



Disparate Impact Of Covid-19 On The Workforce: Strategies For Avoiding Discrimination At Work

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HISTORICAL MARKERS OF RACIAL INJUSTICE

- Tuskegee Experiment (untreated syphilis study on Black males)
 - Tuskegee's Truths, Susan M. Reverby (2000)
- HeLa cells (harvested without informed consent or compensation)
 - The Immortal Life of Henrietta Lacks, Rebecca Skloot, (2010)
- Eugenics (involuntary sterilization)
 - American Eugenics, Nancy Ordover (2003)

RESULTS OF SYSTEMIC RACISM IN HEALTHCARE

- Distrust of the health care system
- Development of preventable illness and conditions
- Reliance on non-traditional, non-Western medicine
- Spread of hoaxes, myths, etc.
- Reduced lifespan and early death



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FACTORS THAT LEAD TO INCREASED VULNERABILITY IN PANDEMIC

- Front-line service jobs
- Smaller and inadequate housing
- Reliance on mass and public transit
- PPE – little to non-existent
 - “New York Attorney General Scrutinizes Amazon for Firing Warehouse Worker” New York Times, April 27, 2020



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FACTORS THAT LEAD TO INCREASED VULNERABILITY IN PANDEMIC

- Jobs without health care benefits
- Poor nutrition
- Lack of education about protection against virus
- Pre-existing conditions
- Lack of access to health care



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HOPEFUL STEPS TOWARDS A FAIR & JUST WORKPLACE

- Access to COVID-19 testing
- Access to information to combat spread of virus
- Adequate PPE
- Favorable laws protecting sick employees
- Sensitive Human Resources policies and procedures
- Pragmatic Diversity, Equity and Inclusion policies



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PRACTICAL SOLUTIONS FOR THE WORKPLACE

