Beyond the Curve:
Preparing Your ABA Practice for a Return to “Normal”

Presenter: Matthew R. Korn, Fisher Phillips, LLP | CEU Instructor: Yvonne Bruinsma, BCBA
GENERAL RETURN-TO-WORK PRINCIPLES
During Phase One, employers are recommended to follow five steps

**Step One**
Continue to encourage remote work and telework whenever possible and feasible with business operations

**Step Two**
If possible, return to work in phases

**Step Three**
Close common areas where personnel are likely to congregate and interact, enforce strict social distancing protocols

**Step Four**
Minimize non-essential business travel and adhere to CDC guidelines regarding isolation following travel

**Step Five**
Strongly consider special accommodations for workers who are members of a vulnerable population
GENERAL RETURN-TO-WORK PRINCIPLES
During **Phase Two**, employers are recommended to follow four steps

**Step One**
Continue to encourage **remote work and telework** whenever possible and feasible with business operations.

**Step Two**
Continue to close **common areas** where personnel are likely to congregate and interact, or enforce **moderate** social distancing protocols.

**Step Three**
Businesses can resume **non-essential business travel**.

**Step Four**
Continue to consider **special accommodations** for workers who are members of a **vulnerable population**. Encourage **remote work and telework** whenever possible and feasible with business operations.
States and regions that have no evidence of a rebound of COVID-19 cases, and satisfy the gating criteria a third time, are ready to enter Phase Three. During this phase, the guidance is simple: employers can resume unrestricted staffing of worksites.
HIRING/RECALL CONSIDERATIONS

- Evaluate local and state shutdown orders
- Develop objective criteria for identifying who will be brought back to work
- Protocol for employees who are afraid to come back to work
- Analyze impact of recalling and re-hiring employees using loan proceeds obtained through federal government

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› Consider staggered return-to-work issues:
  › Maintain remote work or intermittent remote work
  › Encourage use of conference calls or video meetings
  › Small, static groups
  › Staggered schedules
  › Swing shifts
  › Consider predictive scheduling requirements
  › Consider non-discrimination on basis of FFCRA and related leave laws
  › Requests for accommodation

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Consider high-level changes to operations to communicate to employees:

- Change in business hours
- Travel freeze or limitations
- Changes to bonus programs
- Across-the-board compensation reductions or freezes
- Amendments to vacation and fringe benefit programs

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GUIDANCE FOR CLEANING & DISINFECTING
PUBLIC SPACES, WORKPLACES, BUSINESSES, SCHOOLS, AND HOMES

1 DEVELOP YOUR PLAN
DETERMINE WHAT NEEDS TO BE CLEANED. Areas unoccupied for 7 or more days need only routine cleaning. Maintain existing cleaning practices for outdoor areas.
DETERMINE HOW AREAS WILL BE DISINFECTED. Consider the type of surface and how often the surface is touched. Prioritize disinfecting frequently touched surfaces.
CONSIDE THE RESOURCES AND EQUIPMENT NEEDED. Keep in mind the availability of cleaning products and personal protective equipment (PPE) appropriate for cleaners and disinfectants.
Follow guidance from state, tribal, local, and territorial authorities.

2 IMPLEMENT
CLEAN VISIBLY DIRTY SURFACES WITH SOAP AND WATER prior to disinfection.
USE THE APPROPRIATE CLEANING OR DISINFECTANT PRODUCT. Use an EPA-approved disinfectant against COVID-19, and read the label to make sure it meets your needs.
ALWAYS FOLLOW THE DIRECTIONS ON THE LABEL. The label will include safety information and application instructions. Keep disinfectants out of the reach of children.

3 MAINTAIN AND REVISE
CONTINUE ROUTINE CLEANING AND DISINFECTION. Continue or revise your plan based upon appropriate disinfectant and PPE availability. Dirty surfaces should be cleaned with soap and water prior to disinfection. Routinely disinfect frequently touched surfaces at least daily.
MAINTAIN SAFE PRACTICES such as frequent handwashing, using cloth face coverings, and staying home if you are sick.
CONTINUE PRACTICES THAT REDUCE THE POTENTIAL FOR EXPOSURE. Maintain social distancing, staying six feet away from others. Reduce sharing of common spaces and frequently touched objects.

