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**THE CFO FOCUS**

# What to Expect When You Are Expecting to Reopen

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*The following information is informational and does not constitute legal advice or create a contract*

# ■ What We Will Cover

- **Workplace Entry and Screening**
- **Workplace Safety, CDC, OSHA, and Workers' Compensation Issues**
- **Protocol for Responding to Suspected or Confirmed Worksite COVID-19 Exposure**
- **Accommodations for Vulnerable Employees**
- **Vacation, Sick, and Childcare Leave Policies**

# Workplace Entry and Screening – Employees and Visitors

## ■ Temperature Checks

- Are we legally required to conduct temperature checks?
  - Generally permitted; may be required by certain state and local laws.
- If we decide to conduct on-site temperature checks, what is our process?
  - Some states require notice to employees (e.g., California Consumer Privacy Act).
  - Who is taking temperatures?
  - What quality control and personal protective equipment is required for the screener?
  - Do we have to hire a health care professional?
  - Should we also have a member of Human Resources present?
  - How do we maintain proper social distancing?
  - Do we have to pay for waiting time?
  - What is the employer's obligation with respect to confidentiality?

# Workplace Entry and Screening – Employees and Visitors

- **If we are not legally obligated to conduct temperature checks on site, should we?**
  - Consider other alternatives – employee self-administered temperature checks at home, various developing phone apps
- **Questionnaires**

In addition to conducting temperature checks, employers should conduct screening through medical questionnaires. Employers should condition entry upon employees answering “no” to all of the following questions:

- **Question 1.** In the past 24 hours, have you tested positive for COVID-19 or experienced any of the following symptoms? (Symptoms listed on the CDC website.)
  - Cough
  - Shortness of Breath or Difficulty Breathing
  - Fever
  - Chills
  - Muscle Pain
  - Sore Throat
  - New Loss of Taste or Smell

# Workplace Entry and Screening – Employees and Visitors

- **Question 2.** In the past 14 days, have you been in close contact (10+ minutes within less than 6 feet) with a person with a confirmed or suspected case of COVID-19?
- **Question 3.** Have you recently travelled to a restricted area that is under a Level 2, 3, or 4 Travel Advisory according to the U.S. State Department?

## ■ Visitor Screening Protocol

- Signage on Workplace Door
- Restricted Entry into the Workplace
- Employer Gatekeeper for Visitor Access

## ■ Tracking Access to the Worksite

- New York state recommends employers maintain a continuous log of every person, including workers and visitors, excluding customers, who may have close contact with other individuals at the work site or area.

# Workplace Safety, CDC, OSHA, and Workers' Compensation Issues

## ■ Develop a Workplace Safety Policy

- Designate a Pandemic Coordinator.
- Identify Point People - Advise employees of the designated Point People responsible for overseeing the following areas:
  - Workplace entry and screening.
  - Measures to ensure social distancing within the workplace.
  - Cleaning and disinfecting the workplace.
  - Responding to confirmed or suspected COVID-19 cases in the workplace.
  - Leave of absence policies.
  - Workplace accommodations.
  - Regulatory and legal compliance.
  - Fielding safety concerns and complaints.
- Create a social distancing plan.
- Identify and be prepared to supply required Personal Protective Equipment (PPE).

# Workplace Safety, CDC, OSHA, and Workers' Compensation Issues

- Maintain a healthy work environment. Encourage proper hygiene through signage and maintenance of hand hygiene stations for personnel.
- Adopt a Cleaning Protocol. Needed for both daily cleaning and cleaning in response to a confirmed or suspected COVID-19 case in the workplace.
- **Center for Disease Control (CDC).** Important websites:
  - *General Business Frequently Asked Questions:*  
<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>
  - *Interim Guidance for Businesses and Employers Responding to COVID-19:*  
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
  - *Cleaning and Disinfecting Guidelines:*  
<https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>
- **OSHA**
  - Guidance on Preparing Workplaces for COVID-19:  
<https://www.osha.gov/Publications/OSHA3990.pdf>
- **Workers' Compensation Issues**
  - Should we require employees to sign liability waivers? Are they enforceable?

