

April 21, 2020

CDC AND EEOC GUIDANCE ON RETURNING TO WORK

Webinar On Continuing Safe And Compliant Business Operations

Some companies that are classified as “essential businesses” under local and state orders have been operating with employees at the physical work location. Other companies have allowed some or all of their employees to telework but are now considering bringing some employees back to the office. While it appears premature at this point, companies that were not classified as “essential” have been anticipating the day when business operations can resume. Paramount in these assessments is how to conduct business when best protecting the health and safety of employees, as well as customers and vendors.

Upcoming Webinar: Best Practices for Resumption of Business Operations & Continuing Operations: Stradling will be hosting a webinar the week of April 27th to discuss best practices for continuing operations as CDC guidance continues to evolve and to help companies prepare themselves for resumption of business operations. Please look for an invitation later this week, which will also be posted on Stradling’s LinkedIn page. <https://www.linkedin.com/company/stradling/>

Employers Considering Return to Work Should Review The CDC’s Interim Guidance for Employers

A must read as part of evaluating the various considerations that go into developing an effective plan for continuing or restarting business operations is the Centers for Disease

Control and Prevention (“CDC”) Interim Guidance for Businesses and Employers to

Plan and Respond to Coronavirus Disease 2019 (COVID-19). The guidance can be found at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

The CDC focuses on three areas of concern: 1) reducing transmission among employees, 2) maintaining a healthy business operation and 3) maintaining a healthy work environment.

While the guidance is likely to be revised and updated, and while each situation must be individually evaluated for best practices, some key points from the CDC guidance are:

Reducing Transmission Among Employees:

- ✓ Reconfigure the workplace to enable employees to practice social distancing whenever possible
- ✓ Consider assigning employees to work in shifts and stagger breaks to reduce contact among employees
- ✓ Avoid large meetings
- ✓ Actively encourage sick employees to stay home and have a plan in place for when employees are allowed to return consistent with CDC guidelines
- ✓ Encourage employees to wear a face mask when interacting with others and offer to provide cloth face masks if requested

Maintaining a Healthy Business Operation:

- ✓ Consider pre-screening employees and visitors coming to the workplace, whether by taking employee temperatures and/or asking whether COVID-19 symptoms are displayed
- ✓ Minimize or eliminate business travel
- ✓ Be sensitive to employees reluctant to return to work because they feel at higher risk of contracting COVID-19, such as employees with certain underlying medical conditions or those

April 21, 2020

CDC AND EEOC GUIDANCE ON RETURNING TO WORK

65 years of age and older; for these employees consider telework or minimizing face-to-face contact or assign work tasks that allow them to maintain social distances with co-workers, customers and visitors

✓ Observe all required paid and unpaid leave requirements

Maintaining a Healthy Work Environment:

✓ Increase ventilation rates and percentage of outdoor air that circulates into the system

✓ Develop a plan for cleaning and disinfecting the workplace and utilize a qualified professional cleaning service

✓ Encourage proper hygiene practices (e.g., washing hands regularly, not touching face, avoid using other employees' work equipment when possible and if necessary clean and disinfect equipment before and after use) and ensure that hand hygiene supplies are readily available

The CDC discusses other steps to take to prepare your workplace for your employees, workplace practices to implement and monitor, and how to deal with employees who contract the virus or display symptoms. Employers should carefully review the CDC guidance, practice common sense, and stay on top of developments.

EEOC Updates Guidance On The ADA And Other EEO Laws

On April 17th, the EEOC updated its questions and answers regarding the application of the disability and other laws prohibiting discrimination to COVID-19 related concerns to include additional information relevant to employees returning to work "as government stay-at-home orders and other restrictions are modified or lifted in your area."

The EEOC reiterated that given the current guidance from the CDC, employers may continue to take employee temperatures and to ask questions about symptoms or require employees to self-report symptoms of COVID-19.

The EEOC also stated that employers may "require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols)." However, employers may be required to provide accommodations related to that protective gear if the employees have a disability or religious practice that needs accommodation. For example, employees with a latex allergy may need to be accommodated with non-latex gloves or need modified protective equipment due to religious garb. In those cases, employers should discuss the accommodation with the employee "and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII." The financial circumstances of the employer caused by the pandemic can be considered when evaluating whether an accommodation would cause an undue hardship. Employers must still "weigh the cost of an accommodation against its current budget while taking into account constraints created by this pandemic."

