A NEW WAY FORWARD: REIMAGINING THE NONPROFIT WORKPLACE

Virtual Engagement Series
A NEW WAY FORWARD:
REIMAGINING THE NONPROFIT WORKPLACE

July 16
10 - 11:30 a.m.

HR Policies, Procedures & Practices for Workspace Re-Entry
Today’s Program

• Welcome & Housekeeping Notes

• Panelist Presentations

• Q&A with the Panel

• Closing Comments
Housekeeping Notes

• This webinar is being recorded.
• Q&A time is built into each portion of the program.
• Use the “Chat” function to share your questions anytime.
• Conversations are based on our best understanding at this time.
• The attorney presentation features legal guidance, not legal advice.
Next in Our Series

Upcoming Topics Include:

Leveraging Technology and Helpful Tips for taking the Workplace Virtual

Best Practices for Nonprofit Boards in Strategic Re-Entry
Today’s Presenters

Alexis Davis  
Client Management Associate & Paralegal, Michigan Community Resources

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Clark Hill, PLC

Lara Das  
HR Manager, W.K. Kellogg Foundation

Chris Dilley  
General Manager, People Food Co-op (PFC) Kalamazoo
ESSENTIAL CONSIDERATIONS FOR RETURNING TO WORK

Anne-Marie Vercruysse Welch, Esq., Clark Hill PLC
Reopening the Workplace: A Roadmap

- Preliminary considerations
- Preparing the workplace for safe re-entry
  - OSHA/ CDC guidelines
  - State Health Authorities
  - Executive Orders
- Hiring/Rehiring
  - Dealing with Workers’ Anxiety
  - Refusals to work
  - Telework, accommodations & leaves
- Dealing with workplace exposures or workers who get sick
- Takeaways/ Action steps
Preparing the Workplace for Safe Re-Entry
• 69% of the respondents trust their employer to make the best decision on when they should return.

• 74% want their work facility to be thoroughly and regularly cleaned and disinfected.

• 63% want assurance from the Centers for Disease Control and Prevention that it’s OK to return.

• 62% want employers to set strict policies on who can come into the workplace (e.g., barring anyone who is sick or has recently traveled).

• 57% want facemasks to be made available.

• More than 60% want the options to maintain physical distancing of at least 6 feet at work and wear a mask.
Preparing the Workplace for Safe Re-Entry

Look to:
- What does your State/Local law require?
- What does OSHA recommend?
- What does the CDC recommend?
- What does the EEOC allow?
- What do your customers require?
- What does your insurance require?
- Industry needs or guidelines
OSHA Recommends Preparation of RTW Pandemic Policy: Components

- Infectious Disease Preparedness and Response Plan
- Basic Infection Prevention Measures
- Prompt Identification and Isolation of Sick People
- Communication Plan
- Workplace Controls
- Follow OSHA Standards
OSHA: Develop, Implement, and Communicate about Workplace Flexibilities and Protections

“Be aware of workers’ concerns . . . that may arise during infectious disease outbreaks. Provide adequate, usable, and appropriate training, education, and informational material about business-essential job functions and worker health and safety, including proper hygiene practices and the use of any workplace controls (including PPE). Informed workers who feel safe at work are less likely to be unnecessarily absent.”
Workplace Testing

• Employers may test for COVID-19 but it must be an accurate test
• Employers may take temperatures
• Employers may ask about symptoms
• Develop a plan to protect employee privacy and respond to results
Fitness for Duty

- Permissible
- BUT...“doctors and other health care professionals may be too busy . . . to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.”
- Reminder: Telemedicine has supplemented more traditional methods of health care and the employer should be flexible with accepting documentation
Protective Gear

“An employer may require employees to wear protective gear (for example, masks and gloves) . . .”

Let’s talk a little bit more about masks…
CDC Recommendations: Consider Requiring Face Coverings

- Nonmedical grade face coverings are not PPE according to OSHA (not regulated)
- They may prevent the wearer from spreading the virus (carriers without a positive test or symptoms)
- Some states may require and dictate terms
- Employers may require
- If require, consider subsidy for materials and cleaning, training. Post CDC guidance.
- Check industry requirements
Employers should discuss requests for accommodation due to a disability (e.g. non-latex gloves, modified face masks for interpreters) or sincerely held religious relief (e.g. modified equipment due to religious garb) to see if it is feasible and does not pose an undue hardship on the operation of the employer’s business.

• Do you have an accommodation request form?
Handling Refusals to RTW
Handling Refusals to RTW

- What reason does the employee give:
  - Fear
  - PPE
  - Requested leave
  - Need for accommodation
  - Make more $ on unemployment

There may be overlap between reasons!
“I’m afraid to come to work.”

