A blurred, blue-tinted photograph of an office interior. Several people are visible, some standing and some sitting at desks, all in motion, creating a sense of activity and fast-paced work. The background shows office partitions and desks.

DEVELOPING YOUR BACK-2-BUSINESS PLAYBOOK

Buchanan
Ingersoll • Rooney

DEVELOPING YOUR BACK-2-BUSINESS PLAYBOOK

As federal and state governments begin lifting COVID restrictions and allowing people to return to work, companies will be faced with a myriad of questions ranging from how to go about safely and efficiently bringing employees back into the office to longer term challenges of how to ensure the company stays financially viable. Our Back-2-Business Playbook is designed to help you navigate through what may be the most challenging endeavor yet – getting back to work with the coronavirus still ever so present.

While the approach will differ significantly by industry and business, our playbook will walk you through the steps and critical issues you need to consider. Our attorneys are ready to partner with you to find the answers that will get your company back to work safely and efficiently.

STEP 1:

Be Mindful of Applicable Governmental Orders, Other Guidance and CARES Act Provisions

- Monitor state and local governmental orders permitting, limiting or prohibiting your business's reopening
- Analyze applicable guidance provided by the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), the Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL) to determine their impact on your decision to reopen
- Determine obligations and procedures under applicable CARES Act stimulus provisions to maximize forgiveness under the Paycheck Protection Program; take advantage of available tax credits and defer payroll taxes



STEP 2: Prepare Your Workplace

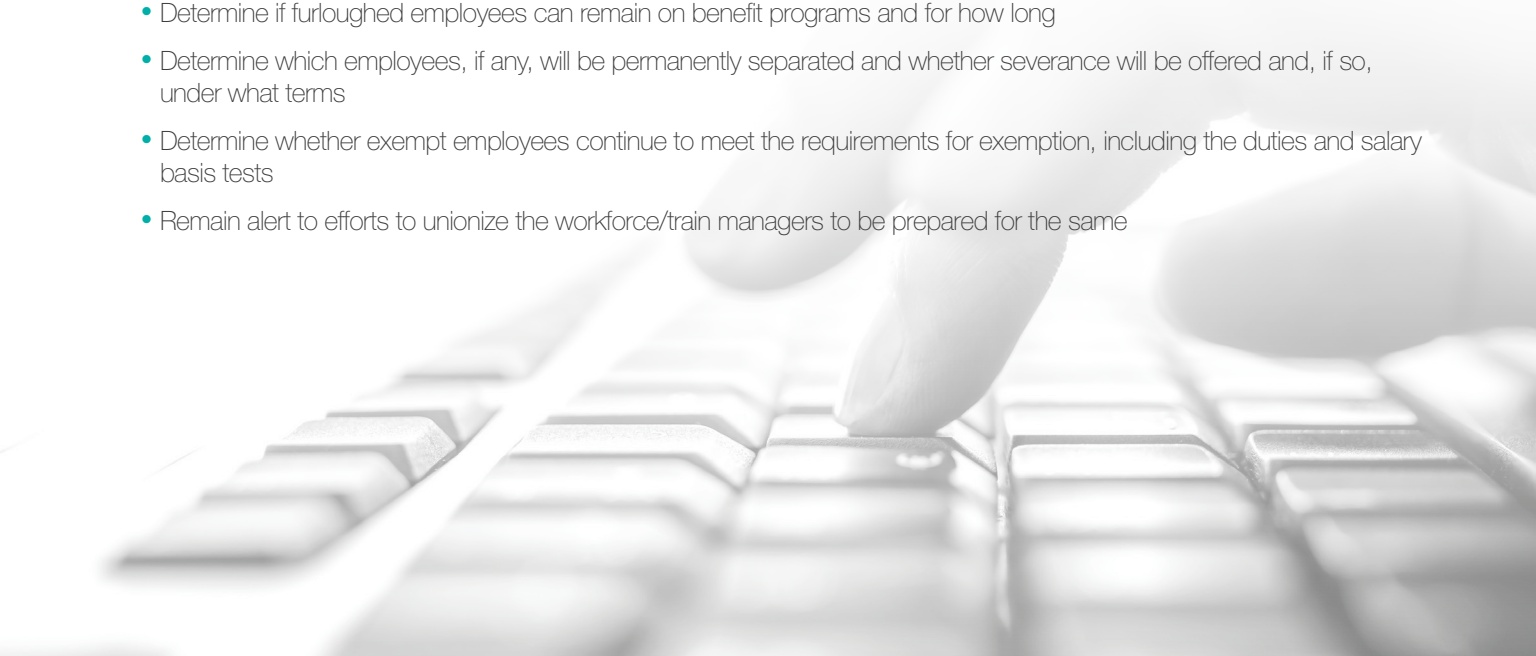
- Appoint a task force and develop a return to work plan and timeline
- Develop policies and procedures to comply with state and local governmental orders applicable to your workplace
 - Increase sanitization efforts
 - Improve air quality and purification
 - Increase cleansing of common areas
 - Sanitize tools and equipment
 - Use EPA-approved cleaning chemicals from List N or that have label claims against the coronavirus
 - Coordinate the cleansing and sanitizing of common areas with landlord/building management
- Implement social distancing measures within your physical space
 - Obtain required personal protective equipment (PPE) for employees, visitors and customers
 - Mandate use of personal protective equipment, such as face masks, gloves, etc. for use by employees and visitors
 - Conduct temperature checks and COVID-19 tests as available and consistent with legal guidance procedures when required
 - Install barriers to separate employees, visitors and/or customers
 - Consider alternative payment and communication methods to reduce close personal contact
 - Impose limits on the number of individuals occupying confined spaces at any given time
 - Eliminate waiting rooms in healthcare offices, instead require patients to wait in their cars until it is time to be seen
 - Place appropriate notices and signage to notify employees, visitors and customers of required safety, personal hygiene and social distancing requirements



