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POST-PANDEMIC RETURN-TO-WORK CHECKLIST

As employers begin reopening their businesses and calling back their workforces, they will need to carefully monitor this process and have reopening strategies in place to mitigate workplace COVID-19 risks. In addition, close attention must be paid to any guidance being generated from government authorities such as the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA), which requires employers to provide a safe work environment free from recognized hazards. To help prevent workplace health risks, employers should consider implementing the following return-to-work measures:

☐ **Phased-in reentry.** Reopening the workforce in phases may be required, depending on the lifting of state stay-at-home orders. Employees should return to the worksite in small groups, and those who are able to work remotely should continue to do so at least for the initial phases.

☐ **Staggered start times.** Asking employees to report to work at staggered start times can reduce crowding in elevators and other common areas.

☐ **Social distancing.** Evaluate the worksite's layout to assess whether desks and other workspaces need to be rearranged to allow employees to work at least 6 feet away from one another, customers, and others. Other suggested measures to prevent the spread of disease include physical barriers (e.g., plexiglass sneeze guards) and videoconferencing, even if employees are in the workplace, instead of in-person meetings.

☐ **Hygiene and cleaning.** Thorough cleaning regimens should stay in place until government health officials are more certain the pandemic has passed. Common surfaces should be cleaned frequently, and employees also should clean their own workspaces throughout the day. Post reminders to employees about the importance of best hygiene practices, such as frequent hand-washing and the use of face masks, gloves, and other personal protective equipment (PPE), some of which may be required by state orders. Place hand sanitizer in restrooms and throughout the workplace.

☐ **Kitchen protocol.** Implement strict cleaning procedures, and prohibit communal snacks in the office. Furthermore, furniture located in break rooms may need to be adjusted to discourage employees from eating in close proximity to one another, and the number of employees in the room at any one time should be limited.

☐ **Temperature testing.** Employers may want to take the temperature of all employees before they enter the workplace using "no-touch" infrared thermometers, which the Equal Employment Opportunity Commission (EEOC) allows for this type of medical examination for COVID-19. Note, however, an

elevated temperature is only one symptom of COVID-19 and is not definitive.

☐ **Screening for COVID-19 symptoms.** The EEOC also allows employers to screen employees who are entering the workplace for possible COVID-19 symptoms. Consider using a health questionnaire that asks about symptoms identified by the CDC, such as fever, chills, cough, shortness of breath, recent loss of taste or smell, headaches, muscle pain, or sore throat (see Additional Resources for Employers, below).

☐ **COVID-19 testing.** Employers should consider carefully the pros and cons of COVID-19 testing at work. The EEOC allows COVID-19 testing (which usually involves a swab of the nose or throat and also could involve blood antibody tests), but employers should ensure that the tests are accurate and reliable and should be aware of the potential for false positives and false negatives. Employees who test negative one day could be positive the next, so ongoing testing would be necessary to provide any useful protection against virus infection. Reliable tests also may be difficult to find for nonhealthcare workplaces.

☐ **Self-reporting of COVID-19 symptoms.** The EEOC also allows employers to require employees to report if they are experiencing COVID-19 symptoms while at work (again, use those symptoms identified by the CDC). Employees with COVID-19 symptoms should be sent home and not return until they meet the CDC's suggested guidelines for discontinuing home isolation (see Additional Resources for Employers, below).

☐ **Medical information confidentiality.** Any medical information collected as the result of COVID-19 workplace medical examinations and inquiries must be kept confidential as required by the Americans with Disabilities Act (ADA). The ADA requires covered employers to keep medical information in confidential medical files that are separate from regular employee personnel files.

☐ **Notify employees of workplace exposure.** Employers are not required to notify employees of exposure at work, but it is recommended you do so to help prevent the spread of the virus. Employers should keep medical information regarding an infected employee (including his or her identity) confidential and should only share information about when the employee was potentially exposed. Exposed employees may need to leave work and self-quarantine depending on state and CDC recommendations.

☐ **Drug testing and background testing.** Employers generally do not need to conduct drug testing or background testing if employees have been on furlough for just a few weeks or months unless your policies and procedures require this type of updated testing after a short-term leave of absence, such as for employees in safety-sensitive positions (for example, those who drive on your behalf or enter customer homes). Be sure to comply with any state drug testing restrictions.

☐ **Return-to-work certification.** The EEOC allows employers to require return-to-work, fitness-for-duty certifications when an employee has been absent for medical reasons and after a pandemic furlough, but both the EEOC and the CDC are not currently recommending employers require return-to-work certifications because of the difficulties employees may have in getting these certifications from overwhelmed healthcare providers. Employers may want to suspend their current medical

certification requirements during the COVID-19 pandemic and then reinstate the requirements once things are more "normal."

