Sysco’s Exclusive Info Session #5
NAVIGATING COVID 19 CUSTOMER WEBINAR

Reimagine YOUR RESTAURANT

#foodservicestrong
Sysco Exclusive Info Session
RELIEF FUNDS CUSTOMER WEBINAR

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Insurance Recovery, Litigation & Counseling Practice

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Signal Restoration Services

Arnie Mascali | President
Procor Solutions + Consulting

Pamela Moore | Partner, Labor & Employment Law
McCarter & English, LLP
Agenda

- Employment concerns in the post pandemic workplace
- Cleaning Considerations
- Insurance Considerations
- Sysco Cares Support Center
- Marketing Services Concierge

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EMPLOYMENT CONCERNS IN THE POST PANDEMIC WORKPLACE

Pam Moore
Partner, Labor & Employment Law
McCarter & English, LLP
DISCRIMINATION

• Can I bring my younger workers back sooner than my older workers?
  • Must base decisions on legitimate business reasons
• Is concern for my older workers’ health a legitimate business reason?
  • Pregnant employees
  • Employees over 65
• Discrimination on the basis of race or national origin on the increase
  • Harassment of Asian workers
Can I deny employment to employees whom I know to have medical conditions that increase their risk of suffering serious consequences from Covid 19?

New EEOC Guidance:
- Direct threat analysis
- High standard
- Must show that employee’s health condition poses a direct threat to his/her health that cannot be eliminated or reduced through reasonable accommodation
DISCRIMINATION

• Can I take employee temperatures or require that they be tested for Covid 19 and/or have antibody testing?
  • Must test everyone
  • Must show that testing is “job related and consistent with business necessity”
  • Must use reliable testing
  • Must be done post offer for new hires

Pamela Moore | Partner, Labor & Employment Law
McCarter & English, LLP

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DISCRIMINATION

• Can I require employees to stay home if they have symptoms of Covid-19?
  • Yes
  • Follow CDC or state law guidelines

• Can I require employees to provide a fitness for duty certificate upon returning to work?
  • Yes
  • Be flexible on form
DISCRIMINATION

• Can I ask employees whether they are experiencing symptoms of Covid 19?
  • Yes (EEOC Technical Assistance Q&A, May 5, 2020)
  • Must keep up with available information
  • Must maintain confidentiality

• Can I withdraw an offer of employment because an employee contracts Covid 19?
  • Yes
WAGE AND HOUR ISSUES

• Do I have to pay employees for the time they spend in medical screening?
  • Yes

• If I can only open on a reduced basis, do I have to pay my exempt employees their full salary?
  • Must pay on a salary basis
  • Must pay full salary unless the employee misses a full day for personal reasons or sickness covered by a bona fide sick leave policy
  • Must pay full salary if any work performed during a work week.

Pamela Moore | Partner, Labor & Employment Law
McCarter & English, LLP
WAGE AND HOUR ISSUES

• Can I suspend an employee without pay for refusing to comply with safety procedures?
  • Yes (including exempt employees)

• Do I have to pay an employee who reports to work but is sent home because they fail the medical screening?
  • State law may require report pay
  • Must pay for the hours worked
  • If union contract, must comply

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McCarter & English, LLP

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FAMILY AND MEDICAL LEAVE ACT

- Covid 19 related absences may be covered “serious health conditions” even if the illness is temporary.
- Payments provided to employees for perfect attendance, hazard pay, etc. may run afoul of FMLA requirements.
- Must check policies to be sure they permit employees to substitute PTO in appropriate situations, e.g., when state or federal law mandate it.

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WORKERS COMPENSATION

• Am I responsible for paying medical expenses if my employee becomes sick from Covid 19?
• Is a Covid 19 infection covered by workers compensation insurance?
  • Most states typically cover infectious diseases if they are contracted through exposure at work
  • Some states are creating presumption for coverage, but IL now enjoined from doing so
• Benefits to providing coverage
  • Exclusivity provision (maybe)
  • No tort liability (in most cases)
• Workers compensation is state specific

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McCarter & English, LLP

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TORT LIABILITY

• Law suits being filed for wrongful death or wrongful infection
  • Family of employee in PA sued employer for “promoting the spread of the virus by forcing employees to continue working in close proximity without PPE”
  • Texas restaurant employer accused of prohibiting employees from wearing masks. Could result in similar action
UNIONIZED WORKFORCES

- Do I have to bargain over pay benefits and working conditions?
  - Flight attendants demand increased safety measures
- What do I do with employee complaints?
- United Airlines sued. Union claims the airlines reneged on a promise not to cut wages after it obtained $5B under the coronavirus relief package

Pamela Moore | Partner, Labor & Employment Law
McCarter & English, LLP
WHISTLEBLOWING AND RETALIATION

- Discrimination Statutes
- Wage and Hour
- OSHA
- State Whistleblower Statutes
- Wrongful Discharge
- Unfair Labor Practices
  - Employees complaining about safety at work
  - Employees complaining that their pay is insufficient
  - Employees complaining that employer refused to reasonably accommodate
- Florida A/C technician files suit after he is fired following complaints.