For more information, please visit CORONAVIRUS.GOV

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DEVELOPING COVID-19 REPORTING PROCESS

› Prepare memo to employees regarding CDC and public health agency guidance

› Include instructions for how and who to report if employee tested positive or comes into contact with someone who tested positive in past 14 days

› Designate point person to handle concerns

› Train employees regarding new policies and procedures:
  › Safety measures
  › Social distancing measures
  › Cleaning mandates
  › Symptom monitoring
  › Privacy issues

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Workplace Safety

Operational Considerations

› Order and distribute PPE to employees
  › Review state/local law to see if masks are required to be provided
  › Check state law to determine whether reimbursement required
› Post COVID-19 social distancing floor markings and signage on entry/exits and in breakrooms
› Install hand sanitizer dispensers
› Develop policy/protocol and communicate with employees

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Implement daily health/risk screenings to confirm the health and exposure of employees and anyone entering the workplace.

- Could include screening measures at home and at work.

- Possibilities include:
  - Questionnaire
  - Temperature checks
  - Symptom checks
  - COVID-19 testing
  - Vaccine (when available)

Confidentiality of employee medical records.

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WAGE AND HOUR CONSIDERATIONS

➢ Prepare reinstatement memo to employees returning from furlough/layoff

➢ Prepare new/amended pay plans for employees whose rate of pay may have changed

➢ Provide notice regarding changes in pay, including bonus program amendments

➢ Discretionary/non-discretionary bonuses

➢ Consider when to return to previous pay rate/classification if changed

➢ State and federal minimum salary thresholds for exempt employees

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HUMAN RESOURCES

Preparing For Return To The Worksite

- Ensure handbook contains updated accommodation, FFCRA, sick leave, benefits, and other policies and procedures
- Strongly consider special accommodations for workers who are members of a vulnerable population when an accommodation is requested
- Ensure all employment posters and notices are current—including new FFCRA poster
- Train managers on revised policies and preventing COVID-19 related harassment, discrimination and retaliation
  - Individual liability under FFCRA

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FURLOUGH vs. LAYOFF

If employees were terminated and are now being re-hired, prepare new hire packets containing:

- Acknowledgment of employee handbook
- Arbitration agreement and restrictive covenants
- New Form I-9
- Pre-employment screening (drug testing, criminal background, etc.)
- Employment contracts
- Document reinstatement of accrued, unused paid sick leave if required under state/local law
- Obtain personal email and cell phone numbers

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WORKERS’ COMPENSATION & PERSONAL INJURY CLAIMS

- Discuss insurance coverage for third-party exposure claims with broker
- Review workers’ compensation policy and coverage and confirm reporting requirements
- Lawsuit avoidance best practices:
  - Follow CDC and OSHA guidance
  - Ensure employees are provided and properly wear all required PPE
  - Continue to promote workplace education regarding safeguards
- Notify carrier and counsel immediately if claim is filed

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PAYCHECK PROTECTION PROGRAM LOANS

> Treasury Department continues to update guidance

> Encouraging borrowers to carefully review whether “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”

> Borrowers must take “into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business”

> Safe harbor deadline extended through May 14, 2020

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FAMILIES FIRST
CORONAVIRUS RESPONSE ACT

- Emergency Paid Sick Leave
- Emergency Family And Medical Leave Act

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EMERGENCY PAID SICK LEAVE

Qualifying Reasons

Must provide paid sick time “to the extent the employee is unable to work (or telework) due to a need for leave because:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
4. The employee is caring for an individual who is subject to an order or self-quarantine as described above
5. The employee is caring for a son or daughter if school or child care is closed/unavailable
6. The employee is experiencing “any other substantially similar condition” specified by HHS (catch all)
EMERGENCY FAMILY AND MEDICAL LEAVE
Qualifying Reasons

12 weeks of job protected leave when:

› “The employee is unable to work (or telework) due to the need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency”

› Likely FMLA definition of “son or daughter” will apply

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FFCRA PAID LEAVE
Practical Considerations

- Prepare tracking system for leave, including duration and reasons for leave
- Consider interplay with state/local paid sick leave laws
- Be aware of continued eligibility for FFCRA benefits through December 31, 2020
- Maintain proper documentation
  - Leave request forms
  - Documentation of calculations for tax credit