☐ **Plan for potential absences related to COVID-19**. Employees may need time off for their own illnesses or their family members' illnesses, as well as time off to care for children still out of school. Family and Medical Leave Act (FMLA) leave may be available for employee and family member illnesses that are also serious health conditions under that law. In addition, employers covered by the Families First Coronavirus Response Act (FFCRA) (those with 499 employees or fewer) must provide paid emergency sick leave, as well as paid emergency FMLA, that covers these absences.

☐ **Be prepared to address concerns of employees who are afraid to return to work.** Employees who are at risk for more serious illness because of COVID-19 or who have family members who are at risk may be reluctant to return to work. According to the CDC, this group includes individuals over 65 and people with underlying medical conditions such as those with chronic lung disease or moderate to severe asthma, serious heart conditions, diabetes, severe kidney disease, liver disease, and severe obesity, as well as those who are immunocompromised (among others). Discuss workplace precautions being taken to prevent the spread of COVID-19 with these employees, and consider allowing them to work from home (if possible) or take leave under the ADA as an accommodation for their own disability (see below) or FMLA for a serious health condition. Employers with 499 or fewer employees also may have to provide emergency paid sick leave to employees who are advised by a healthcare provider to self-quarantine.

☐ **Consider potential ADA accommodations.** Disabled employees returning to work may be at greater risk for serious illness from COVID-19 because of their underlying disabilities (see above) and may need reasonable accommodations. Work-from-home options could be considered accommodations, as well as reduced contact in the workplace and modified work schedules to reduce exposure.

☐ **Form I-9 obligations.** Employers must remain aware of their I-9 obligations during the COVID-19 crisis regarding new hires and when they are recalling/rehiring employees.

○ **New hires:** Once normal operations resume, all new employees who completed the Form I-9 using the temporarily allowed *remote verification* must report to their employer within 3 business days for "in-person" verification of Section 2 identity and employment eligibility documentation.

○ **Temporarily laid off or furloughed:** When employees have been temporarily laid off, generally, this time period is considered "continuing employment," and employers do not have to complete a new Form I-9 or reverify the employees' current Form I-9.

○ **Permanently laid off/ terminated:** For employees who have not been continuously employed and/or did not have a reasonable expectation of employment at all times, a "hire" is considered to have taken place when the employees return to work. If this occurs within 3 years from the initial date of execution of Form I-9, the procedures for rehires may be followed (i.e., prior I-9s may be used, but employers must ensure employees' work authorization documents have not expired); if this occurs after 3 years from the initial date of execution, a new Form I-9 must be completed.

☐ **Employee handbook updates.** Review leave and sick leave policies to ensure compliance with any new state law mandates resulting from the pandemic (particularly regarding sick leave) and FFCRA requirements (if the employer has 499 or fewer employees). Modify return-to-work policies if necessary to suspend medical certification requirements (see above). Consider implementing or updating telecommuting policies to allow more employees to continue to work from home.

☐ **Workplace poster update.** Make sure the FFCRA notice is posted in the workplace if you have 499 or fewer employees. Effective April 1, 2020, employers must post the notice to explain the law's emergency paid leave provisions. The poster is available from the Department of Labor (DOL) online at https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf.

☐ **Employee benefits.** In coordination with service providers and any insurance carriers, restore benefits that were discontinued during furloughs, including corresponding salary deferral arrangements. Prepare to process election changes, especially for employees whose work arrangements or other circumstances have changed. Make sure the plan documents and related contracts are followed or amended correctly.

☐ **Be prepared for a second wave of COVID-19.** A second wave (most likely in the fall) could cause not only increased employee absences related to COVID-19 but also state-mandated workplace closures or restrictions.

☐ **Consult with your attorney.** Review your reopening strategy with your attorney to ensure it meets state mandates and federal recommendations to prevent the spread of COVID-19. Discuss potential liability issues regarding workplace exposures.

Additional Resources for Employers:

CDC "Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)," https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html

CDC "Symptoms of Coronavirus," https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html

CDC "Prevent the spread of COVID-19 if you are sick"; includes suggested guidelines for discontinuing home isolation, https://www.cdc.gov/coronavirus/2019-ncov/downloads/sick-with-2019-nCoV-fact-sheet.pdf

CDC "People Who Need to Take Extra Precautions," https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html

OSHA "Guidance on Preparing Workplaces for COVID-19," OSHA 3990,
https://www.osha.gov/Publications/OSHA3990.pdf

"COVID-19 and the Fair Labor Standards Act Questions and Answers,"
https://www.dol.gov/agencies/whd/flsa/pandemic

OSHA "COVID-19," https://www.osha.gov/SLTC/covid-19/

EEOC "Coronavirus and COVID-19," https://www.eeoc.gov/coronavirus

DOL "Families First Coronavirus Response Act: Questions and Answers,"
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

USCIS "Reverifying or Updating Employment Authorization for Rehired Employees,"
https://www.uscis.gov/i-9-central/52-reverifying-or-updating-employment-authorization-rehired-employees

USCIS "Temporary Policies Related to Covid-19," https://www.uscis.gov/i-9-central/questions-and-answers-related-temporary-policies-form-i-9-and-e-verify