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Return to Work Plan Outline

Your return to work plan is going to be dependent on your industry, your work culture, whether you completely shut down or decreased operations during the pandemic, and the design of your workplace. At the same time, there are a number of topics that all organizations should keep at top of mind when they are reopening.

Reopening Plan

The first step to how you will reopen is to formulate a plan. During formulation, consider the following:

- Follow federal, state, or local restrictions and requirements for reopening.
    - Identify a point person to remain up to date on these duties and requirements as they evolve and change.
        - Sources for this information include:
            - The Center for Disease Control
            - The Occupational Safety and Health Administration
            - State and Federal Department of Labor
            - The Equal Employment Opportunity Commission and your state Fair Employment Practices Commission (FEPC)
- Follow federal, state, and industry guidance for monitoring and/or testing employees for COVID-19. The requirements that are most likely to appear in business reopening orders include:
    - Quarantining of employees with confirmed COVID-19 cases.
    - Contact tracing of others who came in contact with the infected employee and isolation of those identified.
    - Screening of workers and other workplace visitors with procedures for sending home individuals with fever or other COVID-19 symptoms.
    - Social distancing measures.
    - The use of face masks and other personal protective equipment (PPE), especially for public-facing workers.
    - Enhanced cleaning and sanitation protocols.
    - Restricting use of shared equipment and work spaces.
    - Requiring frequent handwashing and providing washing stations and cleaning products.
    - Posting and distributing notices about the new procedures.

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- Consider a phased return to work.
  - In considering the phased nature of return to work, make sure you use nondiscriminatory practices in returning people to work.
  - Consider whether remote working opportunities remain possible for some of your workforce.
- Prepare how you will communicate your reopening plan to your employees, as well as to third parties.
- Prepare a contingency-operation plan to address an increased outbreak or spike in infections as restrictive measures are loosened.
- Consider instituting safe screening practices for both employees and visitors prior to entrance into the facilities.
  - Mandate that employees with symptoms stay home from work and follow employer call-in procedures.
  - Refuse entrance to visitors who display COVID-19 symptoms.
- Consider implementing temperature checks upon entrance in a safe and confidential manner.
  - Be mindful of privacy concerns and any necessary accommodations.
- Consider suspending or reconfiguring security practices that require touching frequently touched surfaces, such as PIN-entry devices, thumbprint scanners, time clock stations, and in sign-in books.
- Be mindful of responsibilities under the Payroll Protection Program and other support programs for returning employees to work.

Travel to Work

Once you reopen, how will people arrive at their work location and at what point in time may compensable time begin to occur? During this analysis consider everything that employees will need to do to get from their home to their desk or work station.

- Are the employees using public transportation?
  - Is public transportation running on a limited schedule?
  - How is social distancing being maintained?
  - How much contact will employees have with others during their commute?
- Do employees travel by car, carpool, or company shuttle?
  - If possible, encourage workers to avoid carpooling to and from work.
  - If carpooling or using company shuttle is necessary, attempt to institute some controls and practices:
    - Limit the number of people per vehicle as much as possible. This may mean using more vehicles.
    - Encourage employees to maintain social distancing as much as possible.

- ▪ Encourage employees to use hand hygiene before entering the vehicle and when arriving at the destination.
- ▪ Encourage employees to wear mouth/nose coverings.
- ▪ Encourage employees to regularly clean and disinfect commonly touched surfaces after each carpool or shuttle trip.
- Once employees arrive at work, do they need to take an elevator to their desk/workplace?
  - o Will employees come in contact with individuals of another entity/company during this time?
    - ▪ If so, what precautions are those companies requiring employees take?
  - o Will employees be able to practice social distancing within the elevator?
    - ▪ If not, have you created an elevator policy attempting to limit the number of employees per elevator?

Physical Space

Once employees arrive at work, how will you maintain their safety in the work environment?

- Encourage single-file movement with a six-foot distance between each worker through the facility, where possible.
  - o Provide visual cues (e.g., floor markings, signs) as a reminder to workers to maintain social distancing.
- Designate individuals to monitor and facilitate social distancing.
- Consider changing or staggering shifts.
- Implement engineering controls, such as physical barriers or dividers or rope systems, to maintain at least six feet of distance between individuals.
- If individuals need to be within six feet of others, make sure they are using appropriate PPE based on the repeated close contact.
- Consider staggering the times when employees arrive at work, leave work, and take breaks.
- Limit the number of individuals who can be in a breakroom, conference room, or other space and post that number outside the space.
- Permit employees to leave the facility during meals and breaks to increase social distancing.
- Continue to hold meetings virtually.
  - o Consider the effect on your workforce if a mass gathering is held and the virus spreads to all individuals in attendance.
- Rearrange work spaces to permit greater social distancing.
- Consider whether furniture and work equipment can be reconfigured to facilitate social distancing.
- Develop protocols for elevator use (as discussed above).
- Limit the number of visitors by conducting business virtually.
- Discourage social practices such as handshakes.