• Plain fear of personal exposure generally isn’t enough to refuse to return, **BUT** have a conversation
  
  • Make sure the reason underlying the fear isn’t legally qualifying (e.g., FFCRA, ADA, etc.)
  • What if the fear really connects to a live-in family member?
  • What if the employee has a pre-existing condition (anxiety, panic attacks)
  • Documentation
“I want to take leave.”

3 step-inquiry:
- What’s the reason?
- What does the law require?
  - Basis for request
  - FFCRA-next slides
  - Michigan Paid Sick Leave?
  - ADA/FMLA?
- What do your policies say?
Families First Coronavirus Response Act (FFCRA)

• Emergency Paid Sick Leave/FMLA+
FFCRA Entitlement when Unable to Work

• 80 hours of PAID leave at REGULAR RATE because (1) of quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or (2) employee is experiencing COVID-19 symptoms and seeking a medical diagnosis; or

• 80 of PAID sick leave at 2/3rds of REGULAR RATE because of a bona fide need to care for an individual subject to quarantine or to care for a child whose child care provider unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by HHS; and

• Up to an additional 10 weeks of PAID FMLA leave at 2/3rds of REGULAR RATE for employees, who have been employed for at least 30 calendar days, where their child care provider is unavailable for reasons related to COVID-19.
FFCRA

- Intersection between rehiring & eligibility
  - <500 employee threshold (includes full & part-time, and those on leave)
  - Count is made at time leave is sought
  - Under 50 employee exception for child care leave
“I need an accommodation.”

• Remember the usual considerations under the ADA:
  • Definition of disability –
  • What are the essential functions of the position (job description?)
  • Interactive process, including obtaining medical information
  • Undue hardship – balance may not be the same now according to the EEOC
  • What about telework? Funny you should ask …
Teleworking
Teleworking: Has it been successful and will it continue?

• 88% of office workers working from home >1 day/week during the pandemic.
• People feel they perform equally well at home as they do in the office (70% are satisfied in both places) in both solo and group work, but they are more satisfied collaborating in person.
• 77% of respondents indicated that they gain back more than a half-hour of productivity from unwanted interruptions.
• 77% of employees want to continue working from home at least once a week. 16% don’t want to come back to the office at all. Only 6% say they don’t want to work from home in the future.
• U.S. employees want to continue working from home an average of 2.5 days a week.
Teleworking

• Maybe you’re already there
• Considerations are many:
  • Productivity
  • Employee Engagement
  • Social distancing needs
  • Data security
  • Monitoring
  • Wage and hour
  • Time Tracking/Recording Method
  • Training
  • ESSENTIAL FUNCTIONS
Takeaways/ Action Steps
Takeaways/ Action Steps

- Review CDC, OSHA and State and Local Authorities to determine any necessary steps for reopening
- Understand any customer or insurer requirements
- Consider Industry Specific Requirements
- Assess risk of employees contracting COVID-19 in the workplace and draft policies and procedures to minimize that risk, including:
  - Health screening
  - Environmental controls (social distancing, hygiene, PPE, travel)
  - Procedures for isolating confirmed or symptomatic employees
- Prepare communications to employees regarding steps to assure their safety
- Draft or review your accommodation request form
- Revisit your attendance and call in procedure policies prior to redistribution to employees
Takeaways/ Action Steps

- Create or update policies
- Train managers and supervisors
- Communicate to employees or customers, vendors, suppliers or other third-parties
- Make sure to hang FFCRA poster and have FFCRA compliant forms to collect information necessary to obtain tax credit/substantiate leave
- Ensure you are regularly and consistently up-to-date on recommendations and guidance, especially from the CDC or Health Authority
- Don’t forget fundamentals: consistency, documentation, objective evidence, following traditional legal requirements
- Exercise Flexibility and Use Common Sense
Thank you

To help provide perspective and education on COVID-19, Clark Hill attorneys have produced thought leadership to assist clients through this difficult and rapidly-changing time.

clarkhill.com/pages/covid-19

Legal disclaimer
This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.
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THANK YOU

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Lara Das

HR Manager,
W.K. Kellogg Foundation
“Use the money as you please so long as it promotes the health, happiness and well-being of children.”

~ W.K. Kellogg, 1930
WKKF Priorities

Working Families

Thriving Children

Equitable Communities
Business Continuity Strategies

**EXECUTE**
- Driving toward outcomes and the foundation’s Ends
- Making decisions with stakeholders in mind
- Contributing your talents and knowledge to the work
- Collaborating with colleagues, teams, grantees, partners and communities

**ENGAGE**
- Being accountable for your role and to your team
- Communicating to develop shared understanding and for impact
- Demonstrating agility in day-to-day work
- Committing to mindfulness, resilience and ongoing personal development

**ORGANIZATIONAL RESPONSE STRATEGIES**
- Prioritizing employee safety and well-being
- Keeping channels of communication open
- Following legislative updates (SECURE, FFCRA, CARES)
- Assessing grant-making priorities
- Ensuring access to technology
- Engaging through town hall meetings
- Emphasizing EAP and wellness program services
- Encouraging frequent conversations with leaders
Emergence Principles

- Prioritizing the health and safety of our staff, contractors, our families and communities.
- Factoring individual health and family circumstances into all equations.
- Taking a gradual, cautious approach.
- Relying on data and expert guidance.
- Remaining flexible and adaptive as the situation develops and then evolves over time.
Staff Snapshot Data - June 2020

STAFF FEEDBACK ON KEY COVID-19 QUESTIONS

74% 
Do you have concerns about returning to your WKKF office?

