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## CONSIDERATIONS FOR POST-CORONAVIRUS RETURN TO WORK PLANNING

### Planning and Communication

#### Decide the right time to reopen

- Monitor federal, state, and local closure orders, re-opening guidelines, industry practices, and geographic considerations ([federal guidance](#))
- If enrolled in the SBA Paycheck Protection Program, remember employers have until June 30, 2020 to restore full-time employment and salary levels for changes made between February 15 and April 16, 2020

#### Determine who should return to work first

- Identify essential business functions and essential employees
- In determining essential employees, consider the nature of the job, the functions of the position and ability to return to work safely
- Consider profitability of certain position to manage cash flow in the near term
- Consider structuring a phased ramp-up to limit the spread of the coronavirus
- Determine minimum staff necessary to sustain operations in the event of increased absenteeism
- Evaluate whether seniority or recall rights are implicated, including furloughs
- Remind all decision-makers in these decisions of nondiscrimination policies

#### Prepare communication to employees regarding return to work

- Establish a return to work timeline
- Establish a plan for employees maintain communication with management
- Identify and explain to employees steps taken to ensure safety
- Review any applicable collective bargaining obligations to make changes to the workplace upon re-opening
- Develop a written protocol for confirmed or suspected COVID cases
- Protocol should include at minimum:
  - Identify necessary notification procedure if symptomatic
  - Designate point(s) of contact for reporting and questions
  - Communicate with employees impacted by potential exposure
  - Identify remedial sanitization measures for impacted employee(s)

- Identify triggering events for quarantine procedure
- Establish the duration of quarantine and conditions for return
- Assess reporting obligations under OSHA and state workers' comp. laws
- Anticipate employee anxiety, rumors, misinformation, and plan accordingly
- Leaders should be visible
- Communicate frequently with employees (low cost options may include anonymous surveys).
- Respond to questions with the information currently available, even if the answer is "we do not know right now" in order to dispel myths and rumors
- Remind employees of any existing Employee Assistance Programs (EAP)
- Consider providing additional alternative resources (e.g. counseling, working parent discussion groups, etc.) to help employees manage stress and anxiety
- Prepare employer's response for possibility workers may refuse to work, simultaneously call in sick, strike or walkouts.
- Train key management on protected concerted activity in a union and non-union setting

### Workplace Safety

#### Review applicable OSHA and CDC standards

- Monitor local and federal guidance for best practices and requirements for employers ([OSHA guidance](#), [CDC guidance](#))
- Take steps to make the workplace more safe
- To the extent possible, implement social distancing requirements, such as staggered shifts, breaks, spacing between desks and community areas
- Limit in-person meetings in favor of virtual meetings where possible
- Minimize physical contact (i.e. handshakes, cough etiquette, etc.)
- Limit or close off gatherings in common areas (e.g. breakrooms or kitchens)
- Intensify janitorial sanitation
- Make efforts to increase air exchange in the building, if possible
- Educate employees regarding best hygiene practices
- Promptly respond to any safety related concerns

### **Consider whether face masks, gloves, or other protective equipment are mandatory or optional**

- *If mandatory* - company must provide or reimburse employees for masks, gloves, and other protective equipment
- *If optional* - determine whether employer will place any limitations or restrictions on employee created protective equipment or the type of masks, gloves, or protective equipment permitted
- Ensure protective equipment does not otherwise pose a safety concern
- Consider temperature checks and COVID testing for employees and/or visitors
- Results of temperature checks are a medical record and (if recorded) must be treated with appropriate confidentiality and recordkeeping
- Consider whether screening time is compensable
- Assess the feasibility and advisability of conducting employer paid Covid-19 testing for employees

### **Create a policy restricting non-essential employee travel**

- Minimize non-essential travel for work
- Consider how essential travel is defined
- Consider mandatory notification of personal travel
- Implement additional documentation requirements for employee movement to make contact tracing more effective and accurate

### **Assess changes to hiring and training processes required by social distancing obligations**

- Train managers regarding “do’s” and “don’ts” of preemployment inquiries concerning medical conditions

## **Leaves of Absence and Workplace Accommodations**

### **Teleworking issues**

- Consider whether remote work is a necessary reasonable accommodation under the ADA or if a special accommodation is necessary for members of a vulnerable population.
  - For example, is there anything unique or special about the employee’s concern for returning to the workplace?
  - Is the employee in a protected class or high-risk population because of age or underlying health condition?
  - Is the employee caring for an individual in a high-risk population?
- Prepare a response to requests for continued remote work based upon the essential functions of the job
- Protect data from cybersecurity breaches with a teleworking workforce

### **Train management team to ensure understanding of new leave options, eligibility and retaliation concerns**

- Assess unused leave benefits available under the Families First Coronavirus Response Act (FFCRA)
- Consider eligibility for additional leave available, including leave under the FMLA
- Review applicable state or local paid sick leave laws and company vacation and sick leave policies
- Ensure management understands any negative comments about use of FFCRA leave may support claims of retaliation

### **Flexibility in leave policies**

- Consider new COVID policies relaxing preexisting leave

policies that are explicitly intended to be temporary in duration

- Openly communicate the company’s policies and position on leaves of absence
- Create a clear process for requesting leave and identifying the amount of leave, if any, available

## **Employee Benefits and Compensation**

### **Review whether any changes need to be made to health and welfare plans**

- Determine whether employees returning to work will need to re-enroll or update prior plan elections
- For cafeteria plans which may have offered individual spending accounts for a year, determine whether unused portions during an interim absence will be restored upon rehire
- Determine whether any probationary periods apply during which a rehired employee will not be covered (for instance, Union benefit programs)

### **Evaluate whether returning employees owe any portion of health care premiums while furloughed**

- Develop a reasonable plan for employee to pay back health care premiums, if necessary
- Consider state and local laws regarding wage deductions

### **Consider potential issues relating to retirement / pension plans**

- Determine whether employees returning to work will need to re-enroll or update prior plan pre-tax deferral elections
- Review retirement plans and consider whether there has been a break in service and, if so, what the implications might be (vesting, for instance)
- Evaluate the potential need for plan amendments to modify conditions for annual benefit allocations (e.g. minimum hours requirements)
- Manage administration of plan loan program for returning workers (e.g. restart wage deductions for loan repayments)
- Review employee compensation and bonus programs
- Determine if any changes to compensation must be made, and review applicable laws relating to notice of wage changes
- Calculate the effect of closure on existing bonus or incentive plans

## **Employee Morale**

### **Communicate Regularly**

- Communicate the steps the company is taking to ensure safety
- Remind employees of benefits offered
- Request feedback and internalize it. Consider anonymous surveys as a low cost and effective mechanism to gauge what is working.
- Address any health and safety concerns brought by employees promptly
- Aim to respond to specific employee concerns promptly
- Establish a communication channels for employees to address concerns

### **Remind employees that discrimination and retaliation is strictly prohibited**

- Review non-discrimination policies and recirculate, as needed
- Train managers on how to respond to offensive or discriminatory comments regarding the coronavirus and certain groups of individuals