# SHEARMAN & STERLING

# Guide to the Evolving Workplace

Among its many impacts on society, COVID-19 has changed, perhaps permanently, how employees interact with each other and the workplace. This quick reference guide provides three checklists of items for businesses to consider as they begin opening their doors again to their workforce and as they seek to expand their telework environments.

## THE NEW PHYSICAL WORKPLACE

As some employees return to onsite work, at partial or full capacity, businesses are adapting their physical workplaces to protect their employees' health and safety during the COVID-19 pandemic and beyond. Businesses should take measures to implement social distancing and promote good hygiene practices in line with best practices and local requirements. This may require equipping and reconfiguring workplaces to control occupancy and increase ventilation. Additionally, businesses should develop health screening procedures to monitor employees' health and prevent exposure to the pandemic at the workplace. Federal agencies, including OSHA, the CDC and the EEOC have published guidance for businesses developing plans to return to a new physical workplace.

## RETHINKING EMPLOYEE POLICIES

In reaction to evolving workplace needs, businesses are either establishing telework policies or updating their existing employee policies to foster productivity, protect against cybersecurity threats and comply with changing laws. Specific employee policies that businesses should review include those related to technology, confidentiality, workplace conduct, compensation and employee leave. Businesses should update their hiring and onboarding processes for both new, and returning furloughed, employees. Employers should communicate policy updates to their employees in a timely manner and be available to answer questions that arise. When updating policies, consider applicable industry standards and the historic approach of the business to employee policies, as well as the business's compliance capabilities to ensure consistent implementation of policies that are adopted.

## ENGAGING THE WORKFORCE

Employee engagement and wellbeing are critical to the strength and productivity of a workforce and must be assessed and monitored in the current environment. To increase employee morale and retention rates, businesses should consider whether to update existing benefits, compensation and recognition programs for remote and hybrid working environments. It is important to identify aspects of a business's culture that are valuable to the business, its leadership and its workforce, and assess whether those aspects are being sustained in new working circumstances.

**Please also see our thought leadership and practical legal advice relating to other Executive Compensation and Workforce issues stemming from the COVID-19 pandemic. You can access these past publications and webinars here.**

# The New Physical Workplace

## SOCIAL DISTANCING

☑ **Limited Occupancy.** Establish policies and practices for social distancing, including limiting the number of employees and visitors in the workplace at any given time. This could include staggering employee shifts and rotating weeks in the office and working remotely.

☑ **Controlling Traffic Flow.** Develop a plan to control flow of traffic through the workplace. Additionally, consider establishing procedures for using escalators and elevators.

☑ **Workspace Configuration.** Reconfigure office spaces to maintain proper social distancing with consideration given to shared office equipment, such as printers and copiers. Establish policies for the use of shared office equipment. Consider barriers between work stations.

## PROMOTING GOOD HYGIENE PRACTICES

☑ **Personal Protective Equipment.** Develop a plan to support good hygiene practices, including by providing hand sanitizing stations and personal protective equipment (e.g., masks, gloves and protective eye wear).

☑ **Cleaning and Disinfection.** Perform routine environmental cleaning and disinfection. Additionally, consider increasing cleaning for high traffic and common areas.

☑ **Increasing Ventilation.** Consider facility enhancements, including increasing ventilation rates in the workplace and/or installing high-efficiency air filters.

☑ **Posting Signage.** Post signs around the workplace to remind employees about good hygiene practices, proper social distancing and policies for self-monitoring and reporting of COVID-19 related symptoms.

☑ **Compliance with Government Mandates.** Evaluate and implement occupancy and other related mandates issued by state and local governments and other government agencies (e.g., CDC and OSHA).

☑ **Shared Office Buildings.** Consult with the building's management to determine and implement required safety protocols and coordinate with other businesses that use the same office space to ensure consistent approaches and responsibility for screening or other health and safety protocols.

## HEALTH SCREENINGS AND PROCEDURES FOR REPORTING COVID-19 SYMPTOMS

☑ **Conducting Health Screenings.** Conduct health screenings (e.g., body temperature screenings and health questionnaires) as a condition to enter the workplace and develop policies and procedures for conducting these screenings (e.g., location of screenings, person administering screenings and maintaining confidentiality of the information obtained from the screenings). Consistently monitor CDC, state and local law guidelines and requirements with respect to workplace health screenings.

☑ **Onsite Health Care Workers.** Consider hiring a health care worker or nurse (or retaining third party health care service provider) to administer health screenings and/or to have on site in the event there is a report of COVID-19 related symptoms.

