

The background features a gradient from light green at the top to dark blue at the bottom. It is overlaid with several semi-transparent circular elements: a large scale on the left with numerical markings from 140 to 260, and several smaller circles with arrows indicating clockwise or counter-clockwise rotation. The overall aesthetic is clean, modern, and technical.

BUSINESS REOPENING AFTER COVID-19: WHAT EMPLOYERS NEED TO KNOW

DISCLAIMER

- This is strictly for informational purposes. The information is intended to be used solely by the subscribers to the Webinar.
- Any answered questions are for hypothetical purposes only. There is no attorney-client privilege information or specific advice.
- If you have specific questions and are a part of Foley & Foley's On-Call Triage Service, then please feel free to reach out to me at wendy@foleylawpractice.com.

PRE OPEN CHECKLIST

- Do you have a safety plan in place? Do you have your attestation poster ready to sign?
- Do you have a training program/class for all employees? Can you build in time for “orientation” on the first day back?
- Do you have enough cleaning and disinfecting supplies? Do you have the proper cleaning procedures in place?
- Do you have an effective way to screen employees?
- Do you have a plan of efficient communication to all employees?
- Do you have enough PPE, masks, goggles, plexiglass barriers, gowns, gloves?
- Have you rearranged work stations to be six feet apart and closed common areas?
- Have you accounted for any safety or workflow issues with the new guidelines?

COVID-19 SAFETY PLAN

- The safety plan should include four main parts: Social Distancing, Hygiene Protocols, Staffing and Operations, and Cleaning and Disinfecting.
- Social Distancing: The plan should define the appropriate social distancing (6ft apart) and state the protocols in place to accomplish this (moved workstations, plexiglass shields, markers on the floor). It should state it requires face masks for all employees and whether the company will provide them. Restate the OSHA guidelines on how to properly wear a mask.
- Hygiene Protocols: The plan should also include step by step instructions on how to properly wash hands and properly use hand sanitizer (20 seconds, wait till sanitizer is dry before touching anything). Name the locations where employees can wash their hands and the supplies provided to each employee. Outline the high touch areas in the company (doorknobs, restrooms, kiosks) and the cleaning procedure and timing for those areas.

SAFETY PLAN

- Staffing and Operations: State the training will be required for all employees and outline the training (which can follow the same outline as the safety plan). Let employees know they are required to sign off they've received the training. If any employee refuses the training they will be sent home. Create a screening questionnaire for employees prior to coming to work and require them to inform HR of any illness PRIOR to coming to the building. Tell employees if they are sick they are required to stay home.
 - Have a plan for when an employee tests positive or has symptoms. Triage by severity, a positive test is more severe than symptoms:
 - Send the employee home and ask who they have been in direct contact with at work (less than 6ft). If they are only showing symptoms tell them to get tested.
 - Contact the employees who were in direct contact. If the employee tests positive then they need to be sent home and quarantined for 14 days. If it is only symptoms, let the employees know to monitor their own symptoms and go get tested.
 - Shutdown the employee's work area for 24 hours and then clean according to the CDC guidelines.
 - Inform the general population that an employee has tested positive and the affected people have been contacted. Encourage employees to monitor their symptoms and to not report if they are sick (if the employee only has symptoms but no positive test, you do not need to announce it to all the employees).

SAFETY PLAN

- **Cleaning and Disinfecting:** The safety plan should clearly articulate the cleaning protocols in place for the facility. This includes workstations, bathrooms, common areas, equipment, lobbies, and high touch surfaces. Create a step by step process on how to clean and disinfect. State the intervals in which the cleaning should take place.
- **MA Template:** <https://www.mass.gov/doc/covid-19-reopening-control-plan-template/download>

TRAINING

- Training should include:
 - Social Distancing: employees are to stay at least 6ft apart from other employees and customers. Use extreme caution in situations where this is not possible. Small confined spaces should only be occupied by one person at a time, including vehicles. Employees are required to wear masks at all times when they are around other people. If the mask is taken off it should be done in a secluded area, where no one else is around. You should clean the area once you leave it and put the mask back on.
 - Hygiene Protocols:
 - Handwashing: Wash you hands frequently after coming in contact with another person, receiving a package, taking or putting on your mask, before and after eating, and after using the restroom. Wash your hands for 20 seconds (sing happy birthday twice).
 - Hand Sanitizer: Only use hand sanitizer with at least 60% alcohol. Rub your hands together until completely dry. Do not touch surfaces until your hands are no longer wet from the sanitizer.
 - Respiratory Etiquette: Cover your mouth when you cough. Do not use your hands. Cough into your elbow or cloth on your body. Maintain distance from others if you are coughing. Wash your hands if you've used them to cover your mouth. Avoid touching your face.
 - Cleaning: Frequently wipe down your work station and any equipment that is used or touched frequently. Do not share equipment with others. If you do, then ensure that it is properly disinfected prior to sharing. Clean your cellular phone frequently.