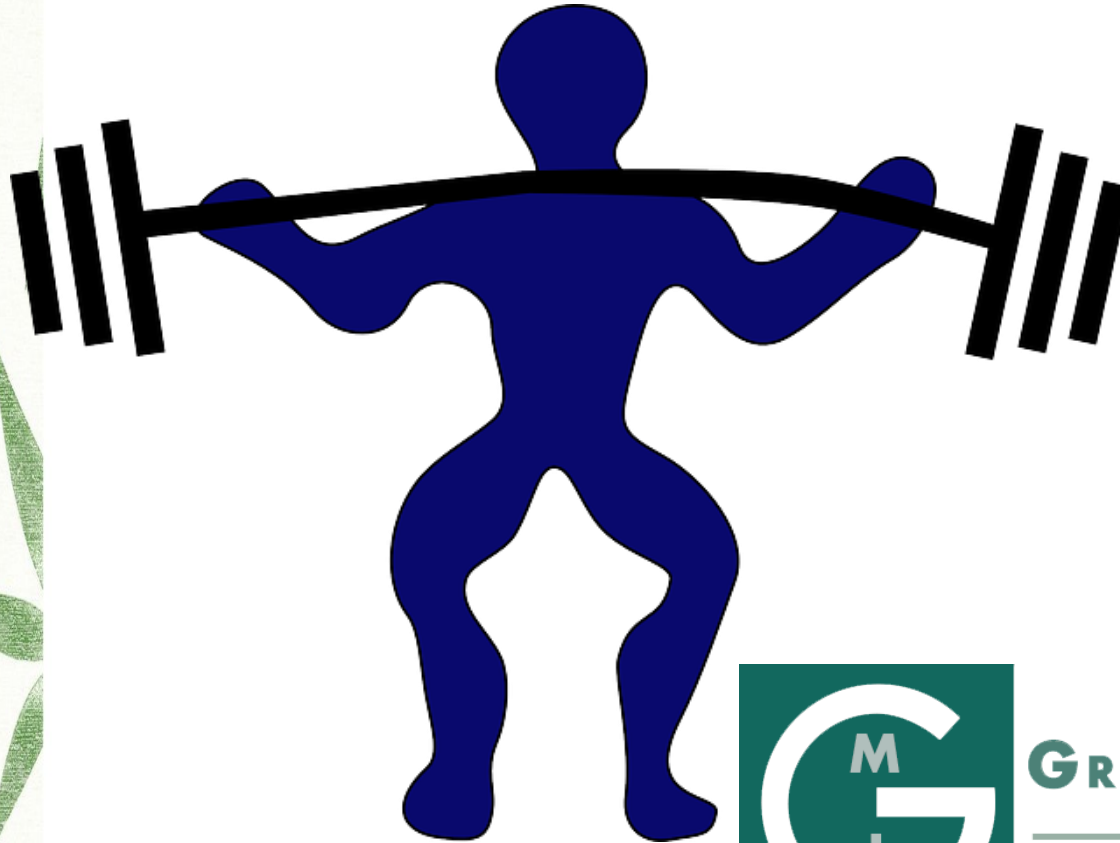
Health Concerns

Finances

Work From Home

Home School

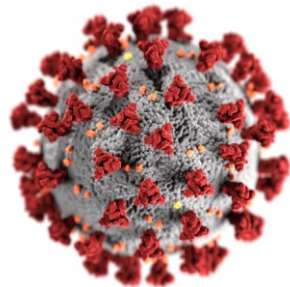
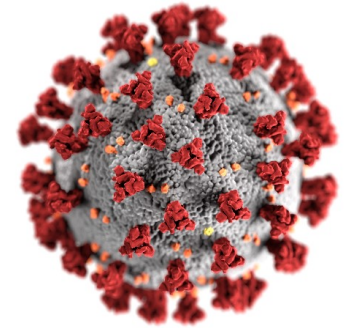
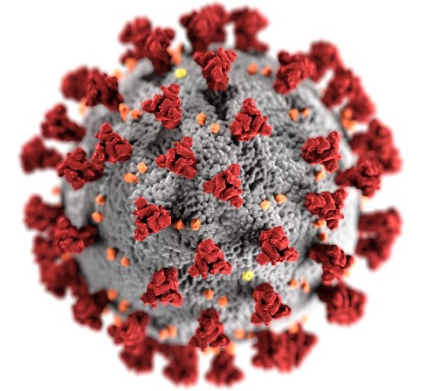
Family Care



GROVER WORKPLACE SOLUTIONS

SAFETY AT WORK

- **COMPANY POLICY REQUIRED**
 - Physical Distance and Barriers
 - Employee Training
 - Cleaning Protocols
 - Screening Employees & Guests
 - Infection Control
 - Unique Industry Requirements



GROVER WORKPLACE SOLUTIONS

SAFETY AT WORK

- **EMPLOYEE INVOLVEMENT IN SAFETY**
 - What Do Employees Need to Feel Safe?
 - Empower Employees
 - Employees Lead Training
 - Open Line for Suggestions
 - Plan for Handling Unsafe Behavior
 - Support at All Levels



GROVER WORKPLACE SOLUTIONS

TIME OFF

- **MANDATORY TIME OFF**

- Federal Leave
 - FFCRA
 - ADA Accommodation
- State Leave
 - COVID-19 Leave
 - Sick Leave
 - Workers Comp
 - Child Care Leave
 - Special COVID-19 Laws
- Local Ordinances



GROVER WORKPLACE SOLUTIONS

TIME OFF

- **OTHER TIME OFF**

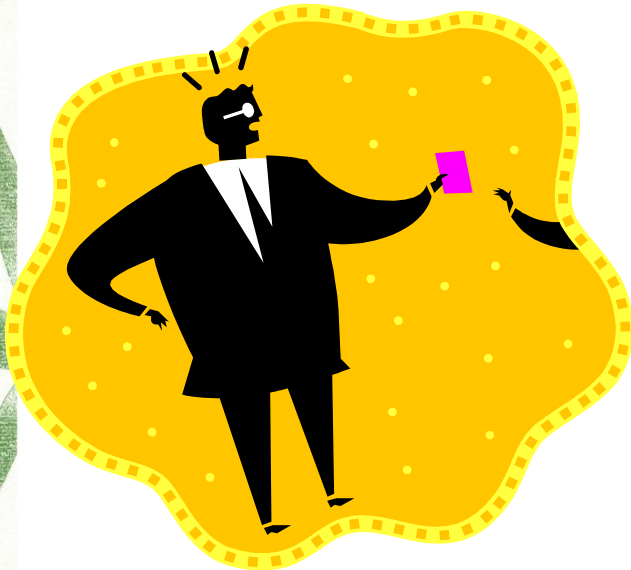
- **Disability Accommodation?**
 - Fear of Infection
 - High Risk Family Member
- **Flexible Schedules**
 - Part-Time Work
 - Job Sharing
 - Flexible Schedules
- **Time Off for Testing**
- **Use Temporary Workers**



GROVER WORKPLACE SOLUTIONS

TIME OFF

- **LAYOFFS AND FURLOUGHS**
 - Avoid Bias in Selection
 - Consider Alternatives
 - Provide Ample Notice of Return to Work



