Hit the Ground Running: Tactics for Re-Opening During COVID-19

Presenters: Morgan Dilks, Laura Rubenstein and Greg Currey from Wright, Constable & Skeen. Harry Plack from The Plack Group

Morgan Dilks:

Well, good morning everybody and welcome to our webinar titled Hit the Ground Running: Tactics for Re-Opening During COVID-19. Today's presentation has been organized by the attorneys at Wright, Constable & Skeen with a guest appearance by Harry Plack of the Plack Group of Certified Public Accountants. I'm going to start by doing a brief overview of what we're going to be talking about today. We're going to start by talking about the current climate. Where are things as of May 20th, 2020? After that, we'll jump right into the central theme of the presentation. What can you do today to help your business survive and thrive now and in the coming months?

There will be a discussion about mandatory employee benefits. We'll have Harry Plack, a CPA and owner Plack Group discuss financial strategies and management of the PPP Funds, and any other government funds you may have obtained. We will discuss planning for reopening, including topics such as managing vendor and customer relations, as well as what employer requirements will be for bringing back employees safely. And, we'll wrap with a discussion about the opportunities that this pandemic is presented and how you can capitalize on them.

But we'll get into all that in just a moment. First I want to introduce our panel this morning. Laura Rubenstein is a partner at Wright, Constable & Skeen in the firm's Labor and Employment practice group. Her practice concentrates in advising clients in many different areas of workplace law. Laura is an experienced litigator and counselor who represents employers, corporate clients, and nonprofit organizations in a wide range of legal issues.

Greg Currey is a partner at Wright, Constable & Skeen also in the firm's Labor and Employment practice group. Greg's an experienced counselor and litigator who represents companies and individuals in all stages of litigation and potential litigation, and writes extensively to keep his clients up to date on the most important issues that affect their businesses.

Harry Plack is a certified public accountant and owner of the Plack Group, an accounting firm that works with clients to create wealth management, tax and business solutions through coaching, planning and accounting services.

And my name is Morgan Dilks and I'm an attorney at Wright, Constable & Skeen. I have master's in Business Administration. Prior to becoming an attorney, I was a financial manager at a very large well known company in Maryland. I was an accountant for a national healthcare organization and I spent seven years operating a small business in Baltimore City. So, I know well the pains of paying vendors and employees while experiencing a cash crunch.

Before we get started, we just have a little disclaimer. This webinar is provided for informational purposes only and is not legal advice. Participation in this webinar does not create an attorney-client relationship between Wright, Constable & Skeen and the participant. The general opinions expressed at or through this webinar are the opinions of the attorney and may not reflect the opinions of the firm, or any individual attorney of the firm.

So, where are we now? As you've probably noticed around us, nonessential businesses are starting to reopen with their services limited. Schools and daycares are still closed indefinitely. Legislation has been passed that's created paid leave for employees and significant stimulus packages have been passed. This has led to some interesting problems. Businesses are not used to running in a quarter capacity, so how are we going to adapt? What concessions if any, are businesses required to make for employees who don't have access to childcare because of these closures? How can employers get their businesses off the ground again when we're allowed to proceed with heavy restrictions? The confusion surrounding many of these questions puts us squarely in crisis mode, and what does crisis mode mean? It means a lot of different things to a lot of different businesses, but one common theme that it has among all of us is that we don't have the luxury of waiting to act, we have to act now.

So, part of acting out is concentrating on a couple of key and important things. Number one, first and foremost, preservation of cash is key. Businesses need to be stepping outside of their normal routine to manage their cash flow in a way that allows them to hold on to more of it. There are a few high level ways this can be achieved. First, you're going to want to put off expenditures that are not critical to the operation of the business. Right now might be the best time for you to pay someone to redesign your website if you're say, a restaurant who wants to go strictly to online ordering and curbside pickup. That could arguably be a critical expense and critical to your operation for now and the foreseeable future. Now probably isn't the time to pay someone to redesign your website for aesthetic purposes. If you're not in love with the font on the homepage, you might at least want to consider living with it for the time being until revenues returned normal.

Along the same lines, you should look for places to cut costs in the short term. For example, when I owned a coffee shop a couple of years ago, we had a TV in the office with cable, we had some satellite radio and when times get tight, that was the first thing to go by the wayside. We got rid of that. We got rid of the satellite radio and we let our employees hook their phones up to the sound system and play their music that way. We reassessed our menu, we took off items that weren't selling as well to streamline our business a little bit, which led to smaller invoices from our suppliers. While we're in crisis mode, you should be projecting your cashflow at least four weeks for retail operations and smaller businesses, at least eight weeks for larger operations and this is an exercise that should be revisited weekly.

In addition to cost cutting and cash output management, it's important to manage your receivables. There are two key points that I want to touch on for receivables, and the first one I'm going to break into 1A and 1B because they're two sides of the same issue, and that's collection of your money. 1A is this, now's not the time to let all of your receivables age. Even if you had previously had a more relaxed approach to receivables collection, the economic environment suggests you should be getting your hands on the money that's owed to you sooner rather than later. But 1B is the flip side of that, and that's that you need to understand that everyone is trying to preserve cash at this point. Work with your customers, work with your clients. Understand that this is going to end at some point, and the treatment that you give people could be the difference between keeping or losing a good client when business returns in full swing.

The second concept for receivables management is a sad dose of reality, and that's that not every business out there is going to survive this. Avoid taking credit risks that you wouldn't normally take. In a time of reduced revenue and work output, it's easy to fall into the trap of taking on customers and clients that you wouldn't normally take out of concern that they wouldn't be able to pay. Remember if you can't get paid, it doesn't help you to do the work. Pay close attention to who you're doing business with, and the terms that you're extending. You don't want to find yourself in a position of chasing significant receivables from companies that are on the verge of bankruptcy.

