

## **COVID-19 TO-DO LIST – An Employer Checklist**

### **Executive Summary**

Since the beginning of the outbreak of COVID-19, employers—and particularly human resources and in-house counsel—have been grappling with how best to ensure the wellbeing of their workforce and the continuity of their business in the face of this novel outbreak. While a patchwork of legal analyses and recommendations can be found from an internet search, the sheer volume of information—often mixed—can leave employers overwhelmed and wondering where to begin. Meanwhile, the effects of COVID-19 throughout the country and the world change daily and time to take action remains of the essence.

The following checklist is designed to give employers a comprehensive overview of the steps they can take today to place their workforces and their businesses in the best position in the event COVID-19 impacts operations. While this checklist is designed to be comprehensive, it is not exhaustive. Employers' particular facts and circumstances may warrant additional or different action items not specifically listed.

For more information on each of the recommended steps below, employers should consult with their counsel or a Crowell & Moring attorney. Additionally, Crowell & Moring has established an [e-hotline](#) and [online resource page](#) to address questions regarding COVID-19. Email inquiries sent to that e-hotline will be directed to the appropriate working group for prompt response.

#### **1. Initial assessment of risk level to employees.**

- Stay current on status of the virus.
- Review alerts and recommendations from the CDC and federal, state and local authorities.
- Assess level of risk to workforce on an ongoing basis.

#### **2. Employer communications with employees**

- Communicate with employees regarding the following, updating as necessary:
  - Risk/impact of virus based on current information
  - Precautions and hygiene suggestions
  - Policies affecting those exposed to infection or risk of infection
  - Travel restrictions/guidelines
  - PTO/leave availability and company guidelines
  - Assurance against retaliation
  - Confidentiality regarding reporting exposure and infection
  - Non-discrimination and anti-harassment policies
- Consider separate communications at different sites dependent on level of risk of exposure and/or location of employees.

- Develop emergency communication protocol and consider implementing hotline/dedicated webpage/email address/text messaging system.
- Compile short list of helpful resources and contacts for distribution among employees.
- Maintain and update employee contact information and emergency contacts.

### 3. Management and training

- Appoint a single individual or department as the point(s) of contact.
- Educate and train managers and supervisors on the following:
  - Proper communications to employee, including FAQs to common questions
  - Responses to questions regarding availability of benefits (healthcare coverage, leave and government mandated benefits)
  - Reminder that all policies and procedures must be enforced in a non-discriminatory manner
  - No tolerance policy for discrimination, retaliation, or harassment

### 4. Safety precautions

- Consider deep cleaning of premises and provisions of hand sanitizers/wipes/masks.
- Posting notices regarding washing of hands and other best practices.
- Implement policy relating to visitors to company premises to minimize risk of infection or exposure to infection and prepare related notice(s) to visitors.

### 5. Leave Policies, Practices and Administration

- Review and evaluate existing policies and practices:
  - Evaluate compliance with applicable laws (*e.g.*, local paid sick leave, state family leave, FMLA, etc.).
  - Remind employees of leave and call-out policies in a manner consistent with CDC guidelines.
  - Assess responses to requests for accommodation and compliance with ADA and other similar laws.
  - Assess PTO availability and current balances.
    - Stay abreast of current legislation.
  - Determine unpaid leave availability.
  - Evaluate implication of unlimited vacation policy and impact on company.
  - Consider temporary supplements to PTO.
  - Remind employees of adherence to attendance policies in compliance with sick leave and disability laws.

## 6. Travel and Immigration Guidelines

- Assess travel policies and implement COVID-19 specific guidelines and restrictions.
- Assess impact on immigration status for employees on H1B or other work-related visas.

## 7. Office Closure

- Establish Telecommuting 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.
- Assess financial impact of office closure in advance and prepare personnel decisions accordingly.
- Designate essential and non-essential positions in advance:
  - 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 need to comply with predictive scheduling laws.
- Assess WARN Act (and mini-WARN Act) triggers.
- Ensure 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.

## 8. Quarantine procedures for affected employees

- Implement permissible procedure to send employees home.
- Implement procedure regarding employees' return to the workplace.
- Evaluate permissibility of testing and other health-related inquiries.
- Assess disclosure considerations, including privacy and confidentiality concerns and statutory prohibitions.
- Consider [OSHA](#) duty to provide safe work environment.
- Review reporting and recordkeeping requirements under OSHA, state and local laws.

## 9. Testing and Employee Exposure

- Assess appropriateness of testing.
- Implement guidelines to handle information regarding positive test results for voluntary disclosure.

- Create list of action items in face of news of employee infection or exposure.
- Maintain employee privacy and emphasize company policy against retaliation, discrimination and harassment (Equal Employment Opportunity Commission guidance can be found [here](#)).

**10. Other considerations**

- Assess impact on independent contractors and establish communication policy with them.
- Assess coverage of health benefits and contact information for administrator(s) of such benefits in case of questions.
  - Appoint contact person/department to handle questions or administration of these benefits.
- Workers' compensation/disability policies:
  - Review in advance and confirm coverage.
  - Evaluate requirement, if any, under applicable state workers' compensation law concerning notices to employees regarding their rights to such benefits.
  - Consider permissible interplay between disability, workers' compensation, federal, state and local family leave, safe and sick leave, vacation and other PTO.
- Consider implementing or modifying policies affecting visitors, contractors and vendors.
- Compile list of contact information for vendors, utilities, and local and national governments and have information readily accessible.
- For unionized workforces, review collective bargaining agreements; consider whether there are any issues that need to be addressed with the employees' bargaining representative and whether there are any provisions in the company's collective bargaining agreements that may be affected by the foregoing.

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

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