62% 
Do you anticipate structural, systemic or personal barriers that require special consideration upon returning to your WKKF office?

75% 
I would prefer to work from home full-time if the offer was extended to me.

“I am concerned about what it will look like to social distance, wear face masks, etc. If we can’t socially be together at work I would prefer to continue working from home where Zoom has allowed us to safely be together.”

“I am ready to return to the office!”

“The low-activity Fridays have been helpful, giving us a space to read, learn and do the work. Suggest we keep this. Also, no meetings should end past 5 p.m. to ensure work-life balance.”

“My family’s childcare and summer programs are closed right now. Again, if we open prior to a vaccine, I will have to continue to work from home, as two parents are high risk... that I help care for.”

“I am concerned that my colleagues will travel even if it is not necessary which puts those that work in the office even if they do not travel at risk.”
Uncontrolled pandemic with continued fluctuation and resurgence happening as states and countries begin their phased re-openings.

An effective vaccine has been discovered and is readily available.

Phase I
March-December 2020*
Uncontrolled pandemic with continued fluctuation and resurgence happening as states and countries begin their phased re-openings.

Phase II
Critical health markers (significant decline in hospitalizations, sufficient testing and contact tracing) in each WKKF place, government permissions and expert guidance indicate appropriate conditions for employees to return to offices with strict mitigation efforts in place.

Phase III
When conditions permit
An effective vaccine has been discovered and is readily available.

*Phase 1 projected to last through Dec. 31, 2020
Emergence Planning Domains

1. People
   Key policies, practices and protocols aligned to COVID-19 regulations as well as ensuring workforce remains cohesive.

2. Facilities
   Reassess design and physical infrastructure of WKKF offices following COVID-19 health and safety protocols, procedures and practices.

3. Business Continuity
   Strong business continuity and new ways of working that respond to challenges of COVID-19 and promotes productivity, positive staff engagement, cohesion, alignment, clarity of communications and well managed change.
## Organizational Strengths

<table>
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<tr>
<th>Networked Organization</th>
<th>Flexible and Remote Work</th>
<th>Place-based Teams</th>
<th>Engaged Workforce</th>
<th>Technology Infrastructure</th>
<th>Monitoring System</th>
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<tbody>
<tr>
<td>Networked-based organization model that is highly collaborative, agile, adaptable, responsive and accountable.</td>
<td>An established and robust flexible work program that drives efficiency and attracts and retains top talent.</td>
<td>Staff who are in proximity with the grantees, children and communities we serve.</td>
<td>Workforce highly dedicated to our mission and deeply grounded in WKKF values and DNA.</td>
<td>A comprehensive technology infrastructure that facilitates productivity, connectivity and engagement.</td>
<td>Monitoring and metric system designed to measure accountability toward Ends, productivity and organizational health.</td>
</tr>
</tbody>
</table>
Key Priorities

1. Establish a conditions-based organizational strategy
2. Engage with employees, and enable them to succeed
3. Ask key questions
4. Be ready to flex, adapt and be agile
Chris Dilley

General Manager, People Food Co-op (PFC)
Kalamazoo
COVID -19 RESPONSE
PFC
Natural Grocery & Deli | Farmers Market
Farmers Markets

1204 Bank Street
Kalamazoo, MI, 49001
www.pfcmarkets.com
COVID-19: Adapting Quickly
Pressures and Concerns:

New cases • United States • Michigan • All time
Pressures and Concerns:

- Latest Information
- Staff Safety
- Customer Safety & Confidence
- Budget
- Rapid Change
COVID Resources
Pandemic Plans

• Market & Store:
  − Phased
  − Supplies
  − Communication
  − Department level needs
  − Staff symptom reporting

• Staff Support:
  − PPP
  − S/Hero pay
  − EFMLA
Changes to Customer Expectations

- Masks
- Gloves
- Capacity
- Social Distance
Changes to Customer Expectations
Changes to Customer Expectations
Changes to Operations: Prepared Foods
Changes to Operations: Innovation
Changes to Operations: Innovation
Q&A
Thank you for being a part of today’s conversation!

Please be sure to complete the evaluation at the end of the session.
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