Ballard Spahr LLP

Operation Healthy Office: Return to Work and COVID-19

ALTA Webinar
May 20, 2020

Shannon D. Farmer
farmers@ballardspahr.com
(215) 864-8221

Elliot I. Griffin
griffinei@ballardspahr.com
(215) 864-8258

Mary O'Donnell, ALTA President
CEO | Westcor Land Title Insurance Co.
modonnell@wltic.com

Craig Haskins
COO | Knight Barry Title Group
craig@knightbarry.com

Disclaimer

- These materials are not intended to and do not provide legal advice. The materials are not a substitute for consultation with qualified legal counsel regarding the manner in which the laws and regulations referenced herein may be interpreted and applied to particular facts or to particular business models. These materials are for informational and educational purposes only, and are not a solicitation and should not be construed as such.

Ballard Spahr LLP

Visit Our COVID-19 Disease Resource Center
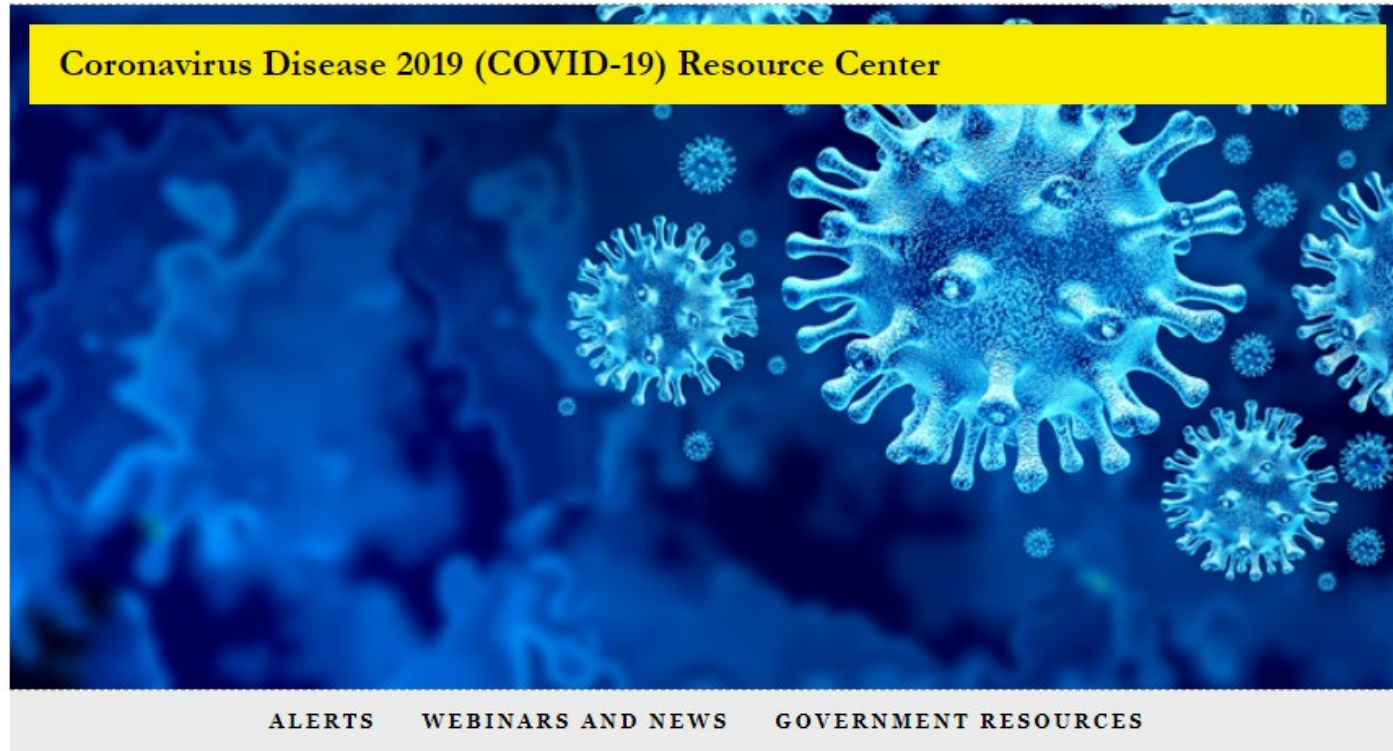
Ballard Spahr COVID-19 Resource Center