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- For retailers, consider providing alternative points of sale and no-touch payment options.

Access to Health and Safety Materials

Employers need to make sure that they have on hand the physical items and safety materials that employees will need to safely perform their jobs.

- Provide workers access to soap, clean running water, and single use paper towels for hand washing.
    - o Require employees to disinfect common surfaces following use as appropriate (e.g., in microwaves).
    - o Provide hand sanitizer, disinfecting wipes, and proper disposal in all common areas and at work stations where employees cannot leave to wash their hands between interactions with the public.
- Include additional sanitation measures for the facility, especially in common areas and for frequently touched surfaces or shared equipment.
- Coordinate with facility maintenance to increase air exchanges in facilities.
- Provide alcohol-based hand sanitizers containing at least 60% alcohol if soap and water are not immediately available.
    - o Place hand sanitizers in multiple locations to encourage hand hygiene. If possible, choose hand sanitizer stations that are touch-free.
- Consider other workplace programs to promote personal hygiene, such as:
    - o Building additional short breaks into staff schedules to increase how often staff can wash their hands with soap and water or use hand sanitizers with at least 60% alcohol;
    - o Providing tissues and no-touch trash receptacles for workers to use; and
    - o Placing proper handwashing protocol posters in all common work areas and in restrooms.
- Be flexible with employees' breaks to allow for frequent handwashing.
- Encourage (or require if applicable under local, state, or federal law) employees to use masks or approved facial coverings and gloves, and provide them if able.
- If employers permit employees to use their own, provide clear expectations on what is appropriate.
    - o Allow for breathing without restriction;
    - o Fit over the nose and mouth and fit snugly, but comfortably against the side of the face;
    - o Are secured with ties or ear loops;
    - o Include multiple layers of fabric;
    - o Can be laundered using the warmest appropriate water setting and machine dried daily after the shift, without damage or change to shape (a clean cloth face covering should be used each day);
    - o Are not used if they become wet or contaminated;

- - Are replaced with clean replacements, provided by employer, as needed;
  - Are handled as little as possible to prevent transferring infectious materials to the cloth; and
  - Are not worn with or instead required respiratory protections.
- Ensure employees are trained on proper use of PPE.

Wage and Hour

When all of the above practices and procedures are implemented, they could create wage and hour concerns. Consider the below:

- Stagger break times or provide temporary break areas and restrooms to avoid groups of workers during breaks. Workers should maintain at least six feet of distance from others at all times, including on breaks and in restrooms.
- Stagger employee arrival and departure times to avoid congregation in parking areas, locker rooms, and near time clocks.
- Monitor and respond to absenteeism at the workplace. Implement plans to continue essential business functions in cases of higher than usual absenteeism.
- If you are testing employees (temperature, COVID-19) analyze whether this time is compensable.

Policies to Review/Analyze or Create

As the business plans to reopen, employers should evaluate (or create) several key employee policies and procedures that may be impacted in pandemic and post-pandemic phases. These include an employer's:

- Analyze sick leave policies and consider modifying them to make sure that ill workers are not in the workplace. Make sure that employees are aware of and understand these policies.
  - Consider the FFCRA (if applicable) and how it interacts with your current policies.
  - Review state or local expansion of paid sick or family leave.
  - Determine whether your state permits "use it or lose it" type policies and how they will apply to any state or local grant of paid time away from work.
  - Consider permitting one-time carryover provisions for individuals who may have had vacation/PTO that they were unable to use on account of COVID-19.
- Review and update FMLA policies if the FFCRA is applicable to your organization.
- Analyze any incentive programs and consider modifying them, if warranted, so that employees are not penalized for taking sick leave if they have COVID-19.
- Additional flexibilities might include giving advances on future sick leave and allowing employees to donate sick leave to each other.

