Employer Liability Issues When Returning to Work from COVID-19

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www.lockelord.com/covid19resourcecenter
Return to Work Considerations

- New rules in the workplace / new normal
- Communicate and set expectations
- ReopeningRI.com and Executive Orders
- Distancing and congregation issues
- Physical configurations or renovations?
- Health and temperature screenings
- Masks
Return to Work Considerations

- Who can still work at home?
- Modified staffing or scheduling
- Business travel
- Are there outside exposures?
- Third-party visitors or vendors
- Contact with other tenants or neighbors
Employer Liability / Workers’ Compensation Protection

- Rhode Island:
  - Employees are limited to the relief provided by the Workers’ Compensation Act for any workplace injuries or harm

- Exclusive remedy

- Can an employee prove how or when exposure occurred?

- Some third-party claims permitted
Employee Health and Safety

- Except for healthcare and emergency responders, OSHA has issued limited guidance for employers regarding COVID-19
  - Follow CDC personal hygiene recommendations
  - Assess workplace hazards
  - Evaluate risk of exposure
  - Select and implement controls

- Despite limited guidance, employers remain duty-bound to provide safe workplaces
Employee Health and Safety

■ OSHA suspended recordkeeping requirements related to COVID-19 for most employers, except:
  ■ Healthcare employers
  ■ Emergency responders
  ■ Correctional institutions

■ All employers must record COVID-19 cases if:
  ■ They have objective evidence that the infection may be work related
  ■ The evidence was reasonably available
Employee Health and Safety

- OSHA issued Interim Enforcement Response Plan for COVID-19
  - Classifies jobs into the following exposure risk categories:
    - High and very high exposure
    - Medium exposure
    - Low exposure

- Exposure incidents at medium or low exposure risk workplaces will not normally result in on-site inspections
Employee Health and Safety

- Regardless of your exposure category, best practice remains observing CDC guidance

- Consider monitoring employee health
  - Testing/screening employees, but also consider the practical limitations of these tests
  - Using health questionnaires
  - Requiring employees to report suspected exposure/infection and implement isolation procedures

- Address employee safety concerns and do not retaliate for concerns raised in good faith
Questions / Locke Lord Contacts

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