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EMPLOYEE REQUEST FOR EMERGENCY PAID SICK LEAVE OR EMERGENCY FAMILY AND MEDICAL LEAVE FOR COVID-19 (CORONAVIRUS) RELATED REASON AND SELF CERTIFICATION

Employees requesting Emergency Paid Sick Leave and/or Emergency Family and Medical Leave must complete this form, collect proper documentation supporting the need for leave and return both to [INSERT COMPANY CONTACT] as soon as practicable. Consult the Company’s Emergency Paid Sick Leave Policy and Emergency Family and Medical Leave Expansion Act Policy for more information regarding your entitlement to leave. Providing false information or documentation shall constitute a violation of Company policy.

NAME: ___________________ Date of Request: ___________________

EMERGENCY PAID SICK LEAVE:

_____ I am unable to work or telework because I am subject to a federal, state or local quarantine isolation order related to COVID-19. I attach documentation related to the order.

- Name of government entity issuing order: ___________________________________________

_____ I am unable to work or telework because I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

EMPLOYEE REQUEST FOR EMERGENCY PAID SICK LEAVE OR EMERGENCY FAMILY AND MEDICAL LEAVE FOR COVID-19 (CORONAVIRUS) RELATED REASON AND SELF CERTIFICATION

BY SIGNING BELOW, I CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND THAT ANY FALSE STATEMENT MAY RESULT IN DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION OF EMPLOYMENT.

Print Full Name ___________________ Signature ___________________ Date _________________

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BACK TO BUSINESS FOR NON-UNION AND UNIONIZED EMPLOYERS

Engage

› Develop or enhance social media presence to regularly engage the workforce
  › Highlight positive projects or outcomes
  › Encourage employees
  › Promote special programs, opportunities, company occasions, etc.

› Institute supervisory huddles at the beginning of each shift to offer words of encouragement, gratitude, and support

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BACK TO BUSINESS FOR NON-UNION AND UNIONIZED EMPLOYERS

Listen and Communicate

- Establish clear lines of communication with employees and/or union representatives
- Communicate on a regular basis
- Consider townhalls via web applications
- Provide updates via email or hardcopy, depending on your operation

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BACK TO BUSINESS FOR NON-UNION AND UNIONIZED EMPLOYERS

Solicit Feedback

➢ Set up a feedback portal to solicit questions and concerns
➢ Research job placement sites for comments and reviews to identify common threads of employee concerns
➢ Conduct an employee engagement survey to get the pulse of the workforce
➢ Skip-Level Meetings - Solicit employee feedback about supervisors as a tool for proactively addressing issues before they lead to PCA or union activity by the employees

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Visit FISHER PHILLIPS RESOURCE CENTER for Employers

Post-Pandemic Back-To-Business FAQs For Employers

Comprehensive set of FAQs that will be continually updated throughout the recovery period. Not only do we go deeper on all these topics, but we also have detailed information about:

- SBA Loans
- Paid Sick Leave and E-FMLA
- Benefits
- Unemployment
- I-9s and Immigration Issues
- International Workplaces
- Trade Secrets Concerns
  ...and more

Please rely on fisherphillips.com for up-to-date information
COVID-19 DATA BANK
Templates and Forms

COVID-19 Data Bank (Templates & Forms)
The below documents are available for download free of charge.

› Authorization to Disclose COVID-19 Diagnosis (Not California Compliant)
› Authorization to Disclose COVID-19 Diagnosis (California Compliant)
› Children in the Workplace Policy and Agreement
› COVID-19 Manager Talking Points
› COVID-19 Sample Employee Questionnaire
› COVID-19 Sign For Front Door of Company Facility
› Fisher Phillips Back to Business Checklist [NEW!]
› Model Announcement to Employees about Positive Test

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We encourage you to subscribe to Fisher Phillips’ alert system to gather the most up-to-date information. Visit www.fisherphillips.com and scroll to bottom, click on Subscribe.
Best wishes that you, your family, your workforce, and those you care about stay well.

Matthew R. Korn
Fisher Phillips, LLP
mkorn@fisherphillips.com
803.740.7652