GROVER WORKPLACE SOLUTIONS

REMOTE WORK

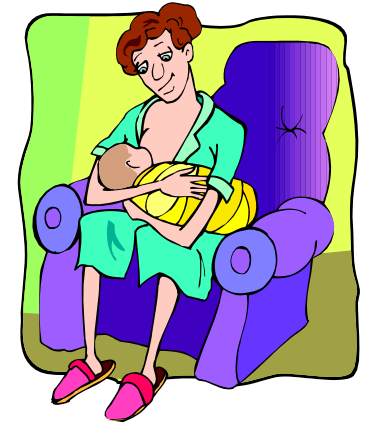
- **HOME OFFICE**
 - Computer Needs
 - Ergonomic Needs
 - Internet Provider
- **CONSIDER HOME SITUATION**
 - Children at Home
 - Other Family Members
 - Adjust Expectations



GROVER WORKPLACE SOLUTIONS

COMPASSION

- **EMPLOYEE STRESS REDUCTION**
 - Acknowledge Stressors
 - Be Aware of and Stop Biased Words/Behavior
 - Mentorship Programs
 - Use EAP if Available
 - Discussion/Support Groups
 - Role Play Stressful Situations
 - Offer Reduced or Flex Schedule
 - Provide Extended/Additional Breaks
 - On-Site Child Care ?



GROVER WORKPLACE SOLUTIONS

Health Equity Considerations/Impact on Racial and Ethnic Minority Groups

- **Centers for Disease Prevention and Control (“CDC”) [July 24, 2020]:** *“People from some racial and ethnic minority groups are disproportionately represented in essential work settings such as healthcare facilities, farms, factories, grocery stores, and public transportation. Some people who work in these settings have more chances to be exposed to the virus that causes COVID-19 due to several factors, such as close contact with the public or other workers, not being able to work from home, and not having paid sick days.”*
- **World Health Organization (“WHO”) [June 25, 2020]:** *“Racial and ethnic minorities, migrants are disproportionally represented among those who are more exposed to adverse labor market outcomes ...the pandemic is a major economic and labor market shock, which will have long-term impacts in terms of unemployment and underemployment, as well as in terms of the quality of work. Studies show that racial discrimination in the world of work increases during an economic downturn.”*
- **Pew Research Center [July 1, 2020]:** *“About four-in-ten U.S. adults say it has become more common for people to express racist views toward Asians since the pandemic began.”*

Harassment/Discrimination

- **National Origin/Race:** Employers can reduce the chance of harassment by explicitly communicating to the workforce that fear of the COVID-19 pandemic should not be misdirected against individuals because of a protected characteristic, including their national origin, race, or other prohibited bases.
- **Age (40+ workers)/Disability:** Labor and employment attorneys around the country say they are receiving a flood of complaints and questions about layoffs, firings and recalls to the workplace that involve potential discrimination against older and disabled workers. Many cases involve an overlap of age and disability bias claims as well as associational disability claims.
- **Caregivers:** Employers may provide any flexibility as long as they are not treating employees differently based on sex or other protected characteristics. For example, under Title VII, female employees cannot be given more favorable treatment than male employees because of a gender-based assumption about who may have caretaking responsibilities for children.

What Laws Are At Play?

- FEHA
- EEOC
- ADEA
- ADA
- FFCRA
- FLSA
- state and local laws protecting older workers, caregivers, and those with disabilities, and providing sick leave

Wage & Hour Implications

- Mandating leave for exempt employees
- Employees who are under government-imposed quarantine
- employees who are unable to perform work from home
- Covering additional costs that employees may incur if they work from home (internet access, computer, additional phone line, increased use of electricity, etc.)
- Accommodation of differing schedules/availability due to COVID-19
- Salary reductions during the COVID-19 pandemic or an economic slowdown--Changes to exempt status?

Whistleblower Complaints

- U.S Department of Labor issued a report finding that the number of OSHA whistleblower claims increased by 30%; 39% of whistleblower complaints filed from February 2020 through May 2020 (approximately 1,600) were directly related to COVID-19.
- Since March 2020, there has been a surge of employee complaints alleging violations of statutory whistleblower laws.
- 136 of the 674 employment-related lawsuits have been related to alleged whistleblower litigation filed in federal or state court; California has the most virus-related workplace retaliation lawsuits with 30. New Jersey follows closely behind at 26.
 - Complaints included allegations of retaliation for claiming violations of social distancing guidelines and failure to provide personal protective equipment.

Tracking Wave of COVID-19 Employee v. Employer Litigation

- So far, 165 complaints around the county. California makes up the highest number of cases by far. There are less than 10 age or disability discrimination lawsuits related to the pandemic have been filed in court but many more anticipated; cases are being investigated and filed as charges or complaints on a pre-lawsuit basis with the EEOC and state civil rights agencies.
- No published EEOC statistics on charges filed with the agency since the pandemic began; no anecdotal evidence of any trend.
- Age Discrimination
- Caregivers
- Pregnancy Discrimination
- Wage & Hour
- PAGA Cal/OSHA Claims
- Wrongful Termination
- Whistleblowers