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Checklist for Your Business Re-Opening Plan
(Last Updated on 5/22/2020)

I. Determine which federal, state and local laws and orders apply and what they require:
   A. State and local shelter in place orders and business re-opening guidelines
      i. New York State re-opening protocols:
         1. Adjust workplace hours and shift design to reduce workplace density
         2. Enact social distancing protocols
         3. Restrict non-essential travel
         4. Require all employees and customers to wear masks if in frequent contact with others
         5. Implement strict cleaning and sanitation standards
         6. Enact a continuous health screening process for individuals to enter the workplace
         7. Continue tracing, tracking and reporting of cases
         8. Develop "liability processes"
      ii. New York State has now issued guidance regarding specific steps that employers must take to re-open:
         1. Confirm that you are in a region that is has met all seven metrics for re-opening.
         2. Confirm that your industry is part of whatever re-opening phase (1-4) currently in effect for the state.
         3. Review the state's summary guidelines and final interim guidance for your specific industry, which can be found here: https://forward.ny.gov/industries-reopening-phase.
         4. Submit the required affirmation (found at the end of the guidance) to the state confirming that the business has read and agrees to operate in compliance with the detailed guidance.
         5. Prepare a written "safety business plan" outlining how your business will prevent the spread of COVID-19 in the workplace and post it "conspicuously" in the workplace. The state has provided a 3-page template for this plan which can be found here: https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf.
   B. CDC, OSHA and other health and safety guidance, directives, laws and orders (may vary by location)
      i. The OSHA general duty clause, Section 5(a)(1) of the Occupational Safety and Health Act, requires that each employer furnish to each of its

employees a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm.

    ii. Conduct risk assessment using OSHA's Guidance on Preparing Workplaces for COVID-19 -- levels of risk depends on the industry:

        1. **Very high exposure risk** – health care workers, laboratory personnel, and morgue workers

        2. **High exposure risk** – medical transport workers, healthcare delivery and support staff

        3. **Medium exposure risk** – involve workers who require frequent and/or close contact with people (employees at schools, transportation workers)

        4. **Low exposure risk** – minimal contact with the public and other coworkers

C. Determine applicability of federal, state and local laws concerning paid sick leave, unpaid leave, and other relevant laws.

    i. Families First Coronavirus Response Act

        1. Sick leave

        2. Family leave

    ii. NYS Paid Family Leave (COVID-19 provisions)

D. Determine whether there is a need to bargain with any union(s) regarding additional workplace health/safety protocols and other changes to policies and practices, and whether local rules or orders will impact bargaining.

E. Consider any industry-specific requirements or business considerations (e.g., healthcare, construction, manufacturing).

II. Establish an Organizational Approach

A. Create a "Return to Work Task Force" or team that can make company-wide policy decisions. Team should include stakeholders from various departments:

    i. HR

    ii. IT

    iii. Building Facilities

    iv. Health & Safety

    v. Office Managers

    vi. Senior Management

B. Consider appointing a "Chief COVID-19 Response Officer" or other point person to coordinate all efforts related to the COVID-19 crisis.

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III.   Determine Which Employees Will Return to Work (and How & When)
   A. Consider starting with an employee survey asking employees about their willingness to return work, primary concerns, work/life balance concerns (no school/daycare) etc.
   B. Decide when you may begin to bring certain types of employees back pursuant to state and local orders.
   C. Identify core/essential business functions that are suffering by not being performed onsite in order to determine which employees need to return to the worksite immediately.
   D. Consider that certain employees may be prohibited from returning to the worksite due to actual COVID-19, symptoms, potential exposure, isolation or quarantine by a health care provide or public health officer, etc.
   E. Determine which employees are on legally protected leaves (plan for business impact of anticipated future leave requests).
   F. Review and revise job descriptions and organizational charts as necessary to reflect changes in job duties and organization structure/reporting relationships.

IV.   Establish Company Philosophy Regarding Remote Work
   A. Create policy and procedure for responding to requests to work remotely. Be consistent and be able to document why certain positions can be remote and others cannot.
   B. Determine which positions/employees will be eligible for remote work while being mindful of avoiding discrimination against certain groups, e.g., elderly or pregnant workers (use objective measures such as seniority or merit).
   C. Develop a remote work policy and remote work agreement for employees to sign.
   D. Consider related IT, timekeeping and performance management issues.
   E. Consider how you will respond to remote work requests due to:
        i. reasonable accommodations for a disability (including potential need to revisit pre-COVID-19 accommodation request denials)
       ii. fear of COVID-19 (note: potential ADA and whistleblower issues)
      iii. membership in a vulnerable population
       iv. allegation(s) of violations of health and safety orders and/or laws or need to quarantine due to potential exposure
        v. child/senior care challenges
       vi. transportation challenges
      vii. household family members being in a vulnerable population (e.g. household family members with underlying medical conditions/immune-compromised or who are senior citizens)

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F. Note that EEOC guidance on telework as an accommodation stats that, after the pandemic, a request to telework does not have to be granted if working at the worksite is an essential function of the job in normal circumstances (i.e. not during a pandemic). The ADA never requires an employer to limit the essential functions of a position, and just because an employer did this during the pandemic does not mean an employer has to permanently change the essential functions of a position, and is not an admission that telework is a feasible accommodation or that telework does not place an undue hardship on the employer.

