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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