Similarly, you want to work with your vendors. You shouldn't destroy your relationships with your vendors in the name of survival because when all of this ends, you'll need them. Don't unilaterally stop paying your invoices. Work with your vendors to discuss extended terms for repayment. When this shutdown happened, there were surely countless bars and restaurants that had inventory sitting in the freezer and since then, that inventory hasn't sold. Unsold inventory leads to unpaid invoices and when the doors reopen, bars and restaurants will definitely need new inventory. And if you're not working with your vendors to clear up the old balances, they may be reluctant to deliver. The same goes for banks. If you're having trouble paying loans with banks, reach out to them to discuss. They should be open to extending leniency towards your business. After all, they have a vested interest in your success.

On the staffing considerations, tough decisions might have to be made regarding staffing. You have to ask yourself, who is necessary for continued operations? Is there redundancy? Are you operating at 40% capacity while still employing 100% of your people? And, can you accept the risks associated with laying off good people knowing that they'll probably seek other employment and you won't get them back? One thing to consider is working with your employees to determine who wants or needs to be there, and who doesn't. In many cases with the current federal overlay, employees make as much money, more money, or maybe similarly compensated on unemployment, and may be happy to take a back seat while that program is still in effect. Additionally, employees who work reduced schedules may be eligible for a portion of unemployment benefits.

And one final thing to consider for your staffing needs, the PPP loans which Harry will discuss a bit later were given with the intent of protecting payroll. In order to have the loans forgiven, you must spend 75% of the PPP loan on payroll expenses, however, forgiveness may not be the best option for everyone and keeping the cash may make more sense for your business. You should at least contemplate the pros and cons of taking the PPP loan and still reducing the workforce, but I'll let Harry handle that in a little bit.

Inventory management as well. Additionally, you'll want to take stock of the inventory that you currently need to operate and the inventory you can operate without. Consider reaching out to your vendors to determine if they would consider credits for inventory returns. From an accounts payable and vendor relations management standpoint, it's better to return the inventory and get it off your books than it is to have it sitting on your shelves not producing revenue, and for the receivables to continue aging or for the invoices to continue aging.

So, we have a poll question. Did your company take out a PPP loan, an EIDL or any other form of Maryland or Small Business Administration COVID-19 Assistance? I'll give everybody a second to answer that.

Laura Rubenstein:

Looks like the polling has stopped. I'm going to end it. Here are the results. About 83% of the participants or their companies did take out some sort of federal government assistance.

Morgan Dilks:

Okay, 83%. That is an overwhelming majority of our participants today took out some sort of financial assistance from one of the government programs. I'm going to turn it over to Harry now, and Harry is going to talk about a couple of those programs and some of the parameters there and best ways to manage the funds. Harry, take it away.

Harry Plack:

Thanks Morgan, I'm glad to be here today. Thanks to you guys. Listen, I would do this a little differently today. I want to get some interaction if we can. If you see at the bottom of your screen, there's going to be a button at the bottom it says chat. I want you to click on that chat if you can and I want you to just tell me that you can hear me. Give me a Y everything is good as far as the video and audio, that's all I need. Just hit me with a Y, and then we're good to go. I see a couple of people. Hey, thanks, guys. That's wonderful, thanks so much. Also, I want you to get in your question because I see 83% of the people have a PPP loan or an EIDL loan, E-I-D-L. So, I want you to get questions to me. I will try to answer all the questions as I go along here, so feel free to type them right into that chat box. I'm keeping an eye on it as I go, and then I'm just going to jump in here.

First thing, there's basically two for smaller businesses and I think this is where we're focusing on, under 500 people, under 500 employees. There's two loans, there's the PPP loan and the EIDL. Also, there's the Main Street Loan Program, which is for larger companies. If you got any questions about that, put that in as well. That's relatively brand new, and you get that from your bank. Those are larger loan programs as well. But the main thing today I guess will be PPP and EIDL. Let's talk about the EIDL.

If you remember, that's the program where you got a $10,000 per business grant on the front end. A lot of people put in for that, and then later a loan comes. Now just you know, if you have not applied for that at this point, it is closed right now, except for agricultural companies. One thing you got to remember here is this legislation, and I'll let the lawyers talk about the details, but it was rushed through. It is full of holes, and we're making all kinds of rules after the fact that apply retroactively. I'll give you an example. Initially this year EIDL loan, the maximum amount was $10 million and it was open to any business. But right out of the blue with no new law changes, the SBA came out with something about 10 days ago and it snuck under the radar and they said, "Hey, the max now is $150,000."

So, if you haven't put in your application yet, your max is ... Well, right now you can't put in unless you're an agricultural business. So for now it's closed, only to agricultural businesses. But if you have an application that was put in previously for the EIDL, remember that the Economic Injury Disaster Loan. It's one of two loans we're going to talk about today. If you put in an application before, and there's a several weeks wait on this, you would get right now up to $150,000. It's a 30-year loan, 3.75% fixed, and it's not personally guaranteed, so that is ... But it is a loan, there's no forgiveness on that. It's just a straight loan. But as far as terms go, they're very good.

So, a 30-year loan, it's got some very good terms. I would think about whether you want to take it or not, but it's not available right now. I don't know if it will be available again to all companies. Right now, it's just to agricultural companies. That's the EIDL. If you have any questions about it, go ahead and ... Oh yes, some questions about bringing back employees. Yes, we're going to talk definitely about that. I got another question about headcount, absolutely. We definitely have some questions. So, I'm going to move ... Remember, one thing was the EIDL and you go directly to the SBA to get that. That's the one you apply for through the sba.gov site. But remember once again, closed right now except for agricultural companies.

So, I'm going to focus most of our time on a PPP loan. That's the Payroll Protection Program loan you've heard a lot about in the media. Once again, this is a completely, and this will be a technical term if you're not familiar with it, this is a screwed up law. Lots of details have not been released at this point. Typically, a law like this has gotten months to get right before it actually becomes law, this thing was just jammed right through. So whatever I'm going to tell you today, I will tell you about every week we're getting new rolls so down the road, these rules will most likely, some of them at least will change and we'll get some things squared away.

