COVID-19 WORKFORCE REENTRY GUIDE

Those states which have issued orders restricting the operation of businesses, have begun lifting or considering lifting such orders and permitting businesses to gradually return to normal operations, albeit with limitations. In anticipation of the orders lifting, employers should be proactively taking steps to prepare for the physical return of their employees to their offices and facilities. While not an exhaustive identification of all possible issues employers may face, this checklist offers practical and legal action items that employers should consider as they develop their own individualized plan to return teleworking, furloughed, or laid off employees to the workplace. Unionized employers should also consider whether any changes in the work environment will require negotiating with the applicable union.

1. **Preparing The Workplace For Reentry**
   ✓ *Consider developing a COVID-19 Reentry Task Force* - If you have not done so already, consider developing a multidisciplinary task force charged with creating, communicating, and enforcing the Company's reentry plan. Your Task Force should determine when to reopen, with consideration paid to the risk-levels within your geographic area and orders and guidance from federal, state, and local government entities, including measures that are required by any applicable orders.

   ✓ *Consider and Implement Changes to Ensure Facility Hygiene* - While measures relating to facility hygiene will be unique to each facility, employers should consider the following:
   - Develop a schedule for cleaning and disinfecting work spaces and communicate with third-party providers regarding the same. Ideally, employers should increase the frequency of cleaning, particularly as it relates to commonly touched and used surfaces (including bathrooms, common areas, and shared electronic equipment). Guidance from the CDC regarding cleaning and disinfecting is available here.

   - Per CDC recommendations, work with your facility maintenance staff or the entity or individual who owns the property to increase air exchanges throughout the facility.

   - Make necessary changes to enforce physical distancing (including as may be required pursuant to any state or local municipality orders) as work duties permit. Changes may include, but are not limited to:
     o **Structural Changes** – i.e., temporarily closing communal spaces, modifying spaces (e.g., removing or repositioning desks, tables, chairs, and equipment), erecting physical barriers (e.g., plexiglass screens or dividers), etc.
     o **Scheduling Changes** – Consider staggering arrival, departure, and break/meal times to avoid mass gathering of employees, including at points of entry, physical time clocks, or other common areas or scheduling more shifts with less employees per shift.
     o **Limiting Gatherings** – Require meetings to occur via video or telephone conference, disallow/limit visitors to your facility (those permitted should be required to sign in and out and certify that they are not experiencing any symptoms associated with COVID-19), disallow/limit the hosting of in-person events.
     o **Signage/Markings** – Place signs or incorporate floor markings to remind employees to maintain a 6 foot distance from others to the extent possible.

- Acquire and distribute necessary personal protective equipment and hygiene supplies and provide education regarding the use of the same.
    - **Masks and Protective Coverings** – Based on CDC guidance and state or local orders, and depending on the location of the workplace and nature of the positions at issue, the Company may require that employees wear masks or other protective coverings. Currently, some states require the use of masks when working. If you are in one of those states, you will need to provide masks to employees and, if you cannot do so, may not be able to resume operations. In addition, if you are in one of those states or will otherwise require employees to wear masks (or other protective coverings) in the workplace, you should develop an OSHA-compliant hazard assessment and training protocol. Employers may consider terminating employees who refuse to wear required protective gear as long as the gear is necessary for the safety of employees and there is no medical reason preventing the usage of the protective gear. Employers implementing the use of masks (or other protective coverings) for the first time, should consider pilot testing such use to ensure it does not interfere with work assignments or impact the employee's ability to safely perform his or her job. The CDC's guidance regarding the proper use and maintenance of face coverings is available here.
    - **Hand Sanitizer, Soap, and Disinfecting Wipes** – Such supplies should be made available throughout the facility. Consider placing signs throughout the facility relating to frequent/appropriate handwashing, coughing and sneezing etiquette, and proper use of disinfectants in the workplace.

