Coronavirus Projected to Trigger Worst Economic Downturn Since 1940s

Since last month, the number of confirmed COVID-19 cases in the U.S. has skyrocketed. On March 15, there were fewer than 4,000 cases in a handful of states. As of April 16, there are nearly 671,000 cases with outbreaks in every state and commonwealth in the nation. Worldwide, there were more than 2.1 million cases by mid-April, with 70,000 to 90,000 new cases confirmed each day. The pandemic has wreaked havoc on the global, U.S. and local economies.

The coronavirus shutdown will induce the sharpest economic downturn and push the U.S. budget deficit to the highest levels since the 1940s, the Congressional Budget Office projects. The economy is likely to shrink 12% in the second quarter—a 40% drop if it were to persist for a year—and the jobless rate will average 14%, the nonpartisan research service said Friday. Job losses will come to 27 million in the second and third quarters.
The federal budget deficit is expected to reach $3.7 trillion by the end of the fiscal year on Sept. 30, the CBO said, up from about $1 trillion in the 12 months through March. Congress has authorized unprecedented deficit spending to offset the shutdown of vast swaths of the U.S. economy. As a proportion of gross domestic product, the deficit will end the fiscal year at almost 18%, its highest level since the year after World War II ended and up from 4.6% in 2019, the CBO said. Federal debt held by the public is projected to hit 101% of gross domestic product by the end of the fiscal year, up from 79% at the end of fiscal 2019, the CBO said. The silver lining is that interest rates are projected to fall so low that the government's net borrowing costs will decline even with the dramatic increase in borrowing, the CBO said. It sees the yield on 10-year Treasury notes hovering at 0.7% in the second half of this year and through 2021. The updated forecasts, published in a blog post by CBO Director Phillip Swagel, rest on assumptions that are "subject to enormous uncertainty." These include the extent to which the coronavirus is brought under control in the coming months and the possibility of a subsequent re-emergence.
Some degree of social distancing is expected to continue through the first half of 2021, the CBO said. But those measures are projected to diminish by roughly 75% in the second half of this year relative to the April-June quarter and continue easing into 2021. As a result, economic activity is projected to recover from its current nadir, but only gradually. GDP is expected to contract 5.6% in 2020 from last year and to grow 2.8% in 2021.
The unemployment rate is seen topping out at 16% in the third quarter and declining to 9.5% by the end of 2021. But the CBO cautioned that those numbers understate the extent of damage because they only count people who are actively looking for a job.

The International Monetary Fund (IMF) expects the "Great Lockdown Recession" to be the worst downturn since the Great Depression. The global economy will contract 3 percent or more in '20, with severe declines in the advanced economies (*e.g.*, Germany, -7.0 percent; United Kingdom, -6.5 percent; United States, -5.9 percent) and

nominal growth in a few developing economies (*e.g.,* India, +1.9 percent; China, +1.0 percent).
The World Trade Organization (WTO) forecasts merchandise trade to plummet 13 to 32 percent in '20. Nearly all regions will suffer double-digit declines, with exports from North America and Asia hit hardest. IHS Market's Purchasing Managers' Indices shows economies were already contracting in March in eight of top 10 markets for U.S. exports. Recent reports suggest that China is struggling as well.

The Texas manufacturing sector continued to collapse in April, according to a monthly survey by the Federal Reserve Bank of Dallas, with economic indicators plunging to historic lows — showing a contraction that is far worse than the Great Recession. The production index, plunged to minus 55.3 in April, the lowest reading since the survey began in 2004. It had already drastically declined to minus 35.3 in March. Positive readings indicate an expansion and negative readings indicate a contraction. The lowest reading during the Great Recession was minus 37.7. That severe downturn, which stretched from late 2007 to mid-2009, was the worst in 70 years. The severe drop off in Texas' manufacturing activity is another blaring red indicator for national and local economies reeling from social distancing measures put in place to combat the spread of the coronavirus. Manufacturing is considered a leading sector, meaning that its fortunes typically predict the direction of business a few months ahead of other sectors. Manufacturers are taking hits on all sides: mandated shutdowns to slow the spread of the coronavirus reduce demand for products at the same time as an oil price collapse batters the energy industry, frequent customers for manufacturers. Houston-based manufacturers, more than a quarter of which are tied to the oil and gas industry, are being squeezed as the energy industry finds itself in complete disarray with oil prices in the U.S. sitting far below $20 per barrel. Manufacturing is Houston's largest sector of the economy. Texas' service sector saw a similar decline, according to a companion survey. The revenue index, a key measure of service sector conditions, fell from 14.0 in February to -67.0 in March, an all-time low for the survey.