You can still apply for PPP loan. Remember, there's two loans I'm talking about today. There's the EIDL, we call it the EIDL, or the PPP. This is the PPP. PPP, which is Payroll Protection Program is applied at your bank. You can go to your bank or any other commercial bank, most commercial banks offer these loans and there is money available right now. If you remember, on the front end they ran out of money, but right now they still have money available. That's a good thing, and it's a lot easier to apply right now. I got an email from a banker yesterday that said that their average turnaround right now is five days. Before it was like three weeks, so that's good. This is the Payroll Protection Program and you get this from your bank.

Now, it's a loan that can be forgiven. They will give you up to two and a half months of your average payroll and benefits in a loan. They have forms to calculate that out for you, your bank would certainly have that. It's a loan, but it can be forgiven and most people are trying to get it forgiven as much as possible. It can be forgiven if at least 75% of it is used for payroll and related costs. That would be payroll, health insurance, retirement plan contribution, things of that nature. If you use it during the first eight weeks for those costs, it can be forgiven. Now, at least 75% has to be used for those, the other 25% if you have more loan available you can use for things like lease payments, lease to your building, rent to your building, also lease on equipment. This is just new. This came out just Friday night.

You can use it for cars or vehicles that you're leasing as well. Utilities, that would include internet, telephone, cell phone, gas and electric, things of that nature as well, and a couple of other things as well you can use it for. If you use these funds for these specific programs over the eight week period, it can be forgiven. Now, I just mentioned Friday night the new form came out that you have to fill out on the back end for the Payroll Protection Program if you want to get it forgiven. It's an 11-page package you have to fill out. It's detailed, I mean it's really like a tax return almost and it just came out Friday night. That's something you have to fill out on the back end to get it forgiven, and there's a lot of details that we couldn't possibly go into today.

Laura Rubenstein:

Harry, I think you're talking about the forgiveness application.

Harry Plack:

Yes, that's exactly right.

Laura Rubenstein:

Is it a form that comes out from the SBA, or have banks individually modified those?

Harry Plack:

Right now, it's just come out from the SBA, and it looks to me like it's going to be an SBA form. I got a lot of questions here guys so Morgan, how long do I have here? I'm going to go ahead and figure out what I'm going to do next.

Morgan Dilks:

You got about seven or eight more minutes.

Harry Plack:

Fantastic. Well, let's just go ahead and hit the questions here because ... If I don't get to yours, maybe I can follow up with you later to do that. Headcount increases, yes. Okay, there are some issues here. There's another rule in the forgiveness. You have to keep the headcount the same. So if you had 49 employees before all this came up, during this eight week period you have to have 49 employees. I am overly simplifying it. There are details on how you calculate that out, and a lot of these details just came out Friday night. For a full time equivalent, it's 40 hours. People thought it was going to be 30, you have to base that on 40 hours a week. That's one thing. But, they do have a little shortcut method. You can make all your part-time employees count is one half of one FTE, and your full-time over 40, 40 or more, of course would be one. That's something that just came out.

One of the things we're realizing here is the government is a horrible partner. Most of our clients who have taken this PPP loan have probably never taken any kind of government money again. They've paid in hundreds of thousands or millions of dollars in taxes, but they've taken very little if anything, and now they're getting into this and they're realizing that they don't ... A lot of people are chafing right now because you got in on the front end with certain types of rules, and then now the rules are different and then probably in a few weeks the rules will be different again. So also I want everybody remember, PPP is a short term program.

Editorially, I don't think the PPP objective was to really necessarily save your business. It was to keep people on payroll, because our businesses have to last a lot longer than eight weeks. So, we can't just make all the decisions on this eight week period. Everybody wants to get their PPP forgiven if possible, but we've had a few days of some really good news about this whole COVID thing and hopefully we're going in the right direction. The stock market's come back, we got a lot less people having problems. New York, the whole problem there has gone down. Those are all fantastic things, but we all know, if you only hear three or four days of bad news, it gets bad really quickly. And as a leader or an owner of a business, I think it's important to think long term. Not just to get through the next eight weeks, how do I get through the next six months, or 12 months or 18 months, or however long this thing lasts?

So, I'd encourage you to step back and not be totally focused on the details of this sometimes and think, "Hey, what do I want to do? What's best long term?" I think sometimes people are going to and I think Morgan mentioned this earlier, sometimes people will elect to go ahead and take some of it as a loan. It's not the worst loan in the world for sure. It's a 1% loan, so it's wouldn't be a worst thing maybe to keep some of your powder dry, even if it can't be forgiven.

Now, let's go back to headcount for a sec. A couple of things are taking place because unemployment is so high. The amount you can get for unemployment is so high. Some people are offering people their jobs back and they're saying, "No, I don't want to do that. I want to stay home with my kids. I'm getting as much as I was making before, or close to it on unemployment." Now, if you make an offer to somebody and they say, "Hey, I don't want to come back," that does not count against you for your headcount. That was some really good news that just came out Friday as well. What you want to do there is make sure that you document that you offered the job back to the person, that's important. And, you want to talk to your lawyers here who can set you up as to how the best way to do that.

There's a lot of employee issues. Every day I get people asking me about employee issues. Had one yesterday, a dentist asked about that same thing. Somebody just didn't show up to work for three days and he's not sure, can he fire this person or What shall we do? My advice, especially right now is really talk to an attorney because there's all these new rules that people have regarding COVID and whether they have it or don't have it. I think if you're thinking about letting somebody go for whatever reason, it's really important to document and really important to get with your attorneys on it, because there's a lot of potential problems and before you do anything, you want to make sure you know what you're getting into.

Morgan Dilks:

Hey Harry, I got a quick question along the same lines. If you let somebody go and you've replaced them within the eight weeks, wouldn't that qualify?

