Practical Safety Considerations for Employers Amid Wisconsin Reopening Efforts

On May 13, 2020, the Wisconsin Supreme Court overturned the statewide Safer at Home restrictions put in place on private businesses in response to the COVID-19 pandemic. As we previously reported, Wisconsin businesses that are not otherwise restricted by local health orders may now begin the process of resuming operations and reopening services to the public.

The loosening of statewide restrictions raises several practical and legal questions for employers as businesses assess how to proceed amid the ongoing public health crisis. Boardman Clark's Labor & Employment team has identified several issues employers should consider when deciding when and how to gradually return to normal operations. This is the first in a series of articles discussing the variety of legal issues businesses must consider as they prepare to reopen.

The CDC, OSHA, and the Wisconsin Economic Development Corporation (WEDC) have all issued safety guidelines for businesses to mitigate workplace exposure to COVID-19. WEDC has issued both general and industry-specific (such as construction, fitness centers, salons, manufacturing, hospitality, retail, transportation, and professional services) reopening guidelines for Wisconsin businesses. As businesses begin the process of resuming in-person operations and returning employees to worksites, there are several risk-mitigation measures and sanitary policies employers can implement to protect employee and public safety.

Education

Businesses should educate both employees and customers about the steps they can take to protect themselves. Such measures may include:

- Training workers on any new public health policies implemented to reduce the spread of COVID-19. Educate employees on how COVID-19 spreads and how to reduce exposure through proper hygiene and social distancing.

- Placing posters as recommended by the CDC that encourage hand hygiene and proper coughing and sneezing etiquette at workplace entrances and in other visible areas of the workplace, such as restrooms, lobbies, and other common areas.

- Actively encourage and/or require sick employees to stay home.

- Ensure employees are aware of and understand company leave policies, including any new sick leave/childcare policies implemented due to COVID-19.

- Inform and train employees on any new human resource policies implemented in response to COVID-19.

- Communicate to any contractors or on-site visitors about changes in the workspace that have been made to help control the spread of COVID-19. Post signage at entrances informing customers about any changes to your company policies.

- Train workers who need to use personal protective equipment (PPE) on how to put it on, use/wear it, re-use/clean it, take it off correctly, and properly dispose of it. Training materials should be easy to understand and available in the appropriate languages for your workforce.

Hygiene

- The CDC recommends employers identify potential workplace "hazards" that may be present in the workplace that increase the likelihood of COVID-19 transmission. After potential hazards are identified, employers should determine appropriate solutions to remove the hazard or protect employees, such as providing PPE where appropriate.

- Perform routine cleaning and follow the CDC's cleaning and disinfection recommendations. Adopt policies to regularly sanitize the work environment and use CDC-recommended disinfectants that are effective against COVID-19. Frequently touched surfaces, such as workstations, handrails, doorknobs, etc. should be routinely cleaned throughout the day.

- Provide soap and water throughout the workplace to encourage proper handwashing. Also provide employees with alcohol-based hand sanitizer that is at least 60% alcohol and ensure adequate supplies are maintained.

- Place touchless hand sanitizer stations in multiple locations throughout the office.

- Provide tissues and no-touch trash cans.

- Provide disposable disinfecting wipes for employees to wipe down commonly used surfaces.

- Implement strategies to minimize the number of people touching certain surfaces. Such strategies may include leaving doors propped open and removing communal amenities such as silverware, condiments, and limiting the use of shared appliances.

PPE and Engineering Controls

- The CDC recommends all employees and customers wear cloth face coverings in public, especially in areas where community-based transmission is present.

- OSHA guidance contains a classification system to determine your company's risk of workplace exposure to COVID-19. For high and medium risk exposure occupations (such as healthcare and jobs that require frequent and/or close contact with other individuals in areas of community transmission), OSHA recommends various environmental controls and PPE standards that employers should provide.

- Both the CDC and OSHA recommend increasing ventilation rates in the work environment or installing high-efficiency air filters where possible.

Social Distancing

- Discourage handshaking and encourage employees to use noncontact greeting methods.

- Discourage workers from using each other's phones, desks, offices, or sharing equipment if possible.

- Use videoconferencing or teleconferencing when possible for work-related meetings and gatherings.

- When holding in-person meetings, hold the meeting in an open, well-ventilated space and maintain a distance of 6 feet apart and wear cloth face coverings.

- Alter employee workspaces to maintain social distancing. Examples include:

  o Implementing partitions and/or plexiglass barriers between workstations as a shield.

  o If possible, separate employee work areas so they are at least six feet apart.

