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COVID-19 response and safe re-occupancy plans and training - by Stephen Graham

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Previously in NEREJ's April 15, 2020 issue, an overview was presented on cleaning and disinfection methods for the novel coronavirus (SARS-CoV-2) that causes coronavirus disease 2019 (COVID-19). Such measures, identified by the U.S. Centers for Disease Control and Prevention (CDC), U.S. Environmental Protection Agency (EPA), and the U.S. Occupational Health and Safety Administration (OSHA), are a precursor to allowing building owners and business operators to re-open safely. This present article reviews key provisions of recent state government

efforts to regulate re-occupancy, and how to comply with such programs. Each state's plan will incur considerable new effort by the commercial real estate (CRE) industry.

Connecticut, Maine and Rhode Island have inaugurated programs requiring registration and self-certification of a detailed compliance checklist or plan, and designation of an "administrator" or "health officer." Connecticut imposes an employee log; training on all plan elements; cleaning checklists; and estimates of personal protective equipment (PPE). Vermont instituted a policy that employers must "immediately order...and conduct routine" thermometer checks, amongst other requirements. As of May 11, New Hampshire retail could re-open if: Employees wear masks during all business hours, even where no others were present; regular updates and training is provided; and employees report any symptoms of COVID-19 or close contact to a supervisor. In Massachusetts, a "Four-Phase Approach to Reopening Massachusetts" with "Mandatory Safety Standards for Workplaces" was announced which applies to "all sectors and industries" prior to May 18 Phase I re-openings.

The Massachusetts version is arguably the most far-reaching and illustrative of most other states' plans. The approach establishes three "dimensions"- overall social guidance, mandatory safety standards, and sector specific protocols. These lattermost protocols will be rolled out soon. The four elements of the mandatory standards are as follows:

Social Distancing: All persons, including employees, customers, and vendors should remain at least six feet apart to the greatest extent possible, both inside and outside workplaces • Establish protocols to ensure that employees can practice adequate social distancing • Provide signage for safe social distancing • Require face coverings or masks for all employees.

Hygiene Protocols: Provide hand washing capabilities throughout the workplace • Ensure frequent hand washing by employees and adequate supplies to do so • Provide regular sanitization of high touch areas, such as workstations, equipment, screens, doorknobs, restrooms throughout work site;

Staffing and Operations: Provide training for employees regarding the social distancing and hygiene protocols • Employees who are displaying COVID-19 like symptoms do not report to work • Establish a plan for employees getting ill from COVID-19 at work, and a return-to-work plan.

Cleaning and Disinfecting: Establish and maintain cleaning protocols specific to the business • When an active employee is diagnosed with COVID-19, cleaning and disinfecting must be performed • Disinfection of all common surfaces must take place at intervals appropriate to said workplace.

It is apparent that before opening in any New England state, employers need a plan along with employee training in safety and hygiene protocols.

In the scramble to get employees back to work, many landlords and some tenants have already issued initial guidance on what to expect once the office reopens. Our experience shows that a comprehensive COVID-19 Safe Re-Occupancy Plan (ROP) addressing the elements described

above, amplified with practical, “how-to” details, provides an orderly framework for pre-opening preparation and employee re-transition into the workplace. Perhaps more importantly, the availability of a ROP shared via training in advance of office re-entry, provides a sense of comfort and re-assurance to employees who are understandably nervous about that “first day back.” This document can also set the ground rules for work behavior and can provide protective language useful for employment issue resolution

Other key components we recommend including in ROPs include:

- Risk Exposure (a review of virus transmission mechanisms) and Risk Reduction (use of Employee Self-Screening Questionnaire, which efficiently verifies absence of COVID-19 contact, and submitted prior to re-entry);
- Personnel Policies – discussion of whether certain age categories or at-risk individuals should remain at home initially; employee acknowledgement, and enforcement of policies; and handling of complaints;
- Risk Reduction Protocols and PPE: May include temperature checks at entry and recording data; when masks are needed/not needed, e.g., in common areas vs. individual workspaces; cleaning type, frequency and responsibilities (landlord vs. tenant); in-building traffic flow and directions; proper waste disposal;
- Roles and Responsibilities: Landlord vs. tenant; security, custodial, property management, and administration responsibilities;
- Engineering Controls: Air flow pathways and filtration considerations; workplace modifications (rearrangement of seating, Plexiglass panels).

Regarding the topic of air filtration, the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) guidance, “Position Document on Infectious Aerosols, April 14, 2020” should be used by both landlord and tenant to confirm best practices are being implemented.

Each ROP will be different not only for the varied types of CRE business, but for each individual business. Retail, restaurant, multi-family, industrial, office, and industrial/warehouse, for example, have very different infrastructure, staffing, and social distancing requirements.

Regarding who should prepare a ROP, and conduct the associated training, it is suggested that the scientific and engineering aspects of COVID-19 compliance should be obtained from internal staff or an outside consultant with expertise in both health and safety and infectious diseases. Advice on labor and employment matters, and contract/lease adjustment/allocation of responsibility and related concerns arising from downsizing, COVID-19 compliance, etc., would best be obtained from legal counsel. Hinckley Allen and Pierce Atwood are two regional law firms who have each held webinars

and/or published alerts with specific guidance on these topics recently. Overall, the “peace of mind” resulting from the input by experts in the field into a ROP has generally been seen to reassure the employer, employee, and customer that the best possible practices have been implemented to allow a safe re-opening in response to the on-going pandemic.

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