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- Ensure that a policy and procedure is in place for processing Families First Coronavirus Response Act leave requests and recouping available tax credits.
- Create a policy or procedure for when employees diagnosed with COVID-19 or suspected of having COVID-19 can return to work.
    - Make sure this does not run afoul of the ADA or state FEPAs.
- Review and update any teleworking and accommodation policies or procedures. Employers should consider the following when reviewing such policies:
    - If employees successfully teleworked during a stay-at-home order, the employer must determine whether that degree of teleworking is desirable or feasible going forward, which may vary depending on the phase of reopening (e.g., employees may fear using public transportation before a vaccine is available);
    - That a demonstrated ability to telework effectively during a stay-at-home order may affect the reasonableness of (or undue hardship posed by) an employee's request to work from home as an accommodation for a disability, particularly given the now commonplace use of remote meeting technologies;
    - That telework is privilege, not a right; and
    - The criteria and conditions required for assessing work from home requests must be handled in a non-discriminatory manner.
- Travel policies. Employers should consider whether:
    - Non-essential business travel should be discouraged or prohibited during one or more phases of reopening;
    - Employees should be discouraged from traveling to any specified regions during the pandemic; and
    - They will question employees about personal travel and require a period of quarantine after return, if consistent with CDC or other guidelines. However, employers should be aware that certain states have laws prohibiting employers from taking actions against employees for lawful off-duty conduct (see Employee Privacy Laws: State Q&A Tool: Q1, Q 11).
- Employee job descriptions. Consider whether, as a result of business closures, the employer has identified certain essential job functions for any positions, such as an employee's physical presence in the workplace, or determined that certain functions are no longer essential (see Mitigating Employer Reopening Liability Checklist: Comply with Applicable Wage and Hour Laws).
- Expense reimbursement policies. For example, employers may need to reevaluate their policies regarding reimbursement for:
    - PPE or other health and safety equipment;
    - Work-from-home expenses, such as high-speed internet, computer monitors, ergonomic chairs, or cell phones required or requested for performing telework; or
    - Tolls and parking for employees unable to safely use public transportation but need to come to the workplace.
- Develop and implement procedures to track any positive cases to provide proper notification for those exposed and to prevent further spread.

- o Establish a system for employees to alert their supervisors if they are experiencing signs or symptoms of COVID-19 or if they have had recent close contact with a suspected or confirmed COVID-19 case.
- Update procedures for reporting any safety issues.
- Develop a strategy for workers who decline to return to work or need additional time off.
- Review time-keeping procedures to ensure they allow for social distancing and adequately recording working time.
- Review and update safety policies and clearly communicate new rules and procedures to employees in writing.
- Ensure employees understand these updated policies before returning to work, or if applicable, immediately upon returning to work.
  - o Have employees acknowledge receipt of training, rules and procedures.
  - o Require training on updated safety procedures for employees.
  - o Train supervisors on how to monitor compliance with and enforce new rules and procedures.
  - o As always, enforce the policies and consistently discipline employees for policy violations.

Trainings

You've updated your policies and practices, now you need to make sure that employees are properly aware of how to implement these changes. Proper training, accordingly, is key:

- Workers should be educated to avoid touching their faces, including their eyes, noses, and mouths, particularly until they have thoroughly washed their hands upon completing work and/or removing personal protective equipment (PPE).
- Supplement workers' normal and required job training (e.g., training required under OSHA standards) with additional training and information about COVID-19, recognizing signs and symptoms of infection, and ways to prevent exposure to the virus. Training should include information about how to implement the various infection prevention and control measures recommended here and included in any infection prevention and control or COVID-19 response plan that an employer develops. OSHA provides information about training on its COVID-19 webpage.
- Unemployment fraud. In some circumstances, employees may decline to work because they are earning more benefits on unemployment than in their normal position. Employers must inform unemployment if work is available and the employee refuses to return for an unexcused reason.
- All communication and training should be easy to understand and should (1) be provided in languages appropriate to the preferred languages spoken or read by the workers, if possible; (2) be at the appropriate literacy level; and (3) include accurate and timely information about:

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- o Symptoms of COVID-19, including how it spreads, risks for workplace exposures, and guidance on how workers can protect themselves;
- o Proper hand washing practices as well as the location of hand sanitizing stations;
- o Appropriate cough and sneeze containment; and
- o Proper procedures for removing and putting on masks or face coverings pursuant to suggested infection control precautions.
- Consistently encourage employees to raise questions or concerns and designate a member of your team to engage in dialogue with employees concerning these issues or concerns.

For other questions concerning appropriate re-opening plans, contact Tawny Alvarez or another member of Verrill's Employment & Labor Group.