The Houston Purchasing Managers (PMI) fell from 50.2 in February to 40.2 in March, the steepest one-month drop in the history of the series. Readings above 50 indicate the local economy is expanding, below 50 that it's contracting. The March PMI is only 1.2 percentage points above the index's record low of 39.0 reached in March '09, the depth of the Great Recession. Comments provided by survey respondents suggest the PMI may fall below that level in April.

Greater Houston Partnership's Economic Update - Houston's Current 'Dual Challenge' Worse Than Great Recession

Metro Houston has had nearly 400,000 unemployment claims filed since early March, brought on by the dual challenge of falling oil prices and COVID-19. "We have lost a significant number of jobs in Houston since the beginning of March," said Patrick Jankowski, Senior Vice President of Research. The Partnership estimates there were more than 87,000 unemployment claims for metro Houston for the week ending April 25. That's in stark contrast to the 3,142 claims filed during the same period last year. In total, metro Houston is looking at close to 400,000 initial claims for unemployment insurance filed since the beginning of March. "I can definitely see Houston's unemployment rate somewhere in the mid teens," said Jankowski. "I can definitely see this unemployment rate being the highest its ever been on record." At the state level, nearly a million people have filed for unemployment in Texas in the last month. The sectors with the greatest number of layoffs statewide (from March 7 - April 11) are:

- Hotels, restaurants and bars (204,282)
- Retail trade (123,456)
- Health care (113,868)

For a glimpse at how Houston's current economic climate compares to previous challenges, Jankowski presented data on job losses in the '80s and '08. In March '82, Houston lost 13% of jobs, or about 1 in every 7 jobs. During the Great Recession of '08, Houston lost about 4.5% of all jobs, or roughly 1 in every 22 jobs. Today, said Jankowski, "it is definitely a worse downturn than the Great Recession. I have no doubt about that. We are approaching the level of layoffs that we had during the energy bust and that's a concern."

According to economist Ray Perryman, Houston's GDP is projected to experience a $50 billion hit this year, a 10% reduction. Mining is projected to see the biggest losses (- 36%, or $31 billion), followed by manufacturing. (- 8.8%) Jankowski said about a third of Houston's economy is tied directly to oil and gas. Data from Q2/'19 of Houston's energy industry shows just how significant the oil and gas sector is for the Bayou City. Energy accounts for 1 in every 10 jobs in the region. Jobs in the energy industry pay, on average, twice as much as what other jobs in Houston pay. These energy jobs account for about one-fifth of total wages paid in Houston.
"What this doesn't show," said Jankowski, "is the accounting firms, the law firms...and all of the other agencies and organizations tied to the oil and gas industry." Houston-area energy layoffs in recent weeks have included losses at Baker Hughes, Halliburton, Schlumberger and Weatherford. Jankowski explained most of the companies experiencing layoffs are either oil field service companies or equipment suppliers. "This is the way the cycle tends to fall in the oil industry," said Jankowski. He said the first people to lose their jobs are those in the fields, the blue collar workers. The next wave of layoffs will probably occur in the manufacturing sector, then the white collar layoffs. "I think we're going to have some significant layoffs in the industry."

Jankowski said the upside is that the Texas economy is starting to reopen. Governor Greg Abbott announced April 27 that some businesses will start up again as early as May 1.
He said some indicators that the Houston economy is improving includes a downward trend of unemployment claims, as well as an increase in sales tax collections.