- Remove/rearrange common area furniture (such as waiting area and breakroom furniture) to ensure 6 feet distance is maintained.

- Limit/eliminate large work-related gatherings (e.g., staff meetings, after-work functions).

- Where feasible, the CDC recommends implementing flexible and extended telework arrangements.

- For businesses serving the public, the CDC recommends increasing the physical space between employees and customers, such as:

  o Customer drive-through services.

  o Moving electronic payment readers away from cashiers.

  o Plexiglass barriers where possible.

  o Using signs, tape marks, or other visual cues such as colored tape on the floor, placed 6 feet apart, to indicate where customers should stand when physical barriers are not possible.

  o Minimize in-person interactions by increasing online/telephone payment options, curbside pickup, and delivery options where feasible.

Scheduling & Travel

- Minimize or eliminate all non-essential business travel.

- If possible, adopt staggered schedules for work shifts or alternating day assignments to minimize the number of workers physically present at once.

- Where possible, discourage commuting via public transportation by offering parking reimbursements, single-occupancy ride shares, or allowing employees to shift their hours so they may commute during less busy times.

A thoughtful approach to these issues will increase comfort and awareness by employees and customers as businesses begin efforts to safely reopen. Businesses should examine guidelines specific to their industry to best determine what safety strategies will be most effective in preventing the spread of COVID-19. Companies looking to modify their HR policies and procedures in response to COVID-19 and/or applicable Safer at Home orders should consult with legal counsel to ensure continued compliance with applicable local, state, and federal laws.

Finally, as discussed below, employers in certain municipalities will need to review and comply with local health orders.

Complying With Mandatory Local Health Orders

Immediately after the Wisconsin Supreme Court's May 13, 2020 decision overturning the statewide Safer at Home Order, a number of local municipalities issued their own versions of health orders similar to the Safer at Home restrictions. Most of those orders have now been lifted, while a few remain in place. Some others have issued non-mandatory recommendations for businesses and individuals based on the same principles.

As of the writing of this article, the following counties and cities are known to have some version of an enforceable stay home order in place: Dane County and the City of Madison, the City of Milwaukee, and the City of Racine. These orders were issued under the Wisconsin state statute that requires local health officials to "promptly take all measures necessary to prevent, suppress and control communicable diseases" and gives them broad authority to "do what is reasonable and necessary for the prevention and suppression of disease" [including the authority to] "forbid public gatherings when deemed necessary to control outbreaks or epidemics..." Wis. Stat. §§ 252.03(1) and (2). A federal lawsuit has been filed challenging the enforceability of all of the local public health department orders, including the Madison Dane County order.

Each of the remaining orders establishes a blueprint for reopening the respective communities in similar but not identical manners. Those orders are available at the following links:Madison and Dane County: https://publichealthmdc.com/documents/2020-05-22_Order_3.pdf

City of Milwaukee: https://milwaukee.gov/Order2MovingMilwaukeeForward

City of Racine: https://www.racinecoronavirus.org/wp-content/uploads/2020/05/Forward-Racine-Order.pdf

Also, several of the Tribes located in Wisconsin have issued tribal restrictions, including the Ho-Chunk Nation, the Lac Du Flambeau Band of Lake Superior Chippewa, and the Menominee Indian Tribe of Wisconsin.

This chart highlights the most important mandatory requirements for businesses operating under the Madison Dane County order. Please note that the chart does not attempt to incorporate every element of the order, and businesses should review the order itself. Questions as to how this order, or the other active local orders, may apply to your business can be discussed with your legal counsel or your trade association. .

PRIMARY AUTHORS

Jennifer S. Mirus

(608) 283-1799
JMIRUS@BOARDMANCLARK.COM

- Robert E. Gregg   (608) 283-1751
- Jennifer S. Mirus   (608) 283-1799
- Doug E. Witte   (608) 283-7529
- Steven C. Zach   (608) 283-1736

JoAnn M. Hart

(608) 286-7162
JHART@BOARDMANCLARK.COM

- Richard F. Verstegen   (608) 283-7233
- Michael J. Julka   (608) 286-7238
- Eileen A. Brownlee   (608) 822-3251
- Richard L. Bolton   (608) 283-1789

Brenna McLaughlin

(608) 286-7206
BMCLAUGHLIN@BOARDMANCLARK.COM

- JoAnn M. Hart   (608) 286-7162
- Brian P. Goodman   (608) 283-1722
- Brenna R. McLaughlin   (608)286-7206