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Key COVID-19 Challenges Facing Employers Post-Reopening

July 15, 2020

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AGENDA

- 1 — Safety Concerns
- 2 — Mask Wearing
- 3 — Employee Anxiety
- 4 — High Risk Employees
- 5 — COVID-19 Lawsuits on the Rise
- 6 — Back to School/Other Leave Issues

Challenge #1 – Safety Concerns

Some jobs not as easy remotely

- Employees uneasy about coronavirus exposure
- Mask-wearing policies (OSHA encourages)
- Physical distancing compliance (employees, customers)
- Space may be cramped/working indoors
- Employees lining up for temp taking/confidentiality
- Cleaning/Ventilation (Do employees trust clean up job?) OSHA Gen. Duty Clause



Safety Concerns: OSHA

OSHA's three-phased **recommended** approach:

Phase 1 – Employers should:

- Consider making telework available;
- Limit numbers in workplace (A-B days?)
- Accommodate higher risk employees (older workers, underlying health conditions)
- Limit nonessential business travel.

Safety Concerns: OSHA

Phase 2 – OSHA recommends:

- Continue making telework available *where possible*;
- Keep accommodating at-risk employees;
- Resume nonessential business travel; and
- Ease limits on employee numbers but continue moderate to strict social distancing

(may depend on type of business)

Safety Concerns: OSHA

Phase 3 – May resume unrestricted staffing (not there yet) but:

- Conduct hazard assessments (how workers are likely to be exposed)
- Continue identifying/isolating sick employees
- Don't stop physical barriers/shields
- Don't retaliate against employees!
- Don't blame messenger for legit. concerns

Anonymous reporting hotline a good solution



Challenge #2 – Confronting Refusal to Wear Mask

- Some employees more vigilant than others wearing masks
- If employer doesn't enforce policy, adds to general unease
- Big issue involves customers (esp. for retail employers)
- Some stores have let things slide—don't want to alienate customers
- Washington Post reported last week some workers berated, even assaulted, by aggressive “anti-maskers”

Challenge—Low-wage workers having to enforce policy

Security guard in Michigan killed trying to enforce mask requirements

Handling Mask Nonadherence

- Only handful of national retailers have blanket policy on masks (ex. Costco and Apple), lack of federal guidance
- Companies can take stronger stand
- Don't put front-line workers in harms way
- Avoid spotty enforcement

Challenge #3 – Employee Anxiety

- Many don't want to come back
- 69% have called it most stressful time in entire career (Qualtrics)
- **390%** more anxiety screenings per day in May than Jan. according to MHA
- Over 54,000 results of moderate-to-severe depression

Possible Solutions

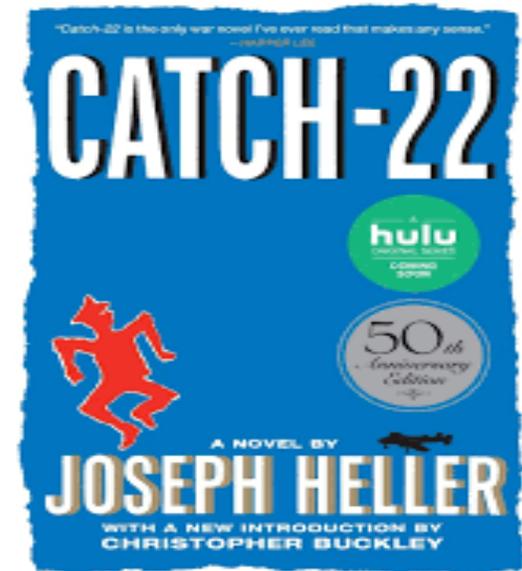
- Recognize common symptoms of anxiety
- Communicate Often/Telework
- Ensure meaningful EAP and easy access



Challenge #4 – High Risk Employees

Employers Face Catch-22:

- Older workers may be at greater risk
- Also true for preexisting conditions, pregnancy
- Avoid blanket policy to steer clear of ADEA, ADA
- **Accommodate but don't discriminate**
- Don't assume someone will not want to come back



High Risk Employees

- Engage in interactive process
- Take case-by-case approach
- Flexibility crucial - modified schedule, temporary job restructuring?
- CDC guidance emphasizes importance of providing accommodations to employees at higher risk for severe illness.

Challenge #5 – COVID-19 Lawsuits on the Rise

- COVID-19 lawsuits, class actions are here
- When unemployment is up, lawsuits go up
- CA, FL, NJ, NY, TX heading the list:
 1. Failure to grant leave requests (FFCRA)
 2. Refusal to let employees work from home
 3. EEOC warns against age bias (recalls or otherwise)
 4. Racial/gender discrimination
- Many lawsuits relating to labor and employment violations
- When unemployment is up, discrimination suits up



And That's Not All...

Other areas of concern include: Wage and Hour—days or hours reduced, duties changed, classification changed (from employee to independent contractor)

- WARN Act (mass layoffs)
- Safety violations – Is employer complying with state/local orders? OSHA? CDC?
 1. MA, NY nursing homes investigated for failing to provide PPE or adequately test
 2. CA OSHA investigating cluster of numerous cases at food packaging plant
 3. Tyson Foods facing suit by families of COVID-19 meatpacking plant victims

Challenge #6 – Back to School Is Coming

Schools reopening, but in what form?

- Staggered schedules likely in many places
- Students may have A/B days or physically in one week and remote the next (or primarily remote) but Mom/Dad back in office
- Accommodation requests, esp. for remote work likely to be on rise (FFCRA in effect through 12/31)
- Could be under FFCRA, FMLA intermittent leave or state protection

Back to School and Childcare

- Pre-pandemic, only 4% offered standardized childcare for employees (SHRM)
- Many centers at risk of closing
- Could lose 4.5 million day care slots
- Some big co.'s extending leave
- Google—up to 14 weeks paid leave



Back to School – What Can Employers Do?

Engage with employees

Discuss possible accommodations:

- Can shifts/days be modified?
- Can work be performed remotely?
- Childcare and elderly relative care

Lack of flexibility to provide care may distract employees, lead to reduced performance, also sends wrong message about company values

How XpertHR Can Help

- [Coronavirus \(COVID-19\): Return-to-Work Overview](#)
- [Coronavirus \(COVID-19\): Anticipating and Addressing Employees' Return-to-Work Concerns Post-Pandemic](#)
- [Coronavirus \(COVID-19\): Benefits - Mental Health & EAPs](#)
 - [Ensure Employee Assistance Programs \(EAPs\) and Benefit Providers Address Employee Mental Health Checklist](#)
- [Coronavirus \(COVID-19\): Health and Safety](#)
 - [Coronavirus \(COVID-19\): Implement Social Distancing at Work Checklist](#)
 - [Coronavirus \(COVID-19\): Return-to-Work Cleaning and Disinfecting Checklist](#)
- [Coronavirus \(COVID-19\): Discrimination and Accommodation Considerations](#)
 - [Families First Coronavirus Response Act: COVID-19 Paid Sick Leave and Expanded Family and Medical Leave Requirements](#)
 - [Determine if an Employee Is Entitled to a Reasonable Accommodation Under the ADA](#)
- [Coronavirus \(COVID-19\): Remote Work](#)
- [Coronavirus \(COVID-19\): Wage and Hour](#)

Thank you



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