A NEW WAY FORWARD: REIMAGINING THE NONPROFIT WORKPLACE

Virtual Engagement Series
A NEW WAY FORWARD: REIMAGINING THE NONPROFIT WORKPLACE

Session 1: Lessons Learned and Legal Guidance for Safely Returning to the Workplace
Today’s Program

• Welcome and Housekeeping Notes
• Introduction of Speakers
• Presentations (10:10am - 11:10am)
  • Moderator: Jamii Tata, Michigan Community Resources
  • Speaker 1: Brian Berryman, Huntington Insurance
  • Speaker 2: Felicia O’Connor, Foley & Lardner LLP
  • Speaker 3: Doshia Barton, Eastern Market Corporation
• General Q&A
• Closing Remarks
Housekeeping Notes

• This webinar is being recorded.
• Q&A time is built into each portion of the program.
• Use the “Chat” function to share your questions any time.
• Conversations based on our best understanding at the time.
• The attorney presentation features legal guidance, not legal advice.
Next in Our Series

Thursday, July 9th (10am – 11:30pm)
Creative Design Solutions for the Workplace

Thursday July 16th (10am – 11:30pm)
HR Policies, Procedures and Practices
Today’s Presenters

Brian Berryman
Huntington Insurance

Doshia Barton
Eastern Market Partnership

Felicia S. O’Connor
Foley & Lardner LLP

Jamii Tata
Michigan Community Resources
(Moderator)
Brian Berryman, AAI, CWAC, AWCA, CWCA

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Reopening... now what?

Protecting Employees
• Protocols, PPE, rules, training, documentation

Protecting Visitors | Clients | Patients
• Mask vs. No Mask? PPE, Signage, training

Protecting Assets
• Company, board, donors, volunteers

Protecting Management
• Directors & Officers Claims
• Liability Claims
• Employment Practices Claims
• Accident and Health Claims
Does your plan meet the 10 requirements?

1. Businesses have to provide training workplace infection-control practices, reporting unsafe work conditions, how to properly use personal protective equipment (PPE) and steps for notifying supervisors that they have symptoms of COVID-19 or have a suspected or confirmed diagnosis.

2. Businesses must have protocols in place for cleaning and disinfecting a workplace in the event that an employee or contractor tests positive for COVID-19.

3. They also must make cleaning supplies "available to employees upon entry" and "provide time for employees to wash hands frequently or to use hand sanitizer."

4. When an employee tests positive for COVID-19, the employer is required to contact the local health department and "any coworkers, contractors or suppliers who may have come into contact with the person."

5. All employees or contractors entering a workplace are required to go through a daily self-screening of their current health conditions and whether they've had a "suspected or confirmed exposure to people with possible COVID-19." Employers are required to keep records of the daily health screenings, according to the order.
Does your plan meet the 10 requirements? (cont’d)

6. Employers must provide non-medical grade masks to all employees. Surgical and N95 masks remain reserved for health care professionals to preserve PPE supplies for front-line workers.

7. Employers also are required to encourage employees to wear gloves, masks and use hand sanitizer when using public transportation to get to work.

8. Employers are to keep workers at least 6 feet apart "to the maximum extent possible." When they can't be more than 6 feet apart, employees are required to wear face masks. When workers have to be within 3 feet of each other, employers should "consider" providing face shields, according to the governor's order.

9. Businesses are to restrict business-related travel for "essential" purposes only and "promote" remote working.

10. Employers are prohibited from firing, disciplining "or otherwise retaliating against employees who stay home or who leave work when they are at particular risk of infecting others with COVID-19."

Next Steps: Being Nimble

• Seek guidance from current resources:
  • Current Risk Advisor
  • Huntington and our loss control team is also available
  • Signal Restoration – COVID-certified cleaning company

• Create your plan and implement – HOWEVER be flexible as it may change as we move forward.

• Legal Assistance – after drafting plans internally and have your risk advisor review, seek confirmation from legal representation.

• Remember – the plan and rules will change so be ready to change with them.
Q&A
Felicia O’Connor

Foley & Lardner LLP | Senior Counsel
Legal and Safety Considerations

- Re-opening the workplace
  - Planning
  - Office space
  - Testing
  - Protocol for positive employees
  - Working remotely

- ADA issues and other leave considerations in the age of COVID-19 and beyond
  - FFCRA
  - ADA
  - Michigan Paid Sick Leave
Legal Requirements

- Check state and local Executive Orders
- Industry specific requirements in state EOs
  - Work performed outdoors
  - Construction
  - Manufacturing
  - Research laboratories
  - Retail, libraries, museums
  - Restaurants / bars
  - Healthcare
  - In home services
  - Barbering, personal care
  - Sports and entertainment
  - Exercise facilities
- Be nimble – prepare for possible changes in requirements
A Safe Workplace: Phased Opening