Harry Plack:

It would. You dropped one and then you added one, that would be totally fine. That would be totally fine. Now, also another question people were asking me is about, "Hey, can I pay my employees a little more?" Yes you can, but my recommendation is to hold tight on that because you have people who are coming in, in a combat situation almost, a difficult situation. I would recommend that you wait till you're six weeks into this PPP loan. What we recommend that people do is, because the rules are changing and this whole COVID thing is changing as it develops on a week to week basis. I'd recommend that at six weeks out, six weeks after you got your PPP loan because remember, it's an eight week period you have to pay and spend this money on certain things.

Six weeks out, do a full reconciliation to see where you are on payroll and other costs to see how much of it you're going to have forgiven. Then at that point, you could also make any additional adjustments that you want to make. So, let's say you've got some room on the payroll side and you want to give your employees a COVID bonus or something like that, some kind of hazard pay because of what they're doing, you can then do that in the last two weeks. At that point, hopefully the health situation will be clearer, and hopefully the financial situation of your business might be a little clearer as well. If you're looking to do anything like that, my recommendation is just wait a little bit. Just keep them on regular payroll right now or bring them back on regular payroll. If you want to go ahead and pay a little extra, do that towards the end of your PPP.

So, headcount. I think we talked a little bit about headcount issues. Okay, somebody asked about the ... Oh, Brian. I know Brian. Brian's asking about the EIDL loan and yes, he got his $10,000 but he hasn't heard anything back. Yes, that's typical. The EIDL takes a long time. That's the EIDL. Remember, that's the one from the SBA, Economic Injury Disaster Loan. That takes a long time. Now remember, that's the one that's closed right now unless you're agricultural. But if you put in the application a while ago, you got your $10,000. It's not unusual to wait several weeks to hear on that. And if you haven't heard so far, I think the max you're going to get is going to be $150,000 just so you know.

Let's see, can you apply for a second PPP loan? No, not at this point, but there's some legislation right now. It was passed in the Congress but has not been passed in the Senate and it doesn't look like it will be. But in that bill, it tells you what some of these lawmakers are thinking. There's a lot more ... There are several more issues there that makes it a little more generous to businesses. Maybe it'll take it from eight weeks to 12 weeks, that would be great. Maybe it'll do another PPP, who knows? But this is once again as I said earlier, this is really developing right now.

Morgan Dilks:

Harry, I think we got time for one more good question here.

Harry Plack:

Let me answer a short one first of all. Copier leases, yes. You can go ahead and get those forgiven. And let's see, forgiveness applications for PPP are do out now. Any suggestions for timing to complete? Yes, they are actually out right now. You can get those at the SBA website. It just came out Friday night just so you know, and you can't fill those out until you're done your forgiveness period. So after your eight weeks, that's when you have to fill this report out. You give it to your bank, and your bank actually makes that decision as far as the forgiveness. We have some other questions so if you want to email me directly some of these questions I didn't get to, feel free.

Morgan Dilks:

Yeah, we're going to pass out all of our contact information at the end of this. Obviously, it's a very important topic that affects a lot of people, and certainly a lot of people attending our webinar today. If we didn't get to your question, by all means feel free to reach out to any of us and we'll definitely get you an answer. We just have to move on for time purposes. So, Greg is going to take over to talk about some critical issues that'll impact your employees and strategies for bringing them back to the workplace, but first we're going to do a quick poll question. This is a little bit of a guessing game here. What temperature denotes a fever? So, at what temperature are businesses required to send employees home?

Laura Rubenstein:

This is great. The numbers are coming in.

Harry Plack:

And it's a great question.

Laura Rubenstein:

Yeah. It's actually a trick question. I'll tell you all that. I'm going to end the polling now. It looks like people have answered. Okay, share results. All right.

Morgan Dilks:

All right, so 100.4. That's actually a very good answer. There isn't really a correct answer, or there isn't one correct answer. Different jurisdictions are applying different rules. The CDC guidelines are 100.4, but different states are applying different rules so sorry, that was a trick question. Greg's going to talk to you in a little bit about some of these issues that are affecting employers and bring back employees safely.

Greg Currey:

Great, thanks Morgan. As was mentioned, the temperature checks for employees are an issue. I'm going to get back to that in a minute, but that really goes into the overarching issue that I'm talking about today, which is handling employee concerns about coming back. But one of the most important pieces to a reopening plan is your employee communication, because one of the most important parts of any business is the employees. As Morgan already mentioned, payroll costs are a huge expense and a huge part of any employer's costs and while polling shows that some of the [public's 00:28:41] concerns about reopening are starting to ease as we get more data and get more information about how things are going in the places that have started to reopen, we still have a majority of US workers reporting that they're concerned about going back to work and concerned that they'll be able to go back to work safely.

As part of your reopening plan, you want to have a process, or you need to have a process really to clearly communicate to your employees that their concerns are taken seriously, and that all procedures are being followed and following the CDC and OSHA's cleaning recommendations, procedures on the use of personal protective equipment, which I'm going to refer to as PPE for the rest of this, not to confuse everyone with PPP. And, employee monitoring for symptoms to ensure that individuals who may pose a risk to others are not entering the workplace.

Over time, information about how you should be opening and the flowcharts from the CDC have changed and evolved. There was initially an 84-page report that was leaked that had extensive CDC guidelines. That was then replaced with flowcharts that were like decision trees with three steps. Those have since been supplemented with a 60-page document that gets into a little bit more detail, but if you read the CDC guidance, a lot of it is really left to the employers and the businesses that are going to be reopening. And also, keep in mind that as we're going through the reopening process, reopening is being done on a state by state and sometimes even county by county basis.

For example, if you're here in Maryland, different rules apply depending on what city or county you're in. Well, Governor Hogan relaxed restrictions on many things statewide. He said at this point, that the local public health officials are going to take over. And so, Baltimore City and Montgomery County and Prince George's County all have different rules than for example, Carroll County, Harford County, Bel Air. So depending on where your business is actually located, you're going to need to follow a three-step process for determining first of all, are you allowed to reopen and to what extent? The first step is going to check with your local county government. If you get the all clear from there, you check with the state and make sure that they don't contradict, and then make sure that you're in compliance with any federal laws. But, you really want to make sure that you go down to the federal level.