TRAINING

- Operations:
 - Do not come to work if:
 - You have a fever of 100 degrees or more
 - You are experiencing difficulty breathing, coughing, or any other respiratory issues
 - You have had an change in taste or smell
 - You are experiencing a headache or body aches
 - Cleaning and Disinfecting: Clean all high touch areas at least every two hours. All facilities should be cleaned and disinfected at least once per day. Wear disposable gloves and masks for cleaning. Clean surfaces with soap and water then use disinfectant. Employees will be required to fill out a log for cleaning. CDC cleaning guidelines: <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

TRAINING

- OSHA videos: <https://www.osha.gov/video/#c>
- MA Posters: <https://www.mass.gov/doc/employer-reopening-poster/download> and <https://www.mass.gov/doc/compliance-attestation/download>
- CDC Posters:
 - Handwashing: https://www.cdc.gov/handwashing/pdf/19_309599-A-Frankson_Handwashing.pdf
 - Respiratory etiquette: https://www.cdc.gov/flu/pdf/protect/cdc_cough.pdf
 - Germs: <https://www.cdc.gov/handwashing/pdf/poster-germs-are-everywhere.pdf>;
<https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs.pdf>
 - Cloth Coverings: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/cloth-face-coverings-information.pdf>
 - How to protect yourself and others: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention-H.pdf>
 - What to do if you are sick: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/sick-with-2019-nCoV-fact-sheet.pdf>

SCREENING

- Should be done daily. Some industries require it while others only suggest. However two things to remember: 1) you are required to log any one who comes into the office and 2) preclude anyone who is sick or shows symptoms. Therefore it would be good to do a daily screening.
- Apps are popping up in order to manage this. It can be done by email prior to coming to work. If employees are still able to work remotely, then encourage them to stay home.
- Send people home if: they have a fever, they have respiratory issues, they have body aches, or have had any recent change in taste or smell. They need to go get tested.
 - For an employee who experiences these symptoms and does not get tested, they need to be quarantined for 14 days. If they want to return sooner, then they need to bring a negative test or a note from a health care provider clearing them to return to work.
 - If an employee test positive they need to quarantine for 14 days and show a negative test prior to coming to work.

LOGS

- MA requires employers to log anyone who has come into the facility so it can help with contact tracing. This can be an administrative burden but you are required to do so. Have a sign in sheet for people, with hand sanitizer next to it or have someone at the door screening people and counting how many people are in the facility. Ensure they have the proper equipment.
- For cleaning logs, create a checklist that lists the items to be cleaned and the intervals (every hour etc.). Have the employee fill out the log after cleaning and disinfecting the area and post the log in a visible location (on a door or wall near the area).

DISCIPLINE/ENFORCEMENT

- There will likely be push back on these procedures. It goes without saying that everyone is dealing with this in different ways. Regardless of a person's opinion, you and they are required to comply with the law.
- Ensure that supervisors and managers understand the importance of enforcing these principles. They should set the examples and address those who are noncompliant. In any situation where an employee is not doing what is asked, follow your normal discipline procedure (warning, PIP, etc.). This would be the same process for any safety violation previously.
- For customers or clients who refuse to comply, then refuse entry. Employers have an obligation to stop the spread of an infectious disease and if a customer poses a threat, then you need to bar them from entry.
- Be cognizant of employee burn out. Don't keep the same employee screening the front door every day. Rotate positions, have senior leadership or office staff join in to help. For those who have been working through this whole period, consider providing a reward (extra vacation time or bonus).

FFCRA

- Emergency Paid Sick Leave:
 - 2 weeks
 - Full pay (capped at \$511 per day) for quarantine or isolation order, need to self-quarantine at the recommendation of a health care provider due to concerns related to COVID-19, or have symptoms and seeking a diagnosis.
 - 2/3 pay (capped at \$200 per day) for caring for an individual who is subject to a quarantine or isolation order, who has to self quarantine at the recommendation of a health care provider due to concerns related to COVID-19, or to care for a child whose school or place of care has been closed due to COVID-19.

