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Reopening Your Business in a Covid-19 World

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On Thursday, May 7, 2020, the Brightworth Business Exit and Transition Services (BETS) Team hosted a webinar for business owners with Jonathan Minnen, an attorney with Smith, Gambrell and Russell. Jonathan is a Partner in the firm's Corporate Practice and is a member of the firm's M&A, Healthcare, and International Practice groups. Jonathan also heads up their COVID-19 Task Force. On the webinar, Jonathan spoke to business owners about best practices for reopening businesses which have been closed or operating in a reduced capacity, as a result of the novel coronavirus. Following is a summary of Jonathan's remarks.

Develop an Infectious Disease Preparedness and Response Plan

Jonathan's first advice to business owners is to develop an **Infectious Disease Preparedness and Response Plan**, which is designed to help guide protective actions against COVID-19, as well as what steps you will take if an employee contracts COVID-19.

This plan should:

1. Incorporate the guidelines advised by the Centers for Disease Control (CDC), which may be found [here](#) [1].
2. Identify workers who may be at high risk, especially if you are unable to practically provide for social distancing. However, remember that if you are discussing any personal health issues, you must comply with Health Insurance Portability and Accountability Act of 1996 (HIPPA) rules.
3. Identify potential sources of COVID-19 risk, including where and what sources of COVID-19 risks may exist to workers, customers, and other visitors to your business.
4. Identify ways to mitigate those risks.
5. Outline steps to take if your business has to be closed down and reopened again.

Tips for Preparing your Business for Re-Opening

The DOL's Occupational Safety and Health Administration (OSHA) has produced a useful guide (found [here](#) [2]) on preparing your workplace. Below are a few highlights:

1. Ensure you are displaying the appropriate COVID-19 safety communications. (CDC print resources may be found [here](#) [3], and the U.S. Department of Labor has additional guidance [here](#) [4]).
2. Conduct a "deep cleaning" of your business. CDC guidelines for doing this properly can be found [here](#) [5].

3. Implement Basic Infection Prevention Measures, including appropriate Personal Protective Equipment (PPE). This may include hand sanitizer and washrooms, gloves stored near commonly touched surfaces such as copy machines, and a supply of gloves and masks for visitors. On the subject of PPE such as masks or other face coverings, if your workers are not already required to use them in the normal course of their job, or if they are not required by law, Jonathan recommended that you make them voluntary, not mandatory. If they are made mandatory, you then become subject to OSHA requirements, which many find onerous.
4. Clearly communicated company policies, such as encouraging good hygiene practices and encouraging workers to stay home if they are sick.

Additional Guidance for Bringing Employees Back to Work

If you have employees who are anxious about their safety when returning to work, be sure to communicate closely with them about all the steps you are taking to protect them. Try to accommodate reasonable requests, if doing so does not compromise your ability to conduct business. For employees who disclose that they have special health considerations that put them at extra risk, consider making additional accommodations, and discuss the details of your legal requirements with a labor attorney.

Consider allowing employees whose physical presence is not critical to your business, to continue working remotely, or provide for flexible worksites, flexible work hours, and other measures to ensure social distancing.

It should probably go without saying, but employers need to make sure their workers know that you have zero tolerance for comments about race (especially as it relates to the potential origin of COVID-19), or about whether workers do or do not wear any Personal Protective Equipment (PPE). The point was stressed that even a 'friendly' joke made to a co-worker or customer is not funny when you end up involved in a discrimination lawsuit.

Additional Considerations for Customers and other Visitors to the Business

As it relates to the legal risk posed by customers, vendors or other visitors to your business who then contract COVID-19, you should carefully read the details of your general liability insurance policy. You will probably find that infectious disease is not covered, but regardless, the burden of proof is on the plaintiff in any such lawsuit. Jonathan outlined how it would be very difficult for someone to prove where they contracted a disease. In any event, he advises carefully documenting all decisions you make regarding the re-opening and operation of your business, including citing federal, state and local guidelines (with publish dates) that informed your decisions.

On the subject of Business Continuity Insurance Claims, Jonathan and his colleagues have authored a timely article on COVID-19 related claims, which you may find [here](#) [6].

Finally, Jonathan provided a link to Smith, Gambrell & Russell's [COVID-19 Resource Page](#) [7], which contains comprehensive guidance for businesses.

If you would like to contact Jonathan regarding issues related to your business, you may reach him by phone at **404-815-3658**, or by email at jminnen@sgrlaw.com [8].

The Brightworth Business Exit & Transition Services Team (BETS) is standing by to assist you with navigating the COVID-19 health crisis, achieving your exit objectives, and

maintaining your exit and transition timeline.

Have more questions about strengthening your team during challenging times? [Click here](#) [9].

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Links

[1] <https://emergency.cdc.gov/planning/index.asp>

[2] <https://www.osha.gov/Publications/OSHA3990.pdf>

[3] <https://www.cdc.gov/coronavirus/2019-ncov/communication/print-resources.html?Sort=Date%3A%3Adesc>

[4] <https://www.dol.gov/>

[5] <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

[6] <https://www.sgrlaw.com/client-alerts/business-interruption-insurance-for-covid-19-related-losses/>

[7] <https://www.sgrlaw.com/covid-19-resource-center/>

[8] <mailto:jminnen@sgrlaw.com>

[9]

<mailto:info@brightworth.com?subject=Question%20about%20strengthening%20my%20team%20during%20challenging%20times>

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