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Five Manageable COVID-19 Employment Law Risks

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Summer is winding down but on the COVID-19 front, the challenges abound for bankers. Nearly all financial institutions have made substantial adjustments in operations. Closing lobbies (now reopening them). Physical distancing. Face masks. Temperature monitoring or taking. Remote work.

These changes – and COVID-19 generally – have some obvious consequences for bank operations and profitability. They also present an entirely new spectrum of risk management on the employment front. Here are five significant risks that, if they have not arisen at your bank yet, they soon will:

1. The Positive COVID-19 Test Result

As the virus ebbs and flows, so too will positive test results. When an employee tests positive, it is best to be prepared in advance. The employee with the positive test should not be permitted to work. Anyone with symptoms should be told to stay home. Other steps may be appropriate or necessary.

2. Vacations

People are people, and particularly at an essential business like a bank, may have been working for a number of months straight. Employees will want to take a break, and some may decide to travel out-of-state or to COVID-19 “hot spots.” Employers have a range of options in handling this issue, and ideally will have a written policy or procedure to address it.

3. Antibody Tests

There is debate over whether COVID-19 antibodies create lasting protection against the disease. But, there is no debate regarding testing for antibodies: the EEOC says it is a violation of the Americans with Disabilities Act for an employer to do so.

4. Employee Complaints

Employee complaints about COVID-19-related safety issues may well be legally protected. A financial institution should be prepared for and take seriously these complaints. It is also critical, however, that a financial institution take extra precautions, including consulting with counsel, before taking adverse employment action against an employee who has made complaints.

5. Navigating Leave Obligations

Early in the pandemic, Congress mandated that certain employers provide paid emergency family and medical leave. Parents may use this leave if they need to take care of children whose schools or day care centers are closed. With some schools reopening, others going entirely “virtual,” and still others adopting various hybrid approaches, financial institutions should prepare for another, more complicated round of questions about what it means for a school to be “closed.”

COVID-19 will continue to present novel employment issues. Employers interested in managing these new risks are best advised to be proactive.