# Protocol for Responding to Suspected or Confirmed On-Site COVID-19 Exposure

- Designate a Coordinator.
- Maintain a continuous log of all workers and visitors who may have close contact with other individuals at the work site.
- All supervisors should be directed to report any COVID-19 related symptoms or illnesses in the workplace to the designated Coordinator.
- Employees and visitors who have symptoms when they arrive at work or become sick during the day should be immediately separated from other employees and visitors, and sent home.
- To minimize exposure, potentially infectious people should be asked to move temporarily to a location away from other employees and visitors, preferably a room with closable doors that may serve as an isolation room, until the potentially sick person can be safely removed from the workplace.
- Employees who develop symptoms outside of work should notify their supervisor and stay home.

# Protocol for Responding to Suspected Confirmed On-Site COVID-19 Exposure

- Sick employees should be advised to follow CDC-recommended steps. Sick employees should not return to work until they meet the CDC criteria to discontinue home isolation and have consulted with a healthcare provider.
- Human Resources should identify and contact employees, customers, and visitors who may have been exposed to the infected individual.
  - In accordance with CDC recommendations, individuals who have had close contact (less than six feet) for a prolonged period of time with a person with COVID-19 symptoms during the period from 48 hours before symptoms onset until that person meets the criteria for discontinuing home isolation, should self-quarantine until 14 days after their last exposure.
  - The CDC suggests the following considerations when defining close contact: proximity, the duration of exposure (e.g., longer exposure time likely increases exposure risk), whether the individual has symptoms (e.g., coughing likely increases exposure risk), and whether the individual was wearing a facemask (which can efficiently block respiratory secretions from contaminating others and the environment). CDC recommendations vary on the length of time of exposure from 10 minutes or more to 30 minutes or more.

# Protocol for Responding to Suspected Confirmed On-Site COVID-19 Exposure

- Cleaning Coordinator should direct appropriate responsive office sanitizing and cleaning.
  - Areas used for a prolonged period of time by the infected individual will be closed off, if necessary, and cleaned in accordance with CDC cleaning and disinfection recommendations.
  - Other areas potentially visited by the infected individual will be cleaned and disinfected in accordance with the Company's ordinary cleaning procedures.
  - If the office is in a shared office building or area, the Company should notify building management so they can take any precautions they deem necessary.
- The Company should notify employees who may have come into contact with the symptomatic individual, but not CDC defined "close contact," of their potential exposure. These employees may continue to report to work; however, they should self-monitor for signs and symptoms of COVID-19 and not report to work should they experience symptoms.

# Accommodations for Vulnerable Employees

- **The Center for Disease Control defines “vulnerable workers” to include:**
  - Individuals over the age of 65.
  - Those with underlying medical conditions – e.g., chronic lung disease, moderate to severe asthma, hypertension, severe heart conditions, people who are immunocompromised.
- **According to the CDC’s guidance “Employers should take particular care to reduce vulnerable workers’ risk of exposure to COVID-19, while making sure to be compliant with relevant Americans with Disabilities (“ADA”) Act and Age Discrimination in Employment Act (“ADEA”) regulations.**
- **Reasonable Accommodation Obligations**
  - Under the ADA, an individual is considered to have a “disability” if she/he has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. An employer does not have to provide an accommodation to a person with a disability if it poses an “undue hardship,” which means “significant difficulty or expense.” In some instances, an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now.
- **Leave Obligations**
  - Under the federal Family Medical Leave Act (and many state law equivalents), employees are entitled to a job protected leave of action to care for their own or a family member’s “serious health condition” as defined by the FMLA.