V. Establish Procedures for Determining if Individual Employees are Safe to Return to the Workplace
   A. Determine whether to use screening processes to determine if individual employees are safe to return to workplace (see more details on implementation of these processes in Section VII below):
      i. Temperature checks
      ii. Health questionnaires/interviews
      iii. Self-certifications
      iv. Fitness for duty certifications or other documentation from health care provider (be flexible regarding types of documentation required)
      v. COVID-19 tests (proceed with caution!):
         1. EEOC says mandatory COVID-19 testing prior to RTW is permissible.
         2. Employer must ensure that test used is FDA approved, and is accurate and reliable.
         3. EEOC has not approved repeated tests, so doing tests only before employees RTW is of limited usefulness – only of use to clear employees to RTW but must be followed by other continuing screening protocols.
         4. Antibody tests are unreliable and should not be used by employers at this time.

VI. Workplace Social Distancing Protocols
   A. Considerations for Reconfiguring Workspaces:
      i. Determine ability to maintain at least six-foot distance in common areas and between desks or workstations.
      ii. Reconfigure workstation paths and workflows (e.g., one-way aisles and floor markers to facilitate social distancing) and re-orient workspaces so employees are not facing one another.
      iii. Redesign production lines (e.g. to increase space between employees).

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      iv. Consider use of physical barriers (e.g., plexiglass shields or higher cubicle dividers).
      v. Repurpose conference rooms, lunchrooms, and other communal spaces to allow for more social distancing.
      vi. Limit in-person meetings and other gatherings.
  B. Considerations for Changes to Work Schedules:
      i. Reconfigure work schedules and/or shifts to limit the number of employees physically present in a specific office, facility, plant, or other work location at any one time.
      ii. Stagger meal periods and rest breaks to the extent consistent with applicable law; consider requiring employees to eat at their desks or workstations instead in a communal lunchroom or other area.
      iii. Implement full-time, part-time and/or rotating work from home arrangements for positions where it is feasible for employees to work from home, either full-time or a certain number of days each week.
  C. Consider limiting or temporarily banning non-essential business travel.

VII.   Health and Safety Protocols
  A. Evaluate need to retain outside safety consultant.
  B. Determine minimum legal requirements OSHA, CDC guidance, state and local shelter in place orders.
  C. Perform a hazard assessment as required by OSHA.
  D. Consider type(s) of continuous health screens/testing to implement:
      i. Self-checks vs. employer administered checks (create written protocols)
        1. Questionnaires or self-certifications – questions to ask:
          a. Have you had in the past 48 hours?
            i. Any one of the following symptoms:
              1. persistent cough
              2. shortness of breath
            ii. Two or more of the following symptoms:
              1. new onset fever
              2. chills
              3. repeated shaking with chills
              4. muscle pain
              5. headache
              6. sore throat
              7. diarrhea
              8. loss of taste or smell

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      b. Have you had close contact with a person who has confirmed COVID-19?

      c. Have you had close contact with a person experiencing symptoms of COVID-19?

      d. Do you currently have a fever greater than 100.4?

2. Temperature checks (preferable to have employee take own temperature) or self-certification of temperature check. Considerations for creating temperature check protocol include:

      a. Who will be screened?

      b. When and how often will screening take place?

      c. Who will conduct the screening and how will that person be trained?

      d. What safety requirements must be met (e.g., PPE, sanitization)?

      e. What type of equipment will be used (e.g., thermometers, scanners)?

      f. Where will screenings be conducted?

      g. How will you maintain privacy and confidentiality?

      h. How will you document results?

      i. How will you communicate the screening process to employees?

      j. Will you pay employees for waiting and screening time?

      k. What protocols will you follow to handle employees who have elevated body temperature readings?

ii. Fitness for duty certifications or other documentation from health care provider (be flexible regarding types of documentation provided)

iii. Privacy and confidentiality issues:

1. Keep all screening documentation in separate, confidential medical files

2. Only share information on a "need to know" basis (e.g., supervisors, government officials, benefits carriers)

iv. Determine protocol for if an employee refuses to be screened/tested. (If an employee refuses to undergo a temperature check or other COVID-related test, the employer may bar the employee from the workplace. However, employer should ask about the reasons for the refusal in the event that there is a health-related or religious reason for the refusal or if more information or reassurances concerning confidentiality would be helpful).

