

Restarting Your Business

Barnes & Thornburg recognizes that the COVID-19 pandemic has impacted our clients in a wide variety of ways – ranging from reported cases in your worksites, remote work for some or all of your workers, temporary layoffs, furloughs, and the uncertainty created for employers and employees. Our hope is that you and your workforce and their families have remained safe and healthy.

States are beginning the “re-opening” process on a limited basis, with more expected to follow in the coming weeks. Given our partnership with you, the Barnes & Thornburg Labor and Employment team has prepared a comprehensive review of employer considerations. As you prepare for restarting your business, let us help you “check the boxes” to facilitate a smooth restart process.

Have you considered/addressed the following topics?

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Employer Considerations Checklist

SAFETY ISSUES

- Infectious Disease Response Plan
- Physical plant preparation/start-up process
- Physical distancing preparedness/evaluation
- PPE or face coverings
- Employee screening/testing
- Employee criteria for return to work
- Cleaning/disinfection
- Employee training
- Meetings/travel changes
- Protocols for sending employees home/return to work
- Third-party access/limits
- Protocols in the event of positive case in the workplace
 - OSHA/workers' compensation notification (if applicable)*
 - Communication plan for worksite*
 - Communication plan for third parties*
 - Disinfection of affected work areas*

RISK MANAGEMENT/LITIGATION PREPARATION

- Contract review/adjustment – insurance and vendors
- Analysis of risks – potential civil claims, workers' compensation, whistleblower claims, OSHA compliance
- Documentation and retention of processes/communication/policies/training
- Documentation/evidence required for contact tracing
- Documentation evidencing compliance with federal, state guidelines/orders
- Review of complaints to employee helplines/code of ethics helplines

EMPLOYEE RELATIONS/STAFFING CONSIDERATIONS

- Restructuring/reduction-in-force analysis/severance decisions
- WARN Act considerations
- Employee transition back to work – how to re-engage workforce
- Changes to work processes – remote work/work sharing efficiencies
- Contingent workforce evaluation
- ADA accommodation process
- Returning from lay-off process (especially if phasing in more slowly)
- Process for handling protected concerted activity/worker protests
- Compensation/incentive payment decisions
- Process for disciplinary decisions relating to COVID-19 absences
- Changes to benefits/policies to address COVID-19 issues
- Compliance with evolving federal/state laws
- Sick leave/time off considerations and tracking (such as employer provided/FMLA/FFCRA/state/local laws)

IMMIGRATION CONSIDERATIONS

- Properly verify any I-9 Employment Verification processes for employees that were completed remotely during the COVID-19 remote work period
- Consider complete I-9/E-Verify internal review (in anticipation of increased ICE audits)
- Review/audit all L-1, E and TN visas for substantive changes
- Review of any upcoming employee visa expiration dates set to occur within the coming 8 months
- Review/audit all H-1B, H1-B1, and E-3 employees who are reduced to part-time work, pay reductions or location modifications to comply with DOL public access file requirements (in anticipation of DHS/Fraud Detection and National Security visits)

LONG-TERM PREPARATION (LESSONS LEARNED)

- Evaluation of successes, challenges, and process changes needed
- Changes to workforce model/use of contingent workers/outsourcing
- Policy changes needed
- Revisions to Infectious Disease Response Plan
- Contract modifications
- Process for compliance with evolving legal requirements – including assessing and potential long-term enhancements to your compliance program (*see also above re: helpline complaints*)

Learn More

A number of these issues require careful consideration of legal implications, as well as the human resources/employee relations considerations. We stand ready to assist you as you navigate these uncharted waters.

Visit our [Barnes & Thornburg COVID-19 Resources](#) page for more insights about COVID-19.