WELCOME to

Science & Practices to Keep Workers Safe and Businesses Productive

*as the COVID-19 Pandemic Changes*

Session will start in less than 15 minutes

*Please type your name, company, and email into chat box for attendance.*
Meeting Regulatory Expectations Related to COVID-19

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Today’s Agenda

*An Overview of COVID-19 Employment Considerations as We Return to Work*

- Compliance with State Emergency Orders
- Employer Policies
- Equal Employment Opportunity Commission (EEOC) Guidance about Americans with Disabilities Act (ADA) Issues
- Families First Coronavirus Response Act (FFCRA) and Other Leave Issues
- Compliance with Anti-Discrimination and Anti-Retaliation Laws
- Other Return to Work Issues
- Liability Considerations
- We Are in This Together!
Executive Orders

State-by-State Executive Orders outline steps employers must take to return to work. Employers should:

- Carefully review and follow the applicable Executive Order(s)
  - Universal requirements or guidelines
  - Industry-specific requirements or guidelines
- Monitor any Executive Order(s) changes/updates
Executive Orders

Executive Orders are generally based on available CDC, OSHA, EEOC or other federal/health agency guidance and address important considerations, such as:

- Communications about COVID-19 prevention efforts
- Emergency illness policies
- FFCRA compliance
- Planning for potential COVID-19 cases
- PPE
- Protocol when employees are sick
- Promotion of frequent hygiene
- Remote work
- Screening processes
- Social distancing
- Workplace cleaning and disinfection practices
Employer Policies

> Employer policies should be created/updated to address COVID-19 issues.
Employer Policies

Policy considerations related to COVID-19 include:

- Screening for COVID-19
- PPE's
- Emergency sick leave
- Unpaid leave/borrowing leave time
- Break time for hygiene
- Flexible work arrangement
- Remote work arrangements
- Anti-retaliation/anti-harassment
Employer Policies

Remote Work – Time for a new or better policy?

- Expectations about work times/locations
- Address logistics
- Workers’ compensation considerations
Employer Policies

Flexible Work Arrangements – A win-win?
EEOC Guidance

> The EEOC recently issued updated guidance based on COVID-19, including:

ADA Considerations

During pandemic, the ADA allows:

- Narrow questions to employees about COVID-19 related symptoms
- Take temperatures/daily log*
- COVID-19 testing (if testing accurate/reliable) *
- Require PPE*
- Fitness for duty note to return to work (CDC guidance is different—no healthcare providers note required because of burden on healthcare providers’ practices)

*If consistent with CDC guidance
To be ADA-compliant, employers should still:

- Treat medical information as confidential
- Engage in an *individualized* interactive dialogue about reasonable accommodations
- Allow reasonable accommodations absent “undue hardship”
ADA Considerations

Some potential accommodations to generally reduce “direct threat” of COVID-19 to an acceptable level:

- PPE’s
- Barriers
- Elimination of marginal job functions
- Temporary changes to work schedules or work locations
ADA Accommodations

> Practical and helpful accommodations resources include:

FFCRA Leave Basics

The U.S. DOL has published a helpful link to the FFCRA’s regulations and FAQs:

https://link.zixcentral.com/u/2fdae7c6/SPg_9oVy6hGTr3EUh3soMg?u=https%3A%2F%2Fwww.dol.gov%2Fagencies%2FWhd%2Fpandemic
FFCRA Leave Basics

There are two types of leave available under the FFCRA:

- Paid Sick Leave (6 reasons for PSL)
- Expanded Family Medical Leave (for the care of a child due to school closure/daycare closure because of COVID-19)
FFCRA Leave Basics

Some FFCRA considerations:

- Covered employer?
- Exemption from FFCRA?
- Type of FFCRA leave at issue?
- Reason for the requested FFCRA leave?
- Interplay with regular FMLA leave?
- Intermittent FFCRA leave available?
- Applicable pay caps?
- Interplay of FFCRA leave with the employer’s existing paid leave benefits?
- Appropriate questions/documentation to confirm FFCRA leave
FFCRA Leave Basics

Remember, the FFCRA provides employee protections:

- Return to work
- Healthcare
- Non-retaliation
Anti-Discrimination and Anti-Retaliation Law Compliance

COVID-19 has not changed legal prohibitions against employment-related discrimination, harassment or retaliation. Some potential issues:

- National origin or race discrimination
- Age discrimination
- Disability discrimination
- FMLA or FFCRA interference or retaliation
- Disparate treatment or disparate impact related to layoffs, furloughs or return to work
Other Return to Work Issues

Some other potential return to work issues include:

> Getting people to return to work when they are reluctant to do so
  - Health concerns/anxiety
  - Unemployment benefits

> Selection for return to work

> Additional need for accommodations upon return to work

> Pay issues related to return to work
Liability Considerations

Employers are concerned about potential liability issues related to return to work:

- Workers’ compensation concerns – will claims be more prevalent?
- Third party liability – possible claims by customers, patrons
- Outreach efforts by business organizations (U.S. Chamber of Commerce)
Resources

> Accommodations

> Compilation of Executive Orders, State-by-State

> Employment Discrimination
  - https://www.eeoc.gov/coronavirus (consolidated page of relevant COVID-19 information)
Resources

> Employee Screening

> Families First Coronavirus Response Act (FFCRA)
Resources

> Liability/Immunity

- States Grant Business Immunity for Coronavirus Lawsuits, by Lisa Nagele-Piazza, J.D., SHRM-SCP, May 29, 2020 ([www.shrm.org](http://www.shrm.org))
- New Hampshire Attorney General’s Opinion No. 2020-02 (May 22, 2020)
Resources

Return to Work Guidance/Requirements *

*Also, please see our previous ECHO sessions for other helpful Resources related to health, safety and best business practices concerning our collective return to work efforts.

- [https://www.covidguidance.nh.gov/](https://www.covidguidance.nh.gov/) (New Hampshire)
- [https://sheehan.zoom.us/rec/share/5Yt8KJ2txERLTY3yznHHZpR_D5TnT6a8h1clrc_QFzEq0Fuf4cLWhb8zPg37FrbYm](https://sheehan.zoom.us/rec/share/5Yt8KJ2txERLTY3yznHHZpR_D5TnT6a8h1clrc_QFzEq0Fuf4cLWhb8zPg37FrbYm) (Webinar presentation by Attorneys Jim Reidy and Mark Ventola, May 1, 2020)
We Are in This Together!
Questions?
THANK YOU

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