This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation. In these uncertain times, the laws and regulations are constantly changing.

Employment Issues to Consider as Nonprofits Get Ready to Re-Open after COVID-19

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After weeks (if not months) of state "stay-at-home" and "shelter-in-place" orders, social distancing mandates and telework, there is a light at the end of the tunnel for nonprofits looking to get back to the business of helping others *in their workplace*. Although each organization needs to determine for itself when it is ready to revive in-person operations, nonprofits should consider how to do so in a manner that minimizes legal risk. Consideration should be given to requirements or recommendations issued by federal and state government officials, including the U.S. Department of Labor (DOL) and the CDC, which endorses a phased re-opening.

Key Notes:

Issue spotting key employment issues as nonprofits prepare to return employees and volunteers to their physical workspace in the wake of COVID-19 closures.

For most organizations, re-opening will not occur overnight and may involve gradual steps. In preparation, it is important for nonprofits to have a plan in place that addresses a wide range of topics and that is tailored to the workforce and workspace. Below are some key areas for employment concern.

The Physical Office Space and Returning Employees and Volunteers

- Consider de-densification. Depending on the nature of the organization and its operations, consider an incremental return to operations by assigning teams of employees to physically work in the office or workspace, while others continue to work remotely (and then swap) for a designated period of time. When determining which employees first return to the physical workspace, the decision should be based on legitimate operational needs and not on employees' protected classifications, such as age. Organizations may consider staggering shift times and meal and rest breaks (while maintaining compliance with state law requirements).

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- <u>Confirm compliance with social distancing guidelines</u>. Before any employee or volunteer sets foot back into the workplace, audit whether the physical space allows (or encourages) employees and volunteers to comply with social distancing guidelines. Spread out workstations where possible and designate six feet of distance where lines are likely to form, such as near entrances, timeclocks and in cafeterias. The CDC recommends that common areas be closed or that a plan be put in place to limit congregation in those areas. For example, in eating areas, all or a portion of the tables or chairs may need to be removed. Limit in-person meetings to a small number of attendees and only as needed. To the extent possible, curtail visitor access to the workplace. Where in-person visitor access is mission-critical, consider requiring a visitor self-screening questionnaire to identify potential risk of exposure.

- <u>Prepare with PPE</u>. Nonprofits can require employees and volunteers to wear protective gear (for example, masks and gloves) and observe infection control practices, such as regular hand washing. Organizations should endeavor to follow applicable DOL guidance. Ensure that the workplace is sufficiently stocked with the necessary sanitization and protective equipment, including soap, hand sanitizer, disinfectant wipes and potentially masks for employees. Schedule frequent and regular cleaning of high traffic areas like shared equipment, timeclocks, kitchens and cafeterias, water coolers, doors, bathrooms and copy machines.

Employee Health and Welfare

- <u>Medical clearance for returning employees</u>. If an employee is confirmed or suspected to have COVID-19 or has been required to quarantine by a doctor because of his/her proximity to an individual with COVID-19, require medical clearance before the employee returns to in-person work. For employees who have not been ill, nonprofits should consider requiring employees to self-certify that the employee is and has been symptom-free and not in close personal contact with anyone who has been quarantined for COVID-19. Such certifications may be mandatory under state re-opening orders and can also be applied to in-person volunteers.

- <u>Employees who object to in-office work</u>. Be prepared to respond to employees who refuse (or are hesitant) to return to the physical workspace upon re-open. If an employee has an underlying medical condition that makes him/her more susceptible to becoming ill or who claims mental health issues resulting from a return to work, nonprofits should engage in the ADA interactive process to determine if they must accommodate a longer period of teleworking. Pre-plan how to handle an employee who does not have any underlying disability but is still fearful of becoming ill by working in the office. Employers will need to balance these requests for additional flexibility against the precedent it will set for other employees.

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- <u>Signs of illness in the workplace</u>. The EEOC has recently opined that employers may continue to take employee temperatures and ask questions about COVID-19 symptoms without running afoul of the ADA, as long as any screening implemented is consistent with advice from the CDC and public health authorities for that type of workplace *at that time*. When the COVID-19 threat has dissipated, such screenings may once again run afoul of the ADA unless job-related and consistent with business necessity. Organizations should continue to send sick employees home and can require documentation from a medical provider that the employee has been cleared to return to work. Employees should be required to notify a designated representative if they have developed COVID-19 symptoms or are required to quarantine.

- <u>Contingency plan for a COVID-19 re-closure</u>. Establish procedures for the potential that an employee tests positive for COVID-19 after the organization has re-opened. The plan should ensure that the workplace is thoroughly cleaned and sanitized. Consider contracting with a vendor beforehand so that the vendor can immediately be called in to clean. Also, describe whether all or some employees must return to telecommuting for a specified period of time and require an evaluation as to whether the incident qualifies as an OSHA recordable event. The CDC also recommends developing and implementing policies and procedures for workforce "contact tracing", which involves identifying persons who may have been exposed to employees with suspected or confirmed COVID-19 during the infectious period. As a result, other employees and third-parties (volunteers, clients, vendors, contractors and others) may need to be notified that they have potentially been exposed to COVID-19.

- <u>Travel</u>. During the early phase of re-opening, it is recommended that non-essential travel be minimized and that employees follow any CDC or state guidelines regarding isolation following travel. In addition, nonprofits should consider how it will handle employee objections to essential business travel.

Organization Policies

- <u>Attendance and available leaves</u>. During the COVID-19 pandemic, many employers have relaxed or modified attendance, PTO, sick and other leave and benefit policies. Determine the right time to restore pre-COVID-19 policies and ensure that employees are provided notice of the "new" expectations.

- <u>Handling potential childcare needs</u>. Although nonprofits will start to re-open, numerous states have already cancelled school for the remainder of the term, and other childcare facilities may be slow to re-open or can only offer limited capacity. Nonprofits with less than 500 employees that are subject to the Families First Coronavirus Response Act (FFCRA) should already be implementing paid sick time and

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emergency FMLA for employees who require leave to care for a child whose school or daycare has closed. Organizations that are not subject to the FFCRA should evaluate what teleworking opportunities or leaves are available to employees without alternative childcare arrangements due to these closures.

- ADA accommodations. Many organizations had no choice but to find creative ways to continue operations from home. After many employees have teleworked for weeks on end, when faced with an employee request to work remotely as an accommodation for a disability, it will be more difficult for an employer to argue that telecommuting is an undue hardship. If an employee has been teleworking, but his or her position's essential functions require an in-office presence, consider ways to re-emphasize those essential functions.

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