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COVID-19 AND EMPLOYEE RELATIONS

**Japan America Society of Southern California
May 7, 2020**

Workplace Culture in the Era of COVID-19

Fostering a Positive Workplace Culture in a Virtual Setting

COVID-19: How to keep company culture thriving even though everyone is working from home

How to maintain culture virtually amid COVID-19

COVID-19: Reimagining Remote Work and the Future

Workplace Culture Change during the COVID-19 Crisis

COVID-19 Creates a Moment of Truth for Corporate Culture

COVID-19: business continuity depends on culture

How to build a long-term remote work culture in the COVID-19 era

How to Maintain Culture While Working Remotely During COVID-19

Can We Emerge from COVID-19 with a Healthier Work Culture?

COVID-19 could make the world of work more inclusive. Especially for those who are neurodiverse.

How to maintain a culture of integrity during the COVID-19 pandemic

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WORKPLACE CULTURE

Workplace Culture

- The values and beliefs of an organization
- The principles and policies of an organization
- The daily manner in the way individuals interact with each other and with people outside the organization

Elements of a Strong Workplace Culture

- Employees feel listened to and heard
- Employees feel safe raising concerns and ideas
- Employees feel respected and valued

A Safe, Respectful, Diverse, and Inclusive Workplace

- Minimizes legal risk
- Increases employee engagement
- Reduces adverse health impacts
- Increases job productivity and retention
- Protects against reputational harm

Respectful Workplaces Training

- Identifies **respectful behavior** and explains the importance of social cues to communicate respect
- Identifies forms of **disrespectful behavior, bullying, and harassment** and explains the negative impact of individual behaviors on workplace culture
- For **employees**: provides skills on how to give and receive **feedback** and on how to be an **engaged bystander** to stop bad behavior
- For **supervisors**: same as above, plus provides skills in receiving and responding to complaints and coaching problematic employees

Strong Workplace Culture Is Critically Important as Workplaces Reopen

- Enables more constructive dialogue with employees around a range of issues, including returning employees to work, safety and testing
- Makes telework issues easier to address
- Supports community and loyalty during a time of stress



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COVID-19 ISSUES AND PRINCIPLES

Issues

1. Employees who are unable or unwilling to come back to work
2. Social distancing and safety measures
3. Screening and monitoring
4. Training

Principles

- Know your legal rights and obligations in each area
- Develop relevant policies and communicate them clearly
- Apply the policies uniformly
- Listen and be empathic, but be firm

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EMPLOYEES UNABLE OR UNWILLING TO COME TO WORK

Different Categories of Employees

- Employees with medical conditions that place them at higher risk of serious illness from COVID-19 or who are older than 65
- Employees with childcare responsibilities because of a closure of school or place of care
- Employees who are caring for a family member who must quarantine
- Employees who are afraid to come to work because of fear of contracting COVID-19 or because they live with a high-risk individual

Best Practice: Ask employees whether they have concerns with coming back to work. Let them tell you why.

Employees Who Are at “High Risk” of Serious Illness

According to the CDC, the health conditions that will put an individual at higher risk of illness if the person contracts COVID-19 are:

- Chronic lung disease
- Moderate to severe asthma
- Serious heart conditions
- Immunocompromised
- Severe obesity
- Diabetes
- Chronic kidney disease requiring dialysis
- Liver disease

Also: People over age 65

Accommodating High-Risk Individuals

- **Allow employees to tell you if they have a health condition** that makes them concerned about returning to work.
- If the condition is on the CDC list, **engage in an interactive discussion** with the employee to see if an **accommodation** is possible, as required by the Americans with Disabilities Act (ADA).
- **Allow the employee** to continue to telework (if job permits); modify the employee's job functions to permit continued telework; or allow the employee to telework at a reduced schedule and reduced pay (but be aware of wage and hour implications).
- If telework is not possible, place the person on a **job-protected leave** (which can be unpaid under the ADA).
- Such individuals who are not permitted to return to work, or whose pay is significantly reduced, may be eligible for some **paid sick leave** and may be able to qualify for **unemployment compensation**.

Employees with Childcare Responsibilities

- As a general matter, **you have discretion to decide** whether an employee who cannot return to work because they need to care for a child whose school or place of work has closed may telework, must take leave without pay, or will be terminated.
- However, depending on how many employees you have, you may have to provide that employee with **12 weeks of job-protected paid leave under federal law** (which will be paid by the federal government).
- Regardless of how many employees you have, you may have to provide that employee with **some job-protected paid leave under state or local laws**. (The amount of leave will vary by jurisdiction and will not be paid by the government.)

