

DuaneMorris®

www.duanemorris.com

2020 Employer Response to the Coronavirus Webinar*

March 19, 2020

prepared for



presented by

Jonathan A Segal, Esquire

*No statements made in this seminar or in the PowerPoint or other materials should be construed as legal advice or as pertaining to specific factual situations. Further, participation in this seminar or any question and answer (during or after the seminar) does not establish an attorney-client relationship between Duane Morris LLP and any participant (or his or her employer).

©2020 Duane Morris LLP. All Rights Reserved. Duane Morris is a registered service mark of Duane Morris LLP.

Duane Morris – Firm Offices | New York | London | Singapore | Philadelphia | Chicago | Washington, D.C. | San Francisco | Silicon Valley | San Diego | Los Angeles | Taiwan | Boston | Houston | Austin | Hanoi | Ho Chi Minh City | Shanghai | Atlanta | Baltimore | Wilmington | Miami | Boca Raton | Pittsburgh | Newark | Las Vegas | Cherry Hill | Lake Tahoe | Myanmar | Oman | Duane Morris – Affiliate Offices | Mexico City | Sri Lanka | Duane Morris LLP – A Delaware limited liability partnership

Important Notice

1. This power point and discussion of its content during the webinar should not be construed as:
 - a. Legal advice in general or pertaining to specific factual circumstances in particular; or
 - b. Medical/infection control advice
2. You are strongly recommended to consult with a health care professional/infection control specialist with regard to issues discussed in this webinar

Circumstances that May Give Rise to Rapid Response Plan*

1. COVID-19 Diagnosis
2. Close Contact With Person with COVID-19 Diagnosis
3. Individual has [some/all] symptoms but no test or confirmed COVID-19 Diagnosis:
<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

*Recommend working with health care professional/infection control specialist in developing list (and scope) of circumstances

Circumstances That May Give Rise to Rapid Response Plan

4. Close contact with person having [some/all] symptoms but no test or confirmed COVID-19 Diagnosis
5. Return from travel [business or personal]
 - a. [All] International
 - b. Cruise
 - c. Domestic travel to be defined (with initial focus on travel by airplane)
6. Other circumstances as may be recommended by health care professional/infection control specialist

Comments with Regard to Circumstances

1. Need to consider each circumstance with regard to not only employees but also non-employees in the workplace, for example, an agency employee or an independent contractor
2. Need to consider time frame for each circumstance, for example, employee came into close contact with person known to have a COVID-19 diagnosis within last 14 days

Rapid Response Plan

1. Develop Rapid Response Team (“RRT”)
 - a. Composition
 - b. Key function—to respond to:
 - i. Report/disclosure of “circumstance”
 - ii. Other scenarios that may be reported/disclosed
 - c. Duty of managers to report to RRT concerns/disclosures made to them

Rapid Response Plan

2. RRT should develop a check list of issues that may arise in a “circumstance”
 - a. Team should convene to implement plan in response to circumstance and work with others to monitor implementation of plan
 - b. To the extent reasonably possible, RRT should document steps, thought process, etc.

Rapid Response Plan

3. The following are steps that ordinarily are recommended in response to a circumstance:
 - a. Remove individual from workplace and quarantine
 - b. Discuss with individual with whom he or she has had close contact
 - c. Determine who else should be subject to quarantine and then implement quarantine

*

Rapid Response Plan

3. The following are steps that are ordinarily recommended in response to a circumstance:
 - d. Issue communication(s)
 - i. Almost always keeping name of individual confidential
 - ii. May result in additional quarantines
 - e. Deep clean
 - f. Other steps as recommended by health care professional/infection control specialist, who should advise on previous steps, too

Rapid Response Plan

4. A few miscellaneous points:
 - a. RRT team will need to be prepared to hear, respond to and document other scenarios that may arise, even if they do not rise to the level of a circumstance as defined in this power point (for example, close contact with someone who is close contact of person with COVID-19 diagnosis)
 - i. Potential for safety precedent
 - ii. Document circumstances

Rapid Response Plan

4. A few miscellaneous points:
 - b. Any matrix or any other document developed for RRT should include appropriate language to provide appropriate wiggle room to take into account specific circumstances; be careful of, for example:
 - i. Absolutes
 - ii. Too much detail

Quarantine (includes isolation as defined by CDC)

1. How long will it be
2. Whether it will be paid—factors include, but are not limited to:
 - a. Whether employee is sick
 - b. Whether employee works remotely
 - c. Whether employee is exempt
3. Will remote work be permitted
4. What communications will take place
5. Conditions for return to work

What if employee (or a family member) becomes sick during quarantine?

1. FMLA and/or state leave laws may apply
2. Sick/PTO days (employer-provided and/or or government-mandated)
3. Insurance (employer STD; state insurance)
4. Workers' compensation (unclear)
5. Benefits under pending bills, if enacted
 - a. Federal: Families First Coronavirus Response Act
 - b. A number of states are considering their own bills

Working Remotely—Primary Legal Issues

1. ADA precedent
2. Payment Obligations: to be discussed
3. Expenses incurred while working remotely, such as:
 - a. Equipment
 - b. Charges
4. Workplace Safety
5. Workers' Compensation
6. Information Security
7. Return to “workplace”

Compensation During Remote Work: Exempt

1. FLSA
 - a. General rule: work week rule
 - b. Practical application
2. Consider the following even if no duty to pay under FLSA
 - a. Employment Agreement
 - b. Compensation Policy
 - c. Immigration considerations

Compensation During Remote Work: Non-Exempt

1. General rule:

- a. Pay only for time worked
- b. Minimize wage and hour risk, for example, by:
 - i. Limiting time period in which employee may work each day absent approval
 - ii. Require “logging in and out” if feasible (and developing alternative vehicle/rules if not feasible)
 - iii. Ask daily/weekly: any time worked not reflected in time recorded/presumed?

Compensation During Remote Work: Non-Exempt

2. Possible exceptions to general rules
 - a. Collective bargaining agreement
 - b. Immigration
 - c. Salaried Non-Exempt (how framed and implemented)
 - d. Compensation Policy

Compensation During Quarantine

1. If employee works remotely during quarantine, same considerations apply
2. If employee does not work remotely during quarantine, same legal considerations generally apply, for example only: exempt employees and salary basis under FLSA

Conclusion

1. Wash your hands regularly as recommended by CDC
2. Engage in social distancing as recommended by the CDC
3. Big thank you to PA Chamber of Business & Industry

DuaneMorris®

www.duanemorris.com

Thank you!

Follow me on Twitter @Jonathan__HR__Law

©2020 Duane Morris LLP. All Rights Reserved. Duane Morris is a registered service mark of Duane Morris LLP.

Duane Morris – Firm Offices | New York | London | Singapore | Philadelphia | Chicago | Washington, D.C. | San Francisco | Silicon Valley | San Diego | Los Angeles | Taiwan | Boston | Houston | Austin | Hanoi | Ho Chi Minh City | Shanghai | Atlanta | Baltimore
Wilmington | Miami | Boca Raton | Pittsburgh | Newark | Las Vegas | Cherry Hill | Lake Tahoe | Myanmar | Oman | Duane Morris – Affiliate Offices | Mexico City | Sri Lanka | Duane Morris LLP – A Delaware limited liability partnership