



BKSPARTNERS  
INSIGHT BEYOND INSURANCE

# COVID-19 *RETURNING TO WORK*

INSIGHT BEYOND INSURANCE WEBINAR SERIES

Presented by:



# WEBINAR LEGAL DISCLAIMER

You are attending a webinar (“Webinar”) presented by Baldwin Risk Partners, LLC and Gray Robinson, on behalf of itself, its affiliates and/or its invited guest presenters, if any (“BRP”). The Webinar is made publicly available and is offered free of charge.

Your participation and/or attendance in this Webinar, or the receipt of any information from BRP or Gray Robinson in connection with this Webinar, is not intended to create nor does it create a broker/risk manager, legal, medical or other relationship between you and BRP. The content, including links to other sites and publications, included in this Webinar is not intended to constitute comprehensive insurance, risk management, legal or medical advice. You should seek individual advice or other professional advice before acting or relying on the content or information in this Webinar.

The information and materials provided in connection with this Webinar is provided “AS IS” with all faults. BRP and Gray Robinson does not warrant the accuracy, adequacy or completeness of the information and materials provided in connection with this Webinar and expressly disclaims liability for errors or omissions in this information and materials. Except as may be required under applicable law, no warranty of any kind implied or express, including but not limited to the warranties of non-infringement of third-party rights, title in, merchantability of or fitness for a particular purpose is given.

The information and material provided in connection with this Webinar is for informational purposes only and is not intended to provide insurance, risk management, legal, medical or other advice and should not be relied upon in that regard.

Certain names, words, titles, phrases, logos, icons, graphics or designs shown or shared in connection with this webinar may constitute trade names, registered or unregistered trademarks or service marks ("Intellectual Property") of BRP or third parties. Intellectual Property belonging to third parties are used under license. However, the display of trademarks or Intellectual Property in connection with this Webinar does not imply that a license has been granted to you or any other third party to use that Intellectual Property.

To the maximum extent permitted by law, any liability which may arise as a result of the participation or attendance in this Webinar, or with respect to its content or the information contained in it, is excluded. BRP will not be liable for any indirect, incidental, special or consequential loss arising out of participation or attendance in this Webinar, including without limitation any loss of business profits.



# WEBINAR LEGAL DISCLAIMER

*This presentation, supporting documentation and discussion is provided for general information purposes only and should not be considered legal or tax advice or legal or tax opinion on any specific facts or circumstances.*

*Attendees are urged to consult their legal counsel and tax advisor concerning any legal or tax questions that may arise.*



# OUR PANEL OF EXPERTS



## GREGORY A. HEARING

Shareholder, GrayRobinson, P.A.

813.273.5082

[gregory.hearing@gray-robinson.com](mailto:gregory.hearing@gray-robinson.com)



## MATTHEW A. BOWLES

Associate, GrayRobinson, P.A.

813.273.5012

[matthew.bowles@gray-robinson.com](mailto:matthew.bowles@gray-robinson.com)

# AGENDA

- Executive Orders and Phased Reopening of the Economy
- Best Practices for Transitioning Employees Back Into the Workplace
- Workplace Safety and ADA Considerations
- Workplace Safety and OSHA/CDC Considerations
- Preparing for COVID-19 Exposure in the Workplace
- Complying with the FFCRA
- Dealing with Difficult Employees
- Questions

# REOPENING THE ECONOMY

- The Trump Administration issued guidance regarding its recommended three phase approach to reopening the U.S.
- The proposed phased approach includes the following:
  - Based on up-to-date data and statistical analysis, as well as overall local readiness
  - Mitigates the risk of COVID-19 resurgence
  - Allows implementation of phases at the state or local level



# REOPENING THE ECONOMY

- States or regions should meet the following gating criteria:
  - Downward trajectory of influenza-like illnesses and COVID-like cases for a 14-day period
  - Downward trajectory of documented cases and positive tests for 14-day period
  - Hospitals treating patients without crisis care
  - Robust testing system in place for healthcare workers

# REOPENING THE ECONOMY

## PHASE ONE

- Encourage telework
- Return to work in phases
- Minimize non-essential travel
- Schools and organized youth activities should remain closed
- Gyms and large venues may open subject to strict physical distancing protocols
- Bars remain closed



# REOPENING THE ECONOMY

## PHASE TWO (ONCE GATING CRITERIA SATISFIED AGAIN)

- Encourage telework
- Non-essential travel can resume
- Schools and organized youth activities can reopen
- Large venues may operate subject to moderate physical distancing protocols
- Gyms may operate subject to strict physical distancing protocols
- Bars may operate with diminished standing room

# REOPENING THE ECONOMY

## PHASE THREE (ONCE GATING CRITERIA SATISFIED A THIRD TIME)

- Unrestricted staffing of worksites
- Large venues may operate subject to limited physical distancing protocols
- Gyms may operate under standard sanitation protocols
- Bars may operate with increased standing room