A key part of any reopening plan should be making sure that you have the materials and PPE in place to make sure that you can reopen safely. When you're obtaining cleaning products for your office or you're hiring a cleaning company, the EPA has a list of cleaning products that have proven effective in killing

COVID-19, as well as the times that they should be on any surfaces to kill COVID-19. So, there is detailed information about that available. Generally speaking it's bleach solutions, but there are other products that have proven effective. Check the EPA list, particularly as we're dealing with shortages in terms of cleaning supplies and cleaning equipment. Go to the EPA list and see because there may be products on there that you weren't aware that are effective at disinfecting surfaces and work areas, make sure that those are there.

In addition, you're going to want to look at the physical spaces that the employees are working in. You're going to want to ensure that employees are able to maintain social distancing while still working and that you don't have employees working shoulder to shoulder. If you have areas where employees are customer facing, you're going to want to look at the CDC guidelines or any state and local guidelines to determine if you need to erect any clear or plexiglass barriers between employees and the general public. You're going to want to make sure that employees have if they're required by the local government or by the state, that they have any required masks, gloves, face shields, things of that nature. And again, there's guidance industry by industry so if you are in retail versus if you're in medical practice, different rules are going to apply.

Depending on where your businesses are located, you are going to need to monitor your employees to make sure that symptomatic employees are not appointed to work, and one of those things are temperature checks. Depending on where your business is located, temperature checks for employees reporting to work may be mandatory, not just recommended. Other jurisdictions are recommending it and when we talk about the ADA later, this is one of the pieces where the EOC has come out and said when dealing with a pandemic situation, we're going to follow what the CDC and local health departments are ordering. So if there's a recommendation or the CDC guidance says you need to be taking temperature of employees reporting to work, then take temperatures of employees reporting to work.

For temperature checks as the poll indicated, a big issue is, when do I need to send an employee home? What constitutes a fever such that an employee is deemed to be symptomatic of having COVID-19? The answer is, it depends on the state and the local jurisdiction unfortunately. CDC guidance states that a fever for the purposes of COVID-19 is 100.4 degrees. However, other states and localities have established other lower numbers. For example in West Virginia, their recommendation is 100 degrees even. In Delaware, it's even lower. Delaware, it's 99.5. Part of that is recognizing that any established standard numbers flawed, because individual baseline temperatures vary.

The true belt and suspenders approach that I've seen employers implement, particularly healthcare employers, if you have advanced notice of reopening, have employees self check their temperature for a week before reopening to establish baseline temperature, and then define a fever as anything more than one degree above that. For example, if someone's regular body temperature is 98 degrees, then at 99 they'd be sent home, whereas an employee whose regular body temperature is 98.6 would be permitted to work if they were at 99 degrees. We've seen this come in all over the place.

I've been working with employers and for example, I had a client whose baseline regular daily temperature is 97.5. She was measuring for a week just to see how effective the forehead scanners were, and she found that her daily temperature runs lower. So for her, by the time she's at 100.4, she's at death's door whereas someone who regularly runs a 99.5, that may not be a significant fever. So, make sure that you're following what the CDC or your local governments is handling for that.

Moving on to personal protective equipment. Prior to reopening, ensure that your business is compliant with OSHA and CDC recommendations. As I'm going to get into in the next two slides from now, this is key to protecting your business from liability claims by employees and customers. You need to pay particular attention to what must be provided to your employees, who is responsible for covering the cost, and what you're going to do if there's a shortage. In many states, employers are responsible for bearing the cost of [inaudible 00:36:08] employees. In Maryland for example, the state rule is that employees can be required to pay for their own mask required to bring their own masks to work.

However, Montgomery County and Prince George's County have turned around and said, "No, the employer is responsible for providing the masks." So, you need to check with your Local Health Department if the state doesn't have a rule that you can easily find. Even if you are not responsible for the cost, you should still consider providing masks or other face coverings to employees to ensure for their sake and for the sake of their coworkers, that employees have access to face coverings. In the event that you will not be providing the face coverings yourself, the CDC does have an explanatory guide that can be provided to employees instructing them as to simple ways to make their own protective face coverings. If you've looked at this guide itself, there's even an extremely simple method where you use an old t-shirt, you fold it over a couple times and you just cut it with scissors. You don't need ties, or draw strings, or elastic or anything fancy. It's very basic but according to the CDC, it constitutes a qualified face covering.

The other thing you want to make sure is that with PPE, not just that they're available to employees, but that they are aware of how to use them correctly. Masks need to cover the mouth and nose for example. When you drive around or walk around the grocery store, you probably see people pulling their masks down or walking around with it just covering their mouth. It needs to cover your nose, and your mouth. PPE isn't going to do anyone any good if employees aren't using it correctly. So again, when you're bringing your employees back, make sure that you have the processes in place, make sure you're communicating that you're cleaning and disinfecting all areas, that you have PPE, that you are following social distancing both for them and for customers. That's going to at least show the employees that you're thinking about this, that you're taking the steps needed to make sure that they can return to work safely.

Moving on, another question that we're getting is, okay, employees are coming back to work, what do we do about what employees are doing at home? What can I do to control an employee's conduct outside of work to ensure that they do not bring COVID-19 to work or to ensure that they are not exposing their coworkers to undue risk because they've decided that for themselves, they're fine with taking the risk of contracting COVID-19 because it's just like the flu? I hear this a lot. Listen to the medical experts, it's not just like the flu. While there are not necessarily serious symptoms, even asymptomatic people can spread the disease and can have hidden underlying medical conditions. Even seemingly healthy people have been seriously afflicted, so I'm not endorsing that viewpoint.

From a legal standpoint, depending on the state where you're located, you may have greater leeway in how you enforce social distancing rules at home. However, unfortunately as a practical matter, as more things reopen and legal restrictions or eased, it becomes more and more inadvisable to dictate what conduct employees are permitted to engage in outside of work. From a privacy standpoint, two concerns stand out. First, most employees would consider it highly offensive and inappropriate for an employer to dictate what legal activities they may or may not engage in outside of work, even if the law does not make it impermissible.

