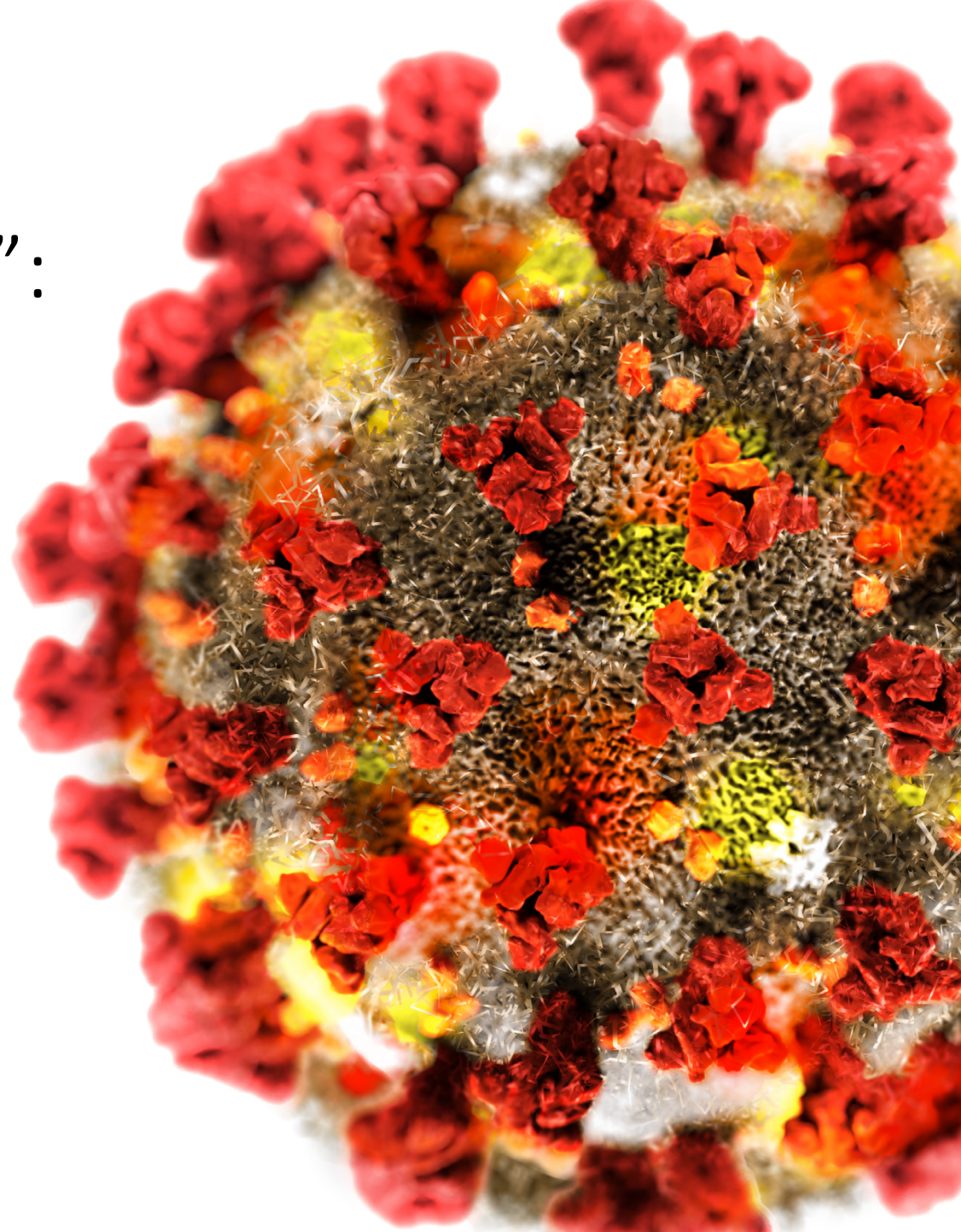


# Reopening to the “New Normal”: Is Your Business Ready?

Practical and Legal Considerations for Deciding  
Whether Employers Are Ready (Part 2)

pillsbury



# Presenters



**Laura Latham**  
Senior Counsel  
Employment



**Julia Judish**  
Special Counsel  
Employment



**Rebecca Carr Rizzo**  
Special Counsel  
Employment

# Introduction



Laura Latham

## Overview of Reopening Considerations:

- Constantly Changing Workplace Safety Rules
- Traditional Employment Law Considerations
  - Wage Hour, Privacy, EEO, ADA, WARN
- COVID-19 Overlay with Novel Liability Theories

# Workplace Safety: Constantly Changing Guidelines



Laura Latham

## Question:

Where the guidelines established by CDC are in conflict with state or local authorities, is it sufficient to follow the least restrictive of those guidelines?

# Workplace Safety: Face Coverings



Julia Judish

## Question:

I am struggling with the idea that I have to provide employees with face coverings. I don't want to pay for them and don't want to pay for them to wash their own masks. Also, I think I am going to have a hard time enforcing all these rules because I have a younger work force that is not buying in. What should I do?

# Workplace Safety: Social Distancing



Laura Latham

## Question:

Most of my workforce already works in cubicles, so that should be sufficient to comply with the social distancing rules, right?