E. Create protocol for screening of non-employees who come to the workplace (e.g., contractors, vendors, customers, clients, service workers, visitors).

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F. Require the use of appropriate PPE (personal protective equipment, e.g., face shields, face masks, gloves, gowns etc.) as appropriate. Required PPE should be provided by employer at no cost to employees.

G. Install physical barriers for interaction with public if applicable.

H. Establish and communicate handwashing and other personal hygiene protocols and post reminders about proper hygiene, handwashing, coughing and sneezing etiquette.

I. Stock the workplace with hand sanitizer, facial tissue, and sufficient cleaning supplies that employees can use to clean their workspaces.

J. Provide centralized trash and recycling bins with frequent disposal.

K. Implement a clean desk policy devoid of employee memorabilia which will enable the night-time cleaning crew to thoroughly clean all desks.

L. Install hands-free faucets, soap, hand sanitizer, and paper towel dispensers, and consider no-touch options for doors, badge readers and garbage/recycling bins.

M. Consider temporarily switching to disposable items where possible (e.g., kitchenware, desk blotters, etc.)

N. Limit unnecessary mail and packages coming into the workplace (consider temporarily prohibiting employees from receiving personal mail at the workplace).

O. Consider temporarily closing any onsite cafeteria or instead, selling only pre-packaged foods on a "grab and go" basis. Avoid shared food items, shared utensils, coffee pots, etc.

P. Consider temporarily stopping any fresh meal deliveries except for pre-packaged items.

VIII. Cleaning Protocols

    A. CDC guidelines for creating a cleaning plan:

        i. Develop a plan

            1. Determine what needs to be cleaned

            2. Determine how areas will be disinfected

            3. Consider cleaning resources and equipment needed

        ii. Implement the plan

        iii. Maintain and revise the plan as needed

    B. Perform deep workplace cleaning prior to reopening. However, according to CDC guidance, if your workplace, school, or business has been unoccupied for 7 days or more, it will only need your normal routine cleaning to reopen the area. This is because the virus that causes COVID-19 has not been shown to survive on surfaces longer than this time.

    C. Implement more frequent or robust routine cleaning.

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D. Provide appropriate cleaning materials and PPE to custodial staff and/or others tasked with performing cleaning tasks.
E. Develop protocol for the handling of incoming mail, packages and other deliveries.
F. Increase cleaning of high traffic areas, common areas, office equipment (e.g., copiers, keyboards, printers, etc.) and periodic deep cleaning of office, facility, plant, and/or other work locations by a professional cleaning service.
G. Commonly touched surfaces in the workplace that require routine disinfection include:
    i. tables
    ii. doorknobs
    iii. light switches
    iv. countertops
    v. handles
    vi. desks
    vii. phones
    viii. keyboards
    ix. toilets
    x. faucets and sinks
    xi. touch screens
H. Develop protocol for employee cleaning of their workstations.
I. Coordinate with landlords and building management.
J. Ensure adequate cleaning of common areas using appropriate cleaning tools. CDC cleaning guidelines recommend the following:
    i. First, clean the surface or object with soap and water.
    ii. Then disinfect using an EPA-approved disinfectant.
    iii. If an EPA-approved disinfectant is unavailable, you can use 1/3 cup of bleach added to 1 gallon of water, or 70% alcohol solutions to disinfect.
K. Consider temporarily removing shared items (e.g., staplers, three-hole punchers, and other office supplies; coffee mugs; etc.) and items with soft or porous surfaces such as rugs, upholstered furniture, that are hard to disinfect.
L. Develop a protocol for shared tools and other items (e.g., leave it for the other employee to pick up rather than handing it off in person, cleaning tools before each use, etc.)
M. Develop a protocol for locker areas; ask employees to leave personal items at home or in cars to the extent possible.
N. Determine whether uniforms and PPEs can put on/off at home or in the car (note: potential wage hour issues).

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O. Consider installing high-efficiency air filters and increasing ventilation rates in the work environment.

