

RE-OPENING & OPERATING YOUR BUSINESS DURING A PANDEMIC

Presented by Crowell & Moring

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Agenda

- Standard of care
- Guidance from government
- Questions from HARDI members
 - Re-opening/operating protocols
 - Customer and customer service considerations
 - Confirmed COVID case
 - Hiring, privacy, and other policies

Standard of Care Considerations

Reopening in a Landscape of Rapidly Evolving Information

- Determining the standard of care
 - How to define “reasonable care” when information is changing daily
 - Who sets the standard, and how to address conflicting guidance
 - To whom is the duty owed?
 - Employees
 - Customers
 - Visitors
 - Supply chain partners
 - Contractors
 - Shareholders/investors
 - Communities
 - Others?

Typical Allegations

Hundreds of Complaints Filed and Mounting

- Failing to provide a safe workplace
- Failing to implement policies and procedures intended to protect employees from COVID-19
 - “Implement” could change to “adhere to” over time
- Failing to follow “even the most basic safety precautions,” and ignoring recommendations made by the Centers for Disease Control and Prevention for the management of coronavirus outbreaks
- Failing to train employees on the actions necessary to prevent contracting and spreading COVID-19
- Failing to adequately sanitize and/or disinfect the common areas

Standard of Care Considerations

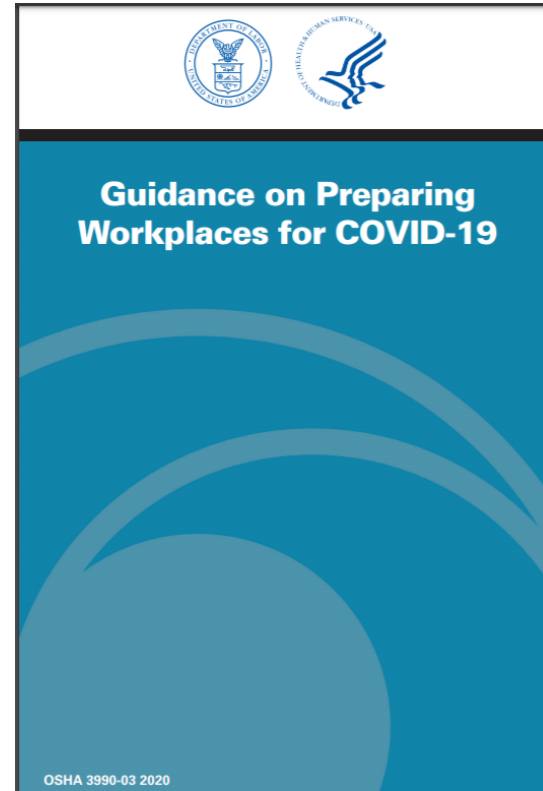
Hindsight is 2020

- Avoiding juror hindsight bias
 - The value of proactivity
 - Anticipate the floor
 - Develop sound, consistent policies
 - Enforce and monitor
- Build a record of engagement
 - Engage directly with stakeholders on health & safety
 - Documentation now to improve the narrative

Evolving Guidance From Governments

Federal Government

- White House
 - Gating criteria
 - Key elements of Phase 1 and 2
- CDC
- OSHA



Evolving Guidance From Governments

State and Local Public Health Orders

- Closure and ‘stay at home’ orders
 - Essential services and activities
 - Essential employees
- Recent developments
 - Face covering/masks
 - Travel restrictions
- “Re-opening orders” - examples
 - Alabama
 - Texas
 - Georgia

Re-Opening/Operating Protocols

- How to obtain information on employee or family member testing positive or symptomatic?
 - Daily survey
 - Apps
- Health screenings and temperature taking – what's permissible and advisable?
- Employee refusals to wear PPE – employer responses?
- Social distancing and physical layout of workplace
- Multiple states – highest common denominator approach or local?
- Differences in policies and approaches for different facilities?
- Sanitizing and availability of cleaning agents – how comply with CDC guidance if not available?
- Inspections by a local or state health inspector – protocols?
- Waivers?

Customer and Customer Service Considerations

- Customer/visitor facing policies
 - Implementation
 - Enforcement
- Customer or visitor claims contracted COVID 19 at our worksite – how mitigate risk?
- Are distributors liable for customers who ignore distancing policies?
- Delivery drivers visiting customers and job sites - protocols
- Waivers?

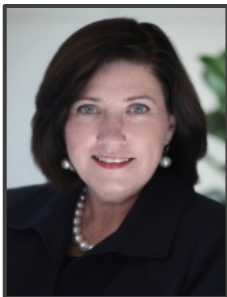
Confirmed COVID Case

- OSHA reporting requirement – how determine if employee contracts it at work?
- Cleaning workplace when employee tests positive?
 - Shutdown entire operation v. certain parts of facility
 - Duration
- Return to work – health care professional clearance?
- “Take home” allegations – how prepare to defend?

Hiring, Privacy, and Other Policies

- What privacy considerations are relevant when employee tests positive or is symptomatic and the member must conduct contact tracing and advise other employees of positive results or symptoms?
 - Sharing information with other employees
 - Sharing information with customers, third parties
- Hiring new employees after lay off/furlough - what actions to avoid to prevent employment lawsuits?
 - At risk populations (65+, medical conditions) – state health orders
 - Objective, position-based criteria
- Special considerations for employees coming back after FFCRA leave?

Questions and Discussion



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