

May 19, 2020

COVID-19 and Reimagining the Workplace: Daily Briefing Recap

The Retail Industry:

Practical Considerations for Re-opening

Please note that the following is a recap of our Daily Briefing from May 18, 2020. Due to the rapidly evolving nature of the pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s [COVID-19 resource page](#) for updates on workplace impacts and [sign up here](#) to receive invitations to future daily COVID-19 webinar briefings and email updates on ongoing legal and workplace health challenges.

Considerations When Re-opening

Compliance with Clear Federal, State and Local Mandates

States, counties, and municipalities are taking a variety of approaches to re-opening. For all of your locations, be aware of requirements with respect to the following:

- Reopening dates
- Mass gathering limitations
- Social distancing rules
- Face-coverings/gloves
- CDC and state requirements

Observing Anti-discrimination Laws

When deciding who to bring back to work, keep in mind the following:

- Neutral re-engagement: employers should not make selections based on individual circumstances, e.g., whether an employee might access new entitlements under the FFCRA
- May require individualized assessment of medical issues for returning employees
- Assess employee rights to paid sick days, sick leave, or other state/FFCRA entitlements

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- Disability and religious accommodations:
 - Employees who are particularly vulnerable to COVID-19 may be entitled to accommodation
 - Required PPE may conflict with some religious observances and/or medical restrictions
- Union or bargaining obligations must be observed
- Furloughs vs. terminations: different employer obligations apply for each when inviting people back
- Wage and hour laws: if staffing is limited, consider whether managers and supervisors who perform additional non-supervisory work still meet wage and hour exemptions

Crafting an Operational Plan

Numerous sample or draft operational plans are available from a variety of public sources. Employers should build a robust, written plan that is tailored to their circumstances and accounts for the re-opening considerations discussed above. The plan should be assessed and modified as employers live through the re-opening.

Getting Employees Back In The Door

- Develop a return-to-work letter covering the following:
 - Return date
 - Rate of pay (some states require notices for reductions in pay)
 - Title
 - Benefits
 - PTO bank hours
 - At-will disclaimer
 - New policies and expectations consistent with operational plan to assure employees of a safe work environment
- Establish a contact point person to whom employees will respond
- Require written confirmation of return
-OR-
Reason for not returning

What If Employees Refuse To Return?

- It is very important to get the employee explanations for not returning in writing – the explanation will set the course for the required subsequent dialogue.
- Create a decision tree for your designated contact person to follow:
 - Does the explanation implicate paid time off entitlements?
 - E.g., employee is willing to return but has tested positive for COVID-19
 - Does the explanation implicate leave laws?
 - E.g., employee has young children whose schools are closed
 - Does the explanation implicate accommodation considerations?
 - E.g., employee is a member of a vulnerable population and may need accommodations
 - If none of the above, e.g., employee has general fear of COVID-19 or is making more money on unemployment, employers need to determine what their next steps will be:
 - Termination?
 - Challenge unemployment benefits?

What if I have more questions?

As issues and concerns around COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with [Jackson Lewis' latest available information and resources](#).

If you have any questions, please contact the Jackson Lewis attorneys with whom you regularly work.