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Presentation Topics

Determining Whether to Reopen

Preparing the Workplace

Bringing Employees Back to Work

States Unveil Reopening Plans

Pennsylvania

Pennsylvania implemented a three-phased plan based on region

Regions must meet certain criteria set by the Governor before it can move out of the red phase.

Several regions of Pennsylvania are partially opened. Philadelphia and the surrounding counties remain closed.

New Jersey

New Jersey laid out a roadmap with six principles to reopening.

Phased reopening of businesses across the state.

Certain outdoor recreational areas and related businesses may restart operations on May 22, 2020.

Delaware

Delaware implemented a phased reopening plan.

Phase 1 will begin on June 1, 2020.

Certain businesses will be allowed to reopen and will need to implement social distancing measures as required by the state.

Determining Whether to Reopen

Key Considerations When Reopening

Is your opening consistent with state and local orders?

Is your business prepared to protect employees at higher risk for severe illness?

Have you developed and implemented social distancing / safety measures?

Do you know how your business will enforce new policies and requirements?

Have you developed protocols for bringing employees back into the workplace?

Do you have a policy for COVID-19 monitoring and exposure related issues?

CDC Guidance: **Reopening**

- On May 14, 2020, CDC issued additional guidance to help the food service industry, childcare programs, and other businesses decide when and whether to reopen.

- Prior to reopening, the CDC recommended that all businesses should ensure:
  - Reopening is consistent with applicable state and local orders
  - The business is ready to protect employees at higher risk for severe illness
  - The business implemented CDC recommended health and safety actions
  - An ongoing monitoring system is in place

- Once a business completes these steps it is ready to reopen.

CDC Guidance: **Reopening Workplaces**

CDC recommended health and safety actions:

- Promote healthy hygiene practices (i.e., hand washing and cloth face coverings for employees).
- Intensify cleaning, sanitization, disinfection, and ventilation.
- Encourage and implement social distancing measures:
  - Increase spacing between employees.
  - Enhance space through physical barriers
  - Change layout of workspaces
  - Encourage telework
  - Closing or limiting access to communal spaces
  - Stagger shifts and breaks
  - Limit large events
- Consider modify travel and commuting practices
- Train employees on health and safety protocols

CDC Guidance:
Reopening for the Food Service Industry

CDC recommended health and safety actions:

- Promote healthy hygiene practices (i.e., hand washing and cloth face coverings for employees).
- Intensify cleaning, sanitization, disinfection, and ventilation.
- Encourage and implement social distancing measures:
  - Increase spacing at establishments
  - Encourage drive-through, delivery, curb-side pick up
  - Increase spacing of tables/stools
  - Limit party sizes and occupancy
  - Avoid self-serve stations
  - Restrict employee spaces
  - Rotate or stagger shifts

CDC Guidance:
Reopening Child Care Programs

CDC recommended health and safety actions:

- Promote healthy hygiene practices (i.e., hand washing and cloth face coverings for employees).
- Intensify cleaning, sanitization, disinfection, and ventilation.
- Encourage and implement social distancing measures:
  - Organize activities in small groups
  - Limit mixing between groups, if feasible
  - For family childcare, monitor distance between children not playing together
  - Maintain distance between children during nap time
- Adjust activities to limit sharing of items (i.e., toys, belongings, supplies, and equipment).
- Train all employees on health and safety protocols.

CDC Guidance:
Reopening Youth Programs and Camps

CDC recommended health and safety actions:

- Promote healthy hygiene practices (i.e., hand washing and cloth face coverings for employees).
- Intensify cleaning, sanitization, disinfection, and ventilation.
- Encourage and implement social distancing measures:
  - Organize activities into small groups
  - Limit mixing between groups
  - Staggered scheduling, arrival, and drop off, if feasible
- Where feasible, adjust activities and procedures to limit sharing of items (i.e., toys, belongings, supplies, and equipment).
- Train all employees on health and safety protocol.

