White and Williams LLP

Checklist For Returning Employees to the Workplace

I.   GENERAL CONSIDERATIONS

A.   *Government Guidelines Should Be Your Floor*

☐ Have you complied with applicable state and local executive orders?

☐ Have you followed Centers for Disease Control and Prevention (CDC) and other governmental guidance?

B.   *Industry Standards*

☐ Have you complied with guidance from industry governing bodies?

☐ Have you considered guidance from industry trade organizations?

☐ Are you taking steps similar to what others in your industry are taking?

C.   *What's Happening Locally?*

☐ Have you complied with local executive orders?

☐ Are you taking steps similar to what others in your industry are taking?

D.   *What Makes Sense For Your Business?*

☐ Have you done a cost-benefit analysis of complying with steps for reopening vs. other measures (*e.g.*, continuing telework)?

II.   PRE-SCREENING POLICIES AND PROCEDURES

☐ Policy preventing employees who are sick, exhibiting symptoms or who have been exposed to COVID-19 from entering the workplace **(required by most state/local executive orders and recommended by the CDC)**

☐ Questionnaires for employees and/or visitors **(required by most state/local executive orders and recommended by the CDC; may be conducted by a property management company)**. The questionnaire should require employees/visitors to confirm that they have not:
- knowingly been in close or proximate contact in the past 14 days with anyone who has tested positive for COVID-19 or who has or had symptoms of COVID-19;
- tested positive for COVID-19 in the past 14 days; and/or
- experienced any symptoms of COVID-19 in the past 14 days (employees should be required to immediately advise of any changes to answers).

☐ Temperature checks for employees/visitors **(required by most state/local executive orders and recommended by the CDC; may be conducted by a property management company)**

- Implement in a manner that ensures safety (*e.g.*, remote thermometer and ensuring social distancing and PPE for individuals who are taking the temperature)
- Implement in a manner that ensures privacy and takes into account Health Insurance Portability and Accountability Act (HIPAA) (temperature logs and records must be kept private)
- Implement consistently

☐ Maintain a log of employees and visitors who have had contact with the workplace **(required by some state/local orders)**

III.   PERSONAL PROTECTIVE EQUIPMENT (PPE) AND HYGIENE

☐ Face coverings **(required by many state/local executive orders and <u>strongly</u> recommended by the CDC)**
- Policy requiring employees to wear face coverings in common areas and when social distancing is not possible
- Employees may be permitted to wear their own face coverings, but employer should also provide face coverings
- Train employees on how to properly put on, take off and clean face coverings
- Post CDC posters and guidance on proper use of face coverings

☐ Hand washing/hand sanitizing **(required by most state/local executive orders and recommended by the CDC)**
- Provide hand sanitizer in common area(s)
- Encourage employees to frequently wash hands or use hand sanitizer
- Require hand washing/sanitizing after contact with high-touch and shared items (*e.g.*, copies, conference tables, laptops, writing utensils, etc.)
- Provide training and post CDC posters on proper handwashing and use of hand sanitizer

IV.   SOCIAL DISTANCING POLICIES AND PROCEDURES
(required by most state/local executive orders and recommended by the CDC)

☐ Ensure compliance with capacity requirements
- Capacity may change depending on state/local executive orders and applicable phase of reopening

☐ Ensure workspaces are spaced at least six (6) feet apart in all directions
- Require employees to wear face covering whenever they are not able to maintain six (6) feet distance, including when in common area(s) and using restrooms

☐ Install physical barriers (*e.g.*, Plexiglas®)

☐ Reduce/limit restroom capacity and post signage as to when the restroom is occupied or at capacity

☐ Provide signage for social distancing markers

☐ Limit the use of shared workspaces (*e.g.*, desks, conference tables, etc.)

☐ Require employees to store items in drawers or cabinets so effective cleaning can be done on surfaces

☐ Limit access or close off small shared areas (*e.g.*, supply closets, break rooms, etc.)

☐ Close off high-traffic shared spaces (*e.g.*, kitchens, vending areas, coffee machines, water coolers, etc.)