The updated EEOC guidance can be found here:

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitation_act_coronavirus.cfm?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

April 21, 2020

CDC AND EEOC GUIDANCE ON RETURNING TO WORK

OSHA Recording Requirements Eased

On April 10, the Department of Labor's Occupational Safety and Health Administration (OSHA) released an enforcement memorandum addressing an employer's responsibility for recording and reporting confirmed cases of COVID-19. The OSHA memo states that COVID-19 is a recordable illness and that employers must record a case if:

1. There is a confirmed case of COVID-19 (as defined by the CDC);
2. The case is work-related; and
3. The case involved meets the general recording criteria set forth in the regulations (the illness results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness).

However, until further notice OSHA will not enforce the requirement that employers make a determination that a case of COVID-19 is work related unless:

1. There is objective evidence that a COVID-19 case may be work-related (e.g., a number of cases developing among workers who work closely together without an alternative explanation), and
2. The evidence was reasonably available to the employer (e.g., information given to the employer by employees).

This enforcement memo does not apply to employers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional

institutions, which must continue to make work-relatedness determinations.

Employers in some industries are already partially exempt from the reporting requirements. Employers who are unsure about their recording requirements should confirm whether OSHA reporting regulations applies to their industry.

For more information on the OSHA enforcement memorandum, visit: <https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19#ftn3>

For more general information about OSHA recording requirements, visit: <https://www.osha.gov/recordkeeping/>

Los Angeles Requires Essential Businesses To Implement and Post Social Distancing Protocol

Effective April 15, essential businesses in the County of Los Angeles that remain open are required to implement and post a Social Distancing Protocol. The protocol must either be in the form of the model provided by the County of Los Angeles or another document substantially in the same form. The protocols require, among other things, that employers provide cloth face coverings to their employees.

The order and protocol can be found here: https://covid19.lacounty.gov/wp-content/uploads/HOO_Safer-at-Home-Order-for-Control-of-COVID_04102020.pdf

Expanded Paid Sick Leave For Food Sector Workers

Governor Newsome issued an executive order expanding paid sick leave for Food Sector

April 21, 2020

CDC AND EEOC GUIDANCE ON RETURNING TO WORK

workers in California. The order applies broadly to workers in facilities that serve, package, or prepare food, as well as delivery workers and agricultural workers employed by companies with employers with 500 or more employees. It is intended to provide paid sick leave to Food Sector workers who are not covered by the Families First Coronavirus Response Act ("FFCRA") that was limited to employers with fewer than 500 employees. Further, the order extends the benefits to independent contractors and gig-economy workers by creating leave obligations for a "Hiring Entity" rather than only for an employer.

Similar to the paid sick leave provided under the FFCRA, covered workers have two weeks (80 hours) of paid sick leave if they are either full time workers or worked at least 40 hours a week in the two weeks prior to taking the leave. Part-time workers with a regular schedule receive the total number of hours the worker is normally scheduled to work over two weeks. Part-time workers with variable schedules receive a number of hours equal to 14 times the average number of hours worked per day over the past six months (or their date of hire if the worker worked less than six months). Employers are not required to pay more than \$511 per day, or \$5,110 in the aggregate.

Covered employees may take leave for the following reasons:

1. The Food Sector Worker is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The Food Sector Worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
3. The Food Sector Worker is prohibited from working by the Food Sector Worker's

Hiring Entity due to health concerns related to the potential transmission of COVID-19. The order also requires that Food Sector workers be permitted to wash their hands every 30 minutes (and more often as necessary).

The order may be found here:

<https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-51-20.pdf>

The Department of Industrial Relations FAQ on the order can be found here:

<https://www.dir.ca.gov/dlse/FAQ-for-PSL.html>

We Are Available To Assist

Please feel free to reach out to us with any questions you have about any of the above issues or other concerns related to the COVID-19 pandemic, employment-related or otherwise. You can also access all COVID-19 related Client Alerts and other useful information at <http://www.sycr.com/COVID-19-Client-Service-Resource-Center/>

Labor and Employment Practice Group

Jeff Dinkin	Sean Piers
805.730.6820	805.730.6804
jdinkin@sycr.com	spiers@sycr.com

Corporate and Securities Practice Group

Ryan Wilkins
949.725.4115
rwilkins@sycr.com

Litigation Practice Group

Jason de Bretteville
949.725.4094
jdebretteville@sycr.com

April 21, 2020

CDC AND EEOC GUIDANCE ON RETURNING TO WORK

Intellectual Property Practice Group

Steven Hanle

949.725.4126

shanle@sycr.com

Public Finance Practice Group

David Casnocha

Brian Forbath

415.283.2241

949.725.4193

dcasnocha@sycr.com bforbath@sycr.com