


Labor & Employment Update: Preparing Facilities for Operations after COVID-19




COVID-19

Andrea J. Bernard | Karen J. VanderWerff | DeAndre' Harris

April 29, 2020

© 2020 Warner Norcross & Judd LLP
These materials are for educational use only. This is not legal advice and does not create an attorney-client relationship.



Warner Norcross - Judd



Andrea Bernard

- Labor and employment litigator who represents employers in various employment disputes, such as age, gender and race discrimination and retaliation disputes, and harassment, FMLA and disability claims
- Serves as Warner's General Counsel

Warner Norcross - Judd



Karen VanderWerff

- Labor and employment attorney with a focus on employment and occupational health and safety compliance
- Specializes in catastrophic events, fatalities, discrimination and harassment in the workplace
- Represents employers on labor and policy matters involving state and federal health and safety compliance

Warner Norcross - Judd



DeAndre' Harris

- Labor and employment attorney who focuses on disability and leave, wage and hour, discrimination, harassment and retaliation issues
- Guides clients through workplace safety and health issues
- Litigates labor and employment disputes

Warner Norcross - Judd

Overview

- What protocols are needed to operate?
- Do I need to provide employees with personal protective equipment (PPE)?
- Do I need a preparedness and response plan?
- How do I ensure social distancing?
- What if someone displays symptoms of/has COVID-19 after returning?

Warner Norcross - Judd

MI's Revised Stay Home Order

Businesses that remain open for in-person work must follow social distancing practices, including, without limitation:

- Developing a COVID-19 Preparedness and Response Plan;
- Restricting the number of workers on site to those necessary to perform work permitted under the Order;
- Promoting remote work to the fullest extent possible;
- Keeping workers and patrons six feet apart;
- Increasing standards for facility cleaning and disinfection; adopting cleaning and disinfection protocols; and
- Providing non-medical grade face coverings to their workers.

Warner Norcross - Judd

Federal Reopen Plan/Schedule

- Criteria
 - Social distancing, PPE, temperature checks, sanitation, business travel, workplace monitor, policies and procedures for tracing
- Phasing
 - Phase 1: Encourage telework, return in phases, close common areas, minimize non-essential travel, special accommodations for vulnerable populations
 - Phase 2: Encourage telework, close common areas, special accommodations for vulnerable populations
 - Phase 3: Resume unrestricted staffing

Warner Norcross - Judd

The Risks

- Death or illness to employees or their family members
- Criminal Sanctions
- Loss of Customers/Clients
- Civil Liability
- Stigma



Warner Norcross - Judd

Michigan Reopen Considerations

Potential Workplace Controls	
Controlling Access	Symptom Diaries; Temperature Checks; Limits on Visitors
Physical Distancing	Minimizing Present Workers; Closing Common Areas; Limiting Meeting Sizes; Reconfiguring Workspaces
Improved Sanitation and Hygiene	Frequent Cleaning and Disinfection; Handwashing Stations; Limiting Shared Tools
PPE	Cloth face coverings for all workers; Gloves for personal contact, handling shared items; Face shields as necessary
Testing, Tracing, and Isolating	Rapid testing at large workspaces for employees; Worksite contact tracing for positive cases; Supporting employees who need to stay home due to sickness

Warner Norcross - Judd

OSHA/MiOSHA General Duty Clause

Employers must provide a workplace free of "recognized" hazards

- "recognized" either because employer knew better or should have known based on common sense

What are public health officials saying?

Warner Noncross - Judd

MiOSHA's COVID-19 FAQs

Q: What can employees do if their employer is not adhering to the CDC recommendations/guidelines (e.g., providing PPE, disinfecting workplace, working with sick or exposed workers)?

A: CDC materials generally are not mandatory, but MIOSHA may take enforcement action against employers for not following CDC recommendations/guidelines in certain situations.

Warner Noncross - Judd

Baseline Safety Protocols:

Identify baseline safety protocols using:

- OSHA Guidance on Preparing Workplaces for COVID-19;
- CDC Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019; and
- State and Local Public Health Orders/Recommendations.

Warner Noncross - Judd

Baseline Safety Protocols

- Basic infection prevention measures
- Procedures for prompt identification and isolation of sick people
- Review and update policies related to sick leave or other time off



Warner Norcross - Judd

Baseline Safety Protocols

Basic infection prevention measures:

- Promote social distancing;
- Promote frequent handwashing, use of hand sanitizer with 60% alcohol;
- Require workers to stay home if they are sick;
- Encourage respiratory etiquette;
- Provide tissues and no-touch trash cans;
- Discourage the use of shared work tools/equipment, whenever possible;
- Minimize non-essential travel; and
- Adopt routine cleaning & disinfection measures.

Warner Norcross - Judd

Baseline Safety Protocols

Social Distancing:

- Before, during, and after a work shift;
- At entrances and exits;
- In elevators and stairwells;
- In common areas;
- Moving throughout the workspace; and
- During meetings.

