Best Practices in Reopening Your Business:

Next Steps for Employers & Keeping Employees Safe

May 12, 2020

David B. Ritter
BARNES & THORNBURG LLP
One N. Wacker Drive
Suite 4400
Chicago, Illinois 60606
david.ritter@btlaw.com
Introduction

• Governor Pritzker’s Stay-at-Home order was issued on March 21, 2020
• It has now been extended to May 30, 2020
• Employers and employees have been greatly impacted
• Proud of how Illinois employers have responded as a community
Agenda

• What are the next steps for employers?
• We are in uncharted territory
• How do we keep employees safe?
• How do we safely reopen or ramp up operations?
Restore Illinois

• Governor’s Five-Phase Approach to Safely Reopen
  – Phase 1: Rapid Spread
    • Strict stay at home and social distancing guidelines
    • Only essential businesses remain open
    • Potential to return to this phase if mitigation efforts unsuccessful
  – Phase 2: Flattening
    • Non-essential retail stores reopen for curb-side pickup and delivery
    • Wear face mask when outside the home
    • Can begin outdoor activities: golf, boating, fishing while maintaining social distancing
Restore Illinois

– Phase 3:
  • Manufacturing, offices, retail, barbershops and salons can reopen with safety precautions
  • Gatherings of 10 or fewer allowed
  • Masks and social distancing

– Phase 4:
  • Gatherings of 50 or fewer allowed, restaurants and bars reopen, travel resumes, child care and schools reopen with guidance
  • Masks and social distancing

– Phase 5:
  • Economy fully reopens with safety precautions
  • Conventions, festivals, and large events are permitted; all business, schools and places of recreation can open with new safety guidance and procedures
When To Return And Reopen

• Tough question
• When the stay-at-home order ends
  – Is it safe then
• Follow the federal government standard
  – Two weeks of sustained reduction in cases
  – Local hospitals must have the capacity to treat all patients without crisis care
  – Jurisdictions must have robust testing program for at-risk healthcare workers, including emerging antibody testing
• Or do we follow the Governor Pritzker plan?
When To Return And Reopen

• Do we feel either standard is appropriate?
  – May depend on your business
• Do we have an independent standard separate from a government standard?
• Do we want to lead, be in the pack, or follow?
• Be aware of what others are doing
Who Comes Back

• Need to decide who comes back
  – Key personnel first?
  – Cross-train employees

• Considerations for at-risk populations:
  – Age, underlying health conditions, pregnant employees
  – Can employees self-identify as at-risk?

• What about employees who have “immunity” or virus antibodies?
• What about people who have to take public transportation to commute; greater chance for exposure
Who Comes Back

• What if someone does not want to come back?
  – Is an expression of fear sufficient?
  – What do we do about absenteeism policies?
• Do we continue remote work longer?
• Does childcare continue to be a consideration?
• ADA and reasonable accommodation issues
• New policies and procedures
Reducing Risk in the Workplace

• Continue to follow CDC guidelines including social distancing
  – Lines/stickers on the floor
  – Workstation dividers
  – Is that possible given your workplace?
• PPE for all
  – Sanitizers and gloves
  – Adequate supply is essential
• Masks
  – Effective May 1st, employers MUST make them available if social distancing is not possible
  – Make them available
  – Require employees to use
  – What if an employee does not wear the mask?
Reducing Risk in the Workplace

• Taking temperatures
  – EEOC guidelines say you can test because there is a “direct threat”
  – Pay employees for standing in line to get temperature taken
  – Have employees complete daily questionnaires about how they are feeling and symptoms

• Also ask employees the following:
  – Have you been in physical contact with anyone who has tested positive or has exhibited symptoms?
  – Have you traveled to any hotspots?

• Can we reconfigure the workplace? Partitions?
• Staggered work hours; different teams to limit contact
• Do not share equipment
Reducing Risk in the Workplace

• Limit employee entry points
  – Punching in and out
  – Biometrics are an issue
  – Home office equipment and expense reimbursement

• Limit entry of truck drivers/deliveries
  – Have them stay in truck
  – Outside portable toilets for driver

• Suspend visits to your facility
Reducing Risk in the Workplace

• No handshake rule
• No communal kitchens
  – Or rearrange tables and seating
  – No gatherings
  – Frequent cleaning
• Lockers
  – Have employees change at home if possible
  – Limit the number of employees in the locker room
  – Disable hand dryers; use disposable paper towels
• Smoking shelters; stagger breaks
Reducing Risk in the Workplace

• No more printed materials
• No group meetings; or social distance them
• Adjust/stagger break times
• Everyone has their own pen/pencil
• Encourage virtual meetings
• Prop doors open if possible
• Cleaning, cleaning, cleaning
  – Daily disinfection in high traffic areas, machines and elevators
  – After each shift
  – Promote good hygiene; washing hands; coughing
  – Signs; videos
• Verify the outside janitorial services are cleaning properly
• Change air filters in office/plant
What To Do When Someone Tests Positive

• Isolate the employee
• Reporting requirements
• Determine who he/she has worked with/near; contact tracing
• Send the employee home if able to drive
• Clean the work area
• Follow-up with the individual
• Communicating with employees
• Return to work procedures
Travel

• Check current travel policy
• Are we permitting business travel?
  – What about hot spots?
  – What if an employee refuses to travel?
• Visit customers “remotely” as much as possible
• What do we do when the employee returns from travel; quarantine
• Ask customers what they prefer
• Use technology for remote engagement
• No visitors
The Second Wave

• Most are predicting a second wave
• We have seen this in other countries already
• Prepare for that now
Communications

- Communicate, communicate, communicate!
- Be honest, open and transparent
- Have talking points ready
- Senior leadership must be involved
- Tell employees everything the company is doing to keep them safe; provide advice on how they and their families can stay safe
- Remind employees constantly about what they can do to stay safe
  - Hand washing
  - PPE
  - Social distancing
  - Car pools
- Remind employees about the EAP; do not ignore mental health aspects
Communications

- Consider having a PR firm ready to go if an employee dies or there is the prospect of bad press
- Have a communications playbook ready
- Intranet
- Publicize links where employees can get up to date information
- Designate someone to be fully informed with the latest information
- Consider a virtual town hall meeting
Chicago Fair Workweek/Scheduling Ordinance

• Mandates on how employers schedule their employees, including 14-day notice of scheduling, predictability pay for changes in scheduled shifts, and extra pay for workers who work two shifts within 10 hours
• Will go into effect July 1, 2020
• Due to COVID-19, several potential changes:
  – Suspension of private right of action for 6 months;
  – No fees or fines for 6 months;
  – Reprieve from other restrictions if employees have declined by 40-50%.
• Updated rules to be issued May 1
Illinois Emergency Workers’ Compensation Rules

• Sangamon County, Illinois judge approved a TRO against the emergency worker’s compensation rules that would have allowed essential employees who contracted COVID-19 to have a “rebuttable presumption” that the virus was contracted at the workplace

• The Illinois Workers Compensation Commission will formally withdraw the emergency rules

• Issue will move to negotiating a legislative solution on the matter and to advance the measure when the legislature resumes this session
Likely Lawsuits to Come

- Wage and hour/timekeeping/non-exempt issues
- New leave laws
- Retaliation for staying home
- ADA/reasonable accommodation
- Safety issues/OSHA
- WARN/mass layoff/notice issues/whether the pandemic was “unforeseeable”
- NLRA
COVID-19 Resources at B&T

Visit our Resources Page

Visit the link that sits on the homepage of btlaw.com to get updated information about how the firm is supporting its clients during the pandemic.
QUESTIONS?