- ✓ *Consider and Implement Screening Procedures* - To protect the safety of their workforces, many employers are considering options for testing and monitoring employees for the presence of the COVID-19 virus following their physical return to work. In some cases—such as for Essential Businesses and Operations in Wisconsin—the development of policies and procedures to prevent workers from entering the premises if they display symptoms or have had contact with a person with a confirmed diagnosis of COVID-19 is required.
    - Options for testing and monitoring include:
        - **Temperature Testing** – thermometer testing employees and/or contractors upon arrival to determine whether they have a temperature of 100° F or above (or requiring the employee to do the same before returning to work).
        - **Self-Reporting/Acknowledgments** – requiring employees and/or contractors to confirm that they are symptom free (i.e., have not developed a fever, cough, shortness of breath, sore throat, chills, repeated shaking with chills, muscle pain, headache, or new loss of taste or smell) and have not been in contact with any symptomatic individual prior to entering the premises to begin work.

    - Legal Considerations:
        - **Permissible Medical Examination** – Recent EEOC and CDC guidance provides that, *at present*, the COVID-19 pandemic creates a sufficient direct threat to the health of others such that testing and monitoring for the presence of the COVID-19 virus or symptoms connected to it are permissible under the Americans with Disabilities Act ("ADA"). While such testing is permitted under federal law, employers should ensure that it also does not violate state or local laws. Note that at a certain point, the risk associated with COVID-19 may dissipate such that the direct threat exception no longer justifies widespread testing even under the ADA.
        - **Confidentiality and Privacy Requirements** – Although testing and monitoring is presently permissible under the ADA, medical information gathered through such processes must be maintained in a separate medical file and disclosure of such information must be

limited. State-specific disability and privacy laws may place additional limitations on the use and disclosure of such medical information.

- o **Consistency** – To avoid claims of discriminatory treatment, employers must ensure that decisions regarding whether and who will be subjected to testing and monitoring are made for legitimate reasons and are implemented consistently across job categories. For instance, you cannot apply temperature testing only to employees of certain nationalities.
- o **Wage and Hour Considerations** – To ensure compliance with wage and hour laws, non-exempt employees should be paid for time spent waiting for and receiving testing. Any costs associated with required testing should be borne by the employer.
- o **OSHA Considerations** – To ensure compliance with OSHA requirements, the individual(s) conducting the testing must be trained on proper use of equipment and protocols.

- Practical Considerations:
  - o **Obtaining Necessary Supplies/Training** – Prior to implementing mandatory testing or monitoring procedures, ensure that you have obtained all necessary equipment and materials to do so in a safe and hygienic manner. Ensure that you have designated appropriate personnel to perform/oversee the testing and monitoring and that, in addition to the training noted above, such personnel are trained regarding confidentiality and privacy.
  - o **Employee Refusal** – Employers may bar employees who refuse to undergo required testing from the workplace. Employers should allow for an exception process if employees present a legitimate medical or religious reason for their refusal.
  - o **Positive Test/Self-Report** – See below for additional information and best practices relating to positive tests or self-reports.

✓ *Review and Implement Policies -*
- Review existing policies and postings to ensure compliance with recently implemented federal and state COVID-19-related legislation, including the Families First Coronavirus Response Act (FFCRA) and other state paid and unpaid leave laws.

- Create, or revise as appropriate, policies and procedures while are implicated by the pandemic, including those covering:
  - o Temporary requirements for physical distancing and hygiene practices in the workplace;
  - o Testing and monitoring in the workplace;
  - o Reporting COVID-19-related concerns or inquiries;
  - o Requests for leaves of absence related to COVID-19;
  - o Attendance;
  - o Teleworking; and
  - o Restrictions on travel

✓ *Consider All Other State-Specific Requirements* - In consultation with legal counsel, review applicable state and local orders and guidance to ensure compliance with all other policies or procedures required prior to employee reentry.

2. **Returning Employees To Work**
   ✓ *Consider Whether to Return Employees in Stages* - To avoid a potentially significant influx of employees returning to a worksite at once, employers should assess whether employees can be brought back to work in stages.
   - Practical Considerations:
     o How many workers do you need to resume or restore essential operations?
     o Can certain positions continue to work from home even if some of the workforce returns?
     o Consider making return to the work site voluntary initially.