Greater Houston Partnership's Industry Updates

Chemicals & Refining

Chemical railcar loadings, the best real-time indicator of U.S. chemical industry activity, fell 8 percent the week ending April 4. Metro Houston accounts for over 40 percent of the nation's base petrochemical capacity. U.S. refineries typically run at 90 percent or more of their design capacity. Refinery utilization hit 94.5 percent the last week of December but dropped to 75.6 percent the first week of April. With travel plans cancelled, manufacturing output scaled back, and so many people working from home, the demand for gasoline, diesel and aviation fuels remains well below normal levels.

Transportation

With the slump in global trade, container traffic at the Port of Houston slipped 11.5 percent in March '20 compared to March '19. Detailed cargo statistics for the month will be available in May. Data from the Transportation Safety Administration (TSA) shows that U.S. air passenger volumes have fallen 95 percent since the middle of March.

Construction

Local construction began to slow prior to the COVID-19 outbreak. Dodge Data & Analytics reports that Houston-area starts slipped 18.8 percent, or $4.0 billion, in the 12 months ending February '20 compared to the same period in '19. Projects now underway will be completed but anecdotal evidence suggests new projects are being put on-hold until the pandemic passes.

Commercial Real Estate

Houston's commercial real estate sector faced significant challenges before the outbreak of COVID-19. One-fourth of all local office space was vacant at the end of Q1/20. Absorption of new space has been negative nine out of the last 16 quarters. The vacancy rate for warehouse/industrial space has risen for eight consecutive quarters. The rate for Class A properties was 16.7 percent in Q1/20, up from 10.1 percent in Q1/19. With 18.1 million square feet under construction, the vacancy rate may approach 20 percent by year's end. For most of Q1, leasing and sales activity continued at the normal, albeit slow, pace of recent years. Brokerages now report a near halting of activity since mid-March. Tenants are waiting on the sidelines until the pandemic passes. A significant number of retail tenants and a lesser share of office and industrial tenants did not pay their April rent. For the most part, building owners and managers have been willing to work through these delinquencies, adding missed payments to the back end of a lease or pro-rating the amount over the remaining months of the contract. A few hotels in Houston have closed. Those still open have only a handful of occupants. CBRE forecasts revenue per available room (RevPAR) to decline 95 percent for upper-priced hotels 58 percent for lower priced hotels in Q2.1

Residential Real Estate

The Houston resale housing market was relatively un-scathed from the COVID-19 crisis in March. Stay-at-home orders came too late in the month to impact closings. Houston-area realtors sold 7,566 single-family homes, up 8.2 percent from March last year. Those deals entered the pipeline early in the year, however. Now that those deals have closed, sales will plummet. Spring is typically the peak for homebuying season in Houston. A lack of inventory will further depress sales. New listings in the Houston Association of Realtors Multiple Listing Service are down 4.8 percent and active listings down 3.2 percent compared to this time last year. New listings in Zillow are down 8.7 percent. Those trends are expected to continue. Homeowners are reluctant to allow people they don't know well into their houses during the pandemic. Anecdotal reports suggest Houston homebuilders now operate at 50 to 70 percent of their pre-COVID-19 capacity. As with the resale market, most transactions entered the pipeline before concerns about the virus changed consumer behavior. Once stay-at-home orders are lifted, months may pass before the pipeline refills. Some developers are moving forward with projects already underway (water, sewage, drainage, paving) while others have halted all work to preserve cash. Anecdotal reports for multifamily suggest a 5-10 percent delinquency rate for monthly rents at Class A properties and a 10-15 percent rate at Class B and C properties. Those rates will rise if more tenants lose their jobs. The overall apartment occupancy rate was 89.7 percent in early April. With 16,700 units delivered since April '19 and 24,300 currently under construction, occupancy rates, especially for Class A properties, will fall this year, taking rental rates with them.

