

## Client Alert

### Planning for Temporary Workplace Closures and Related Actions

March 16, 2020

Yesterday, New York City Mayor Bill De Blasio announced his intention to sign an executive order requiring restaurants and bars to limit services to take out and delivery orders. Similar operational limits are also in place in other jurisdictions around the country, with several more sure to come. Retailers such as Apple, Nike, Urban Outfitters, Abercrombie and Fitch, Patagonia and Lululemon also announced that they were either temporarily closing their retail stores or significantly limiting their hours and scope of operation. Teleworking is quickly becoming the trend to encourage social distancing and reduce the risk of exposure to COVID-19. The Coronavirus has made the previously unthinkable option of business closure the new reality, with no end in sight.

Businesses are suddenly faced with the decision to alter, streamline or close their operations as the pandemic is bringing about unpredictable challenges that require quick and thoughtful decision making and immediate action. Closing offices or places of operation is never an easy decision, and execution of such decisions requires consideration of a wide variety of factors. The following key considerations must be kept in mind:

- Determine the triggers for office closure and/or telecommuting and establish authority of decision making and approval process invoking these triggers
- Monitor federal, state and local legislative and regulatory developments and health and safety guidance
- Appoint a single individual or department as the point(s) of contact
- Maintain and update employee contact and emergency contact(s) information
- Develop emergency communication protocol and consider implementing hotline/dedicated webpage/email address/text messaging system
- Establish Telework Policies:
  - Evaluate and determine eligible positions
  - Establish protocol and procedures in advance (*e.g.*, data security, remote access, confidentiality safeguards, company-issued equipment)
  - Establish or revisit policy regarding compensable time and timekeeping for telecommuting
  - Maintain pay practices in compliance with the FLSA/state and local wage laws
  - Implement policy for teleworking employees to apply for reimbursement for reasonable expenses incurred to the extent required by law
- Assess financial impact of office closure in advance and prepare personnel decisions accordingly
- Designate essential and non-essential positions in advance:
  - Essential positions

- Consider feasibility of staggering or alternate schedule (e.g. persons 1-5 working Monday, Wednesday and Friday; persons 6-10 working Tuesday, Thursday and following Monday)
- Determine location of work to be performed? Offsite or onsite
  - Designate individual(s) who must remain onsite
  - Designate individual(s) who can work offsite
- Assess the Company's remote access capability and determine whether safeguards exist to ensure data security and confidentiality
- Regardless of exempt status (eligibility for OT pay), consider having everyone below the executive and senior management level to log in specific dates and time of work
- Non-essential positions
  - Designate those occupying such positions and consider reduction in their schedule or taking time off
  - Consider relaxing restrictions in taking available PTO
  - Consider supplementing current PTO once available PTO is exhausted
  - Consider allowing unpaid leave for limited duration
- Establish communication to employees in non-essential positions about office closure and leave (with/without pay)
- Establish practice prohibiting those holding non-essential positions from performing work (both exempt and non-exempt)
- Establish a system to provide cross-training and coverage in event of staff shortage
- Evaluate the need to comply with predictive scheduling laws
- Assess WARN Act (and mini-WARN Act) triggers (in the event of longer term closure, reduction in force or mass layoffs)
- Ensure that payroll and other essential HR functions will continue to operate—set up emergency procedures in advance (including coordination with third party vendors)
- Keep employees informed throughout closure about planned reopening
- Prepare notices to the public, vendors and customers regarding closure

These issues and others that may relate to your workplace must be carefully considered in order to ensure that you are best prepared for the uncertainties ahead. We strongly encourage you to work with your counsel or a Crowell & Moring, LLP attorney with whom you work to place your business in the best position in dealing with these difficult times.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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