DP&F
ATTORNEYS AT LAW

Jennifer E. Douglas
jdouglas@dpf-law.com

Marissa E. Buck
mbuck@dpf-law.com

Employment Update: Key Issues for Onsite Employees During Mid-COVID
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Many of you have continued to have employees work at your facility and others are preparing to re-open and/or have employees return to the workplace. There are many key issues to consider in having onsite employees and we have attempted to address the majority of them below. Note that the specific requirements will vary depending on your work environment (i.e. an office setting versus a warehouse or production facility) and if you have specific questions you should contact us directly to discuss.

- **Essential Workers Only**
    - You should continue to limit employees in the workplace to those who are essential to the onsite business needs. If you have employees returning to the workplace, make sure you know who is returning and when – if you have too many employees coming back on the same day it could be unsafe. It may be helpful to stagger shifts so you have less employees coming and going at the same time.
    - If possible, you can phase in the return of employees but make sure to use non-discriminatory factors in determining who comes back when, such as seniority.
    - To the extent you are able to keep all or part of your workforce remote you should continue to allow employees to work remotely. It is also possible to alternate work from home weeks or days so that you have less employees at the workplace at one time.
    - Continue to stress to employees that they should <u>not</u> come to work if they are sick and to notify the appropriate person if they have been exposed to someone with COVID-19.

- **Refusal or Inability to Return to Work**
    - Determine how to handle employees who are either unable or unwilling to return to work, whether it is because of fear, health concerns, family obligations, or employees that remain quarantined due to COVID-19 exposure.
    - These will need to be handled on a case-by-case basis. It may be helpful to create a company policy beforehand on how to handle employees who are not in a protected category, but only if you are able to consistently follow that policy. At the very least designate one person to address these concerns so that consistency is more likely to be obtained.
    - For employees in high risk groups, consider allowing them to stay remote or on leave and if they are able to return to work consider if additional PPE or other protections are available (i.e. a separate workstation away from other employees, fewer days in the workplace, etc.).

- **Workplace Safety**
    - <u>Social Distancing Protocol</u>: As we provided in an earlier update, all of the Bay Area counties have issued required Social Distancing Protocols that need to be posted at the worksite. A copy of the sample protocol is attached to all relevant County Shelter in Place Orders and they are available in Spanish. If you don't already have one, you need to create a protocol and post it where employees can see it when they return to the workplace. It is also helpful to circulate the protocol and any other updated safety

policies and procedures to employees before the return to the workplace so employees know what to expect. (If you need us to resend the April 1 email let us know).
- o <u>PPE</u>: Depending on the work environment and the Shelter in Place Order for your County, you may need to provide PPE for your employees, such as gloves, masks, face shields, or goggles. Employers are required by OSHA to provide and pay for PPE. Increasing the availability of hand sanitizer throughout the workplace and sinks with soap is also helpful.
- o <u>Additional Resources</u>: CDC guidance on cleaning and disinfecting facilities can be found here: https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html, as well as additional guidance from OSHA on protecting workers during a pandemic: https://www.osha.gov/Publications/OSHAFS-3747.pdf.

- **Symptom Checks Including Temperature Readings**
    - o The EEOC has stated that doing employee symptom checks, including taking employee temperatures, before they enter the workplace is allowable under the ADA because COVID-19 presents a direct threat to other employees, customers, and the general public. Employers can also ask employees if they have COVID-19 related symptoms. The CDC recently updated the list of COVID-19 symptoms, stating that people with the following symptoms may have COVID-19:
        - ▪ cough
        - ▪ shortness of breath, or difficulty breathing; OR
        - ▪ at least two of the following symptoms: fever, headache, chills, sore throat, repeated shaking with chills, new loss of taste or smell, and muscle pain.
    - o All information collected about employee illness is considered confidential medical information and must be treated as such by the employer.
    - o <u>Particular Issues Regarding Temperature Checks</u>:
        - ▪ While temperature checks are permitted, the EEOC notes in their guidance that employers should be aware that some people with COVID-19 do not have a fever. Temperature checks should be done in conjunction with other symptom checks and/or questions related to high-risk factors such as being in close quarters with a person who has COVID-19 or traveling to a high risk area in the last 14 days.
        - ▪ If you send an employee home because they have a temperature they should be paid for reporting to work that day to limit potential liability. Additionally, you should have a policy for what to do if an employee refuses to have their temperature taken.
        - ▪ It is not required that you have a medical professional take temperatures, however, the person doing it should be trained, have proper PPE (mask, gloves, face shield or goggles, and a gown), use a no-touch thermometer (and know how to use it), and understand the confidentiality considerations.
        - ▪ An employee's temperature is confidential medical information, thus the temperature check needs to be done as privately as possible to keep the information confidential. Employees should not line up and wait to have their temperature taken, both for privacy reasons and for social distancing purposes.
    - o Although you are allowed to take temperatures, you should consider this step carefully to determine if you want to start this process. For now, you are not required to take temperatures and unless or until it is required, you may want to hold off given the logistical issues and the confidentiality concerns.

- For more information on symptom checks and other issues regarding return to work procedures, the EEOC's Question and Answer page can be found here: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

- **Potential or Actual COVID-19 Exposure in the Workplace**
    - Create a plan for how to respond if an employee becomes sick at work including sending the employee home, cleaning and disinfecting the workplace, and identifying all employees who had contact with the sick employee starting 2 days before the employee showed symptoms.
    - The CDC provided guidelines for permitting essential employees to continue working following potential exposure to COVID-19 if they remain asymptomatic and additional precautions are implemented (see below). Potential exposure means living with or having close contact (w/in 6 ft.) of an individual with confirmed or suspected COVID-19 beginning 48 hours before the individual showed symptoms.
        - Pre-screen the employee before they enter the workplace by taking their temperature and assessing symptoms
        - As long as no temperature or symptoms, the employee should self-monitor under the supervision of the employer's occupational health program
        - The employee should wear a face mask at all times in the workplace for 14 days after the last exposure (face mask provided by employer)
        - The employee should maintain 6 ft. and practice social distancing whenever possible in the workplace
        - Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely
        - If the employee becomes sick during the day they should be sent home immediately and their workplace should be cleaned and disinfected
        - Compile information on all persons who had contact with the ill employee during the time the employee had symptoms and 2 days prior, including anyone who was w/in 6 ft. of the employee during this time period
    - Determining when an employee can return to the workplace after having COVID-19 should be an interactive process between the employer and the employee and their healthcare provider. For more information on when an individual with COVID-19 can discontinue home isolation see the CDC's guidance here: https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html.
    - Additional resources for employers in planning and responding to COVID-19 can be found here: https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html.

Governmental guidance on this crisis evolves constantly. We will continue to do our best in keeping you informed. For specific questions please reach out to Marissa Buck or me.