# EXECUTIVE ORDERS

- State and local governments are beginning the reopening process via executive orders
- For instance, Florida Governor Ron DeSantis issued Executive Order 20-112 regarding the phase one reopening of the State based on the Trump Administration's guidance
  - EO 20-112 allows restaurants to reopen with full capacity outdoor seating and 25% capacity indoor seating
  - Retail businesses have opened at 25% capacity
  - Gyms and bars remain closed



# EXECUTIVE ORDERS

- As with executive orders in other states, Florida counties and municipalities may have active executive orders which are more restrictive than Florida's EO 20-112
  - For instance, Hillsborough County was under a Safer-at-Home Order which was in effect until rescinded on Monday, May 4, 2020
  - The Hillsborough County Emergency Policy Group elected to follow the phase one reopening provisions of EO 20-112
- Employers should remain aware of active executive orders at all levels of government to ensure compliance with same
  - Some local governments may increase restrictions periodically based on COVID-19 community impact

# BEST PRACTICES FOR REOPENING THE WORKPLACE

## HAVE A PLAN

- Know what your reintroduction process will be and how you intend to implement same
- Consider developing a policy and/or checklist
- Consider altering certain physical aspects of your workplace to promote social distancing and avoid employee congregation
  - Rearrange workspaces, space out chairs in conference rooms, install temporary Plexiglass barriers for reception desks



# BEST PRACTICES FOR REOPENING THE WORKPLACE

## HAVE A PLAN

- Consider certain rules and/or policies to promote social distancing and avoid employee congregation
  - Limit the number of employees permitted in break areas
  - Stagger shifts to minimize the number employees in the workplace
  - Limit the number of employees permitted on the elevator at the same time
  - Prop certain doors open (non-security and non-fire doors) to alleviate employee contact

# BEST PRACTICES FOR REOPENING THE WORKPLACE

## HAVE A PLAN

- Consider certain changes to fundamental practices to promote social distancing and avoid employee congregation
  - Utilize a time clock app instead of a traditional communal time clock
  - Limit the use of copy machines to select employees who can make copies and scans for the entire workplace, thereby limiting mass exposure to such machines
  - Increase workplace cleaning with a focus on high traffic areas and workstations

# BEST PRACTICES FOR REOPENING THE WORKPLACE

## HAVE A PLAN

- Know how you will bring your employees back
  - Consider staggering your employees by bringing them back in waves
  - May bring employees back based on essential positions
  - May bring employees back based on a voluntary basis
  - However you choose to reintroduce employees, ensure that you do not do so in a discriminatory manor (especially be wary of age discrimination)



# BEST PRACTICES FOR REOPENING THE WORKPLACE

## HAVE A PLAN

- Ensure the workplace is stocked with cleaning supplies and disinfectants
  - Consider placing hand sanitizer in high traffic areas
- Ensure availability of certain PPE as such may be necessary pursuant to OSHA and CDC guidance
- Prepare materials and signs which train your employees in the use of available PPE and cleaning products and remind them to utilize same on a regular basis

# EEOC GUIDANCE

- Per the EEOC, employers may currently take the following additional measures to ensure employee safety without violating the ADA:
  - Take employees' temperatures prior to allowing them to enter the workplace
  - Ask employees questions regarding whether they are experiencing COVID-19 symptoms
  - Require employees to self-report any symptoms of COVID-19 or a positive COVID-19 test



# EEOC GUIDANCE

- Employers may send employees who display any COVID-19 symptoms home
  - May require such employees to quarantine for 14 days prior to returning to work
  - May allow an employee to present a negative COVID-19 test in lieu of the 14-day quarantine
- Employers may require COVID-19 testing in the workplace once testing becomes more readily available
- May require employees to wear PPE
  - Employees may seek a reasonable accommodation such as non-latex gloves (reasonableness may depend on availability of such gloves)

# OSHA CONSIDERATIONS

- Employers must utilize caution when addressing employees who refuse to work due to coronavirus fear and ensure they are taking the necessary precautions to ensure a safe work environment.
- OSHA recently released guidance regarding the four COVID-19 exposure threat levels.
  - *Low*
  - *Medium*
  - *High*
  - *Very High*
- Low and medium threat levels will apply to most businesses.

# OSHA CONSIDERATIONS

- Low – The working environment is such that employees have minimal occupational contact with the public and/or other employees.
  - Employees in this category do not usually require PPE other than what they would normally use to perform their job.
- Medium – The working environment is such that employees may come within six feet of individuals who may be infected with COVID-19 but who are not known or suspected COVID-19 patients.
  - Employers must utilize their best judgment in determining which PPE they must provide their employees.
  - Employers should consider the most recent CDC guidance and PPE usually includes a face mask for those within close proximity of other workers and/or gloves for those sharing work supplies and equipment.
  - Employers may also need to train and instruct employees to clean common work supplies and equipment and provide cleaning materials for same.