   - If an employer utilizes a staggered approach to recalling employees (particularly furloughed employees or employees on a lay off) or decides to utilize additional shifts, ensure that you have neutral, non-discriminatory business justification supporting the basis for the recall order or assignment to shifts (i.e., to avoid any claim that the recall favored an employee (or employees) of a certain category).
     o If an employee handbook or collective bargaining agreement contains recall provisions, ensure that you are complying with such provisions in your recall process.

   ✓ *Be Prepared to Answer Benefits-related Questions* - Returning employees may have questions about their benefits eligibility (particularly if they lost coverage under any plans while off work). Employers should be prepared to address questions on eligibility for health benefits, retirement, PTO/vacation, and any other benefits the employer offers.
   - Employees are likely to ask about accrual or contributions while they were off work. Your human resources and/or any benefits specialists should be prepared to address these questions (and ensure the information being disseminated to employees is consistent).

   - If required, talk to benefit plan administrators and ensure you have accurate information regarding any benefits handled by an outside provider.

   ✓ *Prepare a Communication Notifying Employees of Their Return To Work* -
   - Items to potentially cover in the communication:
     o Appreciation and gratitude for employees during this time;
     o Desired date and time for employee's return to work (addressing staggered arrival and departure expectations or new shifts as appropriate);
     o New expectations or policies employees must know prior to their first shift back (e.g., temperature testing, self-acknowledgment of symptoms, PPE requirements). Note that the pandemic is still evolving and policies/procedures subject to change; and
     o Where to direct questions regarding return to work/COVID-19 issues.

   ✓ *Develop a Plan for Employees Who Refuse to Return to Work or Request Continued Telework* -
   - If employees refuse to return to work, employers should engage in a dialogue with employees to determine the basis for refusal.

   - If appropriate based on the dialogue, conduct a leave/accommodation analysis (and if an employee qualifies, ensure that you are requesting and maintaining appropriate documentation to apply for and obtain tax credits and reimbursement for qualifying leave under the FFCRA).

   - If an employee objects to returning on the basis of safety- or health-related concerns, confer with legal counsel regarding whether the objection rises to the level of potential protected activity under OSHA, the NLRA, or other applicable employment laws.

3. **Post-Reopening Considerations**
   ✓ *Develop a Communication Plan for COVID-19 Related Updates to Employees*
   - Unfortunately, the pandemic is not yet over and employers will need to regularly communicate with employees regarding COVID-19 related issues as they continue to arise. Consider whether a weekly or bi-weekly update is appropriate to inform employees of any policy or procedural changes (and issue reminders regarding physical distancing/hygiene policies as appropriate).

   ✓ *Monitor the Workforce for Indicative Symptoms of COVID-19*
   - If your company has not already created one, ensure that you have a procedure in place for employees who present with or self-report COVID-19 symptoms or have tested positive. Such a policy should cover, at a minimum:
     o Expectations for employees who disclose that they are sick;
     o Procedures for symptomatic/positive cases (i.e., interview of employee to determine contacts, requisite disclosures to members of the workforce, and return-to-work procedures (including length of required self-isolation and whether return-to-work testing or documentation will be required));
     o Plan for contact tracing in the worksite and notifying employees exposed (or potentially exposed) to COVID-19; and
     o Whether communication regarding a positive COVID-19 case will be sent to the entire workforce, worksite, or only exposed/potentially exposed employees.
       ▪ As noted above, employers should be careful to respect confidentiality.

   ✓ *Determine Operational Ability if Absenteeism Spikes*
   - Employers should be prepared to address increases in absenteeism, particularly if a second outbreak of COVID-19 occurs, which currently is anticipated. Consider whether to cross-train employees on key positions to ensure necessary staffing if absenteeism spikes.

   ✓ *Continue to Monitor Public Health Guidance*
   - Employers should continue to monitor (and implement, where appropriate) public guidance from the CDC, OSHA, and state and local governments. Consider assigning a designated employee responsible for daily or weekly check-ins for newly-issued guidance.

   ✓ *Consider Opportunities for Morale Engagement*
   - Where appropriate, including based on financial circumstances, employers should try to create opportunities to improve employee morale. Cost effective-ideas include:
     o Casual attire days;
     o Providing lunch;
     o Messages of gratitude/appreciation; and
     o Flexibility (as is feasible).