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Employer Considerations on Returning to the Workplace in the Age of COVID-19

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Following the White House's issuance of broad guidelines for states to implement a phased reopening of businesses subject to isolation orders stemming from the COVID-19 global pandemic, the U.S. Centers for Disease Control and Prevention (CDC) is reportedly preparing to issue detailed guidance. While we await further direction, as businesses face the difficult questions involved in reopening, this article explores interrelated areas to consider in so doing. While by no means exhaustive, the following presents fundamental areas that employers should consider as they make the transition to reopening.

First and foremost, employers should stay abreast of directives and guidance from federal, state and local health authorities (e.g., testing, use of facemasks, gloves or other personal protective equipment) in order to prepare an Infectious Disease Preparedness and Response Plan. It is also imperative to engage in open communication with your workforce to notify them of policy changes and actions being implemented, as well as to address issues and concerns that will inevitably arise.

Implementation of Infection Prevention Measures in the Working Environment

While many aspects of COVID-19 remain unknown, it has been widely reported that it is highly contagious and primarily spread through respiratory droplets produced when an infected person coughs or sneezes. Spreading can occur when these droplets enter the mouths or noses of nearby people, or possibly inhaled into the lungs. OSHA further advises that the virus may be contracted when a person touches an infected surface or object, followed by their own mouth, nose or possibly eyes.

Symptoms typically include fever, cough and shortness of breath, but the CDC has identified other non-respiratory symptoms, including chills (with or without shaking), muscle pain, headache, sore throat and loss of taste or smell. Symptoms of COVID-19 may appear in as few as two days or as long as 14 days after exposure. Of particular concern is that some people are asymptomatic yet nevertheless carry the virus.

Thus, it is critical that employers will need to take active measures to help prevent the spread of COVID-19. Such measures can include:

- Perform a deep cleaning of the workplace before return (and at regular intervals).
- Routinely clean and disinfect all frequently touched surfaces, such as workstations, countertops and doorknobs. Use Environmental Protection Agency (EPA)-approved cleaning products.
- Ensure adequate stock of cleaning and other COVID-19-related supplies (e.g., contactless thermometers for daily temperature checks, along with appropriate face shield or other PPE for the employee(s) performing checks).
- Prevent sharing of computers, phones, desks, offices or other work tools and equipment.
- Provide disposable wipes to wipe down commonly used surfaces (e.g. doorknobs, keyboards, phones, devices, etc.) before each use.

- Promote and enforce regular and thorough hand washing (for at least 20 seconds) in accordance with CDC guidelines.
- Provide alcohol-based hand sanitizer that contains at least 60-95% alcohol at multiple locations throughout the workplace.
- Promote and place posters encouraging healthy practices, like staying home when sick, respiratory etiquette (covering coughs and sneezes) and hand hygiene in areas where they are likely to be seen.
- Provide tissues and no-touch disposal receptacles for use by employees and visitors.
- Encourage employees to self-monitor and report any possible symptoms or other potential exposure (see more detail on this below).

The Physical Working Environment

As public health authorities and healthcare providers have advised, DISTANCE, DISTANCE, DISTANCE is a key weapon in the fight against spread of COVID-19. It is abundantly clear that workplaces will undergo fundamental changes to their layout and operation to implement this critical guidance. Some considerations for employers:

- Implement plans for social distancing, including moving/modifying furniture and other configuration changes to create at least six feet between employees, or where not possible, installing barriers such as clear plastic shields or other dividers.
- Providing employees with virtual up-to-date education and training on COVID-19 risk factors and protective behaviors (e.g., respiratory etiquette and care of PPE).
- Designation of common travel routes (like hallways) as one-way if social distancing is not possible, or other procedures for maintaining distance in such spaces.
- Explore measures to reduce onsite personnel, such as gradual re-staffing based on business needs, staggered shifts and rotating telework schedules.
- Develop plan for safely engaging with visitors to the workplace, including use of a health declaration stating any known symptoms of COVID-19 or exposure to anyone with such symptoms or COVID-19 diagnosis.
- Discontinue physical contact (handshakes, high fives, fist bumps etc.).
- Discontinue nonessential travel; where travel occurs, develop policy for reporting travel and 14-day self-quarantine upon return depending on destination (e.g., international or other “hotspot”) and other circumstances (e.g., potential exposure).
- Limit number of employees gathering in common areas (lunch/breakrooms, lounges).
- Conduct meetings and social gatherings virtually to the extent possible.
- Where conference rooms are used for live meetings, limit number of attendees and/or use dividers/shields.
- Interface with building management as to their health and safety protocols (e.g., social distancing in lobby and elevator banks, procedures for handling visitors exhibiting COVID-19 symptoms, increased cleaning, disinfection and ventilation).

Communication With Employees and Customers/Clients

Develop a communication plan that will both inform and ease anxieties about both working in and visiting the workplace, including:

- Create and implement policies to mitigate risk of infection, including social distancing, disinfection protocols and instructions on staying home or being sent home if sick or exhibiting any symptoms.
- Prepare internal and external communication templates in the event of any diagnosed cases or potential exposure, including reports to public health authorities.
- Determine media strategy and/or appoint a main contact peson for any inquiries.
- Consider confidentiality—an employer must generally maintain an employee’s medical information in a confidential fashion, but there are exceptions (e.g., public health authorities, staffing agencies).

