Return to Work During the Era of COVID-19: An Overview

Presented by:

Carlos Zumpano & Joseph Ruiz

April 30, 2020

AGENDA

Part I
Return To Work – An Overview

Part II
OSHA Guidance on Preparing Workplace for Covid-19

Part III
Ceasing Telework and Issues Pertaining to Policies for Return to Work

Part IV
Q&A

Part I –
Return To Work: An Overview

Changing Times

Due to the global pandemic, many businesses were shut down abruptly, either by order of a government official or by the business themselves due to the many uncertainties. This resulted in many employees being furloughed, laid-off or having their hours or pay reduced.

Now, many employers are looking towards bringing back those employees.

ZUMPANO Z|C CASTRO
ATTORNEYS AT LAW

Reasons for Bringing Employees Back to Work

Changes in Federal/State/Local Orders

- Many of the Safe-at-Home or Safer-at-Home Orders are set to expire and several governors are looking to "re-open" their states, and therefore allow some businesses to re-open.

Funding of PPP Loans

- Several business have now been funded with PPP loans. These loans can be forgiven for payroll expenses during an 8-week period, giving employers and incentive to bring employees back to work.

REGISHRG
EMPLOYER HR SOLUTIONS

Changes in Executive Orders

Issues to Consider- Changes in Gov't Orders

- Many states and municipalities are considering letting current orders lapse, modifying requirements or rescinding restriction on operating businesses.

- Know your business classification-for example, are you an essential business or otherwise.

- Returning to work will be dependent on Federal, State, County and/or City authorization.

- Follow CDC, State, and local government social distancing guidelines. Some city and states may vary from others.

ZUMPANO Z|C CASTRO
ATTORNEYS AT LAW

Changes in Executive Orders

Issues to Consider- Changes in Gov't Orders

- Ensure your business is prepared to open by complying with state and local government preparedness and social distancing guidelines.

- Follow federal, state, county and city guidance restrictions on operating businesses.

  - For example, some restaurants may only be permitted to seat 25-50 percent capacity with social distancing measures issued by state or local government.

Changes in Executive Orders

Orders to Consider

- Governor Ron Desantis' Executive Order for Florida (and updates last night)
- Mayor Carlos Gimenez's Miami-Dade County Orders
- Orders for Individual Cities (Miami, Coral Gables, Etc.)

ZUMPANO Z|C CASTRO
ATTORNEYS AT LAW

Part II –
OSHA Guidance on Preparing Workplace for Covid-19

Keeping Workers Safe At Work

OSHA has Issued Guidelines for Covid-19

- OSHA issued a 35-page outline called "Guidance on Preparing Workplaces for COVID-19," available at OSHA.gov/coronavirus.

- The guidance focuses on the need for employers to implement engineering, administrative, and work practice controls and personal protective equipment (PPE), as well as considerations for doing so.

- OSHA has divided job tasks into four risk exposure levels: very high, high, medium, and lower risk. The Guidance gives different recommendations for each level. The Guidance states that most American workers will likely fall in the lower exposure risk (caution) or medium exposure risk levels.

Keeping Workers Safe At Work

OSHA has Issued Guidelines for Covid-19

- OSHA requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

- The specific guidance is advisory in nature and informational in content, but it is not a standard or a regulation, and it neither creates new legal obligations nor alters existing obligations created by OSHA.

OSHA Guidance

Levels of Risk Exposure According to OSHA

- Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures. Workers in this category include Healthcare workers performing aerosol-generating procedures on known or suspected COVID-19 patients.

- High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19. Workers in this category include Healthcare delivery and support staff exposed to known or suspected COVID-19 patients.

OSHA Guidance

Levels of Risk Exposure According to OSHA

- Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. In areas where there is ongoing community transmission, workers in this category may have contact with the general public.

- Lower exposure risk (caution) jobs are those that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2 nor frequent close contact with (i.e., within 6 feet of) the general public.

REGISHRG
EMPLOYER HR SOLUTIONS

Workplace Control Measures

Recommended OSHA Workplace Control Measures for Employers:

- Engineering Controls involve isolating employees from work related hazards. In applicable workplaces, these types of controls reduce exposure to hazards without relying on worker behavior and can be the most cost-effective solution to implement. Engineering controls for SARS-CoV-2 include depending on your business: Installing high-efficiency air filters. Increasing ventilation rates in the work environment. Installing physical barriers, such as clear plastic sneeze guards.