Warner Norcross - Judd

Baseline Safety Protocols

Health Screenings/Testing:

- Who
- What
- When
- Where



Warner Norcross - Judd

Baseline Safety Protocols

Individual Masks

- Type of mask
- Optional or required
 - Available to Employees
 - Required Use by Employees

Warner Norcross - Judd

Baseline Safety Protocols

Procedures for prompt identification and isolation of sick people:

- Educate employees about the symptoms of COVID-19;
 - When must they avoid coming to work? What if they travel domestically?
- Develop a protocol for positive cases.



Warner Norcross - Judd

Baseline Safety Protocols

Understanding "close contact" for purposes of isolation:

- Proximity;
- Duration of Exposure;
- Whether the Individual has Symptoms; and
- Whether the Individual was Wearing a Face Mask.

Warner Norcross - Judd

Baseline Safety Protocols

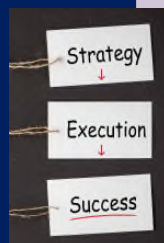
Suspected/Confirmed Positive Cases:

- Designated isolation area/room, then home or medical care;
- Close off employee's workspace and other potentially contaminated areas (48-72 hours);
- Identify and notify exposed employees (while complying with ADA);
- Quarantine exposed employees for a period of 14 days (or until the ill employee receives a negative test);
- Clean and disinfect potentially contaminated areas using EPA-registered chemicals;
- Consult with SDSs and other manufacturer instructions regarding PPE.

Warner Norcross - Judd

Develop a Preparedness & Response Plan

A fully developed and implemented Preparedness and Response Plan is the first and best line of defense to spreading COVID-19 in the workplace.



Warner Norcross - Judd

Develop a P&R Plan

Steps in Developing a Plan:

1. Identify baseline safety protocols
2. Identify worker risk levels
3. Determine additional controls to prevent exposure based on risk level



Warner Noncross - Judd

Develop a P&R Plan

Identify worker risk levels (low, medium, high, very high):

- Which workers have regular contact with others?
- Which workers deal with customers, visitors, deliveries?
- Which workers work side-by-side on machinery or in office cubicles?

Warner Noncross - Judd

Develop a P&R Plan

Industries with medium, high, or very high occupational exposure risks:

- Healthcare;
- Emergency response and public safety;
- Airline operations;
- Retail operations;
- Border protection and transportation security;
- Correctional facility operations;
- Solid waste and wastewater management;
- Environmental (i.e., janitorial services);
- In-home repair services;
- Travel to areas where the virus is spreading.

Warner Noncross - Judd

Develop a P&R Plan

Determine controls based on risk levels:

- Low risk employees:
 - Ordinary PPE;
 - Providing non-medical grade face coverings;
- Medium risk employees:
 - Requiring additional PPE (gloves, face mask/shield, goggles) and consider engineering controls (e.g., sneeze guards, barriers)

Warner Noncross - Judd

Implement the P&R Plan

1. Identify who will be responsible to carry out the Plan (Office/Plant Manager; EHS Manager; HR; Security);
2. Set reasonable but swift deadlines for completion;
3. Follow up and follow through.

Warner Noncross - Judd

Update the P&R Plan

- Learning new information every day
- The CDC guidance changes
- The Governor's orders change
- The local health regulations change

Warner Noncross - Judd

Develop a P&R Plan – Do's

Do:

- Tailor the plan to your operations and the risk level of your workers
- Rely on Guidance Provided by the CDC, OSHA, and State/Local Governments



Warner Norcross - Judd

Develop a P&R Plan – Don'ts

DO NOT:

- Use only a template or adopt another company's plan
- Conduct a one-size fits all hazard assessment
- Fail to implement the plan



Warner Norcross - Judd

Questions

- What if cleaning/disinfection supplies are sold out?
- What if disposable face masks are sold out?



Warner Norcross - Judd

Questions

- What type of cleaning are employers required to do before employees return to work?
- What about after returned to work?



Warner Norcross - Judd

Questions

- Must we require employees who use public transportation to/from work to stay home?



Warner Norcross - Judd

Questions

- Should we have separate policies for office and field personnel?



Warner Norcross - Judd

Upcoming Warner Webinars


- **April 30:** Insurance Coverage for Emerging COVID-19 Claims Against Businesses
- **May 1:** Managing your Supply Chains After COVID-19
- **May 6:** Employment Litigation After COVID-19
- **May 7:** COVID-19 Strategies for Reducing Your Legal Spend
- **May 12:** Gaining Access to Government Data During COVID-19 with FOIA and OMA
- Visit WNJ COVID-19 Resource Center at www.wnj.com/About-Us/COVID-19-Updates

Email covid@wnj.com to subscribe to Warner's eAlerts and webinars.



Warner Noncross - Judd


Be Careful Out There



COVID-19

Andrea J. Bernard | abernard@wnj.com | 616.752.2199
Karen J. VanderWerff | kvanderwerff@wnj.com | 616.752.2183
DeAndre' Harris | dharris@wnj.com | 616.752.2331

© 2020 Warner Noncross - Judd LLP
These materials are for educational use only. This is not legal advice and does not create an attorney-client relationship.



Warner Noncross - Judd