STEP 3:

Strategize How Best to Return Your Workforce

- Determine how/what order to recall employees
 - Prioritize employee returns based on job function, location, ability to perform tasks remotely, seniority, collective bargaining obligations, etc.
 - Consider SBA loan forgiveness requirements, in terms of maintaining head count and compensation levels, if your business received a loan under the Paycheck Protection Program
 - Assess continuing telecommuting and remote work arrangements
 - Analyze a phased return plan and alternative scheduling arrangements, such as staggered hours, alternating days in the office, etc.
 - Review the return plan for compliance with applicable anti-discrimination laws, wage and hour requirements, etc.
- Develop communications to employees regarding their return to work (including issues and consequences associated with refusing to return to work)
- Work with insurers and employees on enrollment obligations and waiting periods associated with your employee benefit plans (including retirement and pension plans)
- Address any unpaid insurance benefit premiums owed by employees due to furloughs
- Develop a strategy and procedures for responding to employees who cannot or refuse to return to work
 - Managing employees who have underlying conditions that make them more susceptible to COVID-19 or at higher risk for complications
 - Responding to employees who do not want to come to work for fear of infection
 - Coordinating return to work efforts with ongoing unemployment compensation eligibility filings
- Determine if furloughed employees can remain on benefit programs and for how long
- Determine which employees, if any, will be permanently separated and whether severance will be offered and, if so, under what terms
- Determine whether exempt employees continue to meet the requirements for exemption, including the duties and salary basis tests
- Remain alert to efforts to unionize the workforce/train managers to be prepared for the same



STEP 4:

Update Your Policies and Procedures

- Develop a protocol for execution upon discovery that your business has been exposed to a person who is a probable or confirmed case of COVID-19
- Implement protocols to address employees, visitors, and/or customers who arrive at the workplace with symptoms of COVID-19 or who develop symptoms of COVID-19 while in the workplace
- Develop and/or revise policies to encourage employees who are sick to stay home, including flexible time-off policies and, if so desired, telecommuting policies
- Develop policies and procedures to comply with state and local government orders on social distancing, required PPE, medical testing and notifications
- Develop and/or update policies on employee leave entitlements, including paid sick leave and paid family leave obligations under the Families First Coronavirus Response Act (FFCRA) and additional COVID-19-related paid sick leave under applicable state laws that have been enacted
- Implement procedures to obtain and maintain documentation necessary to support forgiveness of your Paycheck Protection Program loan, Employee Retention Tax Credit or tax credits due under the FFCRA
- Assess essential job functions (including mandatory attendance in the workplace) and accommodation obligations under the Americans with Disabilities Act (ADA) and similar state laws as they relate to COVID-19 in the workplace
- Review medical check procedures and inquiries to confirm compliance with the ADA and similar state laws, as well as EEOC guidance
- Consider a work from home/telecommuting policy or agreement to address time keeping, maintaining and enhancing a safe work environment, expense reimbursement, confidentiality and cybersecurity, etc.
- Review compensation plans, agreements and provisions to determine whether modification is necessary due to business interruption caused by COVID-19
- Review the definition of “cause” in your employment agreements and consider revising to account for pandemics, such as COVID-19
- Consider policies encouraging meetings by phone or videoconference rather than in person and, when in person, limiting the number of people in attendance, and limiting non-essential visitors in the workplace
- Revise travel policies to limit employee travel to essential travel only and consider establishing self-isolation guidelines upon return (depending on the destination)
- Revise policies and procedures governing food in the workplace, including closing or limiting common dining facilities
- Review scheduling strategies to consider staggering scheduled shifts, meals and breaks to avoid overlap and unnecessary congregation
- Review immigration policies and procedures to avoid lapses in status and compliance issues in visa and immigration processes for foreign national employees

STEP 4: Update Your Policies and Procedures (Cont.)

- Update workplace safety policies to address OSHA and CDC guidance
- Promptly address possible issues around discrimination/harassment based on disability, or race/national origin perceived to be affiliated with an affected area
- Develop supervisor and employee training programs on new policies, procedures and expectations in terms of employee hygiene and conduct
- Develop a communication strategy for providing information and resources to employees related to COVID-19 and its impact on the workplace

STEP 5: Review Your Business and Analyze Potential Legal Liability/Claims

- Assess and revise your annual business plans and budgets to account for the business interruption caused by COVID-19
- Review opportunities available to your business under the CARES Act
- Review insurance policies to determine whether your business has coverage for the business interruption caused by COVID-19 and whether to add or increase such coverage
- Coordinate with your workers' compensation carrier to respond to claims of work-related exposure to COVID-19
- Review contracts to assess the consequences of nonperformance, nonpayment, etc. applicability of force majeure provisions
- Monitor solvency of creditors to determine threat of insolvency
- Develop or revise your emergency response plan in order to respond to another COVID-19 or other pandemic outbreak
- Closely monitor ever-changing government orders and requirements applicable to your business and/or employees

Buchanan's Back-2-Business Team can help you through all of these steps to provide customized guidance based on your specific company's needs. Find out how we can help:

CoronavirusResponseTeam@bipc.com

BIPC.com/covid-19