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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:
 - Employees should not come into work if sick
 - 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