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Business Reopening Guide

May 08 2020

Practice Area: Business and Corporate Law & Labor and Employment

As an increasing number of states "flatten the curve" and increase capacity for testing, businesses must prepare for the loosening and lifting of the various state and local "Stay at Home" or "Safer at Home" orders. These orders, which have restricted the activity of businesses across the country, are likely to have lasting impacts on the workplace and businesses should expect the possibility of a phased return to normal business operations. Now is the time to develop a plan for reopening with an eye toward an eventual return to normalcy, or what may be a new version of normalcy.

Full vs. Partial Reopening?
One of the first decisions a business must make is whether it will, when permitted, fully reopen immediately or whether the business will reopen in phases, even if a full reopen is permitted by law. An immediate reopening is a return to pre-COVID-19 operations as soon as permitted by law. A partial reopening, on the other hand, involves the voluntary selection of a phased reopening where business operations return to normal over a period of weeks or months, even when not required to by law.

While a full reopening may be the most appealing in order to quickly return to normalcy, it also presents a higher risk. A premature return to the workplace for all employees could lead to a future shutdown of the workplace if the virus returns.

A partial reopening, however, may decrease the risk of a future shutdown by limiting the opportunity for the virus to spread within the workplace. Fewer opportunities for spread should result in a lower risk of the workplace needing to shut down once more due to the virus.

What Considerations Should My Business Make When Planning the Reopening?

- **Leadership:** Successful reopening will require a multi-disciplinary approach. Consider creating a leadership committee to plan and manage the reopening with representatives from HR, finance, operations, legal, etc.
- **Critical Roles:** Critical roles should be prioritized, allowing those individuals to return first. However, it will be important to be careful with messaging so that all employees continue to feel valued.
- **Implement New Policies:** Reopening is an excellent opportunity to implement new policies related to telecommuting, attendance, social distancing, and traveling.
- **Ongoing Remote Work:** Employees with duties conducive to remote work should continue to work remotely, either full-time or several days per week. Focus on bringing back employees whose physical presence in the workplace is necessary while allowing others to continue to work remotely.
- **Limit Capacity:** Companies should explore various ways to limit the number of employees onsite at any given time while still allowing the business to function. In addition to remote work, companies can consider shift rotations or staggered schedules to help reduce the number of employees onsite at a time.
- **Consider the Physical Work Environment:** Reopening plans will vary by employer and by the type of facility. A company located in a large office building that relies on shared elevator usage will likely have a different approach than a company with a flat corporate campus. Additionally, consider factors such as the number and proximity of shared work spaces, the number and proximity of shared break spaces, the ability of restroom facilities to accommodate social distancing, and the number of shared equipment, doors, and other touch points.
- **Make Employees Feel Safe:** Many employees may have reservations about returning to work due to the increased risk of virus transmission. It will be important to keep employees informed of all mitigation efforts in place to limit the spread of the virus.
- **Plan for Refusals:** Employees with strong reservations about returning to work may refuse to return when asked. Companies should identify the reason for the employee's objection and consider whether the employee's refusal is a protected action under OSHA, the National Labor Relations Act, or any other relevant state and local law. Companies should also work with the employee and identify any alternatives or compromises, such as permitting the employee to use paid or unpaid leave instead of returning.
- **Increase Sanitation:** Consider increasing sanitation procedures, especially for shared spaces and touch points such as restrooms, breakrooms, door knobs, copy equipment, and elevator buttons.
- **Provide PPE and Other Items:** Masks and other protective clothing may be important for certain roles and industries. Their use should be encouraged, or mandated, though employers must be weary of protective gear that interferes with an employee's duties or employees who may have a medical reason for being unable to use certain items such as masks. Companies should also stock adequate amounts of soap, hand sanitizer, and disinfecting cleaner.
- **Implement Protective Measures:** Protective measures may help limit the spread of the virus within the workplace and include the installation of high-efficiency air filters, increased ventilation rates, assigning tools and supplies to specific employees, and the addition of physical barriers to separate employees. Protective measures also include social measures such as maintaining distances of at least 6 feet, limiting shared elevator and room usage, and cancelling certain employee gatherings and events.
- **Implement Testing:** Some companies may wish to take employees' temperatures at the start of each shift to determine whether they have a fever. While testing and monitoring of COVID-19 is permissible right now, such testing could be restricted in the future. It is important to work with legal counsel for implementing any employee testing, including ongoing review under the EEOC and CDC guidelines.
- **Create Documents for Employees:** Returning employees may have questions about new policies, benefit eligibility, and the overall plan for the reopening of the business. Consider creating a written resource for employees to reference.
- **Positive Test Response:** Finally, companies should be prepared for an employee who tests positive for the virus in the future. Be prepared to follow the CDC exposure guidance, also adopted by OSHA, including the cleaning and disinfecting of any space occupied by the employee within 48 hours of the positive test.

of any space occupied by the employee within 48 hours of the positive test. Consider implementing new cleaning policies and trainings or working with your environmental services provider to create an action plan for cleaning and disinfecting after future positive tests.

Each business will have a unique reopening plan which may include specialized factors not outlined above. It will be important to discuss any potential opening plan with internal leadership as well as external counsel.

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