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**COVID-19:  
Considerations for  
Getting Back to the  
Office**

Venture Law Meetup Webinar  
June 5, 2020

## Presenters

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## Agenda

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Return to Work  
Framework and  
Guidelines

Return to Work  
Measures

Traditional Labor and  
Employment:  
Regulations, Guidance  
and Considerations

Other Considerations

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## Return to Work Framework

### Where to Look for Guidance

- Centers for Disease Control and Prevention (CDC)
- U.S. Department of Labor (Federal)
  - Occupational Safety & Health Administration (OSHA)
  - Equal Employment Opportunity Commission (EEOC)
- State Labor & Employment Agencies
- Guidelines Opening Up America Again
- State Shelter-In-Place Orders

**Continued Evolution** – This situation is still very fluid; what is considered best practice today could be outdated next week or next month.

## OSHA

- The General Duty Clause – “Catch-all” provision that requires employers to furnish to each worker “**employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.**”
- Specific OSHA Regulations
  - Personal protective equipment (PPE), generally
  - Eye and face protection
  - Respiratory protection
  - Sanitation
  - Accident prevention signs and tags
  - Medical records and recordkeeping



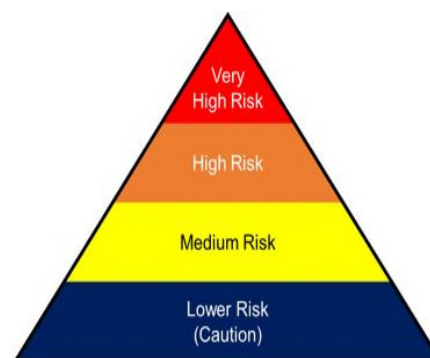
## OSHA

- **Pandemic Preparedness and Response Plan** – Put your COVID-19 Plan into writing, per CDC and OSHA guidance
- **Pandemic Response Team** – Identify who will lead your Plan
- **Hazard Assessments** – This is this first line of defense and an underlying necessity to COVID-19 control and prevention
  - Assess what risks accompany COVID-19 exposure for your particular industry, for particular positions, and particular workers
  - Identify potential risks and sources of exposure in the workplace
  - Classify the risk level of exposure
  - Evaluate possible control and prevention accordingly

## OSHA

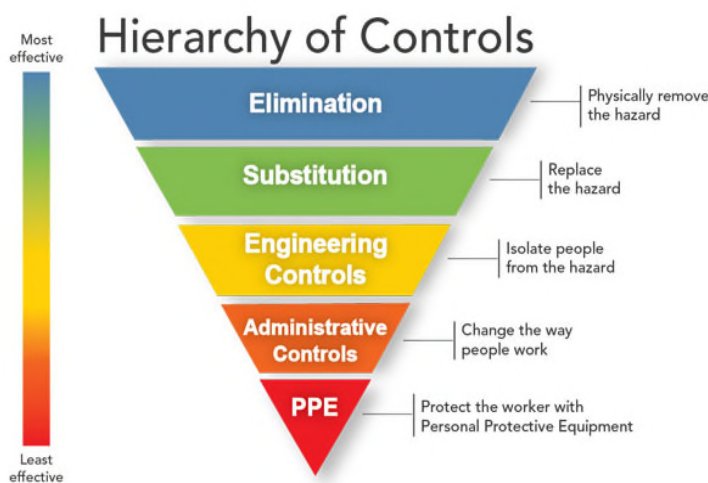
### Four-Tier Risk Levels

- **Low:** Do not require contact with people known or suspected to be infected with COVID-19, nor frequent contact (6-ft) with general public
- **Medium:** Require frequent/close contact (6-ft) with people who may be infected but are not known to have COVID-19 (*frequent contact with general public*)
- **High:** High potential for exposure to known or suspected sources of COVID-19, including healthcare delivery, support state, medical transport, mortuary
- **Very High:** Very high potential for exposure to known or suspected sources of COVID-19, including healthcare, laboratory, and postmortem workers



Categorization based on nature of employer and specific duties

## Control and Prevention: NIOSH Hierarchy



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## Return to Work Measures

### Communications Plan and Training

- The success of any return to work plan will rest on successful integration of good policies, consistent practices, and a dedicated safety and health culture
- None of this will work unless all components are clearly communicated to all workers, and all workers are adequately trained on how to implement each aspect
- Just one slip up can jeopardize entire Plan

## Return to Work Measures

### Key Basic Measures – for All Work Places Regardless of Exposure Risk Levels

- Basic hygiene, including avoid all contact with face, nose, and eyes; cover sneezes and coughs; immediately sanitize afterwards
- Frequently wash hands with soap and water for at least 20 seconds, and provide extra breaks for same
- Frequently disinfect work stations, commonly used areas, high traffic areas, and high touch areas
- Discontinue or modify use of common areas
- Social distancing of at least 6 feet, occupancy limits, direction of travel
- Discontinue non-essential travel
- Isolate sick individuals, avoid contact with infected individuals, and inform supervisors if an employee or a family member is infected, staying home if sick or showing any symptoms associated with COVID-19