CDC Guidance: **Reopening**

For all business, CDC recommended implementing ongoing monitoring of health and safety practices such as:

- Develop and implement procedures to check for signs and symptoms in employees daily upon arrival, as feasible
- Encourage anyone who is sick to stay home
- Develop a plan for if an employee gets sick
- Regularly communicate and monitor develops with local authorities and employees
- Monitor employee absences and implement flexible leave policies
- Be prepared to consul with local health authorities if there are cases in the facility or increase in cases in the local area
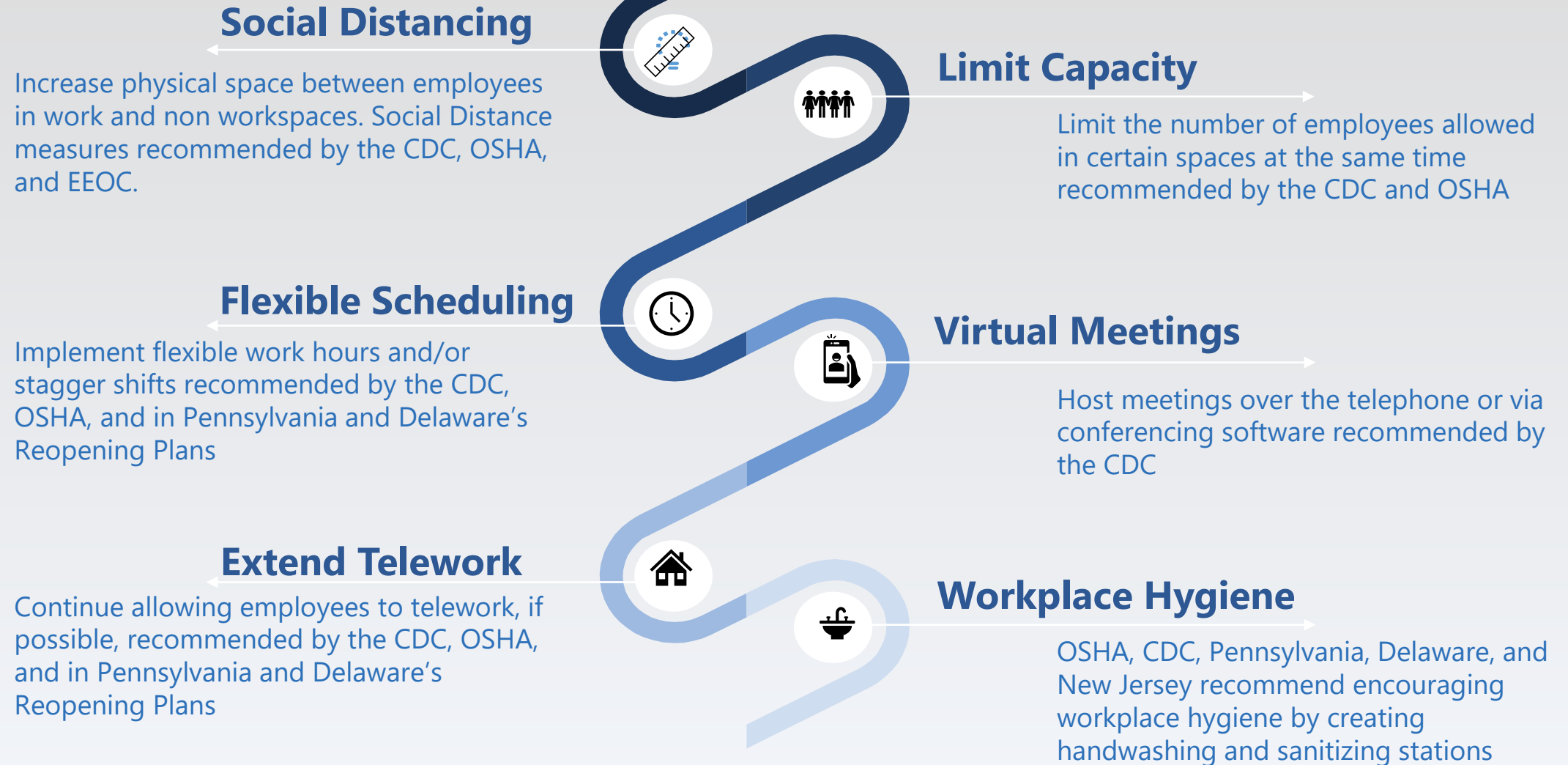
Preparing the Workplace

Clean and Disinfect the Job Site

CDC Recommendations:

- Indoor areas need to be cleaned and disinfected

- Outdoor areas do not require disinfectant

- Areas unoccupied for the last 7 days or more do not need to be disinfected

- Disinfect frequently touched surfaces and objects (i.e., tables, doorknobs, light switches, keyboards, toilets)

- Soft and non-porous surfaces (i.e., carpet, rugs, and/or seating areas) will also require disinfectant

Reorganize the Physical Workplace

Social Distancing

Increase physical space between employees in work and non workspaces. Social Distance measures recommended by the CDC, OSHA, and EEOC.

