Legal Obligations of Businesses Relative to the COVID-19 Pandemic

March 16, 2020

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As of March 16, 2020 the Commonwealth of Massachusetts has cancelled public and private schools for three (3) weeks, various colleges and universities have moved entirely online and required students to move out, and gatherings of 25 or more individuals have been prohibited. There is a civic responsibility for business to take action to help ensure the safety of its employees. While employee safety is paramount, businesses face several additional business and legal challenges as a result of the COVID-19 pandemic. Some of the challenges that may be faced by businesses are outlined below, as well as measures that may be taken to address these challenges.

Gather Information and Stay Informed

Businesses should identify and follow authoritative sources of public health guidance on the COVID-19 pandemic in addition to officially recommended and mandated actions in their relevant jurisdictions. Helpful resources include the Center for Disease Control and

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Prevention, The World Health Organization, and the Massachusetts Department of Public Health.

Businesses should utilize the above-named sources to serve as the basis for all organizational decisions relative to both health and legal-risk mitigation. A decision made by a business relative to COVID-19 response that is in alignment with official recommendations from any of the above-named resources would be an important legal safeguard should a business's infection-control methods be challenged.

Communicate with Employees

Businesses should be able to demonstrate that they have provided employees with accurate information on how to minimize the spread of COVID-19 for both legal and practical reasons. Businesses may accomplish this by educating employees regarding COVID-19 symptoms, precautionary measures, and official sources of information that employees may rely on for current COVID-19 information.

Maintain a Sanitary and Disinfected Work Environment

Businesses should take reasonable precautions in order to minimize the risk of COVID-19 transmissions. This includes providing employees with easy access to hand sanitizers and/or handwashing facilities. Further, businesses should ensure that its premises, including common area surfaces such as counters, doorknobs, and copy/fax machines are regularly disinfected. For some businesses, a good approach to handling hygiene concerns may be to encourage working remotely, changing the physical layout of the office to reduce overcrowding, and take appropriate precautionary measures.

Businesses should instruct employees to notify management if they have been exposed to COVID-19 or show possible symptoms. Employees with symptoms should be instructed to work from home and/or not present to work.

Maintain the Privacy of Employees

Under certain circumstances, employees may be obligated to disclose certain details of their personal health data if he or she is infected with COVID-19. This personal health data includes anything that is an interference with an employee's ability to perform the essential functions of their job or could increase the risk of COVID-19 exposure to coworkers and/or third parties. Fortunately for businesses, privacy rules permit businesses to disclose an employee's protected health information to authorities for public health purposes. Notwithstanding, businesses have legal obligations to maintain the privacy of its employees and, in the interest of exercising due caution, it is strongly recommended that businesses seek legal counsel in order to determine if an employee's protected health information may be disclosed.

Take Precautions to Ensure Workplace Safety

It is advised that businesses be proactive in putting additional measures in place in order to guarantee the safety of its employees and any visitors or customers of the business. Businesses

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have a duty to provide a safe and healthy work environment and an important consideration for businesses is the potential liability to third parties, including customers and visitors.

In addition to the measures outlined above for keeping employees informed, communicating with employees on COVID-19 updates, maintaining a hygienic workplace environment, and protecting the privacy of employees, below are some measures that a business may consider taking in order to ensure continued safety in the workplace:

1. Prohibiting business travel for employees to high-risk COVID-19 countries, such as China, Iran, South Korea, and Italy. Business should regularly check the CDC website for updated countries considered high-risk;
2. Develop a plan for employees that may be returning from a high-risk COVID-19 country, including requiring that employee self-quarantine for an incubation period. With that being said, businesses risk discrimination claims if they base decisions to restrict employees from work on the basis of race or national origins. Reasonable, fact-based restrictions may be imposed IF there is a direct threat to the health or safety of others. Businesses should determine, utilizing official guidelines and/or input from a medical consultant, whether and when an employee who has been ill or who has been potentially exposed may safely return to work;
3. Identify how to implement the CDC guidelines and other public health protocols and guidelines;
4. Identify if working remotely is necessary and possible for the employees of your business. If your business does not have guidelines in place for working remotely, establish remote work policy guidelines, in addition to proper security measures with working from home;
5. Establish a communication plan for all employees, including a method to contact employees in the event that they do not have access to work email;
6. Businesses should use this time to analyze their legal obligations in providing leave to employees in the event of sickness or disability and evaluate whether these policies need to be adjusted in the current circumstances.

The Availability of Unemployment Assistance Benefits

The Massachusetts Executive Office of Labor and Workforce Development (EOLWD) and the Department of Unemployment Assistance (DUA), along with the US Department of Labor have take a series of steps in order to assist businesses and employees.

As of March 16, 2019, the following steps have been taken:

1. Requirement regarding attendance at MassHire career center seminars have been suspended;
2. Missed deadlines due to the effects of COVID-19 will be excused under DUA's good cause provision;
3. All appeal hearings will be telephonic;

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4. DUA may now pay unemployment benefits if a worker is quarantined due to an order by a civil authority or a medical professional or leaves employment due to reasonable risk of exposure or infection to care for a family member and does not intend to or is not allowed to return to work. The worker is not required to provide medical documentation and need only be available for work when and as available;
5. Emergency legislation is being filed that will allow new claims to be paid more quickly by waiving the one week waiting period for unemployment benefits in order to assist those who cannot work due to the impact of COVID-19;
6. EOLWD and DUA are filing emergency regulations that will allow people impacted by COVID-19 to collect unemployment if their workplace is shut down and expect to reopen in four or fewer weeks. The following conditions apply:
    1. The worker must remain in contact with their employer during the shutdown;
    2. Workers must be available for any work their employer may have for them that they are able to do;
    3. An employer may request to extend the period of the covered shutdown to eight weeks, and workers will remain eligible for the longer period under the same conditions described above;
    4. DUA may extend these time period for workers and employers, if necessary.
7. Employers and business impacted by COVID-19 may request up to a 60-day grace period in order to file quarterly reports and pay contributions; and
8. Pending federal legislation proposes further relief, which includes additional money for unemployment benefits and relief to employers for charges related to unemployment benefits paid due to COVID-19.

Establish a Plan to Address Possible Contingencies

If your business does not have a contingency plan yet in place, it may be best to identify temporary succession planning for key decision-makers and managers. Be aware of the legal requirements involved with layoffs and furloughs as many jurisdictions require formal procedures and notifications for layoffs above a certain number of employees. Failure to comply with the relevant legal requirements may result in penalties and/or personal liability for business leadership.

Seek Legal Guidance & Counsel

Over the next weeks, days, and hours, we will continue to see the impact of the COVID-19 pandemic in our communities. In this rapidly evolving global crisis, many questions are arising for business owners and various businesses. For any additional questions you or your business may have relative to the impact of COVID-19 on your business, we encourage you to contact one of Cohen Cleary, P.C.'s Employment Law Attorneys to discuss at (508) 880-6677.

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