## Return to Work Measures

### Implementing the Hierarchy of Controls – Based on Risk Level

- **COVID-19 Elimination (through screening and detection)**
  - Temperature checks
  - COVID-19 testing
  - Questionnaires
  - Contact warning/tracing (smartphones, wrist bands)
  - Isolation planning
  - Medical records
  - Reporting and recordkeeping

## Return to Work Measures

### Implementing the Hierarchy of Controls – Based on Risk Level

- **Social Distancing**

- Avoid unnecessary personal contact and interaction
- Physical barriers or partitions between work areas, personnel, and public
- Restrict number of persons in work areas and common areas
- Relocate high-risk individuals to lower-risk environments
- Specify certain hours for high-risk individuals
- Alternate work schedules
- Modify workplace traffic patterns
- Plan for contained spaces such as elevators, doors, locker rooms, restrooms, and break areas
- Suspend (or minimize) group meetings – pre-shifts, safety committees, team meetings

## Return to Work Measures

### Implementing the Hierarchy of Controls – Based on Risk Level

- **Sanitization**

- Limit opportunities for touch contamination
- Require hand washing and other personal hygiene measures
- Institute frequent decontamination procedures
- Implement waste handling procedures
- Avoid cleaning methods that re-aerosolize infection particles (i.e., dry sweeping)
- Ensure good ventilation and install high-efficiency filters
- Post proper warning signage



## Return to Work Measures

### Implementing the Hierarchy of Controls – Based on Risk Level

- **Personal Protective Equipment**

- Utilize PPE, where necessary and available
  - Face masks vs. respirators
  - Gloves, gowns, and eye protection
- Standard operating procedures
  - Sanitize after usage – user and PPE
  - Differentiate clean areas (e.g., where PPE is put on) from potentially contaminated areas (e.g., where PPE is removed)
- Training! Training! Training!





## Civil Lawsuits

- Worker's compensation coverage
- Worker's compensation bars
- State executive immunity (not for federal laws)
- Legislative immunity (currently in the works)
- State order compliance and creation of "standard of care"

## Other Considerations – IRS FSA Guidance

- IRS Notice 2020-29 allows employers to amend their FSA plans to allow employees to make prospective health and dependent care FSA contribution amount changes without a qualifying life event
- Requires a plan amendment
- Applicable for 2020 only

## Other Considerations – Insurance Make-up Payments

- Premium Make-up Payments – employees returning from unpaid leave might need to make up his or her share of medical insurance premiums paid by the employer during leave.
- Options:
  - Catch-up in the year
  - Employer forgiveness

## Other Considerations – Documentation of FFCRA

- Families First Coronavirus Response Act (FFCRA)
  - COVID FMLA Leave
    - Tax credit of \$200 per day for each employee who is paid COVID FMLA Leave wages – up to \$10,000 per employee for all calendar quarters
  - COVID Sick Leave
    - Tax credit of \$200 per day for each employee, which can increase to \$511 depending on the leave reason
- Both credits are increased by “qualified health plan expenses”

## Other Considerations – Documentation of FFCRA cont.

- IRS FAQs provide that the employer should maintain a written request for such leave from the employee in which the employee provides:
  - The employee's name
  - The date or dates for which leave is requested
  - A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason
  - A statement that the employee is unable to work, including by means of telework, for such reason
- Employer should also maintain:
  - Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit
  - Copies of any completed Forms 7200 and 941

## Other Considerations – CARES Act Employee Retention Credit

- Provides a refundable tax credit equal to 50% of qualified wages paid to employees up to a maximum \$10,000 in wages (up to \$5,000 per employee) if:
  - The employer's operations are fully or partially suspended due to a government order, or
  - The employer experiences a significant decline (>50%) in quarterly gross receipts
- Applies to "qualified wages" paid after March 12, 2020 and before January 1, 2021

## Other Considerations – CARES Act Employee Retention Credit cont.

- Employee Retention Tax Credit – What Are “Qualified Wages”?
  - If the employer had more than 100 full-time employees in 2019, then only wages paid to an employee that is not providing services are “qualified” – looks to 4980H rules for employee count
    - If the employer had 100 or fewer full-time employees in 2019, then any wages paid during a suspension of operations or during a period when the employer is experiencing a significant decline in quarterly gross receipts are “qualified”
    - Qualified wages includes allocable portion of the "qualified health plan expenses"