Second, it's nearly impossible to monitor what employees are doing outside of work. And absent employees sharing information on social media that they shouldn't be sharing, it's difficult to adequately enforce such a policy due to limited information. If you're getting limited information, that then raises the risk that you're going to end up with disparate outcomes because if one point is telling everybody that they're going out and violating social distancing while somebody else is posting pictures of a dinner party, you may discipline employees differently and that may then lead to discrimination lawsuits down the line.

In many jurisdictions even where employers are permitted to control employee conduct outside of work, there are restrictions on prohibiting legal conduct by employees. So in many cases right now, employers are implementing policies advising employees that they're required to abide by any executive orders while they're at home as a condition of coming into work. But if those executive orders barring certain behaviors are lifted, employers should not re-implement those executive orders as a condition of returning to work.

For example, with the removal of the restriction on nonessential activities here in Maryland, individuals are now permitted to gather in groups of 10 or less. So even if you as an employer think that that's risky behavior or your employees think that that's risky behavior, you can't go to your employees and say, "Well we think it's risky, so you're not allowed to do it." All of that said, social media use by employees flaunting CDC recommendations can create workplace issues. Employees should be reminded of all CDC recommendations and local requirements, and advice that workplace conflicts arising out of social media will continue to be handled in accordance with the company's standard policy.

Morgan Dilks:

Greg, before we jump in the next slide, I think we're going to do one quick poll question. That question is going to be, has your company reduced its workforce, required employees to work from home if capable, or kept employees on the payroll while they require staying at home or just some combination of the above?

Laura Rubenstein:

All right. Answers are coming in now. Looks like telework so far may be the clear winner here.

Morgan Dilks:

Require employees to work from home. It looks like there's been a big combination of different ways that employees have been kept out of the workplace. Reduced workforce, required to work from home, required employees to stay at home and not work. So, bringing employees back to the workplace is definitely going to be an important issue to discuss in depth. Greg's already done a fantastic job. He's going to continue with a couple of frequently asked questions on the topic.

Greg Currey:

For employers, liability is a central concern right now of if I reopen, there's not a lot of guidance from the CDC, at least not in a lot of detail. From a business standpoint, obviously businesses aren't making ... If you're not able to do most of your operations by telework, as a business as a practical matter, you want to reopen and you need to reopen. By the same token, your employees are concerned about safety and there's concerns about, "Well, can I get sued if I force employees to come back to work?" That's the million dollar question, or more for many employees. Because at the end of the day, it does no good to reopen in a dangerous way and then have your business destroyed by the eventual lawsuits that come after claims are filed by employees who contract COVID-19 at work because you weren't ready to reopen.

So, that gets us to big question number 1, am I liable to an employee if they contract COVID-19 at work? Generally speaking, historically the answer has always been no. Employers are not liable to employees who contract communicable diseases while in the workplace. It's not a compensable illness under workers' compensation because it's not unique. It's not defined as an occupational disease, it's not unique to the employer's work. However, given the circumstances now, we can expect that there will be lawsuits if individuals are hospitalized or die as a result of contracting COVID-19 at work, and they can trace it to work. So what you want to do, any applicable tort standard, is you want to ensure that you're meeting the applicable standard of care. That means making sure that prior to reopening, that you're taking the steps outlined by the CDC and OSHA, and that you're complying with any of their guidelines.

Similarly, am I liable to employee's spouse or family members if they can track COVID-19 from an employee who contracts it at work? Again, generally speaking historically, the answer has always been no. Employees who contract ... There's generally not considered to be a duty of care owed by employers to family members of employees. But that then gets to, what precautions am I required to take to protect my employees? If you read the CDC guidelines, you want to make sure that you're still adhering to the advanced cleaning protocols, ensuring that you're using disinfectant and cleaning products that meet the CDC guidelines and that have been shown by the EPA to kill the coronavirus.

When you are doing your cleaning regimens and when you're implementing all these processes, you need to be memorializing it. Writing down how often your cleaning company is coming into the office, record what cleaning products you're making available to your employees to clean their personal workspaces and their surfaces, and document any communications to employees about how you're cleaning the office. Again, if you've got that paper trail showing, we communicated to employees that this is how we were cleaning, we were maintaining social distancing, we kept employees at least six feet apart, we closed down common areas, things of that nature. Those are all things that you should be doing to protect employees because generally speaking, prolonged exposure to the virus is what's going to heighten the risk of catching it.

Laura Rubenstein:

Yes, why don't you answer this last question, and then we're going to have to move on because we're tight on time.

Greg Currey:

All right, sorry. If you have an asymptomatic employee refusing to work for fear of contract with COVID-19, you want to talk to that employee and find out whether they or any family members have underlying health concerns that are causing them to be fearful of returning to work. If that's the case, you're going to want to treat it as a request for reasonable accommodation with the ADA. Otherwise, if they don't have any documented health concerns and they're simply afraid of returning to work, then that becomes a business decision. You need to sit down and talk to that employee, see if you can allay their concerns, but at that point if they're not willing to work due to a generalized fear and you can't make them come to work, then if you need to separate employment, you'd probably want to communicate to them that that separation of employment may be deemed by unemployment to be a voluntary separation by the employee without good cause since they may not get unemployment.

Morgan Dilks:

Thanks Greg, that was super helpful. And for anybody who didn't get their questions answered, we apologize. We're on a one hour timeline here, so feel free to reach out to any of us. Our contact information will be around at the end. Greg's an absolute expert on everything ADA so feel free to reach out to him or Laura or myself, and we'll get your question answered. So, Laura is going to take over and talk about the Families First Coronavirus Response Act.

