Workplace Re-Opening Checklist

Many employers are still making plans for a full "return to the office." For some companies, this will be full-time in-person while others are adopting a hybrid work model. Many others plan to continue a fully remote workforce for the near future, or longer. The below checklist is intended to highlight useful actions whatever option you choose.

1. Workplace Safety

- Under OSHA, employers are obligated to provide a safe workplace environment for their employees. Employers must comply with OSHA guidelines and complying with CDC guidance will further help to establish that an employer took reasonable measures to provide a safe work environment, should it ever have to defend against a claim.

- Many states and localities have published their own guidance, with which employers are generally required to comply. Employers must adhere to both state and local guidance where applicable. If the local guidance is more restrictive, those guidelines will usually control. Most states have lifted many of their restrictions at this point, but some remain in place.

- The EEOC has also published guidance relating to various return to work issues, such as disability-related inquiries and medical exams, confidentiality of medical information, reasonable accommodations questions, vaccination mandates and other COVID-related issues. You can review up-to-date EEOC guidance here and should make sure to comply with applicable laws when communicating about returning to work with employees who may require reasonable accommodation due to health reasons or sincerely held religious beliefs.

- Best practices suggest identifying a COVID coordinator for each of your physical locations to be the point of contact for employees with questions about the company's protocol.

- Businesses should consider health screening procedures and determine mask and social distancing policies for each office location based on applicable guidance.

- Make sure to consider policies for third parties visiting your offices as well (clients, vendors, etc.), if you will be permitting visitors.

- Create an exposure plan that addresses isolation, containment and contact tracing procedures, stay at home requirements, and communications to potentially-exposed staff.

- Determine what PPE supplies you will provide to staff and, if appropriate, to visitors.

- Review cleaning procedures. What will be handled by your existing cleaning crew? Do you need a specialized cleaning crew in case of exposure? What will you ask your employees to clean and how frequently? The CDC provides information on recommended best cleaning practices here.

- Contact your building management company to determine what modifications have been made or can be made to improve ventilation and air quality, and ensure that the office's ventilation system complies with state and local requirements.

- Determine your vaccination policy. Will it be voluntary or mandatory? Will it be encouraged or incentivized by rewarding employees for getting vaccinated? Will you require documentary proof of vaccination, or rely on employees' written or verbal attestations? Also, be aware of state and local requirements for paid time off for employees to receive and recover from vaccinations and ensure you are in compliance with applicable law.

- If considering a mandatory vaccination policy, reasonable accommodations for disabilities or sincerely held religious beliefs must be provided. Potential accommodations include face masks, regular testing, social distancing, modified work schedule and remote work.

- Create a protocol for separately and privately storing vaccination documentation away from personnel files. Avoid collecting any other medical information along with vaccination proof.

- Consider establishing physical distancing measures in the workplace, and determine whether to differentiate rules for vaccinated and unvaccinated employees. This is currently permitted under federal, state and local guidance.

- Set travel policies following government guidance. Likely to change over time, the policy and updates will need to be communicated to employees and clients.

- Define client/visitor contact protocols for in and out of office requests.

2. Return to Office Procedures

▪ Create an organized and controlled approach, keeping in mind that having everyone return on the same day may be chaotic and not allow social distancing. Be sensitive to employees' concerns about safety, and accommodate requests to work remotely part-time to the extent possible.

▪ Determine how to handle special cases (employees who are fearful of returning, those who have family obligations that interfere and those who are under quarantine due to exposure). Handle requests for accommodations consistently to avoid discriminatory treatment allegations.

▪ If a company plans to remain remote, when will this be revisited? How much notice will be given to employees before requiring them to work in an office? Is the company licensed to do business in remote locations where employees are? Does the company have adequate process for overseeing hours worked by non-exempt employees? Consider ways to keep remote employees engaged and mentored. Consider whether state and local employment laws in employees' remote locations are being complied with, or if policy changes are necessary to ensure compliance.

3. Employee Benefits

▪ Ensure that employee benefits comply with all state regulations, especially in those markets where the company does not have a physical office but now has employees.

▪ Differences may be required in wage and hours, paid sick time and other leaves, vacation accrual and payout, and expense reimbursement.

▪ Modify employee benefits per policy for any employees that have changed their working hours to be more or less part-time.

4. Compensation

▪ Decide if you will change compensation for any employees who have relocated to other markets. Will this talent receive lower increases to reflect a lower cost of living? Should this information be communicated to all employees at this point? Consider impact on inclusion and morale.

▪ It is a good time to conduct a pay equity audit to ensure that any salary reductions/freezes have not impacted protected classes differently.

5. Remote Work

- Are policies clear and up-to-date regarding expense reimbursement, data security and privacy, childcare, etc.?

- If employees took office equipment (chairs, monitors, printers, etc.) home, how will equipment be returned? If the company is moving to hybrid policy, how will additional equipment needed be ordered/reimbursed?

- If remote workers are required to come to the office (monthly, quarterly, etc.) how will notification of dates be handled? How will expenses be handled? Are these visits mandatory or optional? Will employees be reimbursed for costs expended to travel to office from their remote locations?

6. New Hire Paperwork

- Review paperwork of all hires made during remote/WFH period and complete any missing documentation.

7. Policy Changes

- Make sure all policies are updated to reflect the way your company plans to return to the office (or not).

- Update WFH and flex-time policies to reflect new normal.

8. Communications

- Establish a clearly written plan that covers all of this information.

- Employees should be given ample notice of all of this information to protect morale and ensure compliance. Consider a return to office protocol acknowledgement that employees execute before returning to office, confirming they will adhere to protocols.

- OSHA guidance includes documenting all of the COVID-19 return to the office protocols and providing a training session for all employees. Many states and localities also require employees receive training or information on an employer's COVID-19 policies and requirements.

- There can never be too much communication!

9. Business Continuity Plans and Evolving Legislation and Guidance

- Prepare for any future emergencies based on the lessons learned from the pandemic. Also, recognize that additional closings may be required due to COVID-19 infections so planning should anticipate these.

- Establish a regular COVID-19 review meeting to ensure you are making updates to policies and procedures as appropriate for your workforce and to follow federal, state and local laws and guidance.

- Companies should become familiar with applicable state and local requirements for protocols and safety plans. For example, New York employers are required under the HERO Act to create a written Airborne Infectious Disease Prevention Plan. Employers must adopt the model plan published by the state or create their own written plan that meets or exceeds the requirements of the state's model. Several states, including New York, California and Illinois, also have vaccine paid leave laws, requiring paid time off to get vaccinated separate from paid sick time and general paid time off.

This checklist is designed to provide general guidelines. They do not take into account any specific facts and circumstances and legal counsel should be consulted to address those situations.

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