- Administrative Controls require action by the worker or employer. Typically, administrative controls are changes in work policy or procedures to reduce or minimize exposure to a hazard. Examples of administrative controls for SARS-CoV-2 include: Encouraging sick workers to stay at home and minimizing contact among workers, clients, and customers by replacing face-to-face meetings with virtual communications.

ZUMPANO Z|C CASTRO
ATTORNEYS AT LAW

Workplace Control Measures

Recommended OSHA Workplace Control Measures for Employers:

- Safe work practices are types of administrative controls that include procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to a hazard. Examples of safe work practices for SARS-CoV-2 include: providing tissues, no-touch trash cans, hand soap, alcohol-based hand rubs, disinfectants, and disposable towels for workers to clean work surfaces.

- Personal Protective Equipment (PPE). While engineering and administrative controls are considered more effective in minimizing exposure to SARS-CoV-2, PPE may also be needed to prevent certain exposures. While correctly using PPE can help prevent some exposures, it should not take the place of other prevention strategies.

OSHA and PPE

A Note on PPE:

- Employers are <u>obligated</u> to provide their workers with PPE to keep them safe while performing their jobs. The types of PPE required during a COVID-19 outbreak will be based on the risk of being infected with SARS-CoV-2 while working and job tasks that may lead to exposure.

- An Employer can have employees with different risk levels in the same building; for example, some employees who interact with customers may be medium risk, while back office employees can be low risk.

- Workers with medium exposure risk may need some combination of gloves, a gown, a face mask, and/or a face shield or goggles. PPE ensembles will vary by work task, the results of the employer's hazard assessment, and the types of exposures workers have on the job.

OSHA and PPE

A Note on PPE:

- Additional PPE is not recommended for workers in the lower exposure risk group. Workers should continue to use the PPE, if any, that they would ordinarily use for other job tasks.

- Employers should check the OSHA and CDC websites regularly for updates about recommended and/or required PPE.

- PPE may also be required, depending on industry, by State or Local Orders.

Temperature Checks

Can or Should You Check Temperatures?

- Normally, the Americans with Disabilities Act generally prohibits most medical inquiries or examinations—which would include temperature checks—in a workplace setting.

- But the Equal Employment Opportunity Commission has now said employers can now do so during the pandemic, and bar employees with elevated temperatures from entering the workplace.

- Employers should consider temperature checks as part of a back-to-work plan, but they should apply it across the board and remember that many people who contract COVID-19 do not have a fever or are otherwise asymptomatic.

Temperature Checks

Can or Should You Check Temperatures?

- If you are doing temperature checks-
  - appoint someone with proper training—ideally an on-site medical staff person or other medical professional (e.g., R.N., M.A.) if possible—to facilitate or administer on-site temperature checks. No-contact thermometers are preferred.
  - Set a temperature screening threshold over which employees will not be permitted to enter the workplace. The CDC considers a fever at least 100.4 degrees Fahrenheit.
  - It is most conservative to treat temperature test facilitators or administrators as a high/very high exposure risk since they likely will be in proximity to a large number of workers, including potentially infectious individuals.
  - All information gleaned should be treated as confidential medical information under the ADA—i.e. the identity of workers exhibiting a fever should only be shared with members of company management with a true need to know.

OSHA Guidance Generally

Things to Consider

- Develop an Infectious Disease Preparedness and Response Plan if one does not already exist.

- Be aware of workers' non-occupational risk factors at home and in community settings (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy).

- The need for social distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing measures should be analyzed if possible.

OSHA Guidance Generally

Things to Consider

- Prepare to Implement Basic Infection Prevention Measures.
  - Encourage workers to stay home if they are sick.
  - Prompt identification and isolation of potentially infectious individuals is a critical to protecting workers, customers, visitors, and others at a worksite. Employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure.
  - Take steps to limit spread of the respiratory secretions of a person who may have COVID-19. Provide a face mask, if feasible and available, and ask the person to wear it, if tolerated.
  - Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment.
  - Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

Part III –

Ceasing Telework and Issues Pertaining to Policies for Return to Work

Telework

Continue Telework?

- Employers, if able, should encourage telework as long as possible. Telework constitutes both an administrative and safe practice control measure which limits workplace exposure.