FFCRA

- Emergency Family and Medical Leave:
 - 12 weeks
 - 2/3 pay (capped at \$200 per day) to care for a child whose school or place of care has been closed due to COVID-19
 - First two weeks are unpaid and the employee can either use EPSL, vacation time, or take it unpaid.
- Important Points:
 - Employers determine if they want to allow intermittent leave.
 - Place of care includes summer camps, day cares, and any summer child care.
 - Once you take an employee off furlough, they are entitled to this leave.
 - The small employer exemption (under 50 employees and jeopardize the business) only applies to EFMLA and EPSL for the child care reason. You still have to provide EPSL for the other reasons.
 - Make sure you document appropriately: Name of the employee, dates of the leave, reason for the leave, name of the health care provider, name of the school or place of care that is closed, state of the executive order for isolation or quarantine, statement that the position cannot be worked remotely, and statement from the employee that no one else can care for the child.

REASONABLE ACCOMMODATIONS

- If you have an employee who is at risk (by age or immunocompromised), then they can request an accommodation under the ADA for COVID-19.
- The ADA process includes:
 - Interactive process
 - Determine a reasonable accommodation
 - Determine if it is undue hardship
- You cannot force an employee to accommodate or bar them from coming to work. The employee makes the decision to request.
- EEOC's FAQs:
<file:///C:/Users/whansen/Downloads/EEOC%20Adds%20FAQs%20About%20Employer%20Accommodations%20During%20COVID-19%20-%202020.05.05.pdf>

ONBOARDING

- Clear communication with employees who are furloughed or hours increased
 - Letters that delineate the start date, hours, and reinstatement of benefits.
- Create a checklist to reinstate similar to a new hire checklist.
- Verify with management and supervisors so that you are on the same page and the employee is getting the same message.
- Furloughed employees should return to the same accrual rates, benefits, and seniority since the employment relationship never ended.
- Prepare them for new safety training and orient them to the new environment.

DISCRIMINATION ISSUES

- Be aware of optics in bringing people back, similar to when you let them go.
- Use neutral criteria to determine who should be brought back first:
 - Experience
 - Seniority
 - Performance review scores
 - Disciplinary history or lack thereof
 - Education, training, cross-training (helps with flexibility in the event of absences)
 - Performance on skills tests or other objective measures
 - Performance in rehire interviews

NEW PPP GUIDANCE!!!!

- Its all about forgiveness (finally). Highlights:
 - Bonuses are included in payroll costs however still cannot be over the \$100,000 threshold.
 - If the borrower offered the same job to a furloughed or laid off employee and they refused, it will not affect forgiveness. Offer and rejection need to be in writing. The same applies for those who were fired for misconduct.
 - Full Time Equivalent means an employee who works 40 hours or more on average each week. An employee who works 30 hours is a .75 FTE and employee who works 10 hours is a .25 FTE.
 - New Regulations: <https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>.

RELIABLE SOURCES

- Department of Labor's – this agency is in charge of promulgating and executing the rules under the FFCRA, if it comes from them, then it is the most accurate/up-to-date information.
- Internal Revenue Service – this agency is in charge of applying tax credits to the FFCRA, they will have the most up to date information.
- Department of Treasury – this is department in charge of the PPP loans, here's their update FAQ to lenders: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>.
- Center of Disease Control – In charge of providing evidence-based, scientific information on COVID-19, how to prevent it, how to manage it, and what they symptoms are.
- State or Local Government Websites – each state website will have a specific location for reopening resources. Here is MA: <https://www.mass.gov/info-details/reopening-massachusetts#general-business-guidance->
- State Department of Health – This will provide the up to date statistics on COVID-19 in your area.
- For SBA loans (PPP) – TALK TO YOUR LENDER, they are the entity taking on the liability of the loan, you want to be sure what they expect from you for forgiveness and implementation of the loan. Link to the interim final rule: https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule_0.pdf and additional guidance: <https://www.sba.gov/sites/default/files/2020-04/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>

BIO – WENDY HANSEN

- After graduating law school on a merit scholarship, Wendy Hansen organized and created a legal compliance program for a large manufacturer in Massachusetts. Starting from the ground up, Wendy taught legal compliance and leadership training; implemented and produced policies from employee records to employee reviews; drafted and implemented a framework for a new Human Resources department for the company; and conferred with upper management regularly on HR and general business problems. This experience gives Wendy an insider's perspective on the day to day challenges HR and management face.
- As well as her strong human resources background, Wendy worked at an insurance defense litigation firm in Boston. She reviewed and analyzed employment law agency charges, demand letters, and litigation. Wendy worked with employers under their employment practice liability insurance on a variety of claims, including harassment, discrimination, retaliation and wrongful termination.
- Wendy graduated from New England School of Law, cum laude and received the Outstanding Scholastic Achievement Award. She was a Comment and Note Editor for New England Law Review, where her case comment, *Morrow v. Balaski: When Good Intentions Go Bad*, was published. She was a Mock Trial Regional Finalist her second year.
- Email: wendy@foleylawpractice.com Phone: (508) 548-4888



Q&A

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