

# EMPLOYEE RELATIONS: REOPENING & MANAGING YOUR WORKFORCE DURING COVID-19

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# Overview



- Reopening Plan
- Returning employees to work
- Common reasons employees are giving for not coming into work and how to respond
- Whether and how to screen/test employees
- When and how to return employees to work who have COVID-19 or have been exposed
- What to do with a positive case in the workplace
- Other common questions & considerations

# Reopening Plan

- Mandatory Safety Workplace Standards
- Self-Certification
  - Develop written COVID-19 Control Plan
  - Print, sign and post Compliance Attestation Poster
  - Post employer and worker signs and posters (rules for SD, hygiene, cleaning/disinfecting)
- Industry-Specific Rules

# Returning Employees to Work



- Phased return
- Make decisions on who to return using same considerations as were used in deciding who to furlough (job functions/departments)
- Legitimate business reasons; look for disparate impact
- Communication is critical

# Common Issues With Employees Being Told To Return To Work



- As employees are being required to return from furlough/unemployment, these are the most common types of push-back:
  - I am making more money on unemployment
  - I am scared to come in
  - I don't want to come in because I live with someone in a high risk category
  - I don't want to come in because I have a condition that makes me high risk
  - I can't come in because I still don't have child care

# Screening of Employees



- Should I take the temperatures of my employees?
  - EEOC has said it is permissible
  - Think about whether to take at work or require it be done at home
  - Ensure confidentiality, training for those managing it
- Should I require my employees to attest that they are symptom-free?
  - Wellness certifications recommended (and required by some states)
  - Even where not required expressly, still need a plan to deal with ensuring employees are well
  - List CDC and state-specific symptoms and temperature (100.4)
  - One-time approach versus daily attestation

# Employees Who Have Confirmed COVID-19 or COVID-19 Symptoms



- Employees who have COVID-19 symptoms or a positive test are to isolate until:
- Symptom-based strategy:
  - At least 3 days (72 hours) have passed *since recovery* defined as resolution of fever without the use of fever-reducing medications and
  - Improvement in respiratory symptoms (e.g., cough, shortness of breath); and,
  - At least 10 days have passed *since symptoms first appeared*
- Test-based strategy:
  - Resolution of fever without the use of fever-reducing medications and
  - Improvement in respiratory symptoms (e.g., cough, shortness of breath) and
  - Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19

# Employees Exposed To COVID-19



- 14 days of quarantine after exposure
- CDC notes that recommendations for discontinuing isolation in persons known to be infected with COVID-19 could appear to conflict with recommendations on when to discontinue quarantine for persons known to have been *exposed* to COVID-19
- CDC recommends 14 days of quarantine after exposure based on the time it takes to develop illness if infected. Thus, it is possible that a person *known* to be infected could leave isolation earlier than a person who is quarantined because of the *possibility* they are infected

# What To Do With Positive Case of COVID-19

- Comply with State and Federal requirements for cleaning and possible shut-down
- Identify those in close contact (i.e. 6 feet or less)
- Inform those who need to know about a positive case; no names!
- Communicate with ill employee about return to work requirements

# Other Considerations

- Can I request a doctor's note before an employee returns to work?
  - If out for COVID-19 symptoms, yes but...
  - Can still require notes for MA paid sick time, to support ADA accommodation or certification for traditional FMLA
- Can I offer "high risk" employees greater accommodations?
  - Yes but offer to all high risk (not just over 65)
  - Remember confidentiality
  - Do I have to offer high risk accommodations based solely on their high risk?
- Should I get a "waiver" or "disclaimer signed by returning employees?"
  - Generally, no
  - Could be used as evidence against you
  - Will not absolve an employer of negligence or failure to take reasonable steps

# Thank You!

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