

# Considerations for Employers at the Start of 2021

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**A**s we happily close the door on 2020 and begin a new year, many of us use this time to think about lessons learned and new goals moving forward. This concept is not limited to personal and individual matters, and many employers are thinking about how to best move forward as well. At top of mind is likely how to effectively foster and maintain a healthy and equitable workplace.

## 1. Leave Policies

Although 2020 is behind us, the COVID-19 pandemic, unfortunately, is not. Employers are still considering how to support employees facing related challenges, including need for time off for their own illness, to care for an ill family member and to care for their child in the event of school closures.

The Families First Coronavirus Response Act (FFCRA), which required most employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19, is now voluntary. This means employers have the option of continuing to provide paid sick leave or expanded family and medical leave for qualifying reasons. Notably, if employers choose to allow employees to take leave under the FFCRA framework, they may still claim the payroll tax credit through March 31, 2021.

In addition, employers should keep in mind there are additional sources of monetary relief for employees missing work for COVID-19-related reasons. States that have their own paid sick leave laws and federal contractors must offer paid sick leave under Executive Order 13706. Oregon employees may be eligible for COVID-19 Temporary Paid Leave when employees do not have other employer-provided paid time off. Depending on the circumstances, employees offer work for COVID-19-related reasons may also be eligible for unemployment or workers' compensation benefits. Further, eligible employees may have unpaid leave available under the Oregon Family Leave Act if they are suffering from their own serious health condition, are caring for a family member with a serious health condition, or if the employee is caring for their child whose school or place of care is closed due to the statewide health emergency.

## 2. Vaccinations

Many employers are considering what additional steps they can and should take in order to keep employees safe and healthy, and one common question is whether to require vaccinations. The U.S. Equal Employment Opportunity Commission issued guidance on mandatory vaccination, which indicates that employers may generally require employees to receive a COVID-19 vaccination, with some exceptions. Oregon law generally matches this guidance.

Employers with mandatory COVID-19 vaccine policies must consider requests for exceptions for individuals with sincerely held religious beliefs and



those with a disability that prevents them from receiving a COVID-19 vaccination. Employers are not required to grant the exception if it creates an undue hardship on the business or a direct threat to the safety of employees or others.

Also note, under Oregon state law, the following employees cannot be required to get a vaccine: people licensed or certified to provide health care, employees of health care facilities, licensed health care providers or clinical laboratories, firefighters, law enforcement officers, corrections officers, or parole and probation officers. In addition, a collective bargaining agreement may prohibit mandatory vaccinations in the workplace.

Guidance from Oregon's Bureau of Labor and Industries encourages employers to start planning for vaccination requirements now. This means providing employees with as much advance notice and information as possible, providing a path for questions, and considering whether to provide vaccinations onsite or require employees to obtain a COVID-19 vaccination from their own health care providers.

## 3. Achieving Equity

Of course, it is always important for employers to maintain a workplace free of discrimination and harassment. Recent events, as well as legal updates, bring this to the spotlight and it will likely continue to be a focus in the coming year.

Recall, as of October 1, 2020, Oregon's Workplace Fairness Act requires all Oregon employers provide employees a written policy on workplace discrimination, harassment and sexual assault. The Workplace Fairness Act details several policy requirements, including providing a process for employees to report prohibited conduct, identifying an individual or position designated by the employer and an alternate to be responsible for receiving reports of prohibited conduct, including a statement advising employers and employees to document any incidents of covered discrimination or sexual assault, including the applicable statute of limitations period to an employee's right of action for alleging unlawful conduct, and including required statements about nondisclosure or non-disparagement agreements and no-rehire provisions. Ultimately, employers should encourage complaints in order to properly investigate and take any necessary action.

It is also an important time to consider further steps available to promote diversity, equity and inclusion more generally. Approaches to this may look different for unique employers, but it is a great time to think critically about what can be done to further these goals, beyond the legal baselines.

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