



THE MALLOY FIRM

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CENTRAL MAINE HUMAN RESOURCES ASSOCIATION/
LA METRO CHAMBER OF COMMERCE
EMPLOYMENT LAW LUNCH AND LEARN
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HYPOTHETICAL NUMBER 1

You are the HR manager of a small accounting firm. There are two partners who own the firm, plus you, two other CPA's, and three accounting assistants. One of the partners comes to you this month and tells you that she wants everyone in the office to get a flu shot, and once a COVID vaccine becomes available, she wants to make that a mandatory condition of employment – no exceptions. If they don't get the shots, they will be fired. She's worried about the upcoming tax season and what could happen if COVID has not been stamped out by then. What do you tell her?

At the accounting firm, all but one of your employees agrees to get the flu shot, and, once it becomes available, to get a COVID vaccine. However, one of the CPA's, Sawyer, refuses, and send you the following email:

"I am a vegan and am opposed to the flu vaccine since its manufacturing commonly involves eggs. I have been a vegan for my entire life and am philosophically opposed to the flu vaccine on this basis, and I request to be exempted from having it as my desired accommodation."

You offer to speak to Sawyer about his request, but he refuses. He states "I want to be crystal clear on the practice's position here. Please respond to me only in writing. In addition, please provide me with a complete copy of my personnel file."

DISCUSSION QUESTIONS

1. How do you handle the partner's request to implement the vaccination policy?
2. Do you have a duty to accommodate Sawyer's request?
3. If so, what would a reasonable accommodation be?
4. What if Sawyer doesn't like the accommodation you provide him?



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VARIATION:

Instead of it being an accounting firm, it's a nursing home. Instead of a CPA, Sawyer is a Nurse. He sends you the same request for an accommodation based on his status as a vegan. How, if at all, do your answers change?

HANDOUT: REQUEST FOR ACCOMMODATION

HYPOTHETICAL 2

You are the owner of a small residential construction company and business is booming. You're booked out for the next six months, and you are thinking about hiring additional help to add to your staff of 6 just to meet the demand. With the winter coming, you're eager to wrap up the exterior projects, and then get indoors on all of those "man cave" and "she shed" conversions you have lined up.

This morning, your best drywall installer, Diane, tells you she bagged a 7 point buck with her muzzleloader at a family reunion in New Hampshire last weekend. She shows you the pictures and you see her standing around a campfire with 10 other people in camouflage, field dressed deer hanging over the side of their pickup trucks. Nobody is wearing a mask and the license plates are from Pennsylvania, Maine, New Hampshire, and Massachusetts.

Questions.

5. Can you require Diane to self-quarantine? For how long?
6. What if she does not want to?
7. Do you have to provide paid leave to Diane? If so, at what rate?

VARIATION:

Instead of Diane bragging about her deer, you get wind of it when a member of her crew texts you the following:

Did you know Diane when hunting in NH last weekend with family from all over? I saw pics and nobody was wearing a mask. Now I've been working in a small basement with her for two days and I'm wondering if I was exposed. I don't feel safe. What should I do? Do I need to get a test?

8. Do you have to send all members of the crew home?
9. With or without pay?
10. Do you have to pay for a test?

11. Can you enact a policy preventing people from going out of state until this is over?
12. Should you discipline Diane?

VARIATION

Your business is not construction, it's a dermatology clinic. Diane is a licensed physician's assistant. Her compensation schedule provides that she is paid for 35% of the net fees the practice receives for patients she sees.

Questions:

13. Can you require Diane to self-quarantine? For how long?
14. What if she does not want to?
15. Do you have to provide paid leave to Diane? If so, at what rate?
16. What about Diane's patients – do you have to reschedule them?

HYPOTHETICAL 3

You are the HR director for a chain of hair salons located in every major shopping center in New England. You have over 200 employees in total, but each salon has only 5 or 6 people working there. On January 15, 2021, Roberto, a stylist at your location in the Maine Mall, tells you that he is going to need time off to care for his daughter, Sasha, who is in 3rd grade. Due to a COVID spike at her school, they've gone all remote learning for the rest of the school year. Roberto is currently on a performance improvement plan for chronic tardiness. His performance evaluations are the same as everyone else's: glowing, even though you know that's not true based on your conversations with his manager. Before COVID hit, Roberto was mugged late at night in the Old Port and he has to testify against the perpetrator at a trial coming up next year.

VARIATION:

What if Roberto elects to keep Sasha in school remotely, but her school gives them the option of hybrid in person or completely remote learning?

SECOND VARIATION:

What if Roberto requests time off to care for Sasha, but you know Roberto's spouse is at home and was laid off?

THIRD VARIATION:

What if Roberto is divorced and shares custody? What if his ex-spouse doesn't believe this whole coronavirus thing, claims it's a hoax, refuses to mask, and attends weekly political rallies with thousands of people, none of whom are masked?

FOURTH VARIATION:

Assume Roberto comes to work a few days a week and works out the childcare thing with his ex. On his first day back, a coworker informs discovers a stack of pre-screening questionnaires for all of his appointments that day. Roberto has apparently forged their signatures and signed his name as having screened them, checking off the coronavirus screening questions and filling in temperatures of 98.6 on all of them, even though the clients have not even come in for their appointment yet.

HYPOTHETICAL NUMBER 4

You run a casual Mexican restaurant, BURRADA BURRITOS, with a drive-thru window. Thanks to your drive-thru and third party delivery apps, you've actually managed to survive COVID pretty well. Unfortunately, one of your line cooks, Elodie, contracted COVID. She had a tough go of it and was hospitalized for 2 weeks, and has begun a slow road to recovery. You paid her 100% of her average wages for each of the 2 weeks she was in the hospital, but you don't offer health insurance to your employees, so she's been on her own for care expenses. Elodie's doctor has advised her to take it easy and stay out of work for another 2-3 weeks and after that, to only work part time as she adjusts to the rigors of being on her feet for an 8 hour shift grilling carnitas. She also has an elderly parent at home, Janet, for whom she cares. Janet also caught Covid and is recovering, but has been permanently weakened and requires around the clock care. What are your leave obligations to Elodie?

VARIATION:

The rest of your line cooks come to you and tell you that they don't want to work close to Elodie. They know she had a bad case of COVID and want nothing to do with her. After her 2-3 weeks of convalescence, Elodie is back to her old self and wants to get back to work full time.