The Doctor Is In

Practical Guidance for Medical Practices and Other Healthcare Providers Opening Their Doors to Patients

As the public health emergency from the COVID-19 pandemic eases and some states begin to open the economy, physician practices and other healthcare providers prepare to welcome patients back to their offices to receive non-COVID-19 healthcare services. As operations resume, medical practices and other healthcare providers may want to consider the following guidance.

Visit Jackson Lewis’ Reimagining the Workplace and COVID-19 resource pages for more information.

Personnel Considerations

Who Should I Bring Back to Work?

- Determine which employees are necessary to assure procedures are properly staffed to maintain patient safety given availability and accessibility of PPE and other supplies necessary to start seeing patients again.

- Try to project patient volume and consider a phased return to work.

- Consider past performance evaluations or tenure for a merit- or seniority-based return system.

- In the absence of past objective based criteria, choices must be carefully analyzed to minimize risk.

- In certain cases, the failure to rehire may be viewed as a termination.

- Evaluate whether employees are subject to leave-related issues arising from COVID-19.
What if my employee does not want to come to work because they are concerned about contracting COVID-19?

- Employers will be justified relying upon existing leave policies in making employment decisions and can require employees to come back to work if:
  - The employee does not present with a risk factor which could increase their risk of contracting COVID-19 (i.e. compromised immune system),
  - The employee has not been advised by their doctor that they have a pre-existing condition which makes them more susceptible to complications if they contracted COVID-19, and
  - The employer is following federal and/or state mandates regarding protection of employees, employers can require that employees come to work.

What if my employee refuses to come back from furlough, preferring to remain on unemployment?

- As operations resume and work is offered to furloughed employees, there is no longer a basis for claiming unemployment as a voluntary termination even if they are earning more money as a furloughed employee on unemployment.
- If available work is refused, consider modifying separation status to an involuntary termination or employee abandonment of employment.
  - If valid, alternative reasons exist for an employee’s unavailability, e.g., childcare issues due to COVID-19, there may be alternative resources available.

What Additional Restrictions Should I Be Aware of to Keep My Workplace Safe for Employees and Patients?

- How do I conduct screenings?
  - Decide who will be screened: employees, patients, suppliers.
  - Determine how and who performs testing and/or screening.
  - Consider whether screening will take the form of temperature checks and whether other methods should be considered or are permissible.
  - Determine if employees need to be compensated for time spent in screenings, temperature checks or putting on and taking off protective equipment.

- What do I do about PPE and face coverings?
  - Masks, gloves, wipes, sanitizers, and disinfectants may now be required for employees who are not providing patient care. Please refer to your state and local requirements.
Please note that wage and hour issues may be implicated if PPE is required and you do not provide them, especially if minimum wage employees have to incur the cost of providing their own.

Operational Considerations

How Can I Make My Business Operations Work?

- Mandatory social distancing and other federal and state restrictions will present additional challenges which will require creative solutions.
  - Consider triage protocols to determine which patients may or should be seen in person in the office.
  - Determine how many appointments will be scheduled and whether it is appropriate to start with a limited number to allow more flexibility to refine new procedures.
  - Evaluate whether it is feasible to operate with waiting rooms or if the practice needs to implement alternatives, such as “wait in vehicles” mandates or bringing patients directly to examination rooms.
  - If the practice intends to continue using a waiting room, consider whether physical measures need to be taken to accommodate social-distancing mandates.

What new protocols will be applied to patients?

- What do patients need to know before they arrive or as a condition of arriving at your office?
  - For instance, decide whether patients be required to take their temperature before arriving for appointments, be COVID-19 symptom-free, wear masks or other PPE upon arrival, or be permitted to bring someone with them.
- Consider whether to require patients seeking non-COVID care and treatment to sign a consent for treatment that includes the risk of COVID-19 contagion.