☐ Close off non-essential shared spaces (*e.g.*, conference rooms, break rooms, etc.)

☐ Stagger shifts

☐ Change employee work hours to ensure less capacity

☐ Encourage telework where appropriate

☐ Restrict visitor access

V. CLEANING AND DISINFECTING

☐ Follow CDC guidelines for cleaning and disinfecting the workplace

☐ Provide cleaning and disinfectant products for high-touch and shared surfaces
- If cleaning products would be unsafe or damage high-use machinery, provide gloves and/or hand sanitizing stations and limit use of such machinery

☐ Conduct regular cleaning and more frequent cleaning of high-touch areas
- Must occur at least after each shift, daily or more frequently (as needed)
- Regular and frequent cleaning of restrooms

☐ Place receptacles for soiled items and PPE

☐ Work with building management to ensure compliance with cleaning and disinfecting measures

VI. PLAN FOR COVID-19 EXPOSURE IN THE WORKPLACE

If an employee has a known or suspected case of COVID-19, develop a plan to:

☐ Close off area(s) employee came into contact with and follow CDC guidance on cleaning of area(s)

☐ Identify employees/visitors who had close contact with the affected employee and have those employees/visitors stay home for 14 days and monitor symptoms (telework is permitted, if appropriate)

☐ Do NOT disclose the identity of individual(s) who have known or suspected cases of COVID-19 and follow Americans with Disabilities Act (ADA) and HIPAA guidelines

☐ Consult state and local health authorities about reporting obligations

VII. TRAVEL, OFF-SITE MEETINGS AND VISITORS

☐ Prohibit non-essential travel

☐ Prohibit non-essential on-site and off-site meetings

☐ Prohibit non-essential visitors and make sure visitors abide by pre-screening requirements

VIII. REMOTE WORK

☐ Encourage employees to work remotely whenever practical

☐ Update remote work policies to ensure compliance with:

- wage and hour issues;
- privacy and confidentiality policies;
- productivity goals; and
- other company policies, including harassment, discrimination and retaliation.

IX. ACCOMMODATION AND LEAVE ISSUES

☐ Develop a policy and procedure for reviewing employee requests for accommodations

- Have requests evaluated centrally by human resources or upper management to ensure consistency

☐ Provide "reasonable accommodations" to high-risk employees, including employees with underlying health issues, pregnant employees and employees over the age of 65, as required by the ADA and state disability laws

- Evaluate requests on a case-by-case basis
- Consult human resources or outside counsel to review legal issues
- Provide accommodations, but leave the decision as to whether or not to enter the workplace up to the high-risk individual
  - Equal Employment Opportunity Commission (EEOC) guidance prohibits employers from preventing high-risk employees who desire to come to the workplace from doing so out of concern for the employee's health

☐ Consider issues related to employees who live with or are regularly exposed to high-risk individuals

- Likely not eligible for an accommodation under the ADA or state disability laws

- May be eligible for Family and Medical Leave Act (FMLA) or expanded sick leave under Families First Coronoavirus Response Act (FFCRA)
- May permit employees to continue to work remotely at employer's option

☐ Consider issues related to employees who do not want to come to work because of a general fear of exposure to COVID-19

- Likely not eligible for an accommodation under the ADA or state disability laws
- Beware of potential for whistleblower claims for complaints of unsafe working conditions
- May permit employees to continue to work remotely at employer's option

X.   PROVIDE FLEXIBLE TIME OFF POLICIES

☐ Allow employees who are sick, experiencing symptoms of COVID or who have had exposure to COVID-19 to stay home without penalty

☐ Ensure compliance with FFCRA

☐ Ensure compliance with state expanded sick leave

If you are interested in discussing any of the checklist topics, including adopting workplace policies and procedures, updating employee handbooks and training your supervisors and staff, please contact Jim Anelli (anellij@whiteandwilliams.com; 201.368.7224), Laura Corvo (corvol@whiteandwilliams.com; 201.368.7226) or another member of the White and Williams Labor and Employment Group.

This checklist is a part of a complete Return to the Workplace Guide White and Williams attorneys have published. As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates here.