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Critical Return to Work Issues for Employers

This is a summary of the first in a series of webcasts that will be offered on a variety of topics and legal considerations as companies return to work after the COVID-19 pandemic. This presentation is meant to raise awareness of the myriad of issues and considerations relevant to returning to work.

This is a summary only; please contact a Seyfarth attorney for any legal advice or guidance needed.

Return to Work Framework

Some countries such as China, Germany, and Australia are preparing to or already are lifting some restrictions and allowing employees to return to work. The process followed for this has varied greatly by country, region, or province, as well as by industry. It is important to note that returning to work is a process, not an event or occurrence, and most companies are engaging in a rolling open.

In the United States, the Federal government has issued Guidelines for Opening America. This three-phase approach is based on up-to-date data and readiness, mitigates risk of resurgence, protects the most vulnerable, and is implementable on a statewide or county-by-county basis at the governors' discretion. Some states have developed regional alliances. It is likely that the states in these alliances will provide regional back to work orders. Governors are also sharing best practices and information regarding the current health information of their constituents.

Issues to Consider Before Employees Return

The first item to consider is what federal, state, and local laws and orders apply to your location and to your industry. These laws and orders can change rapidly, so it is very important that companies have the most up to date information and to understand how this will impact your business. OSHA and other health and safety laws and orders are also a concern, and companies will need to ensure that they have the right health and safety protocols in place before employees return. Other issues to consider are paid and unpaid leaves, as well as whether there is a need to bargain with any unions over changes to existing agreements based on changes to policies, practices and protocols.

Return to work planning will not be a one-size-fits-all approach. Companies will need to determine an overall philosophy and organizational approach to reopening the business and returning employees to work that takes into account factors such as the industry, location, type of business, and company culture. A point person or team should be designated to make company-wide decisions. This team could be comprised of members of HR, IT, building facilities, health and safety, office managers, or senior management.

Another critical step in the process is determining which employees will return to work, when they will return to work and how to handle high risk employees or employees who face logistical or other barriers to returning to the worksite. Give consideration to whether your company's philosophy about working remotely has changed and how you may handle an increase in requests to work remotely even after employees are cleared to return to work.

Employers will also need to establish a procedure for determining if individual employees are safe to return to work. This may involve a screening process that could include questionnaires, temperature checks, self-certifications, and testing.

Logistics and Communication

Once employees have been selected to return to work it is important to think through the logistics of reintegrating those employees. Things to consider may include:

- Return and inventory of any employer owned or leased equipment that employees may have been using to work remotely
- Reimbursement of any reasonable and necessary business expenses incurred during the shutdown, and certification regarding the same
- Confirmation that non-exempt employees accurately recorded all time worked and were provided with all legally required meal and rest periods while working remotely
- Confirming accuracy of sick, vacation, and PTO banks
- Determining if training or orientation is needed for any employees

Before employees return to the workplace, it is important for employers to ensure that they have the proper policies and employee communication plans in place. Will the employee handbook and any policies need to be updated? There are many new COVID-19 related paid sick and protected leave entitlements. Are there COVID-19 specific policies or protocols that need to be created and implemented or changes to existing policies? Employers will also need to ensure that these updated policies are communicated properly to employees and that all posting requirements are met.

Health and Safety Measures and Social Distancing Protocols to Consider

Employers will need to develop and implement social distancing protocols. They will need to think creatively and proactively about how to most effectively use the workspace in compliance with all applicable legal requirements. They also may need to consider reconfiguring schedules, stagger meal and rest breaks, or possibly implement work-from-home arrangements, either full-time or on a part-time basis.

There will also be health and safety protocols to consider such as implementing hand washing procedures, requiring employees to wear PPE, and conducting health screenings. Workplace cleaning protocols also need to be considered such as performing a deep clean of the entire workplace before reopening and ongoing cleaning of work stations, locker rooms and high traffic areas.

Other protocols that may need to be addressed are:

- Rules for visitors and other workers in the workplace
- Plans to quickly respond to any COVID-19 diagnosis, symptom reports, or exposure
- Procedures for unannounced inspection by OSHA, a Public Health Officer, or the police

Stay Informed, Be Prepared, Be Flexible

The COVID-19 environment is fluid and information and recommendations change rapidly. It will be important for employers to monitor for new legal requirements such as:

- CDC guidance on workplace safety and travel
- EEOC guidance
- State and local orders and laws

Employers are advised to prepare for a myriad of possible contingencies. For example, employers should be prepared for the possible need for future employee layoffs and/or temporary furloughs or alternatives such as wage or hours reductions, for the possibility of a large number of employees needing sick time or other leaves, and, unfortunately, for another shutdown or partial shutdown due to future government orders. If there is another shutdown order, will the company follow the same procedures as last time or might there be different or better ways to approach a shutdown having been through it once before?

Lastly, employers will need to be flexible and have a good communication plan ready. Ensure that all employee contact information is up to date and that there is an established method for communicating quickly with the workforce. Companies should also develop a media/public relations strategy to address future issues.

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