## Other Considerations – CARES Act Employee Retention Credit cont.

- IRS FAQs do not provide clear guidance
- At a minimum, employers should document their files to show that they were eligible for the credit
- In addition, employers should also maintain:
  - Documentation to show how the employer determined the amount of paid to employees that are eligible for the credit
  - Copies of any completed Forms 7200 and 941

## Other Considerations – IRS and DOL Joint Employee Benefits Extensions

- Joint Extensions
  - Disaster Relief Notice 2020-21 - issued April 28, 2020
  - Final regulation – issued jointly by Department of Labor and Internal Revenue Service
  - Extend a variety of timelines during the period of March 1, 2020 and 60 days after the announced end of the coronavirus disease 2019 (COVID-19) National Emergency (“Outbreak Period”)

## Other Considerations – IRS and DOL Joint Employee Benefits Extensions cont.

- Joint Extensions, cont.
  - COBRA
    - COBRA premium payments will be treated as timely if paid within 30 days following the end of the Outbreak Period.
    - COBRA 60-day election period is also disregarded during Outbreak Period.
  - Special Enrollment Periods
    - Deadlines extended until after the Outbreak Period
  - Benefit Claims
    - Deadlines extended until after the Outbreak Period



## Contact Us

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## July Venture Law Meetup Webinar

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- **Topic:** *Pending*
- **Date:** Friday, July 10, 2020
- **Time:** 9:00 a.m. EDT

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## Squire Patton Boggs – COVID-19 Resources

COVID-19 continues to impact businesses globally, posing changes and challenges in your day-to-day operations. Please utilize the resources below from our firm to stay up to date on the latest COVID-19 news and manage related business impacts:

[COVID-19 Resource Hub](#) – 24/7 monitoring and regular updates on current coronavirus legal, regulatory and business continuity issues across our global platform, including how business is responding to potential new and existing ramifications.

[Coronavirus Contingency Planning Risk Assessment Tool](#) – A complimentary mapping tool, including optional contingency planning template. Within 24 hours, you will receive a summary mapping factors your business has not yet considered, together with benchmarking information collated from assessments completed by other businesses.

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## CDC

- **COVID-19 Resource:** <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- **How to Protect Yourself:** <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>
- **What to Do If You Are Sick:** <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>
- **Face Coverings:** <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>
- **Cleaning and Disinfecting:** <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>
- **Businesses and Workplaces:** <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>



## OSHA

- **Preventing Worker Exposure to Coronavirus (COVID-19), OSHA Publication 3989):** [www.osha.gov/Publications/OSHA3989.pdf](http://www.osha.gov/Publications/OSHA3989.pdf)
- **OSHA Guidance on Preparing for COVID-19:** <https://www.osha.gov/Publications/OSHA3990.pdf>
- **OSHA Interim Enforcement Response Plan:** <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>
- **OSHA's COVID-19 Safety and Health Topics Page:** [www.osha.gov/coronavirus](http://www.osha.gov/coronavirus)
- **OSHA COVID-19 Poster:** <https://www.osha.gov/Publications/OSHA3994.pdf>

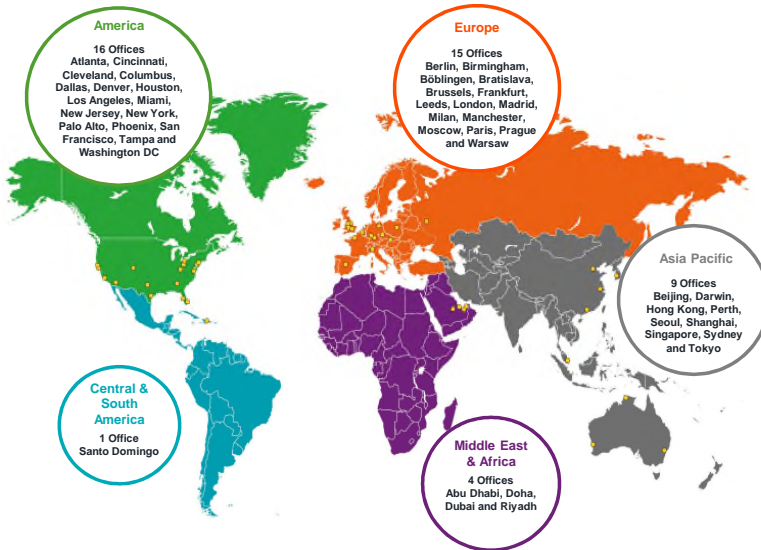
## Employee Protections

- Disability accommodation and interactive process
- Lactation and wellness spaces
- Selection criteria for work returns and furloughs
- Wage and hour compliance
- FFCRA, EMFLA and FMLA leave
- State paid sick leave
- Benefits issues
- Worker's rights and whistleblower protection

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