Powered by

Ballard Spahr
LLP

Leadership & Planning

Leadership & Planning

- Establish a team or task force to oversee planning, execution and monitoring

- Conduct COVID-19 risk/hazard assessment

- Create the Reopening Plan

- Undertake regular monitoring and updates

- Document the process

Ballard Spahr
LLP

Reopening Plan

- Health and safety mitigation measures

- COVID-19 response process

- Staffing (e.g., security, janitorial, screening)

- Workplace screening and testing

- Leave and other employee concerns

- Transition from partial remote to in-person operations

- Recall and rehiring processes

- Communication and education plan

- Consider retrenchment, if needed

Ballard Spahr LLP

Policies & Protocols

- Social distancing

- Hand washing

- Cleaning & sanitation

- PPE (face coverings, gloves)

- Scheduling, breaks, shifts, interaction

- Workspace and movement (entry, exit, elevators, common space)

- Screening and testing

- COVID-19 "Open Door" policy

- ADA and accommodation requests

- Leave and attendance policies

Ballard Spahr LLP

Monitoring and Compliance

- Regular and ongoing review of guidance – public orders, CDC, OSHA, etc.

  – Adjust reopening plan based on changes

- Be prepared to address issues as they arise

  – Consider "coordinators" in departments and facilities to oversee compliance

  – Establish "open door" policy to report, investigate, remediate issues and complaints

- Media/PR issues

Ballard Spahr
LLP

Liability Mitigation

- Third Party Agreements
  - Staffing agencies
  - Lease agreements (common space)
  - Cleaning and janitorial
  - Screening and testing vendor

- Insurance
  - Workers' compensation coverage (employee infections)
  - General liability coverage (infection of customers, vendors, third parties)

Ballard Spahr LLP

Health & Safety & Operations

OSHA Duty & Standard of Care

- General duty to provide a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm."

- No specific, mandatory COVID standards

- Protection for employees who refuse to engage in dangerous work when subjectively and objectively dangerous, employer refuses to eliminate danger and there is no time to correct through enforcement channels

Ballard Spahr
LLP

Engineering & Administrative Controls

- Cleaning/disinfection protocols

- Work area partitions, workspace configuration, Plexiglas

- Social distancing protocols

- Reconfiguring work spaces

- Limiting in-person interaction (cohorting)

- Scheduling changes (staggered shifts, teams)

- Continued remote work

- Additional time clocks to limit congregation of workers

- Single file movement (could include directional arrows like in store aisles)

- Additional breaks and changed schedules

- Reviewing and revising sick time and leave policies

- PPE: face coverings (already required in some states), gloves

Ballard Spahr
LLP

Protective Personal Equipment

- Considerations include:
  - Whether employers should (or must) provide?
  - What kinds (gloves, shields, face coverings)?
  - How to procure?
  - How much PPE is enough?
  - For just employees, or vendors, clients, and customers too?
  - Limited quantities are available.
- For employees who are bringing in their own PPE, how to ensure it meets government or employer standards?
- Handling requests for religious or medical exemptions

Ballard Spahr LLP

Screening and Testing Programs

- Developing screening/testing protocol
  - What
  - Who
  - How
- Wage and Hour issues - Is testing/screening compensable time?
- Leave and return to work protocols for employees
- Recordkeeping and confidentiality

Ballard Spahr
LLP

Sick Employees

- Employees exhibiting COVID-19 symptoms (fever, cough, shortness of breath) should immediately be separated from others and sent home

- Sick employees should not be permitted to return to work until they have met the CDC's latest criteria to discontinue home isolation

  – At least 10 days have passed since symptoms first appeared & 3 days since recovery

Ballard Spahr LLP

Signs/Postings

- Posting reminders about the new policies in the workplace, such as reminders to wash hands and social distance, one direction hallways, break/lunch rooms

