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A COVID-19 “TO-DO” LIST – General Guidance for Businesses

In addition to trying to get one’s arms around the COVID-19 pandemic and what it means for all of us, the effect of the pandemic on our families, our businesses and our communities is daunting.

There is a plethora of information available. But where does a business begin in deciding what “best practices” that it will put in place for its employees and its customers? In addition to coping with the current challenges, it is clear that, in the future, when the immediate focus is on crisis control, we may expect a re-focus on what the management of a business did during that crisis.

Some of the areas that might be involved in a business plan for operations during this period might include:

1. Establishing protocols to meet recommended guidelines for employee and customer safety and to base those procedures on a specific standard.
2. Future inquiries and administrative hearings to analyze whether (for example) did a business correctly identify and implement required notices and provide information on “leave eligibility”? Or, did a business follow governmental requirements if it was permitted to remain in operation as an “essential business,” as defined by the applicable regulation or governmental order? If furloughs or layoffs were used, did it implement the correct protocols regarding applicable notices under WARN statutes? Did a business post the proper notices as required by law and recent regulations?
3. Is your business currently operating in conformity with various closure orders and designations that identify whether a business is “essential.” If you are operating, what internal operating protocols did you establish to maintain protections for your employees and customers?

Your attorneys at BB&Y can help you navigate the ongoing changes to the classification of a business as “essential,” or “non-essential,” or a business that, by governmental order, is “closed” to the public.

We would recommend you consult the general guidance provided through both Governor Hogan’s Executive Orders, and the interpretative guidance that is provided by his Office of General Counsel, both of which that can be accessed through this link:

<https://governor.maryland.gov/covid-19-pandemic-orders-and-guidance/>

Governor Hogan’s Executive Orders regarding essential and non-essential business

classifications are grounded in the CISA regulations which can, in turn, be accessed through these links:

Identifying Critical Infrastructure During COVID-19 (CISA):

<https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>

and

Guidance on the Essential Critical Infrastructure Workforce:

<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce#download>

Future Consequences

The future consequences for incorrect decisions as to how your own business is classified and how you are conducting businesses that can continue to be operational, may be substantial.

Maryland has implemented procedures for the enforcement of the Governor's Orders, as discussed in several of his press conferences and as provided for in a specific Executive Order released on April 5, 2020; that Order can be accessed here:

<https://governor.maryland.gov/wp-content/uploads/2020/04/Delegation-to-County-Health-Officials-4.5.20.pdf>

Even if your business is “closed to the public,” there are steps that may be taken to maintain the infrastructure, including buildings, payroll operations, and web presence, and IT to manage telecommuting and security.

Let us know if we can help you to assess your business classification and the procedures that may apply to it and to your operations. Please call our main numbers — 410-838-5500, or 410-879-2220, or see <https://lawbrown.com/about-brown-brown-young.php?page=covid> for further details:

12 Steps Your Business Needs to Take

Next, what are the steps that you, as the employer, need to take during this pandemic? How will you organize your staff to help you to identify steps, draft protocols and policies to address the areas and questions that will confront you on an ongoing basis?

Your attorneys at Brown, Brown & Young, P.A., are here to help you in these and in other areas; but first, to get you started, please review the following “**12 Steps**” list of procedures we strongly advise you integrate into your business.

We understand that this outline will not “fit” every business, but it is intended to help you, the employer, identify the areas where you will need to focus on, and also give you a “road map” to help you in your operations during this challenging period.

As always, we would be happy to discuss how many of them you should institute, and how to do that.

1. Conduct both an initial & an ongoing assessment of risk.

First, evaluate the risk level your business engenders to employees. Then, institute processes that assess the level of risk to your workforce on an ongoing basis. This should include evaluating different areas within each business sites, if your company maintains several physical sites or has different buildings within one site.

2. Communicate with your employees & update them on an ongoing basis.

The information you communicate should include the risk and impact of the virus, based on current information available at official (governmental web sites and sources). You should also implement hygiene policies as suggested, and announce and enforce internal policies and remind your employees to follow them. The CDC has ongoing recommendations, and although OSHA has not yet incorporated these recommendations into a regulation or formal guidance, at present the CDC guidelines as to protocols and cleaning materials provides the “standard.”

The CDC Resources for Businesses and Employers may be found at:

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

3. Keep Your Processes Up-to-Date.

Things are changing rapidly, so you should put a process in place to stay current on status of the virus in your immediate community, and in those states in which you do business, or have operations. For instance, for the State of Maryland, Governor Hogan’s office has created a specific web site where each of his Executive Orders, as well as Interpretative Guidance, can be accessed:

<https://governor.maryland.gov/covid-19-pandemic-orders-and-guidance/>

For Harford County specifically, monitor these sites:

Harford County Executive Barry Glassman updates:

<https://www.harfordcountymd.gov/2823/COVID-19-Resources>

Send an e-mail to: citizensaffairs@harfordcountymd.gov for specific inquires, or call 410.638-3420.

Review alerts and recommendations from these sites and from the CDC:

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

as well as alerts and recommendations from other federal, state and local authorities.

4. Review your operational policies.

For example, you might put temporary business travel restrictions in place, especially in light of local (state to state re-entry self-quarantining orders), and verify current

leave balances for employees under both pre-pandemic levels, and as those leave options have been adjusted by the Families First Coronavirus Relief Act (if your business is at 499 employees or less); here is the link to that information:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

5. Post required notices & risk information and communicate about it.

Numerous statutes being enacted on a continual basis, such as the Families First Coronavirus Response Act, includes the requirement for businesses to POST various notifications.

