

COVID-19/ Return To Work Considerations

Joe Sileo, JD, of McNeese
Wallace & Nurick LLC



RETURNING TO WORK DURING COVID-19

- **What will be covered**
 - Considerations for resuming operations and returning employees to work as the state allows more businesses to reopen
 - **Best practices**
 - **Legal requirements**
 - **Are you prepared?**
 - Questions and answers



RETURNING TO WORK DURING COVID-19

- **Clear Employee/Workplace Communications**
 - Welcome employees back, convey positive and reassuring message
 - Also address important health and safety issues
 - **Social distancing, masks, time off policies/employees who feel sick, etc.**
 - Provide clear notice of available work and expected return to work date
 - **Could be relevant to unemployment comp claims**
 - Maintain an open-door policy (but with social distancing!!)
 - **Employees will have a lot of questions**
 - **Be prepared to promptly address questions and concerns in a time of concern and much uncertainty**



RETURNING TO WORK DURING COVID-19

■ Post Required COVID-19/related Notices

■ Families First Coronavirus Response Act (FFCRA)

- The DOL published notice/ poster can be found here:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

- Also see the DOL's Families First Coronavirus Response Act Notice – Frequently Asked Questions here:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

■ PA COVID-19 Safety Procedures for Businesses

- The required state notice can be found here:

<https://www.pa.gov/wp-content/uploads/2020/04/COVID-19-Reopening-Businesses-Flyer-8-5x11-1.pdf>



RETURNING TO WORK DURING COVID-19

- **Establish Relevant Policies and Protocols**
 - Personal hygiene practices and facilities/supplies
 - Cleaning procedures
 - Security and safety measures
 - Social distancing
 - Masks/other relevant PPE
 - Temperature screenings??
 - **If/when to implement. Immediately? On an ongoing basis?**
 - **But, temperature screenings are required by state order following an exposure in the workplace**
 - Exposure protocols



RETURNING TO WORK DURING COVID-19

Families First Coronavirus Response Act (FFCRA)

■ Key Provisions:

- Emergency Paid Sick Leave Act (EPSLA)
- Emergency Family and Medical Leave Expansion Act (EFMLEA)

■ Effective Dates

- Signed into law on March 18, 2020.
- EPSL and EFMLE effective April 1, 2020.
 - **More employers will have to actively administer these benefits as more businesses are allowed to resume**
- Sunset provision as of December 31, 2020.



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- **Other Leave Requests/ Reasonable Accommodation**
 - Be prepared to address other leave issues and requested accommodations:
 - **FMLA**
 - **Company leave policies**
 - **ADA reasonable accommodation requests**



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- **Watch for Potential ADA liability**
 - Big issues:
 - **Disability-related inquiries and medical exams**
 - **Excluding individuals from workplace (“direct threat”)**
 - Direct threat
 - **Significant risk of substantial harm even with reasonable accommodation**
 - **EEOC has recognized that the COVID-19 pandemic meets this test**
- **Medical exams**
 - Normally, if done during employment, must be “job related and consistent with business necessity”
 - New hires – may screen applicants *after* conditional offer of employment, as long as it is done for all entering employees for same job
 - More flexibility now due to pandemic, but still need to be careful
- **Privacy**
 - Maintaining confidentiality of employee health information



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■ Stay current with relevant guidance:

- PA state guidance (to be addressed in upcoming slides)

- CDC

- <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

- DOL

- <https://www.dol.gov/agencies/whd/pandemic>

- OSHA

- <https://www.osha.gov/SLTC/covid-19/>

- **Be mindful of industry-specific guidance (see examples next slide)**



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■ OSHA Industry-Specific Guidance

- Joint OSHA-CDC Guidance: Meat and Poultry Processing Workers and Employers (April 26, 2020).
 - COVID-19 Guidance for the Construction Workforce (April 21, 2020).
 - COVID-19 Guidance for the Manufacturing Industry Workforce (April 16, 2020).
 - COVID-19 Guidance for the Package Delivery Workforce (April 13, 2020).
 - COVID-19 Guidance for Retail Workers (April 8, 2020).
- **See News and Updates:** https://www.osha.gov/SLTC/covid-19/news_updates.html



PENNSYLVANIA STATE ORDERS

- **Pennsylvania businesses that have been allowed to operate and those which will resume operations as the plan for reopening phases in must comply with various state orders that have been (or will be) issued by Pennsylvania's Governor and Secretary of Health**
 - These include stay at home order, order directing the closure of all businesses that are not life sustaining, order directing building safety measures, and order directing public health safety measures for businesses permitted to maintain in-person operations.
 - See these links:
 - <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>
 - <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200405-SOH-Building-Safety-Measures.pdf>
 - <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf>



PENNSYLVANIA STATE ORDERS

- **Order Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations, which became effective April 19, 2020, requires, among other things, that:**
 - Certain cleaning measures;
 - Employees must wear face masks;
 - Employees must have access to regular handwashing with soap, hand sanitizer, and disinfectant wipes;
 - Non-essential visitors are prohibited from entering businesses;
 - Protocols are established, to be executed upon discovery that the business has been exposed to a person who is a probable or confirmed case of COVID19, including to identify employees who had close contact with probably/confirmed case and take necessary steps and to initiate employer-administered temperature screenings for a reasonable period of time; and,
 - All employees are made aware of the required procedures.
- **Find the Order here: <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf>**
- **See helpful FAQs here: <https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/COVID-19%20Workplace%20Safety%20Questions.pdf>**



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Temperature Screenings

■ When are they necessary?

- Per DOH Order, for all employees after known exposure in the workplace
- No one gets in with temp greater than 100.4 degrees Fahrenheit.

■ Who does the screening?

- Designated personnel NOT from a vulnerable patient population (i.e. no one with preexisting medical condition)
- Need not be a nurse, but should have basic qualifications

■ Establish a policy for uniform enforcement

- Mandatory entry point, managing flow, etc.
- Remember – keep your distance!



PENNSYLVANIA STATE ORDERS

■ Most recent state guidance-

- GUIDANCE FOR BUSINESSES PERMITTED TO OPERATE DURING THE COVID-19 DISASTER EMERGENCY TO ENSURE THE SAFETY AND HEALTH OF EMPLOYEES AND THE PUBLIC
 - Issued May 4, 2020
 - It incorporates and references all relevant state orders
 - Provides updated guidance
 - Addresses the regional and industry-specific approach to reopening non-life sustaining businesses in Pennsylvania- (Red, Yellow and Green Phases).
 - Find it here -
 - <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200504-COVID-19-Business-Guidance.pdf>



QUESTIONS?

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