certain U.S. Department of Labor (DOL) rules implementing FFCRA were invalid, including rules that required work to otherwise be available for an employee to be eligible for FFCRA leave, that stated intermittent FFCRA leave was only available with employer approval, that allowed employers to require documentation prior to an employee beginning FFCRA leave, and that defined who was a “health care provider” for purposes of determining if an employee was eligible for FFCRA leave. The court ruling left a lot of open questions and the DOL is scrambling to amend the rules in question.

Apart from reviewing those rules, the DOL has issued additional guidance regarding when FFCRA leave is available to an employee with a child whose school is using a combination of in-person and online instruction. That guidance explains that FFCRA leave is available to parents of students who are not permitted to attend school in-person, but is not available when in-person school is available, even if the student has selected a full-time online-only option.



### *OFLA Sick Child Leave Extension*

In addition to FFCRA, “sick child leave” under the Oregon Family Leave Act (OFLA) was temporarily expanded last spring to include leave due to the employee’s child’s school or place of care being closed. That temporary rule is set to expire on September 13, 2020, but it is anticipated that it will be extended.

### *Update Leave Policies & Forms*

In light of these recent updates, employers should look at implementing or updating FFCRA leave policies, request forms, and designation notices, so leave is properly tracked and employees are clear on what rights and responsibilities apply to their time off. These policies and forms ideally should address the overlap between FFCRA leave, OFLA, traditional FMLA, and Oregon Sick Time.

### *Telework Policies & Agreements*

Apart from juggling leave rules, many employees are still required by the Governor’s Executive Orders to work from home, so now is a good time to implement or review telework policies and agreements. These policies and agreements should be clear regarding who is eligible for telework, how long the telework arrangement will remain in place, what duties are or are not required, what the work schedule is, how employees are expected to balance caregiving responsibilities while working at home, and more. Having clear policies and agreements now will prevent misunderstandings and disputes later.

## **NEXT**

The “next” will focus on bringing employees back into the office and hiring or rehiring staff.

### *Reopening Policies*

Offices that remain closed should be planning now for reopening and welcoming employees back into the office. Planning includes preparing a written social distancing policy and designating an officer or employee to ensure the policy is being followed. It also includes preparing an infectious disease preparedness and response plan in the event of a COVID-19 case in the workplace. Perhaps most importantly, it involves understanding your employees’ expectations and needs. For example, working parents who have young children attending school remotely may not be able to return to the office immediately and may need help developing a plan.

### *Review Hiring & Onboarding Processes*

In addition to bringing back employees who were teleworking, employers should be ready for rehiring and onboarding. This will include honoring commitments to furloughed employees or employees laid off with recall rights. It can also include rethinking hiring practices. Consider whether you would want to require arbitration agreements or noncompetition agreements for eligible employees, as these agreements can only be entered into upon hire or promotion. Note that both require certain notice to the employee that these agreements will be required, so having agreements prepared will allow you to meet those notice requirements yet still move quickly in onboarding employees. If vacation or paid time off was cashed out for employees during layoffs, consider if you want to continue the same system. Changes to PTO are easier when employees are starting fresh. If you require pre-employment



drug tests prior to starting work, be prepared for delays at testing sites who may have limited capacity due to a shift to COVID-19 testing or new protocols that reduce drug testing capacity. The more all of these pre-employment steps are prepared for in advance, the smoother your onboarding process will be to allow new hires to easily and quickly get to work.

## **BEYOND**

The “beyond” is the fun part. It is where you get to envision where your company will be in a year or in five years. COVID-19 has fundamentally changed the way many companies do business and how many employees perform their work. Some of those changes are good and are here to stay. We call these “silver linings.”

In light of these silver linings and where you want to be in the long run, examine whether your organizational structure is still optimal. Many companies have undergone reorganizations in response to reductions in staff or changes in their service delivery model. Some organizations anticipate that they will not return to “business as usual.” Rethinking the organizational structure may better position your company for the “beyond.” Where do you want your business to be in a year? In five? Now is the time to evaluate the best structure to get there. From that, flows the work of revising job descriptions, analyzing whether your pay structure is in line with pay equity requirements, and training employees to be successful in their new roles.

So get to work and prioritize your own “Now, Next & Beyond” to support your team, but also position your business for long-term future success.

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