The following site provides access to the “posters” that must be placed in their workplaces, by employers affected by the act:

https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Here are CDC-approved notices, fact sheets and posters about hand-washing:

<https://www.cdc.gov/handwashing/fact-sheets.html>

<https://www.cdc.gov/handwashing/posters.html>

Here are CDC-approved information on masks and how to make them:

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/DIY-cloth-face-covering-instructions.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

Meanwhile, you should post all information available, and keep it current, while at the same time communicating directly with your employees. For example, to educate your employees and your customers on current procedures, including restrictions for public entry and your policies for visitors to the premises, you might use:

- workplace announcement boards;
- company personnel meetings;
- signage at points of entry.

We would recommend that in making those decisions you refer to the CDC guidelines and local governmental recommendations, to minimize risk of infection or exposure to infection, and prepare related notice(s) to visitors.

6. Develop emergency communication procedures.

It is important for your business to develop these types of procedures. Examples you might consider installing include:

- An employee or customer “hotline”;
- A dedicated web page;
- A “key staff” e-mail address option on that web site;
- A text messaging system.

In all these cases or steps, management should designate and train an individual (or,

in the case of large operations or having several locations or construction site, multiple individuals), a department or an on-site manager, as the point(s) of contact; you must train those people and front-line managers on proper communications to employees, including the “FAQs” to common operational and COVID-19-related inquiries.

7. Make sure your employees know the facts.

Both the CDC and the State of Maryland have developed web sites that can address the general “Facts” on the current pandemic: here is the Maryland version:
<https://coronavirus.maryland.gov/>

Johns Hopkins University has established: <https://coronavirus.jhu.edu/> . On this web site you can see real-time numbers on the epidemic, down to the level of a specific county (with a life Infographic).

You must also, in advance, make sure your employees know whom they should contact for their questions regarding availability of benefits, including healthcare coverage, leave, vacations, etc.

8. Comply & enforce in a non-discriminatory manner.

Remind everyone in the “chain” that all policies and the procedures to implement those policies MUST be enforced in a non-discriminatory manner. You cannot not tolerate, or afford to tolerate, in your frontline or in your supervisors, any forms of discrimination, retaliation or harassment.

9. Clean deeply!

Confirm that your business’s cleaning and maintenance schedules meet the recommended criteria for “deep cleaning” for common areas, restrooms, employee workspaces, etc.

Consult the recommended cleaners recommended by the CDC through this link:
<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

10. Plan in advance for when the virus strikes your business.

Implement procedures to be able to send employees or customers home in the event that an individual begins to feel unwell, or reports on recent travel, symptoms, or a family member’s illness.

Determine your policies as to when your employees return to the workplace after exposure, illness, quarantine. Your Human Resources department or staff need to stay abreast of the permissibility and recommendations for testing and other health-related inquiries as well as the restrictions against disclosures, to protect an employee’s privacy, and also statutory prohibitions against inadvertent or intentional

disclosures.

Review reporting and record-keeping requirements under OSHA and your state. Your Human Resources department or staff also needs to determine the policies it will put in place before, during and after the event of an employee infection or exposure.

11. Adhere to strict compliance with all advisories, regulations and laws.

Your business should become familiar with the CDC updates on handling employees or customers who become ill on premises; please consult this web page:

<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>

For an important “poster” about what you should or should not do in the case of exposure to COVID-19, for both employees and employers, see:

https://www.cdc.gov/coronavirus/2019-ncov/downloads/Essential-Critical-Workers_Dos-and-Donts.pdf

Review your current Leave Policies with your Human Resources department or staff; this is a new area of law, and your HR department or staff may benefit from outside guidance on the changing regulations.

You will also need to make sure that both HR and your “front-line” supervisors — anyone who deals with employees — are updated and committed to staying in compliance with applicable laws, including paid sick leave, state family leave, FMLA, and now FFCRA, and of course, ADA (especially when the company is using remote workplace programs).

Now is an excellent time for your Human Resources department or staff to identify your employees’ current Paid Time Off (PTO) eligibility. Decide what your policy is related to an employee’s ability and the conditions that allow an employee to take unpaid leave; you should also consider its impact on your business and on your customer relations.

If you are considering instituting a remote or teleworking policy, make sure it includes confidentiality of client information protections, a security requirement, and portal capacity issues, as well as an attendance reporting policy that meets FLSA, ADA, sick leave and disability laws.

Review your Workers’ Compensation/disability policies, health care, motor vehicle coverage and Premises Liability policies with your providers and confirm coverage(s).

12. Determine your “essential” & “non-essential positions” practices.

What will your company’s policy in each case be, as to office closures (temporary or permanent) and leave (with/without pay). How will you formulate practices to prevent employees in non-essential and salaried positions from performing work (both exempt and non-exempt) during a furlough or other leave?

Also — please be aware that, based on the options that you may be contemplating, regarding temporary or permanent layoffs or reductions in staff, you may be subject to WARN Act/Maryland Unemployment Notice “triggers.”

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The above “**12 steps**” list is not intended to be the final word, or the total list of steps that business owners and employers should take; it is intended only as general guidance, and is not legal advice.

However, steps like these — ideas, guidelines and suggestions that can be adjusted to suit your own company’s needs — can be discussed as your “game plan.”

If you have questions regarding these issues, please feel free to call us. We would be happy to assist you as needed. We can help you through the mass of information that is available, and assist you in creating a plan that fits your specific business situation.

We would encourage you to contact our office so that we can address your specific questions. Please call our main number — 410-838-5500 — or, for further details regarding communications with specific members of the firm, please visit:

<https://lawbrown.com/about-brown-brown-young.php?page=covid#contact>

Thank you for your trust throughout the almost-120-years that our firm has been in practice. Our top priorities have always included the health and safety of our employees, business partners, clients and the community we are privileged to be a part of, and to serve. We will here for you — during and after this period of uncertainty.

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