Small Business Outlook
The Greater Houston Partnership began surveying its small- and medium-sized members (e.g., with 500 or fewer employees) in early April to gauge how well they were managing the downturn. Major conclusions:

- 53.6 percent indicated their revenues have declined since their last billing cycle,
- 47.1 percent have enacted a hiring freeze,
- 41.0 percent classify their operations as severely impacted,
- 34.5 percent are moderately impacted,
- 30.7 percent indicated their outlook has worsened in recent weeks, and
- 24.6 percent have shut down whole or partial operations.

Energy Outlook
The spot price for West Texas Intermediate, the U.S. benchmark for light, sweet crude, closed at $19.90 per barrel on April 16. Prices have not been that low since January '02. Adjusted for inflation, crude now sells for less than it did during the trough of the '80s energy bust. The North American energy industry can't earn a profit at current prices. According to a Dallas Fed survey, companies require crude trade at $24 and $35 per barrel just to cover the operating costs of existing wells. Prior to COVID-19, the world consumed around 100 million barrels of crude per day. By some estimates, consumption has since fallen to around 75 million barrels per day. Without an economic rebound or steep production cuts, the world will remain oversupplied and crude prices severely depressed. OPEC and its allies have agreed to hold 9.7 million barrels per day off the market. That's not enough. Inventories continue to build and by mid-May global storage capacity will run out. That will depress prices further. Companies have begun to shut in wells, a trend that will accelerate in coming months. According to the Dallas Fed, crude needs to trade above $50 to profitably drill a well in North America. No surprise then that exploration budgets have been slashed; the cuts average 15 percent for the major integrated companies to 60 percent for the private independents. The North American rig count will fall below 400 before stabilizing. During the Fracking Bust, the count bottomed at 404. Some firms have gone into hibernation, shutting down all but the most basic functions, hoping to stay alive until conductions improve. Apache, Baker Hughes, Halliburton, Noble Energy, Occidental, Schlumberger, and Weatherford have already announced

furloughs, layoffs and pay cuts. The industry carries a substantial amount of debt, with over $10 billon due in '21 and $15 billion in '22. The capital markets have been closed to the industry for the past two year, so few options exist to refinance the debt.

Energy analysts don't expect supply and demand to rebalance before Q2/21. Houston, with its concentration of oil field service, equipment manufacturing, exploration and engineering firms, is particularly vulnerable right now. Expect a surge in energy-related layoffs and bankruptcies over the next 18 months. The turmoil won't be confined to energy as sectors closely tied to the industry will suffer as well.

COVID-19 Whistleblower and Retaliation Claims on the Rise

Employers are facing multiple challenges in response to the COVID-19 pandemic – including an increased risk of whistleblower and retaliation claims from employees who allege they were disciplined or discharged for complaining about health or safety concerns relating to the coronavirus. Employees who have continued to work in essential businesses are increasingly filing complaints regarding personal protective equipment, social distancing, and other health and safety measures during the pandemic. At the same time, many employers are faced with the reality of changing or reducing hours, cutting pay, or terminating employees due to the widespread decline in business activity. At the federal level, OSHA is responsible for enforcing a wide variety of anti-retaliation provisions under 23 separate whistleblower statutes. While many employers are familiar with claims under Section 11(c) of the Occupational Safety & Health Act, which broadly protects employees from exercising a variety of rights under the Act, remedies under Section 11(c) are limited, a private cause of action is not available to the complaining party, and a worker must file the complaint within 30 days of an adverse job action. However, OSHA also enforces additional statutory provisions that may provide more expansive remedies to a complaining party who prevails—including attorney's fees and punitive damages in some instances. Beyond the Section 11(c) claims that may be filed with OSHA, employers can also face additional exposure and risks when employees use alternative statutory remedies—for example, under §31105 of the Surface Transportation Assistance Act (STAA)—to raise complaints about an employer's response to COVID-19. The risk for employers under certain federal anti-retaliation laws is also increased because a lower causation standard—the "contributing factor" standard—may be applicable in some instances. Specifically, under certain federal anti-retaliation laws a complaining party may establish that they have a viable claim that should be heard by proving, among other things, that a retaliatory motive played a "contributing factor" in the adverse employment decision. In addition, under OSHA, complainants generally do not need to show the alleged violation they complained about actually took place. A viable retaliation claim requires only that they had, among other things, a "good faith" basis for making the allegation in the first instance, which is a low bar to clear. Because not all statutes are created equal, in a retaliation case brought by an employee complaining about health and safety issues relating to COVID-19, the precise burden of proof will depend upon the law used to pursue the claim. Moreover, federal law is not the only source of protection for employees pursuing complaints related to health and safety practices. A majority of states recognize some form of a wrongful discharge claim under anti-retaliation statutes or under common law, which is based on court decisions rather than a statute or regulation. Employees may be entitled to significant damages if they prove that an employer took adverse action against them because they raised a health and safety concern, and the remedies vary from state to state.