# Vacation, Sick, and Child Care Leave Policies

- Available Leave Time Under Employer’s Existing Policies.
- The Families First Coronavirus Response Act (“FFCRA”).
  - Emergency Paid Sick Leave (“EPSL”).
    - Up to 10 days. Partial payment: \$511/day for Reasons 1 thru 3; \$200/day for Reasons 4-6.
    - Permissible Reasons for Taking EPSL:
      - (1) Employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
      - (2) Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
      - (3) Employee is experiencing symptoms of COVID and is seeking diagnosis.
      - (4) Employee is caring for an individual who is subject to self-quarantine by a federal, state, or local order or was advised by a health care provider to self-quarantine.
      - (5) Employee is caring for employee’s son or daughter (under the age of 18) because school or place of care has been closed due to COVID precautions.
      - (6) Employee is experiencing other conditions substantially similar to COVID as specified by the Secretary of HHS.
    - Intermittent Leave.
    - FFCRA DOL FAQ’s: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

# Vacation, Sick, and Child Care Leave Policies

- **The Families First Coronavirus Response Act (“FFCRA”).**
  - **Emergency Paid Family Medical Leave (“EPFML”).**
    - Up to 12 weeks. The first two weeks are unpaid, but can overlap with EPSL. Ten weeks paid at \$200 day, up to a maximum of \$10,000.
    - Only available to provide care for child (under the age of 18) because school or place of care has been closed due to COVID-19 precautions.
    - Intermittent Leave only available with employer consent.
    - Employee can be required to certify that no other person will be providing care for the employee’s child during the period for which the employee is receiving EPFML.
    - If the child is 15 years of older, employee can be required to certify that special circumstances exist requiring the employee to provide care.
- **New York Quarantine Leave Law.**
- **Expanded COVID-19 related reasons to take sick leave under state and local sick leave laws.**
- **Expanded basis for certain state paid family leave and disability benefits.**

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Clients turn to Julie for strategic advice that addresses the potentially wide-ranging impact of employment matters. She serves a dual role as both employment law counselor and litigator, considering the employment actions of a business from every possible angle.

Julie handles employment counseling and litigation for clients—from startups to public companies—in a wide variety of sectors, including technology and life sciences entities. Her counseling practice spans a variety of human resources issues facing employers, such as hiring and recruiting, worker classification, employee terminations, personnel policies, wage and hour matters, and compliance with state and federal EEO requirements. Julie regularly conducts, directs, and advises on workplace investigations involving whistleblower allegations, discrimination, and harassment. She also advises employers on employee mobility issues, including trade secret matters and restrictive covenants. Julie often provides training on discrimination/harassment and managing employees within the law, and she assists with the employment-related aspects of mergers and acquisitions transactions.

When counseling matters result in litigation, Julie is a zealous advocate for her clients. She represents employers in litigation matters in federal and state courts on a wide variety of claims, including harassment and discrimination, wrongful termination, trade secret theft, and unfair competition. In addition to handling court trials and arbitrations, she also has extensive mediation experience, as well as experience with administrative proceedings before the EEOC and state agencies. Julie successfully argued *Silvestri v. Optus Software, Inc.*, 175 N.J. 113 (2003), before the New Jersey Supreme Court, in which the court ruled in the employer's favor and held that in satisfaction contracts, it is the employer's subjective business judgment that determines whether the employer is satisfied with the employee's performance.

A frequent contributor to trade publications and client newsletters, Julie has written numerous articles emphasizing litigation-avoidance strategies for employers.



## Education

- Benjamin N. Cardozo School of Law (J.D. 1996), magna cum laude
- Cornell University (B.A. 1993), with distinction

## Bar Admissions

- New York
- New Jersey

# Lauren M. Hollender

Counsel

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Lauren advises on all aspects of the employment relationship. She represents employers on a broad range of issues, including hiring and retention, dispute resolution, litigation defense, personnel policies, severance, termination, and company shutdowns.

Lauren brings a decade of experience to her practice. She has advised on the full scope of employment laws and regulations, including the ADA, ADEA, FMLA, FLSA, and WARN. Lauren has successfully resolved disputes and litigation claims involving wrongful termination and breach of employment agreements; discrimination, harassment, and retaliation; whistleblowers; and breaches of restrictive covenants.

Bringing to bear an understanding of clients' business priorities, Lauren delivers strong advocacy and creative solutions to the challenges of managing today's workforce.



## Education

- The University of Michigan Law School (J.D. 1993) Cornell University (B.A. 1990), with distinction

## Bar Admissions

- New Jersey

**THANK YOU!**  
**Any Questions?**