



Retail Industry Guidance For COVID-19 Coronavirus Outbreak

Insights

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Many sectors of the retail industry are critical to the nation's efforts to fight the spread of COVID-19. After all, retailers that sell necessities such as food, medication, personal care products, and household supplies cannot stop operating. But there are many hard issues facing even those retailers whose stores remain open, particularly how to keep employees coming to work and how to prepare for the imminent Emergency Paid Sick Leave and Emergency FMLA laws. The following are some ideas to concerns that are popping up repeatedly.

Communication Rules Might Need To Change

We have often noted that allowing retail employees to communicate company business over personal cell phones can create a nightmare scenario if litigation ensues and obtaining information from former employees' cell phones is needed. Depending on your jurisdiction and the nature of the communications, those communications could be also count as compensable time.

But with the rate of daily change both relating to government activities and employees' own health, communication now must occur by any means necessary. At this juncture, concerns about difficulties in litigation take a back seat to keeping the workforce informed. If they do not have the information, managers should collect employee contact information and use it.

Likewise, when it comes to communicating best practices regarding COVID-19, placing a poster on the wall identifying the precautionary measures that the Centers for Disease Control and Prevention (CDC) recommends is not sufficient. Retailers must actively train employees on steps they should take to minimize the chance of catching and/or spreading the virus.

Additionally, a failure to communicate can be harmful. Lack of communication leads to uncertainty and rumors, conditions that diminish the effectiveness of any work place. Retailers need to increase their communications with employees whether through regular meetings or one-on-one interaction — even if those interactions are from a distance of 6 feet or more.

Managers should also take time to ask each employee if they are feeling healthy and well when they arrive at work. The fear of not having money to pay for food will often override employee concerns about others' safety. Managers must be on the lookout for this type of behavior. At the same time, managers should be careful to display empathy during this time of high stress and uncertainty; while they should not guarantee job security, they can emphasize that everyone's well-being is the top priority.

Implement Strict Sanitation Measures Immediately

Most retailers by now have increased their store sanitation programs to do significant additional cleaning. But these measures will not work if employees do not maintain this cleanliness throughout the day. Retailers need to consider the following measures for employees who are repeatedly touching the merchandise throughout the day.

- Schedule monitored hand-washing for employees;
- Place hand sanitizer strategically throughout the store and particularly at cash registers;
- Implement a no-touching policy (no handshakes, hugs, or other close contact);
- Re-sanitize all carts and buggies after each customer use;
- Require vendors to wash or sanitize their hands immediately upon entering the store;
- Keep boxes of tissues by the cash registers;
- Train employees to be on the lookout for customers exhibiting the symptoms of COVID-19 and do not be afraid to tactfully request any such customer to immediately leave the premises for the protection of your employees and other customers.

Communicate With Customers

In order to keep your workers safe, you may also want to consider a message to those customers interacting with your workforce reminding them of simple preventive measures and advising them to follow these steps when interacting with your workers. Post signs at entry ways advising them of the steps your staff is taking to prevent the spread and asking them to take the same steps. Point out where customers can wash their hands or use sanitizer.

Be Prepared For The Upsurge In Work

Where the virus has been spreading rapidly in the U.S., panic buying began. Groceries have had to limit customers from purchasing more than a loaf of bread or two gallons of milk. And when people are sent home from work with little to do, going to the store to pick up some items seems to be a nice break that is consistent with the various stay at home orders. As a result, some stores are seeing more business today than they have seen in years, particularly in terms of the number of people in the stores.

Retailers need to consider how they will staff for this upsurge and how they will control traffic flow in the store in a manner that is consistent with allowing customers to stay apart. For example, some retailers have started making the first hour or two in the morning expressly for seniors who are at greatest risk from the virus so they are shopping when the store is cleaner and the crowd is smaller. Others are limiting the number of customers allowed in the store at any given time with the other customers waiting in line for their turn to shop.

Staffing may present a harder issue. Schools throughout the nation have closed, and the federal government has enacted emergency sick leave and FMLA provisions that will allow employees with children to take paid time off to care for them. When the law goes into effect on April 1, it is

children to take paid time off to care for them. when the law goes into effect on April 1, it is anticipated that many workers will choose the paid leave over work. Retailers need to talk to their employees now to see what they are planning so that they can hire new employees. The good news is that with the closures of restaurants, bars, and a variety of other employers, there is a ready, able, and willing work force in need of jobs.

Other Issues

Unfortunately, busier stores, more workers, and new employees can create a greater number of the common problems of policy violations, misconduct, and absenteeism. In times of stress, store managers simply do not treat these issues with the attention they deserve.

Rather than simply seeing what happens as it comes, companies should actively decide if there are issues that might not be dealt with as harshly — such as attendance — and those that cannot be overlooked no matter what — like sexual harassment. Retailers need to re-emphasize with store managers to enforce those *critical* standards that every day regardless of the situation. Otherwise, some months after the crisis, retailers could find themselves on the wrong end of EEOC charges and lawsuits.

Conclusion

Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our Retail Industry Practice Group, or any member of our COVID-19 Taskforce. You can also review our nationwide Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus and our FP Resource Center For Employers, maintained by our Taskforce.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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