



EMPLOYMENT LAW ALERT – MAY 6, 2020

Business is Coming Back! **Tocci & Lee's Guide for Employer's Reopening Businesses**

With signs that the coronavirus has peaked in the United States and as jurisdictions begin relaxing stay-at-home orders, employers are expected to take reasonable steps to protect their employees and customers as they restart their business and head to full employment. Although Massachusetts Governor Baker has extended the emergency stay-at-home order until May 18, 2020, employers should begin preparing for the reopening of businesses now. Tocci & Lee, trusts that these simple steps will help guide your business through this period.

Considerations in Reopening Business Operations

Employers are expected to develop social distancing plans, policies and practices or to refine/update current plans, policies and practices. These plans will help protect employees, reassure employees who fear returning to work, and may reduce employer liability upon reopening.

Key factors to consider:

- **Phasing return to work.** Although teleworking is still being advised by the CDC, OSHA and other governmental entities, employers should think about ways to limit the number of employees present at the workplace at any one time. Alternatives include:
 - staggering shifts and avoiding overlap;
 - alternating teams/groups in the business at any one time;
 - Allowing certain groups of employees to continue to work remotely;
 - Allowing employees who can work remotely to work remotely part time and in the workplace for the remainder of the work week.
- **Workspace modifications.** Modifying floor plans to increase spacing/separation between workspaces to allow for social distancing. A six-foot minimum distance is still the standard advised by the CDC.
- **Limiting the use of common areas** (kitchens, break rooms) and posting reminders to employees and customers of social distancing expectations.
- **Limiting in-person interactions and physical contact**, including avoiding in-person meetings, gatherings/events of 10 or more people and direct client contact, if possible.
- **Minimizing non-essential business travel** and isolating employees following out-of-state travel.

- **Industrial Hygiene.** Providing hand sanitizer, disinfectant and/or disinfecting wipes at various stations in the workplace, particularly heavy use common areas.
- **Face Coverings.** Employers should advise employees to wear masks (surgical, or cloth) where distancing in the workplace is not possible. Effective May 6, 2020, Massachusetts residents must wear a face covering or mask in public places where maintaining proper social distancing measures to prevent the spread of COVID-19 are not possible. Employees who cannot obtain or access a face covering (this should be rare) should be offered a mask or face covering by the employer.
- **Note: The CDC *does not* advise all employers to utilize N95 Surgical Masks as shortages still exist. N95 Surgical Masks should be reserved and used by health care workers and first responders. Outside of health care, food service or industries in which workers must come into contact with members of the public, the CDC does not recommend the use of gloves. Rather, it is preferable to remind employees to frequently wash their hands, wipe surfaces with sanitizing liquids or wipes and to use hand sanitizer throughout the day.**
- **Employee Monitoring.** Employer should evaluate whether to implement a screening process before employees re-enter the workplace, particularly where close physical employee interaction cannot be avoided. Employers should advise employees to be mindful of COVID-19 symptomology and to immediately report any health issue to a supervisor. Employers may want to consider taking employee temperatures and monitor for symptoms before employees enter the workplace (such as in a parking lot). The EEOC has confirmed that COVID-19 meets the “direct threat” standard for employee medical examinations and inquiries. Employers do not violate the ADA by requiring temperature checks or asking employees health questions narrowly tailored to elicit information unique to COVID-19 symptomology.
- Have a publicized plan in place if an employee tests positive for COVID-19. The plan should require that employee to remain out of the workplace for 14 days after symptoms dissipate. Those employees who worked closely with the diagnosed employee (working within six feet for prolonged periods of time) should be advised to closely monitor their health and, if they develop *any* health issue, to remain out of work and notify a supervisor.
- Finally, advise employees of the importance of social distancing and hygiene. Require regular disinfecting of equipment, surfaces, tools and other frequently used items. Employers should encourage frequent handwashing and use of sanitizers. These are among the simplest yet most effective means of protecting employees as businesses reopen and employees return to work.

Of course, employers should continue to monitor all applicable federal, state, and local laws, regulations and guidelines (CDC, OSHA, EEOC). Employers may need to continue to update their policies and procedures on an ongoing basis.

Be Mindful of Your Employees

- Employers should be mindful of the health, safety, and other issues that employees may be experiencing during this time, and consider exercising flexibility to accommodate their employees, such as flexible time off policies or continuing to offer remote working alternative.
- Employers must also be mindful that returning employees are protected by the emergency sick leave and emergency family leave provisions of the Families First Coronavirus Relief Act, which remains effective through December 31, 2020. See T&L's prior FFCRA alert at: <https://1x9.33f.myftpupload.com/wp-content/uploads/2020/04/Employment-Law-Alert-Corona-033120.pdf>
- Due to heightened anxiety about COVID-19, health and safety authorities (and Tocci & Lee) encourage employers to communicate openly with workers and to collaborate in the determination and development of reasonable and appropriate solutions to coronavirus related issues in the workplace.
- There is a great amount of fear among the public and employees who are vulnerable or have family members who may be especially vulnerable to contracting the virus may not feel comfortable returning to the worksite. Adopting the foregoing measures will alleviate such fear and build trust with your employees.

This is an unprecedented time and Tocci & Lee will continue to provide direction on how to safely reopen your businesses as guidelines evolve. Staying informed is the most important part of safely returning to the new normal!

Questions?

Contact John F. Tocci, Esq., Manager of Tocci & Lee's Employment and Litigation Practice, at (617) 542-6200 x 212 or at jtocci@toccilee.com