Limit Capacity

Limit the number of employees allowed in certain spaces at the same time recommended by the CDC and OSHA

Flexible Scheduling

Implement flexible work hours and/or stagger shifts recommended by the CDC, OSHA, and in Pennsylvania and Delaware's Reopening Plans

Virtual Meetings

Host meetings over the telephone or via conferencing software recommended by the CDC

Extend Telework

Continue allowing employees to telework, if possible, recommended by the CDC, OSHA, and in Pennsylvania and Delaware's Reopening Plans

Workplace Hygiene

OSHA, CDC, Pennsylvania, Delaware, and New Jersey recommend encouraging workplace hygiene by creating handwashing and sanitizing stations

Bringing Employees Back to Work

Protecting Employees from COVID-19

Soliciting health information from employees:

- EEOC confirmed that employers do not violate the ADA by asking disability-related questions.
- Employers may ask questions related to whether the employee suffers from underlying health conditions that may make COVID-19 more severe for them.

Workplace sanitization procedures

- CDC, OSHA, and state guidance recommends implementing frequent sanitization of high-touch areas.
- Designate a team in charge of cleaning and disinfecting the workplace.

Develop new social distancing and safety measures

- Train employees on the new protocols.
- Designate management or individuals as contacts for any questions or concerns related to the new protocols.

Temperature Checks

- The EEOC issued revised guidance concerning COVID-19, the ADA, and the Rehabilitation Act.

- In ordinary times, the ADA limits the circumstances under which employers can require temperature screening. Employers were only allowed to do so if it was "job-related and consistent with business necessity."

- The EEOC stated that what constitutes business necessity is different during a pandemic.

- The EEOC stated that temperature checks during this time are valid and appropriate.

Temperature Checks

- ## Delaware
  - Required for high-risk businesses and recommended for all others. An employee is considered to have a fever if their body temperature is at or above 99.5 F.
  - If a facility has the capability to perform active temperature monitoring, they may do so.

- ## New Jersey
  - No requirement concerning temperature checks.

- ## Pennsylvania
  - Employers may take employees' temperatures before they begin work and send employees home if they have a fever of 100.4 F or higher.
  - Employers must take an employees' temperature if the business has been exposed to a person who is a probable or confirmed case of COVID-19.

  - Remember if recording an employee's temperature it must be maintained confidentially

Face Coverings (Pennsylvania)

- Employers must provide non-medical masks for all employees to wear while at work.

- Employers must make it mandatory to wear masks while on the work site.

- Employers may approve masks obtained or made by employees in accordance with Department of Health policies.

- Businesses may deny entry to those not wearing a face covering, unless the business provides medication, medical services, or food. The business must then provide alternative methods of pick-up or delivery of such goods.

- Customers unable to wear a mask due to a medical condition and children under two may enter premises without a face covering. Customer are not required to provide proof of their medical condition.

Face Coverings (New Jersey)

- Employees and customers of certain essential business must wear cloth face coverings while on the premises, except where doing so would inhibit the individual's health or where the individual is under two years of age

- Employers must provide, at their expense, face coverings and gloves for their employees.

- If a customer refuses to wear a cloth face covering for non-medical reasons and if a face covering cannot be provided to the individual by the business at the point of entry, then the business must decline entry to the individual, unless if the business is providing medication, medical supplies, or food, in which case the business policy should provide alternate methods of pick and/or delivery.