- Follow [CDC guidance](https://www.cdc.gov), local government directions, and [OSHA guidance](https://www.osha.gov)
- Consider re-opening in separate phases – consistent with state requirements
- Phase One
  + Continue encouraging telework
  + Enforce strict social distancing guidelines; keep areas that encourage congregation closed; require use of face masks in open/communal spaces
  + Enforce closing time of facility/office to allow for cleaning and disinfecting
  + Minimize non-essential travel and follow CDC guidelines regarding isolation after travel
  + Reduce or eliminate guest access to the facility/office
- Phase Two
  + Non-essential travel can resume
  + Essential guest access can resume
- Phase Three
  + Unrestricted staffing of facility
A Safe Workplace: Sanitizing

- The CDC considers routine cleaning critical for limiting the transmission of COVID-19.
- Frequency of cleaning and cleaning product use will differ based on area and place.
- Use appropriate CDC recommended cleaning, sanitizing, and disinfecting solutions.
- Focus on high contact surfaces (printer buttons, door handles, lockers) and high risk locations (bathrooms, break area, receptions spaces).
A Safe Workplace: Social Distance

- Reorganize office spaces to increase space between employees
- Mark the ground to clearly designate safe distances
- Impose physical barriers (Plexiglas) (cubicles)
- Provide PPE when physical distance is not feasible
- Stagger shifts and breaks
- Reduce staffing levels per shift
- Consider pre-recorded or telephonic meetings
- Limit in-person meetings to less than 10 attendees
- Increase transportation options (reduce public / carpool)
- Post visible reminders about hygiene around the workplace
- Increase ventilation, such as propping doors open when possible
- Make hand sanitizer and disinfectant wipes readily available
Temperature Testing Guidance

**DO:**
- Use touchless thermometers
- Train the temperature taker and provide him/her with proper PPE
- Identify a consistent temperature threshold
- Understand recordkeeping issues in connection with the ADA and OSHA requirements

**DO NOT:**
- Make individualized assessments
- Inquire as to additional considerations
- Let someone back without a disclosure/notice

**CONSIDER:**
- Compensable time and the FLSA
- Limiting the duration
- Maintaining proper distance while taking temperatures
Personal Protective Equipment

- Consider OSHA guidelines and local guidance for selecting PPE
- All PPE must be:
  - Selected based upon the hazard to the worker
  - Properly fitted and periodically refitted, as necessary
  - Consistently and properly worn
  - Regularly inspected, maintained, and replaced, as necessary
  - Properly removed, cleaned, and stored or disposed
- PPE is not a replacement to hand washing
COVID-19 and the ADA

- ADA refresher
- The EEOC
- Accommodations in the COVID-19 era
- Future considerations
The ADA

- Prohibition on disability discrimination
- Duty to accommodate

provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship.

- Medical inquiries prohibited

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature and severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.
The EEOC Guidance

- EEOC website resources for COVID-19:
  - *What you should know about COVID-19 and the ADA* (last updated on June 17, 2020)
  - *Pandemic Preparedness in the Workplace*
  - *Updated COVID-19 Technical Assistance Publication Addressing Antibody Testing* (June 17, 2020)
Permitted Inquiries

“[E]mployers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others.”
Permitted Examinations

- **Temperature**
  - Yes, but not all with COVID-19 have a fever
  - Confidentiality of results
  - Acceptable for return to work

- **COVID-19**
  - “Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus. Consistent with the ADA standard, employers should ensure that the tests are **accurate and reliable**.”

- **Antibody Testing**
  - “An antibody test constitutes a medical examination under the ADA. In light of CDC’s **Interim Guidelines** that antibody test results ‘should not be used to make decisions about returning persons to the workplace,’ an antibody test at this time does not meet the ADA’s ‘job related and consistent with business necessity’ standard . . .”
Reasonable Accommodations

Work from Home
Reasonable Accommodations

Employees have been working from home for 2 months or more

Written job descriptions
- Attendance as an essential function
- Productivity
- Need for supervision
- Metrics

Case by case analysis
Reasonable Accommodations

Extended Leave / Delayed Return to Work
Reasonable Accommodations

Extended Leave / Delayed Return to Work

- Extended leave / Delayed return to work
  - Intersection with FFCRA
  - Don’t forget about the Michigan Paid Sick Leave Act!

- Remember that extending leave may still be a reasonable accommodation under the ADA
Reasonable Accommodations

Personal Protective Equipment
Reasonable Accommodations

Personal Protective Equipment

- Personal Protective Equipment (PPE)
  - Masks
  - Face shields
  - Gloves

- Related issues
  - Discourage cross-use of phones, computers, tools, equipment
Future Considerations

- Immunity certificates? (COVID Passports)
  - Testing for antibodies to SARS-CoV-2
  - Science has not caught up yet
  - Fake labs, black market
  - Without one, “regarded as” disabled?

- Teledoc Notes/Reports
What the Future Holds for You

- COVID-19 2.0 (Fall/Winter ’20)
- 18 months from now …
  - Meeting with HR
  - C-19 vaccine available
  - You let me work from home before!
- Teleworking as a tool for the future
Doshia Barton

Eastern Market Partnership | Director of Administration
Eastern Market (Pre-COVID)
Eastern Market Post-COVID
Thank you for being a part of today’s conversation!

Please be sure to complete the evaluation that will come at the end of the session.
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