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INSIGHT: Reopening the Workplace—A Preliminary Guide for Employers

April 28, 2020, 4:01 AM

Employers need to start planning for re-opening as jurisdictions begin to start easing pandemic-related work restrictions. Morgan Lewis attorneys outline key considerations for workplace spaces, testing, and the comprehensive reviews of employee benefits.

As jurisdictions contemplate lifting pandemic-related workplace restrictions, employers must start considering how best to cope with a vast array of issues, including restarting or expanding operations, reintegrating remote-working or furloughed employees, implementing new state and local orders/requirements, and protecting the safety of employees and customers.

Employers who proactively plan for these challenges will be best positioned to adapt to the “new normal.”

Key Considerations for How to Reopen/Expand Current Operations

Reopening will be jurisdiction-specific, subject to compliance with all state and local directives as well as any industry-specific requirements.

Employers should develop social distancing plans or refine and update current ones. Many jurisdictions currently require businesses to have written social distancing plans in place. Even if not legally required, these plans will help protect employees, reassure employees who fear returning to work, and may reduce employer liability upon reopening.

Key factors for consideration include:

1. Physical workspace modifications (including modifying floor plans to increase spacing/separation between workstations, closing or modifying common/high-touch areas and surfaces, and posting signs reminding customers and employees of social distancing, face covering, and hygiene expectations).
2. Limiting in-person interactions and physical contact (including fewer in-person meetings, limiting the size of in-person gatherings/events, implementing a crowd control plan that

sets limits on the number of people on company premises and establishes social distancing measures for customers/guests, and ongoing restrictions regarding travel).

3. Training employees and managers on social distancing policies and protocols (including where to go and who is responsible if there are questions or complaints and how to track/consistently discipline employees for failure to follow protocols).
4. Updates to employee scheduling (including measures to reduce the number of employees present at the workplace, potentially staggering shifts, alternating teams, and/or continued telework).

Employers should consider implementing regular screening protocols for employees, customers/clients, or other workplace visitors. Key issues include whether to conduct temperature screens or other symptom checks, whether to pay employees for screening/waiting time, training personnel on how to appropriately conduct screening and maintain information collected, and best practices for telling clients/customers not to enter company locations if they do not pass the screening.

Employers should also consider providing personal protective equipment (PPE). Key issues include if masks/gloves will be mandatory for any/all positions and if so, who provides/pays for them.

Cleaning and disinfecting may require additional steps, including reviewing and renegotiating contracts with vendors that provide these services, as well as whether and how to conduct additional cleaning and providing cleaning supplies/hand sanitizer to employees and customers/visitors.

Employers should develop a safety communication plan for returning employees that explains safety protocols (what measures the company is taking and what precautions employees should take), where to report issues, and what benefits or perks the company is providing.

Protocols for Tracking and Reporting Covid-19 Tests

Employers should consider whether to conduct Covid-19 tests and if so, what type of test to conduct (i.e., blood, saliva, or nasal swab).

Although additional government guidance on the types of permissible tests likely will be forthcoming, employers intending to implement Covid-19 testing should consider and implement protocols concerning what type of test they will run, who will conduct the tests, how these personnel will be trained, whether the test must be performed in a clinical lab or by a licensed healthcare professional, whether a physician order is required for testing, who will be tested, how often tests will be done, how test results will be maintained, and the process for identifying contacts and sharing such information as appropriate.

Employers considering serology (antibody) tests should carefully review Food and Drug Administration (FDA) guidance and regulations as most private companies will not be able to independently conduct these highly complex tests.

Further practical issues that employers should consider include reinstating security/IT access, reactivating credit cards and badges, ensuring recovery of any files or equipment employees took home while working remotely, and reimbursing employees for business expenses.

Comprehensive Review of Existing Policies

With the collective experience gained over the last several weeks, reopening the workplace should trigger a comprehensive review of policies/CBA provisions, especially in light of recent federal, state, and local legislation. Common topics that employers should review include:

1. Leave (including how to address the web of federal, state, and local requirements and which benefits run concurrently with an employer's own paid time off)
2. Furlough (including how to bring employees back, phased rehiring, and potential new hires)
3. Benefits (including updates to health/commuter/401(k) programs and determining premium pay obligations for furloughed employees)
4. Wage and hour/compensation plans (including whether shutdown/furlough periods impact bonus/incentive plans)

Pandemic Preparedness and Business Continuity Plans

In light of Covid-19, companies should review and revise pandemic response plans. These plans should address processes and procedures to prepare for a potential virus recurrence/disaster, benefits available during future closures, management and HR succession planning, public relations messaging, and if a Covid-19 vaccine is developed, how to implement whole or partial workforce vaccination.

We expect there to be numerous orders and guidance issued by various jurisdictions nationwide as they begin to lift prior workplace restrictions and issue new restrictions governing workplace reopenings. This guidance reflects currently available information that employers should begin considering now to minimize difficulties as they reopen or expand current operations.

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Author Information

[Sharon Perley Masling](#) is a partner and a director of Workplace Culture Consulting at Morgan Lewis. She helps companies and organizations create safe, respectful, and inclusive workplaces,

focusing on preventing and responding to issues of workplace harassment and misconduct. She served for eight years as chief of staff and senior counsel to Commissioner Chai Feldblum at the Equal Employment Opportunity Commission , and provides insight on the enforcement of all employment civil rights laws and advises employers on issues of employment discrimination.

[Sarah Bouchard](#) is a partner and co-leader of the firm's whistleblower group at Morgan Lewis and helps companies respond to workplace crisis situations. She litigates highly sensitive and complex harassment, whistleblower, noncompetition, and trade secret matters.

[Daniel A. Kadish](#) is an associate at Morgan Lewis and represents and counsels employers facing employment disputes. He litigates complex employment matters, including class and collective actions, before federal and state trial courts and administrative agencies, the Financial Industry Regulatory Authority, and the American Arbitration Association.

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