RETURNING EMPLOYEES TO WORK AFTER COVID-19

MAY 7, 2020

Jessica Summers, Esq.
Paley Rothman Law Firm
SBLC Strategic Policy Director
THE BASICS

- Plan and prepare
- Implement written policies
- Communicate
- Monitor
- Adapt
CRITICAL PLANNING QUESTION #1

When do we start bringing employees back into the workplace?
RETURN TO THE WORKPLACE – FACTORS TO CONSIDER

- State and local law and guidance
- Capacity of some or all employees to telework
- Physical limitations of the workplace
- Availability of employees
- Options for phased return
- OSHA Guidance 3990
CRITICAL PLANNING QUESTION #2

What modifications can be made to the physical structure and maintenance of the workplace to prevent the spread of COVID-19?
STRUCTURE AND MAINTENANCE – FACTORS TO CONSIDER

- De-densifying to facilitate social distancing
- Cleaning practice
- Creating employee zones
- One way hallways
- Limiting or closing off communal spaces (kitchens, conference rooms, etc.)
- Ingress and egress (doors, elevators, etc.)
CRITICAL PLANNING QUESTION # 3

What type of PPE or other special equipment/products will be required or utilized to prevent the spread of COVID-19?
PPE/EQUIPMENT – FACTORS TO CONSIDER

- Masks or face covering (type? required?)
- Gloves (required?)
- Hand sanitizer, wipes and other cleaning supplies (availability?)
- Who will be responsible for providing?
- What about customers, vendors or other visitors?
What other modifications can be made to the way we conduct business to prevent the spread of COVID-19?
OTHER MODIFICATIONS–FACTORS TO CONSIDER

- Employee shifts and overlap
- Greetings
- Site visits and travel
- Customers, vendors and visitors to the workplace
CRITICAL PLANNING QUESTION #5

How will we identify and address potential risk areas?
IDENTIFYING RISK - FACTORS TO CONSIDER

- Employee self-checks
- Employee testing
- Employee self-reporting requirements
- Visitor screening
CRITICAL PLANNING QUESTION #6

How will we respond if an employee tests positive for COVID-19, is exhibiting symptoms of COVID-19 or has been exposed to COVID-19?
RETURN TO THE WORKPLACE – FACTORS TO CONSIDER

- Quarantine
- Leave
- Notice to other employees/ contact tracing
- HIPAA privacy issues
- Return to work certifications
CRITICAL PLANNING QUESTION #7

How will we implement and enforce any new measures?
ENFORCEMENT–
FACTORS TO CONSIDER

- Pre-return communications
- Updating written policies
- Manager/supervisor oversight
- Employee reporting system
- Notice of consequences
HANDLING EMPLOYEES WHO DON’T WANT TO RETURN TO WORK

- Identify the reason
- Assess any accommodation obligations or leave rights
- Communicate with the employee
REASONS WHY EMPLOYEES MAY NOT WANT TO RETURN

- Employee is at high risk for severe COVID-19
- Employee lives with someone who is high risk
- Employee is making more on unemployment than employee would working
- Employee is caring for child(ren)
- Employee is not high risk but is scared about catching COVID-19
- Employee’s job duties and/or compensation has changed
Under the ADA (and state/local equivalents), an employer must provide a reasonable accommodation to an employee with a disability unless doing so would pose an undue hardship on the employer.

A reasonable accommodation may include allowing the employee to telecommute, work on a reduced schedule or take leave.

Mental health issues may qualify as a covered disability.
LEAVE IN THE AGE OF COVID-19

- FMLA (50 or more employees)
- FFCRA Emergency FMLA (any size)
- FFCRA Paid Sick Leave
- State or Local Paid Sick Leave
COMPENSATION AND BENEFITS ISSUES

Businesses bringing employees back to work should assess:

- Exempt v. non-exempt classifications
- Wage and hour issues
- Benefits eligibility
- Contractual obligations
OTHER TRICKY ISSUES TO CONSIDER AND PLAN FOR

- Employees who typically take mass transit to work
- Impact of business decisions (such as terminations) on PPP loan forgiveness eligibility
- Business liability
- Discrimination claims
- Image and reputation
QUESTIONS?

Thank you for joining us!