# OSHA CONSIDERATIONS

- High – Workplaces where there is a high potential for exposure to known or suspected sources of COVID-19. Includes health care facilities, medical transport, and funeral homes and mortuaries.
- Very high – Workplaces with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures which involve aerosol-generating procedures on patients known to have or suspected of having COVID-19 or handling such patients' specimens in a laboratory setting.
- PPE for high and very high exposure risk level workplaces may include gloves, gowns, fluid resistant coveralls, aprons, face shields or goggles, face masks, and/or respirators.
  - PPE dependent on specific circumstances and employers should provide training regarding when and how to use various forms of PPE.

# OSHA CONSIDERATIONS

- OSHA recently released guidance to reduce the risk of exposure in the workplace
  - Encourage workers to stay at home if they are sick
  - Explore possibilities of flexible worksite and work hours to increase social distancing
  - Promote and provide a location for frequent and thorough hand washing
  - Provide customers and the public with tissues and trash receptacles
  - Discourage workers from using other workers phones, desks, offices, or other work supplies and equipment
  - Regularly clean and disinfect surfaces, equipment, and other elements of the work environment
  - Encourage respiratory etiquette

# PREPARING FOR COVID-19 CONTAMINATION

- It is likely that one of your employees will eventually become infected with COVID-19
- Employers should prepare a contingency plan which includes the following measures:
  - Instruct the COVID-19 positive employee to stay away from the workplace until the employee is cleared to return to work by the employee's health care provider
  - May require a fitness for duty note (to include a negative COVID-19 test if testing is readily available)





# PREPARING FOR COVID-19 CONTAMINATION

- Remotely interview the employee to identify other employees with whom the employee may have come into close contact with
- Notify employees who are identified as coming into contact with the infected employee
  - Only identify the infected employee if he or she waives confidentiality
  - Most employees are willing to do so as they care about their fellow employees and want to limit the potential exposure to COVID-19 as much as possible

# PREPARING FOR COVID-19 CONTAMINATION

- Send those employees who had close contact with the COVID-19 positive employee home
  - Have them quarantine for 14 days or seek clearance from a health care provider prior to returning to work
- Consider notifying local health authorities about the confirmed case
  - Conversely, some agencies may contact the employer if the agency is engaged in contact tracing
- Have the workplace professionally cleaned per CDC guidelines

# COMPLYING WITH THE FFCRA

- Be cautious of the sudden rush for leave as you reintroduce employees back into the workplace
  - Some employees will want to take immediate advantage of emergency paid sick leave
  - Employees may also try to take advantage of paid emergency FMLA leave as soon as they qualify for same
  - For those employees returning from furlough, consider limiting their ability to use PTO and/or vacation time in the near future until you have a grasp on how many employees will take FFCRA leave

# COMPLYING WITH THE FFCRA

- Avoid pitfalls when considering whether an employee qualifies for leave under the FFCRA
  - Ensure that you obtain the proper documentation from the employee which is required by the IRS for reimbursement
  - Ensure that the employee actually qualifies for the leave
    - For instance, an employee who is ordered to self-quarantine by his or her employer does not necessarily meet any of the qualifying needs for emergency paid sick leave



# COMPLYING WITH THE FFCRA

- If the employer ordered the quarantine because the employee showed symptoms of COVID-19, the employee would only qualify for emergency paid sick leave if he or she actively sought a medical diagnosis
- If the employer ordered the quarantine as a precaution due to potential workplace exposure to a COVID-19 positive employee, the employee would only qualify for emergency paid sick leave if he or she consulted a health care provider regarding the potential exposure and the health care provider ordered the employee to self-quarantine as well

# DEALING WITH DIFFICULT EMPLOYEES

- Employees may not refuse to work on the sole basis that they are afraid of catching the coronavirus
  - Employers may discipline and/or terminate such employees for their refusal to follow direction
- But, employers must remain cautious of employees' rights to a safe workplace and right to protection from retaliation
- On April 8, 2020, OSHA issued a press release reminding employers that it is illegal to retaliate against employees because they report unsafe and unhealthful working conditions during the coronavirus pandemic



# DEALING WITH DIFFICULT EMPLOYEES

- If you encounter a situation where an employee is refusing to work due to COVID-19 concerns, we recommend that you consult with legal counsel
- There is a fine line between an employee engaging in protected activity or unprotected activity
- Employers should avoid making such close calls without guidance from counsel
- If an employer is following OSHA and CDC COVID-19 guidance and taking the proper safety measures, then the employer is in a stronger position to handle a difficult employee



# THANK YOU! QUESTIONS?

Check out our Return to Work Toolkit:

<https://bks-partners.com/coronavirus/>