Employees Who Need to Care for a Family Member Who Must Quarantine

- As a general matter, **you have discretion to decide** whether an employee who is caring for a family member who must quarantine may telework, must take leave without pay, or will be terminated.
- However, depending on how many employees you have, you may have to provide that employee with **10 days of job-protected paid leave** under federal law (which will be paid by the federal government).
- Regardless of how many employees you have, you may have to provide that employee with **some job-protected paid leave under state or local laws**. (The amount of leave will vary by jurisdiction and will not be paid by the government.)
- Such individuals will be able to qualify for **unemployment compensation**.

California Requirements

- The state of California has not passed a COVID-19–specific paid sick leave law. However, under California’s existing sick leave law, employers must provide three days of paid sick leave upfront or one hour for every 30 hours worked. Guidance issued by California explains that leave can be taken in order to self-quarantine as a result of potential exposure to COVID-19 or in “other situations” (not defined) that fall under preventative care. <https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>.
- California allows employees at worksites with more than 25 employees 40 hours of time off each year if, among other reasons, their child’s school or childcare provider is closed or unexpectedly unavailable. [California Labor Code 230.8\(a\)\(1\)\(B\)](#).

Los Angeles, San Diego, and Santa Monica

These localities require paid leave for employees with childcare needs, and for those who need to quarantine or care for someone who needs to quarantine.

- Los Angeles
 - Regular paid sick leave of one hour per 30 hours worked; annual use cap: 40 hours
 - Supplemental paid sick leave required of employers with 500 or more employees in LA or 2,000 or more employees in the United States; 80 hours of paid sick leave, in addition to regular paid sick leave
- San Diego
 - One hour per 30 hours worked; annual use cap: 40 hours
- Santa Monica
 - One hour per 30 hours worked; accrual cap: 40 or 72 hours, depending on employer size; annual use cap: none

Employees Who Are Afraid to Come to Work

- Employees may be afraid to come to work because they are concerned about contracting COVID-19 or they are particularly concerned because they are living with a high-risk individual.
- Consider whether such employees can continue to telework.
- However, you may require such employees to return to work.
- You may also require such employees to wear face coverings, gloves, and other protective equipment at work.

High-Risk Individuals Who Wish to Return to Work

- Identify the reason the employee is at high risk—medical condition or age.
- If the reason is age, you may not deny the employee the right to return to work because of protections under the Age Discrimination in Employment Act (ADEA).
- If the reason is a medical condition, you may be able to stop the employee from returning if you can demonstrate that they will pose a direct threat to themselves by coming to work. (But you should still expect claims under the ADA if you do so.)
- As a best practice, we recommend that you explain the attendant risks to those employees, offer accommodations if possible, then leave the decision to the employee.
- In most instances, workers' compensation exclusivity should apply.

Workplace Culture Will Matter

All of the conversations and decisions described above will go more smoothly if you have a workplace culture in which employees feel heard, valued, and respected.



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SOCIAL DISTANCING AND SAFETY MEASURES

Social Distancing

- **Physical workspace modifications** (e.g., separating desks, modifying open floor plans, closing common areas)
- **Limiting in-person interactions and physical contact** (e.g., no nonessential travel, no in-person meetings)
- **Update employee schedules** (e.g., staggered scheduling, telework for less-essential personnel)
- **Training employees** on social distancing policies and protocols, including where to go with complaints

Safety Measures

- **Create infection-control procedures** (e.g., require frequent handwashing, limit sharing of equipment)
- **PPE procedures** (e.g., require workers and visitors to wear face coverings)
- **Workplace sanitization procedures** (e.g., provide hand sanitizer, require frequent sanitization of high-touch areas)
- **Follow current/updated guidelines** of local DOH, reopening orders, CDC, and OSHA for maintaining a clean and safe workplace
- Consider **alternatives to public transportation** or stipends for parking to limit the need for public transportation

Enforcement

- Develop **enforcement policy**, including discipline for those who refuse to wear face coverings or refuse to engage in social distancing
- Notify employees of **whom to contact** if they have questions or concerns.

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SCREENING AND MONITORING

Screening

- **Symptom screening** (refer to CDC guidelines)
- **Temperature screening** (at home, at work, third-party vendors, infrared “guns,” thermal imaging scanners)
- **COVID-19 testing** (preliminary screen, screen when symptoms, random screening)
- **Serology (antibody) testing** (shows promise, but not recommended at this time)
- **Whom to screen?** (employees, customers, visitors, vendors)

Monitoring

- **Establish procedure to address workplace exposure** (e.g., separate and send home workers who appear to have symptoms consistent with COVID-19, clean and disinfect workplace)
- **Develop procedures for contact tracing/notification** of known exposure, consistent with ADA and state laws

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TRAINING

Return to Work Training

- Apply the lessons of Respectful Workplaces training
- Ensure that all employees understand the expected rules for social distancing and safety measures
- Provide skills training in talking with co-workers who are not complying with the rules
- Ensure that employees know how to report violations of the rules
- For supervisors: provide skills in receiving and responding to complaints and coaching problematic employees