Practical Considerations for Employers Regarding Health & Safety Complaints

In this current environment in which employees have increasingly raised retaliation claims related to health and safety complaints, employers should be particularly vigilant to enforce anti-retaliation policies and procedures. Some practical considerations include:

- Encourage employees to report health and safety concerns. Ensure that employees have multiple avenues to immediately raise health and safety concerns, and that the various options to raise concerns are clearly communicated and obvious.
- Employees should *never* be disciplined or terminated because they raised or escalated complaints about a potential violation of health and safety laws or procedures, including concerns regarding the employer's response to COVID-19. There may be independent, non-retaliatory reasons for taking adverse action against an employee who also previously raised health and safety concerns, but any decision regarding the adverse action should not take into account or be influenced by the health or safety complaint.
- If independent reasons justify disciplinary action against an employee who recently raised health or safety concerns, the employer should ensure the reasons are properly documented, consistent with the company's policies and procedures, and that other employees who have engaged in similar conduct—but who have not complained of health and safety concerns—received the same disciplinary action.
- In turn, be certain that the specifics of health and safety complaints are appropriately documented – including the time and date, the recipient of the complaint, and the specifics of the concerns that have been raised.
- Confirm and update the company's procedures for referring or escalating health and safety complaints to the appropriate department or individual, and for investigating and addressing concerns that have been raised.
- Take health and safety complaints seriously. Remind front-line supervisors and others to objectively listen to concerns that have been raised, and to appropriately refer and escalate the concerns consistent with the company's procedures.
- Review and update the company's policies and procedures that prohibit retaliation, and consider setting aside additional training time now to help reinforce the company's anti-retaliation rules, and to help prevent retaliation claims from arising.

Workers' Compensation and COVID-19 Workplace Lawsuits with Texas Employers

Texas employers who have opted out of the workers' compensation system will not have the benefit of workers' compensation's preclusive effects. They face the substantial risk that simple negligence will be enough to support employee claims arising from COVID-19 exposure. As a result, it is imperative for opt-out Texas employers to carefully review and update their workplace health and safety practices to maximize mitigation of any risk of workplace transmission of the coronavirus. Like other states, Texas has a workers' compensation law that provides no-fault, employer-funded insurance for work-related injuries (including occupational diseases). But unlike most other states, Texas allows employers to opt out of workers' compensation and instead face potential liability under tort law. Typically, when an employee experiences a work-related injury, the employee pursues a claim through the workers' compensation system. Although, the particulars differ in each state, workers' compensation essentially guarantees the employee (or their estate) compensation for the injury. In exchange for that guarantee, the workers' compensation laws usually prevent the employee from bringing negligence-based tort claims against his or her employer to recover compensation for the injury. The preclusive effect of workers' compensation is often referred to as the "workers' compensation bar" or "exclusivity bar" since workers' compensation is generally the employee's exclusive source of recovery. Triggering an exception to the exclusivity bar generally requires the plaintiff to show the employer was reckless or engaged in willful misconduct. Without the exclusivity bar, employees of opt-out Texas employers can sue their employers directly for lost income, medical expenses and perhaps even death benefits for simple negligence.