Laura Rubenstein:

All right, the FFCRA. This is a federal act that went into effect April 1. A lot of companies who were scrambling during the month of March not sure whether they were going to stay open, maybe some laid off and then they got the PPP money as Harry explained, now they're in a position where they recalled employees to work, and they may have overlooked the FFCRA. What it is, is that it is a requirement that companies not with the help of the federal government on the front end, that they pay employees up to two weeks of salary, it's capped, if the employee becomes sick or has to isolate or has to be in quarantine due to COVID.

It also expands the FMLA and requires companies to pay employees up to a total of 12 weeks of compensation capped at two-thirds of their pay, or $12,000 for 12 weeks if the employee has to care for their minor aged children because school is closed, or because their daycare provider is closed or otherwise unavailable. It also applies to companies that have fewer than 500 employees. In this case, it's different than the regular FMLA because employees are eligible if they've worked only for 30 days for your company.

Companies on the back end do get a tax credit against the tax imposed by the IRS for each calendar quarter in an amount equal to 100% of the wages paid to employees during that calendar quarter. This benefit does not apply, the FFCRA does not apply to medical providers including those hospital workers, nursing and assisted living facility employees, employees who work in laboratories, et cetera. And, there is exception for companies that are smaller than 50 employees where paying this benefit would result in not being able to operate at minimal capacity. Contact me if you need a definition for that. This law went into effect April 1 and will sunset December 31, 2020. It does not apply to employees who were furloughed or who were laid off prior to April 1, And it also doesn't apply to employees who are laid off post April 1.

All right, some details. You are required to pay employees up to 80 hours of paid sick leave if they are subject to a federal, state or local isolation order because of COVID-19. For a while, for example if you live in the state of Maryland, and you traveled to New York and then you return to the state of Maryland, you were required to self-quarantine for two weeks. If that's the case, then you were required as an employee to report that to your employer, and your employer under the FFCRA would have to compensate you. Now again, the cap is $511 per day if you are sick, or if you are ordered into isolation or advised to self-quarantine for a total of two weeks, so that maxes out at $5,110. Also, the FFCRA benefits pay up to an additional 10 weeks if you are paying for employees as I mentioned, who are caring for their own children because school is closed or daycare is closed.

Now interestingly, some caveats. If the employee is caring for their children at home and the employee is still able to telework, and interestingly the regs say that there are 24 hours in a day and so if you're able to telework at any point during the day not taking into account that you have to sleep, that this benefit is not available. The reality is, this is something that employers and employees really need to discuss and determine how realistic it is if you are attempting to telework and you're watching your four children under the age of 10 at home by yourself, who are trying to do distant learning. So, conversations are always very important between the employer and the employee. In addition, a poster must be hung in the workplace. If you don't have your employees coming into work, then make sure you are disseminating that poster through your intranet or in an email to employees.

Now, you'll want to make sure that you get the tax credits, and you also want to make sure you're keeping your employees honest. The documentation that you're required to get from is relatively easy. It's primarily a statement from your employee identifying their specific circumstances. For example, if an employee had to quarantine or self-isolate, they really just need to provide the name, their name, their healthcare provider's name or the healthcare provider who instructed them to self-isolate and what their specific circumstances were. They traveled to New York, they were exposed because their spouse or child was exposed, or they in fact tested positive for the coronavirus.

For the certification for families who are watching children at home, you just need to have documentation again, from the employee. The names and ages of their minor aged children, the names of the school and when they closed. Documents must be maintained by the employer for up to four years because there have been already, and there will continue to be lawsuits involved. So, already questions have arisen and Morgan, how much time do I have left here?

Morgan Dilks:

You got two minutes.

Laura Rubenstein:

I've two minutes. All right, let's do it. This is not an additional expansion of the FMLA if your employees have already used FMLA prior to April 1. So, let's say you had an employee who gave birth to a new baby on January 1 and she used all 12 weeks of FMLA leave. It's FMLA job protected leave, she wasn't paid, she may have been paid through short term disability or other benefits and now she says, "Okay, my daycare that I was planning to send my infant to was closed. I would like to take advantage of the FFCRA." Unfortunately, she can't. She already used her FMLA benefits. This benefit is not available.

Another question, and I think Greg covered it. My employee is afraid of returning to work for fear of being exposed. Well, a fear alone does not cover any of the FFCRA reasons, and so that is a discussion that you need to have a serious discussion with your employee to explain, "Here are the safety parameters we have in place. Here's what we're doing. Here's what we're requiring of customers walking in the door. Are you comfortable with that?" If not, then you need to make a serious decision whether you keep them and you can continue to accommodate them, can they continue to telework, or is it time to make a separation?

This will be my last slide. There are compliance risks. Already there have been lawsuits. We're only about a month and a half into this law occurring and there have been lawsuits, primarily retaliation claims for employees who were denied FFCRA benefits because these benefits are considered wages. So you have not only plaintiffs' employment attorneys who are ready to pounce and demand unpaid compensation for their clients, but you're also looking at the Department of Labor who can go after companies and seek compensation for individuals who file claims.

Morgan Dilks:

Laura, we have one quick question, is it correct that FFCRA does not have to be provided to employers if they have fewer than 50 employees and Brian Gallagher has asked, "Is the 50 FTP or just employees?"

Laura Rubenstein:

Let me clarify. I'm sorry if I misspoke. It does have to be provided to any company. Any company that has under 500 employees must provide FFCRA benefits. There are three exceptions, one of which is if it will cause a significant financial hardship to the company where they're not able to carry on regular operations. That hasn't exactly been defined by the regulations, but it does have to be provided to companies that are under 500 employees. Thank you for asking that question, I do want to clarify that. And we can talk offline for whoever had that question.

Morgan Dilks:

Okay. We're going to jump right into the reopening process and I'm going to speed through this because I know we're short on time. So, I want to talk about a couple of things. Number one, cost of reopening. That's going to be active invoices for ... That's going to be a big piece of it. You're going to want to square up with your vendors [inaudible 00:57:42] actively develop a plan for dealing with reopening. You know your business better than your vendors do and you're in a better position to explain your capabilities to pay. Do this proactively. As we've mentioned before, if you're not addressing your old balances with vendors, they may be reluctant to deliver fresh inventory.

