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COVID-19: Retaining Employer Discretion to Modify Workplace Policies

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With any emergency or new policy revisions or changes, it is important to retain employer discretion to modify policies going forward. Most employers have a written acknowledgment at the end of their current handbook or policies that indicates the policies do not create a contract and that retains employer discretion to modify all such policies. This is critical to retain as employers are updating or modifying policies during the Coronavirus outbreak and related circumstances.

Employers may use or update their current acknowledgment form to address this. However, it is good practice to further update this form under the present circumstances where governmental emergency legislation, programs and guidelines are certain to continue. Employers should indicate that any interim or emergency policies are subject to change at any time based on company discretion and business needs and considerations, as well as based on any government-led issues, legislation, programs and guidance. Specifically, employers may want to suggest that any new employer benefits or policies provided specifically in response to the Coronavirus will be revised or offset by any potential government mandated or available plans and benefits.

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