Opt-out Texas employers should adhere to best practices to minimize their heightened risk of liability. The following recommendations are some best practices employers should consider implementing to reduce the potential liability if an employee contracts COVID-19 at work. Although currently there are no guaranteed measures to prevent spread, employers can assume that the best defense against workplace-exposure lawsuits will be proof that they recognized the potential for risk and implemented the best possible measures to protect their employees.

- Review and follow the CDC's Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus, which is frequently updated.
- Review and follow OSHA's Guidance on Preparing Workplaces for COVID-19. For example, OSHA recommends that employers should consider which jobs have a higher risk of exposure, and develop an Infection Disease Preparedness and Response Plan.
- Review and comply with the EEOC's Pandemic Preparedness in the Workplace and the Americans with Disabilities Act.
- Given the unprecedented nature of the pandemic, for example, the EEOC has taken the position that employers – at least for now – may screen job applicants for symptoms of COVID-19 (after making a conditional job offer) as long as it does so for all entering employees for the same job. Employers may also take the temperature of on-site employees even though this constitutes a medical exam.
- Consider establishing policies and practices for social distancing and frequent cleaning and sterilization routines. Display posters and train employees on social distancing guidelines and personal hygiene.
- Encourage employees to wear, or provide employees with, PPE, including face masks and gloves. Consider installing acrylic shields or similar barriers.
- Employees who appear to have symptoms (i.e., fever, cough, shortness of breath), upon arrival at work or who become sick during the day should

immediately be separated from other employees and customers and sent home.

- If an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality by not identifying the employee by name as required by the Americans with Disabilities Act.
- These suggested measures are not intended to be exhaustive. Information distributed by governmental agencies such as the CDC and OSHA should be frequently reviewed.

Littler's Insight on Returning to Work – Safety and Health

Over a roughly two-month period, COVID-19 has completely upended work as we know it. Businesses across the globe have struggled to function with limited staff and resources, restructured their workforces, and implemented new protocols to keep their employees safe. In this unsettled environment, employers continue to contend with a steady stream of stay-at-home orders, travel restrictions, safety requirements, and leave mandates, among other significant workplace changes. Now governments are starting to unveil their return-to-work plans. When employees finally reenter the workplace and operations resume, it will hardly be business as usual. Employers will need to make difficult decisions in the weeks and months ahead. How do employers go about recalling employees who have been working from home or on furlough? Will compensation and benefits need to be reassessed? Will the physical workplace look the same? What accommodations need to be made? And how can employers plan for a future disease outbreak or other calamitous event? What will employment's "next normal" look like? To help employers address these and other issues stemming from the current pandemic, Littler is offering a series of Insights on returning to work. This first installment provides an overview of some of the key safety and health considerations employers should assess as they start to bring employees back into the workplace. From a safety and health perspective, how do employers prepare their workplaces before returning employees to work? A host of legal and public health issues must be considered to ensure the safety and health of employees as they return to work. In addition to federal guidance and recommendations, employers will need to take into account the ever-evolving orders, recommendations, and guidance from state and local authorities. Many employers will be encouraged (if not required) to continue with teleworking options as long as feasible. Moreover, different sectors of the economy may have drastically different requirements and guidelines to follow upon their physical return to work, particularly for public-facing businesses and the healthcare sector. There is no "one-size-fits-all" approach to returning to work and that makes the process all the more challenging for employers. During the COVID-19 outbreak, many workplaces were closed or had only a small group of employees present on a day-to-day basis. Employees may have some concerns in reentering the worksite and, specifically, with respect to what employers are doing to ensure their safety immediately upon reopening and thereafter. Employers should consult state and local ordinances or regulations that might be applicable to reopening. In general, employers should consider the following in preparing to safely reopen their worksites: cleaning the worksite and implementing additional engineering and administrative controls.

Worksite Cleaning - Before reopening, employers should review U.S. Centers for Disease Control and Prevention (CDC) guidance on cleaning and disinfecting their facilities. The CDC has indicated that the risk of exposure to cleaning staff is inherently low. If, however, the employer assigns its own employees to perform the cleaning and disinfecting of their workplaces, the employer must ensure the following: The employees performing cleaning tasks must have access to and wear disposable gloves and gowns for all tasks in the cleaning process.