Next, use this as an opportunity to bring back your better performers and replace employees who didn't perform up to expectations. If you've laid off individuals who were not pulling their weight, there's no requirement that you reemploy the same people when this is over. And, consider changing your service model. For the foreseeable future, we're all going to be operating under some sort of restrictions whether those are government imposed, dictated by the market are adopted by our management teams. Prepare for your reality to change a little bit. Consider investing in working from home if your business can handle that, and look into the benefits of curbside pickup if you're a restaurant. Adapting quickly will be key.

A big one is going to be as far as practical considerations, next slide please, preparing for the return of people. You got to prepare your space for the return of people. This may include for retailers, marking off space on the floor for how far apart people should stand in line. For restaurants, this may include knowing how many people are allowed in your restaurant pursuant to local guidelines, removing excess tables from the dining room and encouraging reservations. For offices, pay close attention to the ever changing governmental orders regarding people in office space. Encourage working from home for employees who are capable. Consider keeping hand sanitizer and disposable masks available for visitors to your retail establishment or office. A key factor in successfully reopening will be ensuring that your visitors feel safe in your environment. Put yourself in their shoes. Would you want to go into a business or a retail operation or an office that didn't appear to be taking any precautions in May or June of 2020? I certainly wouldn't.

Next, you're going to want to implement a cleaning plan. A big part of reducing the spread on reopening will be keeping surfaces in your place of business clean. While it's normally routine to clean spaces like kitchen countertops and bathrooms, things like light switches, door handles, desk spaces, they may not be cleaned daily and you may want to reconsider what your cleaning plan is. And if they are cleaned daily, it's possible that based on your traffic, that daily is not often enough. Clean often and this is going to sound funny to say, but clean visibly. Get caught caring about your customers' and your clients' safety. The more people see you taking precautions for their safety, the more interested they're going to be in doing business with you.

For restaurants, rearrange your space to limit the number of people that you can let in at a time. Don't be afraid to remove tables. Remove customer access to self-serve condiments and distribute packets instead. And yes I realize this is more expensive, but the loss of revenue you may suffer from people feeling unsafe doing business in your establishment could be a greater loss than whatever additional expenses you incur from doing that. Don't allow customers to seat themselves. They may sit at a table that hasn't been cleaned yet. I've been guilty that plenty of times. You see that table in the corner of the restaurant and you got to get there, so you go and you sit down but there's still stuff on it. And, you got to let people know that this is for their own safety, there's no self-seating at this time.

And one other thing, you're going to want to communicate with your staff and help them prepare to deal with impatient customers who disagree with your safety policies. In offices, consider closing common areas. In our office, we have a kitchen with tables and we have to collaborative workspaces. Consider closing those areas off or implementing strict protocols for their use. For example, maybe people are allowed in the kitchen to store their lunch or to make coffee, but they're not allowed to eat lunch in there anymore for the foreseeable future. Limit face-to-face meetings as well. As far as physical considerations, is there a high ventilation setting on your HVAC system that could cycle air through your place of business more frequently? Would your business benefit from placing temporary plastic shielding between yourself and your customers?

And finally, communicate with your customers. If your business has been closed for an extended period of time, you should let them know you're back up and running. Take this as an opportunity to communicate both your reopen date, and a brief overview of your most critical safety policies. This will show your customers that they need ... How they need to conduct themselves in your establishment, and give them a sense of confidence that you're prioritizing their safety.

And believe it or not, COVID-19 has presented some opportunities for businesses. First, focus on your core business. What are your goals and objectives? It's easy for businesses to get sloppy in the good times. My old college rugby coach used to have a saying, discipline creates wealth and wealth destroys discipline. What he meant by that was when times are good, it's easy to take your foot off the gas pedal. Take this time to refocus your business on what made it great in the first place. Consider innovating your business offerings. It's difficult to innovate your product when business is moving so quickly. Take this downtime to sharpen your saw. Did you not previously deliver? Maybe that's an avenue to consider.

Use the crisis around us to solidify your relationships with vendors and customers. Let your vendor know how much you appreciate the leniency they're extending, and let your customers know how much you appreciate their continued business. And finally, capitalize on the labor opportunity. Right now we have arguably the most qualified and talented workforce in the history of the world sitting on its collective couch through no fault of their own. There are people who are highly qualified, and yet unemployed. Consider taking this opportunity to upgrade your workforce if you have the means.

As we conclude our presentation today, I want to let everyone know that we're routinely posting updates on our website on a page dedicated to COVID-19 issues. For the latest information and topics, please visit our website. Additionally, we're in tune with changes to updates in law in a wide variety of practice areas and we regularly publish articles updating those issues. So, I would encourage anybody to sign up for our weekly newsletter, the Weekly Wright Report as well. Harry also has a regular newsletter keeping his clients up to date on all things accounting, and I would encourage you to visit Harry's website at plack.com to sign up for his newsletter as well. Our website is right at the bottom of each of these slides. Additionally, Wright, Constable & Skeen, the Plack Group and all of today's presenters can be found on LinkedIn by following the links on this page.

Finally, in closing, I want to touch on an important concept that'll hopefully make everybody feel a little bit better about the current state of affairs. We're in what economists call an event driven bear market, or an economic downturn triggered by one off shocks to the economy such as wars or oil price crashes. This appears to be an event driven economic downturn and the good news from a financial perspective is that event driven economic downturns tend to last less time than structural or cyclical downturns and the declines have historically been less painful. They also haven't lasted as long and recovery times have been a lot faster. With the impending rollback of the current recession our businesses have been facing, we're hopefully well on the way to that recovery.

On behalf of our presenters, Wright, Constable & Skeen and the Plack Group, I'd like to thank everyone for attending our webinar. If you have any questions, by all means feel free to reach out and contact us at the contact information provided on this final slide. Stay safe, stay healthy and get ready for brighter days ahead. Thank you.