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CONCLUSION

Mitigate Legal Claims

- Failure to Accommodate Employees with Disabilities
- Failure to Provide Leave Under Local, State, or Federal Law
- Wage and Hour Claims
- Workplace Safety Claims
- Workers' Compensation or Tort Claims
- Labor Claims
- Furlough and Layoff Claims
- Invasion-of-Privacy Claims
- Discrimination and Retaliation Claims



Create a Strong Workplace Culture

- Leadership
- Policies
- Implementation

Result: Employees feel safe, valued, and respected

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CORONAVIRUS COVID-19



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COVID-19 ALERTS >](#)**

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Chai R. Feldblum helps companies and organizations create safe, respectful, diverse, and inclusive workplaces. Chai served as a commissioner of the Equal Employment Opportunity Commission (EEOC) from 2010 to 2019. As a director of Workplace Culture Consulting at Morgan Lewis, Chai helps employers implement preventive strategies to eliminate harassment and enhance workplace productivity. Chai's policymaking background and insights on the EEOC's enforcement processes inform her counseling of employers on compliance with employment anti-discrimination laws and her investigations of complaints of harassment and discrimination.

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Sharon Perley Masling, a director of Workplace Culture Consulting at Morgan Lewis, helps companies and organizations create safe, respectful, and inclusive workplaces, focusing on preventing and responding to issues of workplace harassment and misconduct. Having served for eight years as chief of staff and senior counsel to Commissioner Chai Feldblum at the Equal Employment Opportunity Commission (EEOC), Sharon provides insight on the enforcement of all employment civil rights laws and advises employers on issues of employment discrimination.

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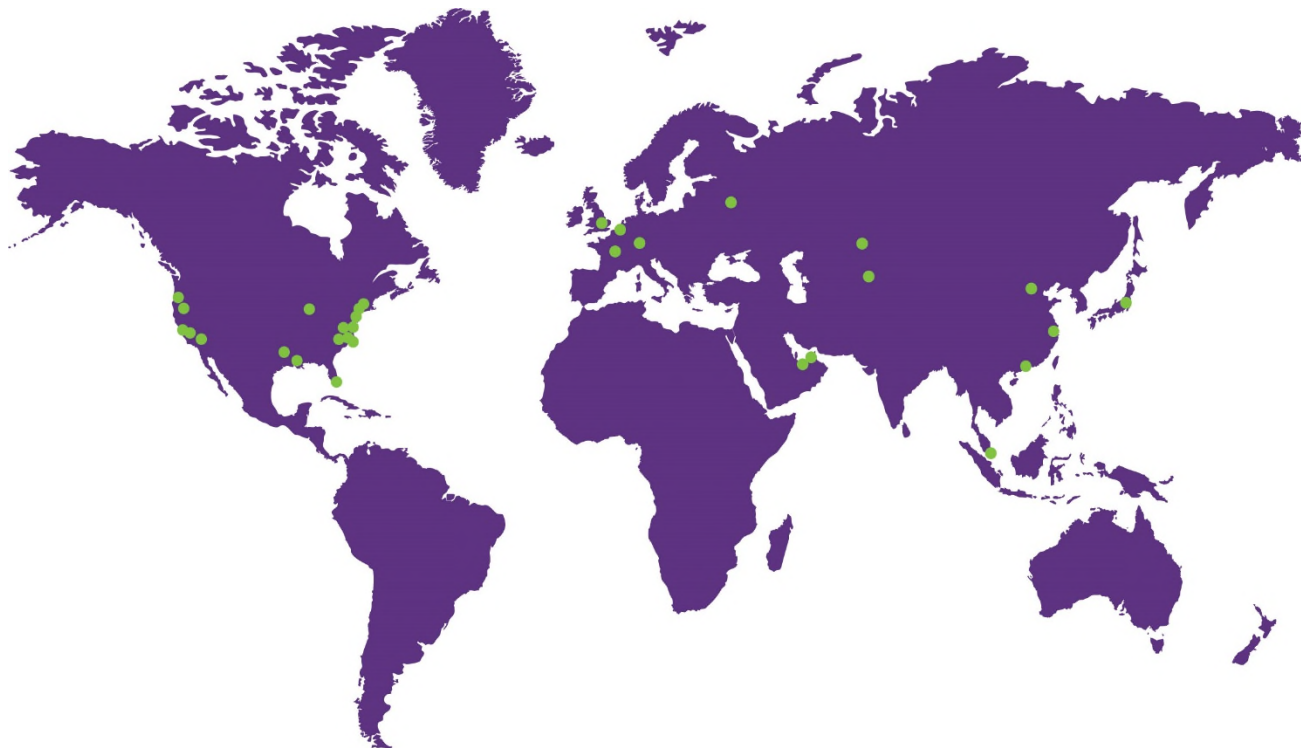
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