Additional Personal Protective Equipment - PPE should be provided if required based on the cleaning/disinfectant products being used and whether there is a risk of splash. Such PPE and other protective measures must be compatible with the safety data sheets and manufacturer(s)' guidance on each of the cleaning/disinfectant products being used. Employees performing cleaning tasks must be properly trained on how to safely clean and remove any disposable gloves and gowns or additional PPE to avoid potential exposure. Employees performing cleaning tasks should also clean their hands for 20 seconds with soap and water after doffing gloves. If soap and water are not available and hands are not visibly dirty, an alcohol-based hand sanitizer that contains at least 60% alcohol may be used.

Defogging - Employers also have the options of conducting a deep cleaning, such as defogging, to clean and disinfect their workplaces or contracting with professional cleaners trained to clean and disinfect potentially contaminated workplaces. Additionally, after employees return to the workplace, it is recommended that employers implement routine cleaning protocols that include:
scheduled cleanings of any equipment shared by multiple employees such as faucets, door handles, copiers, monitors, keyboards, control panels, and similar items; and scheduled (or more frequent) cleanings of any common areas that are heavily trafficked by employees, including, for example, break rooms, cafeterias, kitchen pantry areas, water sources, and restroom facilities. These measures should be clearly communicated to employees so that everyone is informed of the measures being taken on an ongoing basis to clean and disinfect the workplace.

Engineering and Administrative Controls - Before reopening, employers should consider whether to implement additional engineering or administrative controls in the workplace. The CDC and the Occupational Safety and Health Administration (OSHA) have provided some guidance on engineering and administrative controls in the workplace that may help in combating the spread of COVID-19. Such controls include high-efficiency air filters or other devices for increased circulation, filtration, or ventilation. Additionally, employers may want to consider increasing the percentage of outdoor air that circulates into the workplace ventilation systems. Employers should implement controls that are practical, feasible, and effective in their specific workplaces. One common administrative control employers should consider is enhanced social distancing. This step may also be required by state and local ordinances. Some social distancing measures that employers may want to consider include: split shifts; placed markers indicating proper social distancing in any areas where employees may line up or congregate; staggered meal and rest breaks; designated meal and rest break areas; limiting the number of employees permitted in meetings/confined spaces; putting up shields or barriers to prevent employees from being exposed to someone else's respiratory droplets; alternating work stations; removing seats in communal areas to provide additional personal space; and reorienting work points to avoid employees directly facing each other.

Employers should try to implement what is feasible and practical for each specific workplace. Part of this determination depends on whether there are industry-specific considerations that must be accounted for, including whether federal, state, or local authorities have issued requirements or guidance governing any such industries. What steps can employers follow regarding face coverings in the workplace? Employers may have workplaces in states or cities that have implemented laws or guidance relating to face coverings. Some of these jurisdictions may currently have mandatory face covering requirements and many of these laws may still be in place when employees return to the workplace. As such, employers may need to develop procedures and protocols regarding the distribution and donning of face coverings. OSHA has advised that face coverings are not considered PPE subject to formal workplace health and safety standards.

Policies implementing face covering requirements may mandate that employees use face coverings provided by the employer and/or allow employees to purchase or make their own face coverings. In addition, employers implementing face coverings should also consider including protocols detailing how to properly wear, safely don and doff, and maintain these face coverings. Some state and local requirements may dictate these practices as well. The provision of face masks will likely also touch on potential wage and hour and reasonable accommodation issues (as well as other legal issues), which must also be considered. How do employers prepare for an exposure in the workplace?