- OSHA industry specific posters

- DOL FFCRA/Employee Rights poster

Ballard Spahr
LLP
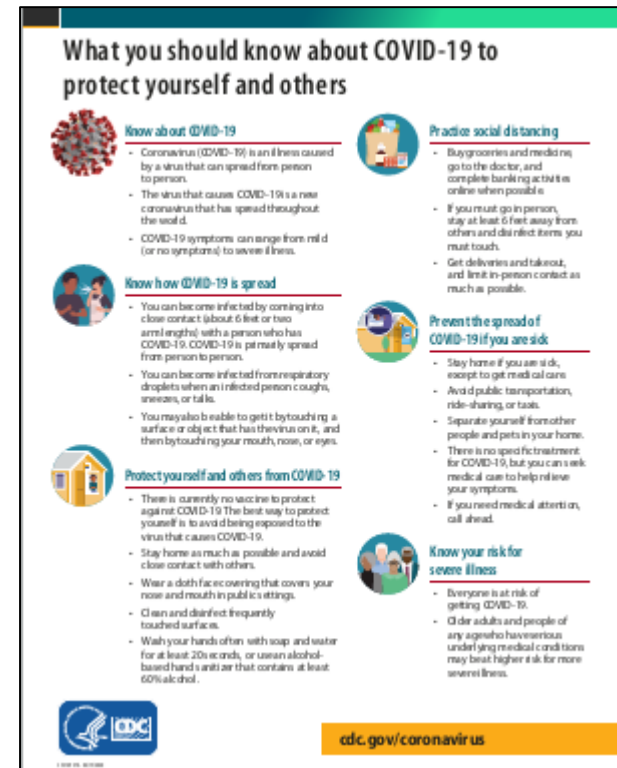
Workforce Issues

Remote vs. In-Person Work

- Should you continue to offer remote work?

- Phasing back workforce with continued balance between remote work and in-person work

- Voluntary vs. mandatory return to in-person work

- Remote work policies if continuing

- Managing requests for continued telework

- Remote work as reasonable accommodation

Ballard Spahr
LLP

Return to In Person Work

- As employees return to in person work, be prepared to address:

  - Communication with employees about safety measures

  - Requests for accommodation

  - Potential changes to leave and attendance policies

  - Changes in business and travel policies

  - Changes in benefit plan design

Ballard Spahr
LLP

Employees Who Refuse to Return

- Employees may not want to return:
  - Fear about contracting COVID-19 at work or during their commute
  - Underlying health conditions that make them particularly susceptible to falling ill if they contract the virus or high risk family member
  - Childcare issues
  - Supplemental unemployment benefits pay more than working

- Response depends on whether reason has legal protections

Ballard Spahr LLP

Leave Issues

- FFCRA leave

- FMLA

- State and local leave

- Employer policies

- High risk employees and the ADA

Ballard Spahr
LLP

Families First Coronavirus Response Act

- FFCRA enacted March 18th

- Two forms of new federal leave for COVID-19 events

  – Emergency Paid Sick Leave (EPSL): 80 hours

  – FMLA-Public Health Emergency (PHE) Leave: 12 workweeks of FMLA leave (including EPSL)

- Covered employers: private employers with less than 500 employees. Exemption for small business with fewer than 50 employees

- Both paid leaves subject to maximum dollar caps

- Available for different, but overlapping reasons

Ballard Spahr
LLP

State & Local Leave Laws

- FFCRA does not preempt or supersede other laws

- Some states and locales have enacted or amended leave laws to cover COVID-19 situations

  - These provisions vary from jurisdiction to jurisdiction

- Others already apply leave to certain public health emergencies impacting work or school

Ballard Spahr
LLP

High Risk Employees and the ADA

- Some medical conditions make an individual high-risk if they contract Covid-19

- Employers may seek to exclude high-risk employees or the employees may request not to return to avoid exposure

  – Direct threat analysis

  – Need to engage in interactive process to determine if there is a reasonable accommodation

- Indefinite leave is not a reasonable accommodation – what about indefinite remote work?

Ballard Spahr LLP

- Exempt Employees—

  – Due to staffing shortages, exempt employees may have been performing nonexempt tasks

  – Does this sacrifice the exemption?

- Temporarily converted to non-exempt—

  – Because of decreased work demands, some employers may have converted exempt employees to nonexempt

Ballard Spahr
LLP

Questions?

Ballard Spahr
LLP

ALTA.ORG/CORONAVIRUS

Powered by
SOFTPRO

What is Coronavirus?

Operation Healthy Office

Track County Recording Office Status

Latest News

COVID-19 Resources

Financial Help for Businesses

Legislation & Policy

State Remote Online Notarization Orders

Ballard Spahr LLP

#GoodDeeds

Ballard Spahr
LLP