Pamela Moore | Partner, Labor & Employment Law
McCarter & English, LLP
OSHA

• INTERIM ENFORCEMENT RESPONSE PLAN FOR COVID-19
  • OSHA paying “heightened attention” to risks posed by COVID-19
  • Enforcement of obligations under General Duty Clause
    • Assumptions: Transmission occurs during close contact (within 6 feet) primarily from respiratory droplets when the person sneezes or coughs.
    • “Prudent infection control practices” must be e
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OSHA

• Do not neglect employee safety for aesthetics or ambiance
• Stay current with CDC guidelines
• Appoint manager(s) to create and update policies and enforce them
• Prepare for complaints
• Invite employee comments and act on them when appropriate
Items to Review / Include in a Business Resumption Plan:

- Disinfection Measures / Cleaning Protocols
- Preventative Materials Supply
- Comprehensive Training
- Social Distancing Policy
- Health Screening Procedure
- Inbound Package Protocol
- Isolation Protocol
CLEANING PROTOCOL

Types of Cleaning:

• Level 1 – Precautionary: fogging with disinfectant and limited high touch wiping.
• Level 2 – Possible Exposure (PUI): fogging with disinfectant and full range disinfecting of high touch surfaces.
• Level 3 – Confirmed Case: fogging of an EPA-registered disinfectant solution, detailed cleaning of horizontal and vertical surfaces, and direct application to vertical and horizontal surfaces with the same EPA-registered disinfectant solution. Wiping of all surfaces 10’ down.

• Standard Ongoing Routine Cleaning

• Recommend Baseline Cleaning & Routine COVID Cleaning
CONTRACTOR QUALIFICATION

• When conducting a deep clean find an external company - experienced in biological cleaning and disinfecting.

• Training & Certification

  • Inquire if have they been trained in proper cleaning and sanitizing methods such as:
    • Do they know the difference between cleaning, sanitizing, and disinfecting.
    • Do they understand what pre-cleaning or removal of bioburden is prior to sanitizing or disinfecting.
    • Do they understand dwell times.
    • Do the understand what log reduction means.
CLEANING PRODUCTS

• EPA N List – Disinfectants for Use Against SARS-CoV-2
  • https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2

• Safety Data Sheets (SDS)
• Ensure proper Dwell Times are followed

• Signal Restoration Services’ Cleaning Team specializes in the utilization of innovative cleaning products and application methodologies designed for comprehensive, environmentally safe, non-toxic, decontamination of molds, mold spores and mold related mycotoxins, bacteria, viruses and many chemical contaminants.
On the Move!
From coast to coast, Signal Offices and our National Disaster Teams are always ready!
CONCLUSION

- Taking steps to be prepared, prevent additional impact to your business, and keeping your employees and customers safe, can be done with planning.

- Hand Washing, isolating and disinfecting your business will prevent future spread and loss to your bottom line.

- For more information on cleaning your business or assistance in developing your COVID-19 Business Resumption Plan, please contact Signal Restoration

800-533-9898
Signal is On Call 24/7/365
INSURANCE CONSIDERATIONS

Sherilyn Pastor
McCarter & English, LLP
Chair, Insurance Recovery, Litigation & Counseling Practice
INSURANCE CONSIDERATIONS

• Avoid the temptation to cancel insurance policies
• Consider Grace Periods and extensions of them for premium payments
• Know what your policy covers
  • Do you have sufficient coverage for your risks?
  • Will the carrier absorb the cost of defending claims?
  • What are the notice requirements?
• Get ready early for renewals
  • Lookout for changes that insurers may make
  • Insist on reviewing proposed policy language (e.g., specimen forms)
To support you as our valued customer during this unprecedented time, Sysco has established a 
CARES Act Support Center.

This Support Center will help you with questions about the CARES Act and the application process to ensure a fast and accurate submission. We have a team of experts standing by.

Call: 1-334-45-i-Care  +1 334-454-2273
Concierge Service

Our Concierge Service available to any customer

- Crisis Menus, Pop Up Shop/Marketplace, Social Media, Thank you cards and other restaurant marketing materials to ensure continuity
- Provide guidance on what you could be doing to promote your business
- Provide guidance and facilitate our iCare Partnerships available to our customers
  - Websites to facilitate Online ordering
  - Delivery
  - Gift cards, etc.

For Marketing Services Help:

- **Call:** 1-800-380-6348 or
- **Email:** info@syscomenuservices.com

For more information about how Sysco can support your business please go to Foodie.Sysco.com/Snapback