Face Coverings (Delaware)

- The state issued guidance for employers concerning face coverings in the workplace. The recommendations include:
    - Require employees to wear a face covering while working in areas open to the public and in areas where coming within 6 feet of other staff is likely.
    - Provide, at the business' expense, face coverings and hand sanitizer for their employees.
    - Deny entry to individuals who do not have face coverings – or if one is not available for them.
    - If any business denying entry is providing medication, medical supplies, or food, the business should provide alternate methods of pick up or delivery.

COVID-19 Exposure in the Workplace
Managing Primary Exposure

Employee is diagnosed with COVID-19

Send the employee home or request that they remain at home.

Contact local Department of Public Health for guidance

Identify all who may have been in contact with the sick employee

Separate the employee from other employees, customers, and visitors

Consider cleaning the workplace

COVID-19 Exposure in the Workplace
Managing Secondary Exposure

Employee has been in close contact with someone diagnosed with COVID-19 in the last 14 days.

Determine if local department of public health or CDC instructed employee to self-quarantine

Employers may identify those who were exposed to the employee

Employers may clean and disinfect the workplace

Employer may send employee home or require the employee to work from home

Critical Infrastructure Workers

- The CDC advises that critical infrastructure workers may be permitted to continue work following potential exposure to COVID-19 provided they remain asymptomatic and additional precautions are implemented to protect them and the community

- Critical infrastructure workers who have had an exposure but remain asymptomatic should adhere to the following practices prior to and during their work shift:
  - Have their temperature screened and symptoms assessed prior to starting work.
  - Regularly monitoring their symptoms.
  - Wear a mask at all times while in the workplace for 14 days after last exposure.
  - Social Distance as work duties permit in the workplace.
  - Disinfect and clean their workspaces.

Telework

- Confidentiality and Security Risks
- Leave
  - Employee may take leave if employer permits it and employee is unable to telework a normal schedule of hours or due to COVID-19.
- Expense reimbursement for masks/safety equipment and internet/cell phone for teleworking employees
- Ensure compliance with Wage and Hour Laws
  - Approval for non-exempt employees
  - Proper time recording
  - Meal and rest break compliance
  - Ensure non-exempt employees meet duties test

Managing Employee Leave Requests

- The Families First Coronavirus Response Act ("FFCRA") required employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.
    - Emergency Paid Sick Leave Act
    - Emergency Family and Medical Leave Expansion Act
- Pay requirements for employees who take sick leave due to COVID-19
- Allow for Intermittent Leave for Paid Sick or Family Leave
- Update existing Wellness and EAP programs to include COVID-19 specific issues

Practical Tips for Managing Employees that Refuse to Return to Work

- Carefully evaluate if the refusal is reasonable.

- Evaluate whether employee is eligible for state or local mandatory sick leave.

- Ensure that all safety and cleaning protocols are implemented to limit employee exposure to COVID-19.

- Employer is not required to pay the employee and/or provide them with PTO or vacation.

- Employers may wish to advise these employees that offer of work was reported to the state, and unemployment benefits will stop.

Compliance with OSHA

- Evaluate OSHA safety procedures and preparedness for dealing with safety violation citations

- Follow OSHA Cleaning Protocols for symptomatic and asymptomatic employees

- Prepare for increased employee safety complaints and OSHA onsite inspections and informal complaint letters

- Respond to informal complaint letters with steps taken to protect employees from exposure to COVID-19

Q & A

Helpful Resources

State Guidance

- Pennsylvania Guidance for Businesses
- Delaware Reopening Guidance
- New Jersey Executive Order for Construction Businesses and Other Business Permitted to Open
- New Jersey Guidance on Reopening Outdoor Recreational Businesses

OSHA

- Guidance on Preparing Workplaces for COVID-19
- OSHA Guidance for Specific Industries

EEOC

- EEOC Guidance on COVID-19

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- Coronavirus (COVID-19) Task Force Resource Center

CDC

- Reopening Guidance for Cleaning and Disinfecting
- Reopening Guidance for Restaurants and Bars
- Reopening Guidance for Workplaces
- Reopening Guidance for Child Care
- Reopening Guidance for Youth Programs and Camps
- Safety Practices for Critical Infrastructure Workers

Thank you!

Questions? Contact:

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Follow our Coronavirus (COVID-19) Task Force Resource Center for all the latest guidance:
www.klehr.com/covid-19