Employers eventually require teleworking employees to return to the workplace. This decision will be dependent on several factors:

- State and Local government workplace guidance.
- State and Local government social distancing guidance.
- Operational efficiency needs of the employer.
- The workplace risk and exposure to infection.
- Employer Implementation of Control Measures.
- Recognizing at-risk employees.

Other Considerations For Return to Work

Things to Consider?

- Employers should evaluate worker concerns on a case-by-case basis. This may involve determining whether employees have pre-existing conditions that put them at higher risk without violating HIPAA laws.

- Employers should also be aware of the Families First Coronavirus Response Act which provides protections to employees—this law requires many employers to provide paid leave for several reasons, including a lack childcare during school closures as a result of the pandemic. This may not have been applicable if employees were teleworking.

Other Considerations For Return to Work

Things to Consider?

- Employers should listen to the concerns of their employees and, to the extent possible, provide accommodations for working remotely particularly for at-risk employees. In the event a remote workplace environment is not available or suitable depending on the type of business, the employer should ensure that it has implemented the Control Measures discussed above prior to the return of employees to the workplace.

- Additionally, employees who return to work will likely forfeit (unless they satisfy a reduction in pay criteria) the augmented unemployment compensation they may otherwise receive.

Other Considerations For Return to Work

Things to Consider?

- Do not use any discriminatory basis in selecting employees for return to work or layoff.

- How to notify employees to return.

- Do you need to formally "rehire" (i.e new application, I-9, etc.)?

- Make sure you have employees properly classified and exempt/non-exempt, especially if there are changes in hours or pay.

Part IV –
Q & A

Carlos Zumpano, Partner
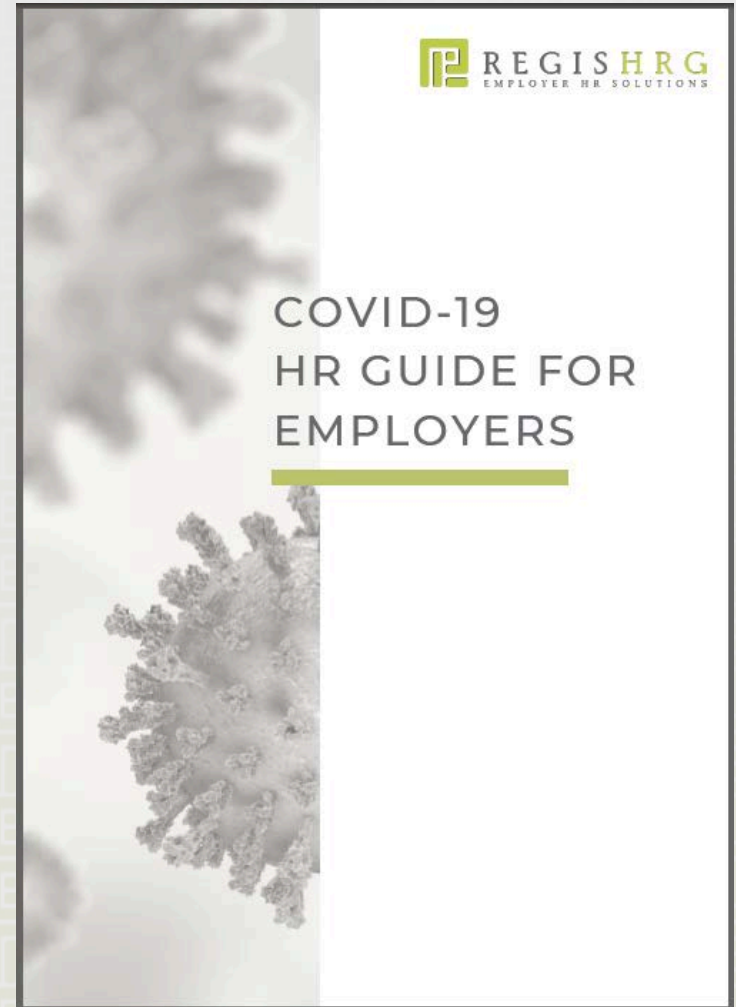Carlos.Zumpano@zumpanocastro.com
(305) 503-2991

Joseph Ruiz, Partner
Joseph.Ruiz@zumpanocastro.com
(305) 704-3345

Thank you
&
Stay Safe!

Click on the image above to access the complete guide.

ZUMPANO Z|C CASTRO
ATTORNEYS AT LAW