Finally, it is likely that once the worksite reopens, employers will again be faced with employees who develop symptoms of COVID-19, test positive for COVID-19, be clinically diagnosed with COVID-19 ("presumptive positive"), and/or have been in close contact with a presumed positive or confirmed COVID-19 individual. Employers should "think ahead" and develop a thorough exposure control plan, which identifies what steps to take for different exposure scenarios including: (1) whether an employee needs to self-quarantine; (2) whether the employer needs to conduct a contact tracing assessment to determine if others should be isolated or quarantined; and (3) how to implement appropriate cleaning protocols. It is essential to have an exposure control plan in place before a potential exposure occurs. Additionally, employers should prepare for and have procedures in place on how and when to record and/or report a confirmed case of COVID-19 in the workplace pursuant to OSHA standards. Even as the world slowly reopens in light of the COVID-19 pandemic, the workplace will be fundamentally changed for the foreseeable future. Employers must start preparing now for the many challenges reopening will entail.

EEOC Says Employers Can Administer COVID-19 Tests Before Employees Return to Work

In guidance issued on April 23, 2020, the Equal Employment Opportunity Commission (EEOC) stated that employers may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus. The EEOC noted that the Americans with Disabilities Act (ADA) requires that any mandatory medical test of employees be "job related and consistent with business necessity." Accordingly, employers are authorized to take steps to determine if employees entering the workplace have COVID-19 on the grounds that an individual with the virus will pose a direct threat to the health and safety of others at the workplace. The EEOC cautions that employers should ensure that the tests are accurate and reliable, and suggests that employers consult guidance from the U.S. Food and Drug Administration (FDA), the Centers for Disease Control (CDC), or other public health authorities' guidance regarding what is considered safe and accurate testing, and to check such guidance for updates. The EEOC further notes that such tests may yield false positives or negatives, and that even accurate tests only reveal if the virus is currently present but do not indicate the employee will not acquire the virus later. Finally, the EEOC states that employers should still require employees to observe other infection control practices such as social distancing, regular handwashing, and other measures in the workplace to prevent transmission of COVID-19.

While the EEOC guidance suggests that testing employees for the presence of COVID-19 would not violate federal anti-discrimination laws, it leaves open whether such a testing program is legally permissible under other federal and state laws or agency guidance in areas including:

- Workplace Privacy
- Occupational Safety and Health
- Workers' Compensation

The EEOC guidance also generates substantial practical questions, including:

- What type of testing is permissible (e.g., only testing for the presence of COVID-19? Or also testing for the presence of related antibodies, which is substantially more invasive?);
- Whether any FDA-approved tests exist to satisfy even the EEOC guidance;
- What frequency of employee testing would be permissible (or even effective)?
- Where the testing must take place, given that the guidance permits testing of employees "before they enter the workplace"; and
- How employers should weigh the incidence of false positives or negatives associated with a particular test.

Next Level Urgent Care is Now Offering Services to Companies as They Work Through Return To Work Issues

Next Level Return To Work Services

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- Pulse Oximetry
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Dress For Success Houston's Her Path Forward

Three out of four women Dress For Success Houston serves have been impacted by the pandemic. DFSH is working to ensure her path forward. The devastating effects of COVID-19 are uniquely impacting the women of Houston. They are on the front lines as healthcare and essential workers. They carry the heavy load of care giving for their families. And their jobs are in industries facing furloughs and outright elimination. For 22 years, Dress for Success Houston has been committed to creating systemic change by providing the women of Houston with the opportunity to succeed, a network of support and the skills and knowledge to achieve economic stability while delivering all of their services without government or United Way funding.

To support the women, DFSH has contributed:

- 472 masks to 118 women
- Scrubs and uniforms to essential workers
- Meal kits distributed to 150+ families
- COVID-19 resource guide sent to 720 women
- 200+ women receiving support through 15 virtual workshops
- 350+ outreach calls

To further contribute, the DFSH Board of Directors is matching every dollar donated up to $10,000. No matter what you give, your donation makes a greater impact. Because of individuals, foundations, and corporations like you, DFSH is able to serve thousands of Houston-area women each year. Please consider donating today to ensure #HERPATHFOWARD.

Sources: Littler; Houston Chronicle; Greater Houston Partnership; Wall Street Journal; SHRM; ASA; MarketWatch; JD Supra; Challenger, Gray, & Christmas