☑ **Reporting Symptoms.** Develop policies and procedures for employees to report when they are sick or experiencing COVID-19 related symptoms. Consider identifying a person/ group (e.g., human resources or on-site nurse or third party health care provider) to whom employees should give notice of COVID-19 related symptoms and develop plan to handle these reports.

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**SPOTLIGHT**

**OSHA, CDC and EEOC Guidance**

- Businesses preparing to have employees return to the workplace should consider federal guidance, including:
- OSHA's "Guidance on Preparing Workplaces for COVID-19" and guidance for specific industries,
- the CDC's "Resuming Business Toolkit" and
- the EEOC's "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws."
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# Rethinking Employee Policies

## IN GENERAL

☑ **Preparing for Review and Update.** Gather all current employee policies and assemble a team that can address any changes that might arise in the course of reviewing those policies. Once a team is gathered, review the employee policies to see if they are still applicable or if changes in circumstances, including to applicable law and as a result of COVID-19, necessitate revisions.

☑ **Rollout to Employees.** Communicate updated policies to the employee population, be available to address questions, and have employees execute an acknowledgement that they have received and reviewed the new policies. Consider how to make the rollout effective in a remote environment and confirm receipt and review by all employees.

☑ **Continuously Update.** Review all employee policies on a regular basis and update as laws and practices change.

## SPECIFIC POLICIES TO RECONSIDER IN AN EVOLVING WORKPLACE

☑ **Remote Work.** Consider whether employees have been working remotely without a written remote work policy or are subject to a prior policy that may be outdated, including in light of the considerations highlighted below.

☑ **Place of Work.** Review employee policies generally to see if they refer to a physical location or workplace and if by doing so limit applicability when services are being performed remotely.

☑ **Data and Confidential Information Protection.** Determine whether a strong data protection and confidential information policy is in place that contemplates best practices while working remotely and safeguards against breaches of sensitive information.

☑ **Use and Return of Company Technology.** Consider whether current policies that govern the use of company-provided hardware (e.g., laptops, cell phones) and company-provided services (e.g., e-mail, Zoom, Slack) provide clear expectations and adequately protect the company against legal and reputational issues that may arise.

☑ **Technology Reimbursement.** Determine what technology (including laptops, cell phones, internet service) employees will need in order to work remotely and whether such technology will be provided or reimbursed. Note that if employees are using personal devices for work purposes, certain jurisdictions require the employer to reimburse a portion of such costs.

☑ **Business Expense Reimbursement.** Align current travel, meal, and other business expense policies with current practices and determine whether those policies as applied to remote work can still qualify for business expense tax deductions.

☑ **Vacation.** Consider whether any changes to PTO policies should be implemented in light of changing work and travel circumstances. Examples may include requiring employees to take vacation even if travel is not possible (providing a mental health break), halting future accruals, offers to "buy out" accrued vacation and blackout periods during busy times to avoid understaffing.

☑ **Travel and Transportation.** Delegate to an HR representative the responsibility of monitoring changes to self-quarantine regulations and ensure returning travelers adhere to these restrictions. Consider what travel is properly classified as business travel and what might be classified as commuting. Consider limiting business travel only to critical travel and evaluate other options, such as virtual meetings. All business travel should be approved in advance.

☑ **Wage and Hour (Timekeeping).** Review timekeeping policies to ensure robust policies are in place to record all hours worked for nonexempt workers and can be audited even in a remote work context. Additionally, consider keeping track of where remote employees are providing services as different wage and hour laws may apply if employees are no longer in the same jurisdiction as the physical office.

☑ **Dress Code.** Determine if the dress code policy or related policies should apply when employees are conducting company business outside of the physical office. In particular, consider whether a dress code would be enforced when employees are using a video platform to telecommunicate in the course of performing their duties.

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# Rethinking Employee Policies (cont.)

☑ **Workplace Conduct.** Consider whether current policies governing workplace conduct (i.e., harassment, discrimination, and retaliation) are written broadly enough to cover remote work and out of office behavior and communications. Further, determine whether the applicable drug and alcohol policy covers use of substances while performing services remotely.

☑ **Sick Leave.** Consider whether procedures that are required under the current sick leave policy (e.g., providing a doctor's note) need to be revised to reflect current practice in light of COVID-19. Additionally, consider whether recent and federal and local laws governing sick, family, and medical leave are adequately addressed. (See Expanded Employee Leave: Application and Enforcement.)