Employees Returning to Work

Reopening the workplace to employees and visitors should be accomplished in the most organized and safe manner possible, which will help alleviate the health and safety concerns that are sure to exist.

- In accordance with the measures above, consider strategies like phased return, staggered schedules and continued telework based on neutral factors such as job function and persons in high-risk categories.
- Be prepared to address the need to engage in the “interactive process” to determine any reasonable accommodations required under the Americans With Disabilities Act (ADA).
- Determine if you qualify for state “work share” programs if bringing employees back on reduced schedules.
- Develop COVID-19 best practices handouts for supervisors and HR professionals to implement.
- Develop health check protocols and related forms for employees and visitors (e.g., instructions on reporting symptoms and not reporting to work if symptomatic, daily temperature scan/symptoms report, visitor health declaration, etc.).

Employees Exhibiting Symptoms

Unfortunately, infection can still occur despite following reasonable precautionary measures. In such cases, it is critical to promptly identify and isolate potentially infectious individuals to protect employees and visitors at the worksite.

- Inform and encourage employees to self-monitor and report symptoms of COVID-19, or exposure to someone exhibiting symptoms (e.g., family members). Emphasize that confidentiality will be maintained in accordance with applicable law, and that no stigma or other retaliation will result.
- Employees who report or otherwise exhibit signs that they are sick or experiencing symptoms of COVID-19 (e.g., fever, cough, shortness of breath) upon arrival to work or during the day should be separated from other employees and visitors, such as a designated area with closable doors.
- The employee should be provided with a face mask or otherwise cover their nose and mouth to contain potentially infectious respiratory secretions, and then be sent home immediately.
- If infection is suspected or confirmed, develop a plan for temporary closure to undergo deep cleaning.

Handling Families First Coronavirus Response Act (and Other) Leave

We have seen a veritable avalanche of new laws and regulations relating to COVID-19, including the Families First Coronavirus Response Act (FFCRA) and the CARES Act, which makes it more important than ever to properly review and implement policies as needed to address them.

- Ensure employees receive posters – in person or via email/intranet – and any related company policies.
- Train HR and supervisors on eligible uses of FFCRA leave.
- Re-train HR and supervisors on continuing obligations under traditional FMLA, state, local and existing company leave policies.
- Create request forms for emergency paid sick leave and emergency FMLA leave.
- Ensure HR and accounting departments communicate for purposes of applying eligible leave to payroll tax deductions.
- Determine any PTO policy changes, such as increasing or decreasing paid leave benefits, or additional restrictions or flexibility in using paid leave.

Returning to Work After Illness

Employers also need a plan to safely allow an employee who became infected with COVID-19 to return to the workplace. The CDC has provided both time-since-illness-onset and test-based options for returning to work:

- Under the time approach, persons with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue isolation when:

    - At least three days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications;
    - Improvement in respiratory symptoms (e.g., cough, shortness of breath); and
    - At least seven days have passed since symptoms first appeared

- The test-based approach, which presents greater challenges given current availability, includes:
    - The above resolution of fever and respiratory symptoms, plus:
    - Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two consecutive upper respiratory swab specimens collected ?24 hours apart (total of two negative specimens).

- Asymptomatic individuals who have tested positive may return at least seven days after the date of first positive COVID-19 viral test and have had no subsequent illness provided they remain asymptomatic (once back CDC recommends three days of distancing and face covering).
- Employees who were otherwise sick may, of course, return to work earlier if a medical provider confirms the cause of the employee's fever or other symptoms is not COVID-19 and releases the employee to return to work in writing.
- Forms should be developed reflecting these policies, such as an Employee Return to Work Certification.

Benefits

It will be important to address and communicate any impact on benefits due to business interruptions stemming from the pandemic, including:

- Determine any group health insurance eligibility issues based on layoffs or furloughs.
- Review any pension plan eligibility and/or contribution issues (401k etc.) due to layoff or furlough.
- Review health insurance, short-term disability policies and flexible spending accounts regarding additional coverage (e.g., telehealth and over-the-counter medication).
- Examine accrual of benefits like PTO, e.g., whether employees may wish to choose not to be paid out in the event of a short-term closure (as would be required in states like California) to continue accrual.

Some other considerations for the Post-COVID-19 World

If this pandemic has made anything clear, it is that business will undergo fundamental changes and require more imagination and flexibility than ever before to keep workforces and others visiting the workplace safe. Some additional areas to think about as the world moves into the "new normal":

- Prepare communications for employees, clients, customers, vendors and visitors describing company safety protocols and procedures.
- Review handbook and policies to address new regulations within locale and/or industry.
- Understand state law regarding reimbursement and update policy to address teleworkers.
- Communicate that old policies remain intact – discrimination and sexual harassment remain issues in a remote or staggered work environment.
- Re-train HR and supervisors on engaging in the interactive process when employees seek an accommodation under the ADA.
- Ensure COVID-19-related forms, including leave requests, self-reporting forms and records of temperature, are stored separately in a medical file separate from personnel files.
- Investigate remote training capabilities to ensure compliance with state law (for example, the Illinois Workplace Transparency Act) and to keep workers connected to company culture, ethics and the law.
- Invest in remote communication capabilities in lieu of business travel.

- Consider a more flexible workplace – for example, OSHA recommends that employees telework where doing so permits other employees to social distance.
- Develop a Business Continuity Plan in the event of another crisis, and review insurance policies for potential gaps in coverage.