IX.   Develop Plan to Quickly Respond to any COVID-19 Diagnosis, Symptom Reports, or Exposure
   A. Applies to employees who have:
      i.   Tested positive for COVID-19
      ii. Been diagnosed as presumptively positive for COVID-19
      iii. Experienced COVID-19 symptoms
      iv. Potential exposure, but no symptoms
   B. Develop protocols to quickly respond to any COVID-19 diagnosis, symptom reports, or exposure:
      i.   Make sure employees know to notify the company of COVID-19 diagnosis, symptoms, exposure (and how to make this notification).
      ii. Identity a point person or task force to oversee the response to such notifications.
      iii. Develop a protocol in the event of a report of confirmed or possible COVID-19. (See separate CWS document for complete Procedure for Responding to Employee with Suspected or Confirmed COVID-19, attached).
      iv. CDC guidance currently permits essential workers with potential exposure to remain in the workplace if certain mitigation steps are taken.
      v.   Develop protocol for a temporary shutdown and deep cleaning of the workplace on short notice:
         1. The entire building or select areas?
         2. Outside vendor for cleaning?
         3. Additional measures when reopen?
      vi. Determine if there is any requirement to notify any government or other public authorities and, if so, develop protocol to provide such notice.
      vii. Determine whether you need to notify your workers' compensation insurance carrier.
      viii. Determine whether an OSHA log report is required.
      ix. Develop protocol for responding to questions and concerns raised by other employees, temporary workers, independent contractors.
      x.   Determine notification protocols in event of COVID-19 positive test in building if shared with other tenants.

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X.   Update Employment Policies and Procedures
- A. Create written protocols/procedures for all new policies put in place regarding:
  - i. Employee health screenings
  - ii. Workplace safety and social distancing procedures
  - iii. Workplace cleaning and sanitizing protocols
  - iv. Remote work
  - v. Responding to COVID-19 exposure
- B. Determine whether any existing employment policies or procedures need to be temporarily revised or suspended.
- C. Update employee handbook or other policies as necessary -- consider creating a COVID-19-specific addendum to employee handbook for use during the pendency of the crisis and have employees sign acknowledgment of receipt and compliance with same.
- D. Ensure that employee leave policies clearly state the process by which employees may request time off so that any grants or denials of such requests are made in accordance with applicable law and that any time off is tracked.
  - i. Anticipate more requests for time off, reasonable accommodations, remote work, etc.
  - ii. Tracking time off is particularly important with respect to time off taken under the FFCRA, for which employers may seek refundable tax credits from the Internal Revenue Service.
- E. Train employees on new procedures and protocols before and after returning to work.

XI.   Evaluate Wage and Hour Implications of Potential Changes in Pay, Hours, Schedules, or Job Duties
- A. Determine whether there is a need for reductions in pay or hours, changes to work schedule, changes to duties.
- B. Evaluate need to reclassify exempt employees to nonexempt (salary basis test, salary thresholds, changes in duties) and, if yes, develop protocol/notice.
- C. Arrange preparation and distribution of any legally required notices regarding changes in pay or status.
- D. Identify and address potential off the clock issues (e.g., symptoms checks at home, temperature check lines at work, putting on PPE at home, cleaning tools at home).
- E. Pay non-exempt employees for any time spent being tested for COVID-19 or spent waiting to be tested, if testing is required by employer.

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F. Identify and address potential meal and rest break claims (e.g., if employees are asked to eat lunch at their workstations, if COVID-19 procedures cut into meal breaks).

G. Consider hazard pay or shift differential pay for certain employees, if appropriate.

XII. Determine Rules for Visitors and Other Workers in the Workplace

A. Determine how and in what respects the new policies and procedures will apply to temporary workers, staffing agency workers, independent contractors, vendors, clients, customers, delivery workers, visitors, and others when they are in the workplace.

B. Consider limiting visitors to the workplace as much as possible.

C. Require any visitors to complete a health screening/questionnaire before entering an office, facility, or other work location, to follow all health and safety protocols, and to wear appropriate PPE.

XIII. Develop Plan for Communication of Updated Policies/Protocols

A. Provide more frequent and routine communication with employees during the crisis to ensure that employees are informed and feel supported by the company.
   i. Consider creating an online "portal" where all COVID-19 related policies, notices and other information can be accessed by employees.

B. Consider remote communication of new policies prior to employees' return to work.

C. Communicate all efforts being made to keep employees safe:
   i. Blanket statement to respond to employee concerns about workplace safety: "We are operating a safe workplace in accordance with applicable federal, state and local safety and health guidelines. There currently is no recognized health or safety hazard in our workplace."

D. Determine need for orientation or training for employees upon return to work, especially for HR and management.

E. Determine notice posting/distribution requirements for employers based on COVID-19 related laws or orders.

F. Evaluate current recruitment and hiring practices in light of COVID-19 and determine if changes are necessary.

G. Prepare for remote onboarding of new hires.

XIV. Be Prepared for an Uncertain Future

A. Possible need for future employee layoffs and/or temporary furloughs or alternatives such as wage and hours reductions.

B. Interrupted supply chains or delayed deliveries.

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C. Large number of employees taking sick time or other leaves of absence.
D. Another shutdown or a partial shutdown due to future government orders.
   i. What will that look like the 2nd time around?
   ii. Will there be a second wave next fall or winter?
E. Have a good employee communication/notification plan ready.
   i. Update employee contact information
   ii. Establish methods for communicating quickly with the workforce.

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