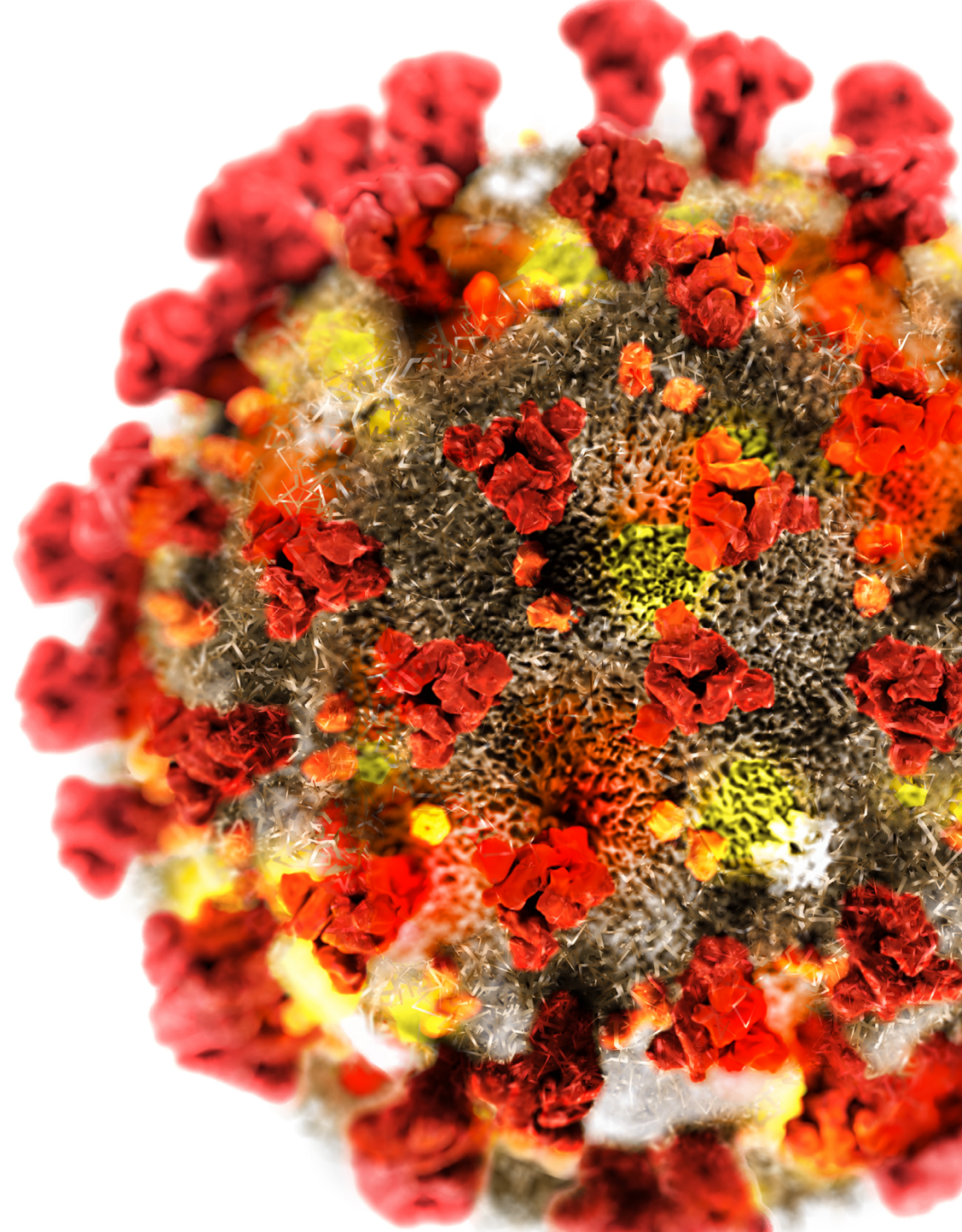


Reopening to the “New Normal”: Is Your Business Ready?

Practical and Legal Considerations for Deciding
Whether Your Business is Ready

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Presenters



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Introduction



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Reopening Considerations

- Constantly changing orders and guidance
- Timing
 - Process vs. light switch
 - Continued telecommuting
- Morale Issues
- Legal issues

Introduction (cont'd)

- **Returning Workers on Furlough/Layoff**
 - Risk of discrimination/retaliation claims based on selection
 - CBA's/ local ordinances requiring bringing back by seniority (e.g. LA, SF)
 - WARN issues if longer than 6 months or turning furloughs into layoffs

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Preventative Measures



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Planning

- Follow OSHA guidance and state resources
- Make a Plan
- Assess Risk: Evaluate whether and when to reopen based on public health guidance
- Review and modify access, layouts, equipment, supplies, signage and schedules
- Coordinate with cleaning services, building managers and other tenants

Preventative Measures (cont'd)



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Testing and Pre-Screening

- No perfect tests or screening available yet
- Temperature screens (but many infected individuals asymptomatic or presymptomatic)
- Symptom checks (same)
- Medical certification (for employees who have recovered)
- No reliable testing yet available (current tests used by White House reported to have a 15% false negative rate)

Preventative Measures (cont'd)



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Personal Protective Equipment

- Provide and maintain supplies of PPE
- Consider whether to allow employees to use their own PPE

Social Distancing

- Discourage previous common behaviors

Hygiene and Cleaning

- Follow latest CDC Guidelines and distribute and display CDC posters
- Provide additional hand washing an/or sanitizing stations, supplies, and cleaning materials
- Modify food service
- Routinely clean and sanitize workspace

