

Roundtable Discussion

Managing Your Workforce Through Reentry and Beyond

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Introductions



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Topics Include

- What factors do I need to consider to avoid discrimination claims as employees return to the workforce - particularly if I'm returning employees in phases or laying others off?
- Do I need to accommodate employees who prefer to continue working from home?
- What policies and procedures should I have in place moving forward?
- What details are recommended for communicating changes in policies to employees?
- What questions can/should I ask of my employees regarding their health and social distancing efforts?
- Should I check my employees' temperatures?
- What mental health issues might we face, and what's required of us to address them?
- Will I face liability for my facility's hygiene?
- What accommodations do I need to make if an employee or family member is exposed to COVID-19?
- My company accepted a PPP loan, what considerations do I need to factor with my workforce in order to maximize qualification for loan forgiveness?

Statewide Safer-at-Home Order Stricken by WI Supreme Court

- Issued no stay or phase-out in implementing decision.
- But: Local governments have begun issuing their own orders, enforceable with fines:
 - Milwaukee City Order: in place, no expiration date
 - Brown County- similar to state SAH, exp 5/20/20
 - City of Appleton, exp 5/20/20
 - Milwaukee County order– 18 municipalities: exp 5/21/20
 - Rock, Kenosha Counties, City of Madison/Dane County joint order, City of Racine: exp 5/26/20
 - Many other counties/municipalities meeting today...stay tuned!

Employee Testing

- Taking temperatures: EEOC permitted
 - Can keep daily temperature logs
 - Can use apps, e.g. Health Check
 - Consider tasking one person or small group
 - Keep confidential!
 - Be careful of incentivizing dishonest answers (attendance bonuses)
- COVID-19, Antibody Testing? Vaccine verification?
- Can require employees to “log in, log out”

Employee Testing

- Allowable co-worker notification on positive test?
- Allowable third party notification on positive test?
- When can an employee return to work after positive test?
 - CDC guidelines are the bare minimum
 - Consider longer timeframe
 - Negative test/Doctor release to work versus time-since-symptoms

Employee/Visitor Questionnaires

- Who can do it? Who *should* do it?
- Consider kinds of questions:
 - Symptoms?
 - Where have you traveled? To a hot spot?
- What about:
 - Are you moonlighting?
 - Do you live with an essential worker who is exposed?
 - Are you wearing mask/social distancing outside of work?
 - Have you attended mass gatherings?
- Political pendulum may swing....
- Should you ask these questions of visitors?

Employee Acknowledgments Not Waivers/Releases

- Waivers and Releases generally not enforceable
- Create issues under OSHA and Work Comp
- Rather: Acknowledgements
 - PPE provided
 - Flexible work schedule
 - Opportunity to telework
 - Regular sanitizing/cleaning
 - Workspace alterations to assure social distancing

Non-Compliance or Complaints from Co-Workers: What to Do?

- Co-worker complaints: Document!
- Differentiate between conduct in and out of workplace
- Employers can insist upon compliance
- Can require masks or other PPE
- Understand NLRB and OSHA evolving protections for employees
- “Public policy”/whistleblower complaints

Return to Work Preparedness Best Practices

- Have a clear plan! No ad hoc response
- Train managers to document responses
 - If no time for formal documentation, suggest that they send themselves an email
- Review your employee handbook/policies
 - FFCRA policy
 - Leave request documentation (required for tax credit eligibility)
- Avoid discrimination/retaliation claims (rehiring/recall from furlough)

What happens if furloughed/laid off employee refuses to return to work?

- Does this impact/reduce PPP loan forgiveness?
 - Dept. of Treasury guidance– demonstrate offer of work at same rate of pay and refusal to return in writing
- Impact eligibility for unemployment?

Can you discipline/discharge employee who refuses to come to work?

- Why is employee refusing?
 - Due to mental/physical disability? –may have to accommodate with temporary leave/telework
 - Symptoms of COVID-19 or doctor directive? [FFCRA]
 - Need to care for family member?
 - FFCRA? (Care for family member with symptoms, care for child due to school/childcare unavailability)
 - “Regular” FMLA– no need to accommodate family member’s disability under ADA, but employee may be eligible for unpaid leave under FMLA.

Can you discipline/discharge employee who refuses to come to work? (cont.)

- Is any county/municipal safer-at-home order in place?
 - Those often encourage telework where possible
- If employee has no disability or suspected disability under ADA/WFEA, no entitlement to FFCRA or FMLA leave, and telework is not possible:
 - Why refusing?
 - Dialogue with employee—find out concerns and give assurances about PPE/other safety measures in writing
 - Document refusal and reasons
 - Carefully document discipline/discharge

Questions/Comments?

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Access our complimentary COVID-19 and related return to work resources at:
www.dkattorneys.com/coronavirusguidance/

