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THE REGISTER CITIZEN

Today's Business: Back to the office if immunocompromised

By Gary Phelan

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Photo: Contributed Photo; Gary Phelan

“My boss wants me to go back to the office. I am immunocompromised. What can I do? Do I have any legal protections?”

In March, Connecticut implemented Gov. Ned Lamont’s executive order stating that to reduce the spread of the COVID-19 virus, all businesses needed to use telecommuting whenever possible. The number of people working from home skyrocketed. At the same time, his order exempted workers at “essential” businesses whose duties were deemed critical.

Businesses now have begun to reopen as Connecticut's COVID-19 metrics dramatically improved. However, many employees with medical conditions have been reluctant to return to work due to the greater risk they could face.

The Equal Employment Opportunity Commission noted that persons with certain impairments were at greater risk of suffering serious illness or death if they were to contract COVID-19. According to the Centers for Disease Control and Prevention, individuals with certain underlying medical impairments were hospitalized at six times the rate of, and died 12 times as often as, otherwise healthy individuals. The CDC listed several medical conditions that might place individuals at higher risk including serious heart disease, diabetes, asthma, kidney disease, blood disorders, liver disease, severe obesity and folks otherwise immunocompromised.

If the person with such a medical impairment had been working from home during the "lockdown" period, this employee could request that the employer permit him/her to continue to work from home as an accommodation under Title I of the Americans with Disabilities Act and the Connecticut Fair Employment Practices Act. The employee would need to request an accommodation, disclose the nature of the impairment and, if the employer requests, provide documentation of the impairment.

If the employer believes that allowing the employee to continue working from home would give rise to an undue hardship — meaning significant difficulty or expense — it should explain the basis for its conclusion. The EEOC said in guidance issued Sept. 8 that the employer's temporary shift to having all of its employees work remotely does not mean the company must accept all remote work requests in the future. Nevertheless, the employer should be prepared to explain why it would now be an undue hardship even if the employee previously had been able to work remotely. The employer also should consider whether there might be alternative accommodations other than working remotely that would reduce the risk to the employee, such as physical changes to the work environment, a temporary transfer to another position, a leave of absence or a modified work schedule.

If the employer refuses to let the employee with a medical condition work from home, the employee will be faced with the difficult decision: resign or return to the workplace despite the health risks. However, the employee is not without other options. For example, regardless of

whether or not he or she returns to the workplace, that person may choose to file a disability discrimination claim with the Connecticut Commission on Human Rights and Opportunities and EEOC. If the person prevails, the remedies could include lost wages and benefits, reinstatement with an accommodation or front pay, compensatory damages, punitive damages and attorney's fees. The employee also might want to consider trying to negotiate a severance agreement that would include a waiver of their legal claims.

If the employee chooses to resign, he or she also should consider filing a claim with the Connecticut Department of Labor for unemployment benefits. The DOL website explains that "if you turned down work requiring interaction with other individuals, in person, whether in an office setting or public setting, that was not suitable because you were at high risk under the CDC guidelines, you can answer 'no' to the question 'Did you refuse an offer of suitable work or rehire, quit a job or get discharged from a job?'" If the employer protests the employee's receipt of unemployment benefits, a fact-finding conference will be held.

Under the federal Pandemic Unemployment Compensation Act, employees were entitled to receive \$600 per week until July 31, 2020, if their unemployment was due to disruption caused by COVID-19. Under the Lost Wages Assistance Program, an employee in Connecticut may be eligible for a payment of \$300 per week in addition to the individual's weekly unemployment benefits payment if their total or partial unemployment was due to disruption caused by COVID-19. The Connecticut Department of Labor has provided comprehensive guidance related to eligibility for unemployment benefits at its website, www.ctdol.state.ct.us.

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