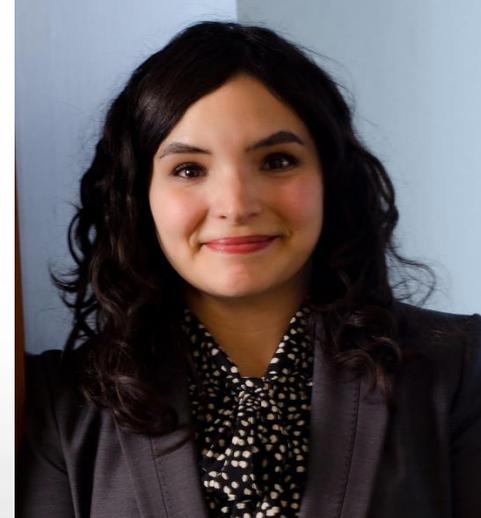


# REOPENING BUSINESSES AND RETURNING EMPLOYEES TO WORK AFTER COVID-19

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# COVID-19 SAFETY AND BUSINESS CONTINUITY PLANS

- Many states and localities requiring formal safety plan
- Consult industry-specific guidance (including OSHA)
- Have clear procedures in place for inevitable COVID-19 cases
- Considerations:
  - Employee/visitor health screenings
  - Stay-at-home requirements
  - Cleaning procedures
  - Ventilation
  - PPE
  - **Get creative to maximize social distancing**

# SOCIAL DISTANCING: KEY TO EMPLOYEE SAFETY AND BUSINESS CONTINUITY

- Remote work whenever possible
- Stagger start dates
- Stagger shifts and breaks
- Spread out workstations
- One-way traffic

**Proper social distancing can keep your business operating even during an outbreak.**

# RECALLING EMPLOYEES

- Consider permitting long(er) term remote work
- Cannot base recall decisions on who will need leave (FFCRA)
- Clear communication about recall date, pay adjustments, flexible leave policies, contingency plans
  - NOTE: Update wage notices if required
- Get employee decision to accept/reject recall in writing
- Notify state unemployment agency of recalled employees
- Use opportunity to assess pay equity across your organization

# EASING EMPLOYEE WORRIES

- Employees are genuinely concerned about their health and that of their household members
- Clear communication may resolve some fears
- Be open to employee ideas and suggestions – involve employees in finalizing return-to-work plans
- Consider additional protective measures
- At minimum, must satisfy OSHA standards
- Consider Hazard Pay

# EMPLOYEE AND GUEST HEALTH SCREENINGS AND TESTING

- Yes, it is legal to take employee temperature and require employees to disclose COVID-19 symptoms (for now)
- BUT:
  - Require same of everyone (unless remote only)
  - Keep information confidential and separate
  - Can require doctor's note for return to work after quarantine, but consider practical barriers
  - Cannot require test for antibodies

# REASONABLE ACCOMMODATIONS

- Employees may be entitled to accommodations under Americans with Disabilities Act
  - Do not assume employee needs accommodation even if you know they are high risk
- Some significant stress and worry is expected, but Anxiety, PTSD, OCD may rise to level of disability
- No accommodation *required* for high-risk household members – many employers are accommodating, but must be fair and consistent

# ACCOMMODATIONS TO CONSIDER

- Follow standard ADA accommodation process
- Use interactive process to determine reasonable accommodation
  - BUT: temporary accommodation due to pandemic is ok, as long as you use fairly and document well
- Common accommodations: remote work; private work space; alternative schedule; change in marginal duties; modified PPE; leave of absence; increased breaks; etc.
  - Mask-accommodation requests are increasing. Use caution and follow the process.

# FFCRA – PROTECTED LEAVE FOR EMPLOYEES IMPACTED BY COVID-19

- The Families First Coronavirus Response Act provides two types of paid leave:
  - Emergency paid sick leave – up to 80 hours, full or 2/3 pay depending on reason for use
  - Expanded FMLA if childcare or school closed due to COVID-19 – 12 weeks job protected leave, first 2 weeks unpaid, next 10 weeks at 2/3 pay
  - Currently expires 12/31/2020
  - **100% of FFCRA payroll costs reimbursed to business through payroll tax credit**

But wait, there's more...

# FFCRA – RECENT UPDATES

- On August 3, 2020, federal court in New York struck down DOL regulations on FFCRA. Notable changes:
  - No longer a “work availability” requirement
  - Healthcare provider exemption more limited
  - Employees do not need approval for intermittent leave
  - Employers cannot require documentation before leave begins (but can require eventually)
- Evolving situation - legal challenges expected

# COVID-19: WHAT IS THE EFFECT ON EQUITY & INCLUSION IN THE WORKPLACE

- The COVID-19 pandemic is expected to significantly impact women more than men (women are 1.8x more likely to lose job due to pandemic) – keep gender equity top of mind
- Dramatic increase in harassment and violence against those of Asian national origin – create and enforce no-tolerance policy for harassment

QUESTIONS?

THANK YOU FOR YOUR TIME!