# Workplace Safety: Travel



Julia Judish

## Question:

After we reopen, an employee has already informed me that she intends to go forward with her family vacation involving air travel within the United States. Can I require her to self-quarantine upon return?

# Workplace Safety: Commuting



Rebecca Carr Rizzo

## Question:

We have a large office in an urban area where many employees use public transportation. Should we tell employees who use public transportation that they need to continue to telework (or stay on furlough if they can't telework)?



# Workplace Safety: Temperature Checks



Laura Latham

## Question:

Can we do spot checks of temperatures randomly throughout the day, as opposed to having employees line up and wait to enter the building at the start of the day?

# Wage-Hour: What is Compensable Time?



Rebecca Carr Rizzo

## Question:

We plan to implement temperature screens for all employees upon entering our building and limit the number of employees who use an elevator at the same time. Our non-exempt employees clock-in when they log on to their computers once they reach their desks. Do we have to tell them to add the time they spend waiting for temperature screens and then waiting in the elevator queue?

# Wage-Hour: Exemption Issues



Julia Judish

## Question:

Our outside sales staff have been restricted from traveling to customer and prospect sites by the stay-at-home orders. Once those orders are lifted, we want sales staff to continue to interact by teleconference so they are not vectors for infection. Can we still classify them as exempt if they are not visiting customer sites in person?

# Wage-Hour: Exemption Issues



Laura Latham

## Question:

We expect to be short-staffed upon return to onsite work, and our managers may have to pick up some of the tasks that the employees they supervised used to perform. Will this affect their exempt status?

# Wage-Hour: Expense Reimbursement



Laura Latham

## Question:

We plan to delay full onsite reopening, even after the lifting of the stay-at-home orders. If employees ask to have printers installed in their homes, do we have to pay for that? Do we need to subsidize their cell phone and internet service?

# Privacy/EEO: Potential Exposure



Julia Judish

## Question:

I know the spouse of one of my employees works in the ICU of a hospital that treats COVID-19 patients. Can I question my employee about whether her spouse is returning to their house after shifts? Can I prohibit this employee from returning to the office, even if the employee's job requires the employee to work onsite?

# Privacy/EEO: Contact Tracing



Rebecca Carr Rizzo

## Question:

An employee on telework was briefly in the office to pick up supplies last week. She just told us by email that she has been diagnosed with COVID-19. Should I inform the public health authorities? Do I need to let the supply room personnel know they need to get checked?

# EEO: ADEA/Discrimination



Julia Judish

## Question:

I have a somewhat overweight employee who is in her early sixties and can telework. But she is adamant about coming back into the office because she prefers in-person meetings and exchanging printed documents. Must I let her return, even though CDC guidance indicates she may be in a higher risk group?



# EEO: ADEA/Discrimination



Julia Judish

## Question:

What if this same employee (early 60s) has diabetes and had a prior heart attack? Do I still need to let her come back into the office?

# EEO: ADA/Accommodation



Laura Latham

## Question:

My employee says he has an underlying medical condition that places him at higher risk of severe complications from COVID. He says he will only come back to work if I provide him a full body PPE. Do I have to provide that and pay for its cleaning?

# EEO: ADA/Accommodation



Rebecca Carr Rizzo

## Question:

An employee has used up all available FFCRA leave (or isn't eligible for FFCRA due to company size) and is requesting both telework and a part-time schedule for as long as her child's elementary school is closed. Do I have to grant her request?

# EEO: ADA/Discrimination/Accommodation



Julia Judish

## Question:

Our employee lives with an immunocompromised child and, although not in a high risk group himself, has requested approval for telework. Prior to the stay-at-home orders, this employee had received performance counseling and had performance and attendance problems. He has been taking FFCRA leave, so he has not been teleworking currently. His supervisor is reluctant to allow him to work from home because it makes close supervision more difficult. We've approved other telework requests, but can we deny this employee's request?

# EEO: Discrimination/Adverse Impact/WARN



Rebecca Carr Rizzo

## Question:

We furloughed a significant portion of our workforce. When we reopen, we only want the most productive employees back. We plan to terminate the rest so they can continue to collect unemployment insurance. Any problems with that approach?

# Novel Liability Theories: Workplace Exposure



Laura Latham

## Question:

If an employer allows an at risk/vulnerable individual to come back to work and the employee contracts COVID-19 and consequently gets sick and/or dies, would the employer be liable?

# Novel Liability Theories: Workplace Exposure



Julia Judish

## Question:

What kinds of liability might an employer face if the employer has followed all applicable OSHA guidance and state and local orders and an employee still gets COVID or infects another?

# Novel Liability Theories: Risk Mitigation



Laura Latham

## Question:

Should I be asking for waivers from workers for claims related to workplace exposure to COVID-19? Would they likely be enforceable under California law?



# Novel Liability Theories: Risk Mitigation



Laura Latham

## Question:

What documentation should I be creating now to put us in a better position if a claim is filed?



**Laura Latham**



**Julia Judish**



**Rebecca Carr Rizzo**

*For client alerts and past webinar recordings,  
visit our COVID-19 [Resource Center](#)*

# COVID-19 (Coronavirus)

*If you have questions about how the 2019 Novel Coronavirus impacts you or your business, please contact us.*

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