☑ **Workers Compensation and OSHA.** Review workers compensation and general liability insurance policies to ensure that they adequately cover remote working. Note that certain OSHA obligations (such as recording work-related injuries) continue to apply even when employees are working remotely.

☑ **Employee Performance.** Determine whether current policies assessing and governing employee work (including policies regarding availability, caregiving responsibilities, and performance measures) continue to apply and whether such policies may need to be updated to account for changes to how employees are working and providing service in light of COVID-19.

☑ **Termination.** Evaluate procedures for terminating and furloughing employees and develop procedures to do so in a remote working environment.

## HIRING POLICIES AND RETURNING FURLOUGHED EMPLOYEES

☑ **Hiring Policies.** Evaluate hiring procedures and practices, including those related to recruiting, interviewing and completing required new hire documentation (e.g., Form I-9s). Determine whether any current hiring procedures and practices require updating for changes in applicable law and remote applicants.

☑ **Remote Onboarding.** Adjust onboarding process to reduce in-person contact and/or developing plan for remote onboarding (e.g., online or video training modules). Determine whether furloughed employees need to be onboarded as new hires. Note that depending on the length of the furlough, employees may need to be brought back as new hires (check requirements under applicable local law).

☑ **Employee Benefit Plans.** For rehires and furloughed employees, determine implications for participation in retirement and pension plans and other employee benefit plans (e.g., health, vision, dental). Review plan terms and internal policies to determine any reinstatement of accrued paid time off and service credit for the length of the furlough. Provide re-enrollment opportunities for employees who lost eligibility under any benefit plan while on leave or during any furlough period (may need to coordinate with life and disability insurers regarding evidence of insurability requirements).

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**SPOTLIGHT**

### Guidance on Cybersecurity

**Businesses developing telework policies should reference guidance on preventing cybersecurity threats, including:**

- The Cybersecurity and Infrastructure Security Agency (CISA)'s "Telework Guidance and Resources,"
- The National Cybersecurity Alliance's "COVID-19 Security Resource Library" and
- Crowdstrike's "Cybersecurity Resource Center."

# Engaging the Workforce

## EMPLOYEE MORALE AND RETENTION

☑ **Compensation Changes.** Evaluate compensation changes that were made in light of COVID-19. Determine whether missed annual compensation increases will be implemented retroactively and/or whether previously implemented pay reductions will expire.

☑ **Bonuses and Pay Increases.** Consider offering retention/signing bonuses or temporary pay increases for essential workers. Additionally, consider offering increased pay for employees working additional shifts.

☑ **Employee Recognition Program.** Considering implementing an employee recognition/reward program that recognizes and/or rewards employees for exemplary work.

☑ **Workload Evaluation.** Evaluate employee responsibilities and workload to mitigate risk of employee burn out. Additionally, considering establishing plans for promoting work/life balance.

☑ **Employee Engagement.** Consider developing employee engagement strategies. This could include increasing frequency of group/team meetings or events (virtually) and team building exercises.

☑ **Management Training.** Conduct training sessions for supervisors and managers on how to handle and manage remote/distant workers.

☑ **Additional Benefits.** Consider providing new or additional benefits for employees in light of COVID-19, ssuch as home office equipment, emergency day/family care and commuter benefits.

☑ **Maintaining Culture.** Identify aspects of workplace culture that are important to the business and should be re-enforced in light of changes in work circumstances due to COVID-19. Communicate about steps the business is taking to maintain the pre-COVID-19 culture, and solicit feedback from employees about their concerns.

## LEGAL CONSIDERATIONS

☑ **Human Capital Disclosures.** Consider SEC or other regulatory disclosure obligations with respect to employee workforce and changes to executive compensation arrangements and employee benefits. Note that the SEC recently promulgated final rules with respect to human capital management disclosure.

☑ **Disclosure of Employee Perks.** Determine whether new employee perk programs (e.g., sending employees technology or other equipment related to remote work) must be disclosed in order to comply with SEC or other regulatory disclosure obligations.

☑ **Notice Requirements.** Determine whether any notice requirements are required for changes to employee benefit plans, including updated summary plan descriptions.

☑ **Collective Bargaining Agreements.** Determine obligations under collective bargaining agreements and whether any provisions of any collective bargaining agreement require updating. Note that any change to a collective bargaining agreement will need to be negotiated with the applicable union.

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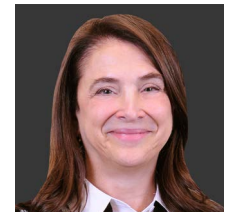T: +1 212 848 7171
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