Workplace Exposure Protocols



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General Best Practices:

- Follow CDC/OSHA guidance
- Develop self-reporting requirements
- Draft checklist or action plan for handling symptomatic employees in the workplace
- Implement communication protocols for notifying employees and visitors of potential exposure
- Perform immediate risk assessment of any potential or actual threat of exposure to workers or public

Workplace Exposure Protocols (cont'd)



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For Known Exposures or Confirmed Cases, consider:

- Self-reporting to HR
- Immediate deep cleaning and sanitation of work area and common spaces
- Daily self-monitoring and recording of symptoms
- Alternative work options during quarantine/isolation period (e.g. telework)
- To what extent to request/require self-quarantine
- Medical evaluation and testing; return to work certifications
- If employees must be onsite, enhance PPE and social distancing

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Senior Associate

Written Policies and Training



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- **Develop relevant written policies, procedures, guidelines**
 - Screening, Safety, Self-Reporting, Cleaning, Telework, etc.
 - Disseminate to employees
 - Review and update policies/practices regularly as things evolve
- **Provide training to employees and managers**
 - What the new enhance safety protocols are in the workplace
 - How to use equipment, personal protection, cleaning supplies
 - How to safely interact with other employees and public
 - What to do when employees, customers or clients don't comply with new practices?

Travel and Meeting Policies/Practices



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Employment

- **Employee Commutes**
 - Mass transit; Carpools
- **Office Visitor Guidelines**
 - Who's allowed in? Who can employees visit?
- **Heightened Travel Restrictions**
 - Refer to CDC and WHO guidance re high risk destinations
- **Necessary Business Travel**
 - What is necessary? Assess need for in-person client meetings (e.g. sales)
- **Personal Travel**
 - May require quarantine or other precautionary measures upon return

Proactive Planning



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- **Wage and Hour Issues**
 - Reimbursable expenses (PPE, remote work, etc.)
 - Outside Sales? Commission Sales?
 - Temporary changes in duties effect on primary duty analysis
- **Paid Sick Leave**
 - Families First Coronavirus Response Act
 - State and Local Paid Sick Leave Ordinances
 - Legal patchwork; as always, most protective wins

Proactive Planning (cont'd)



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- **Continue to Assess Potential Work Slowdown/Stoppages**
 - Be prepared for a “second wave” and potential second shutdown
 - Develop plans, checklists, emergency response systems, etc.
 - Update your workplace safety program (IIPP)
 - Plan now for further reductions
 - Review severance policies
 - Identify CBA issues that could affect contingency planning

Liability Review: 60-day Lookback



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- **Self-Audit**
 - Have outside counsel or legal team review all employment-related actions from the past 60 days
 - Consider what, if any, remedial actions are necessary
- **Document Decision-making process**
 - Where compliance with federal, state or local “best practices” is not practicable, make sure to document reasons why practices were or were not implemented
 - Note any alternative measures that were implemented

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Attorney

Discrimination Claims



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- Continue to take all reasonable steps to prevent workplace discrimination, harassment, and/or retaliation on the basis of any protected characteristic
- Remind employees of anti-discrimination policies
- Set up confidential reporting systems to avoid workplace “witch hunts” among employees
- Consider how to deal with employees who want to return to work despite being high risk

Discrimination Claims (cont'd)



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- Bases for discrimination:
 - Not just disability/perceived disability claims
 - Age claims also likely to rise
 - Title VII (race, national origin)
 - Consider associational discrimination claims (i.e., being married to someone who is immunocompromised)

Reasonable Accommodations



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- Engage in the interactive process with all employees seeking a reasonable accommodation on the basis of COVID-19 or any other disabling condition
- Don't be suspicious if employees raise conditions of which you were not previously aware
- You can require employees to submit medical documentation to support (but can also choose to relax standards given influx/temporary nature of requests)

Reasonable Accommodations (cont'd)



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- Maintain confidentiality of all medical information
- Separate, confidential file separate from personnel file
- Ensure employees receive all statutory protected time off
- New standards of what is a reasonable accommodation for remote work
- Don't have to provide employee's preferred accommodation
- Potential increase in request for accommodations for anxiety and other mental health conditions

Reasonable Accommodations (cont'd)



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- Not only a legal issue – employee morale and employer PR will also be impacted
- Consider providing flexible work arrangements, PTO, vacation, other time off as accommodation if employee needs additional time off
- Consider changes to physical layout that will benefit everyone (i.e., moving desks and work-stations 6 feet apart, reducing contact, erecting barriers, etc.)

Employee Privacy, Testing, and Contact Tracing



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- Do not identify employees by name to any other employees, without permission
- Identify individuals with whom the infected employee has had contact
- Involve CDC/local health department as required
- Follow all EEOC, ADA, CDC, and other applicable guidelines as to what information can be requested of employees and how such information is stored

Workers' Compensation



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- California
 - Presumption that anyone who returns to work and gets sick contracted the illness at the workplace
 - Workers' compensation is generally considered a “no fault” system of liability, but
 - Employer's insurance premiums can still increase based on employee claims
- State-specific decisions
- Looking for further guidance from state legislatures
- Causation and proof issues

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Conclusion

For past client alerts and webinars, visit our COVID-19 [Resource Center](#)

Email additional questions to reagan.rush@pillsburylaw.com

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COVID-19 (Coronavirus)

If you have questions about how the 2019 Novel Coronavirus impacts you or your business, please contact us.

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