

Lisa Anderson

From: Brian Reider <Brian.Reider@bbklaw.com>
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Subject: TYWBI: COVID-19 - Business Re-Opening Can's and Cant's

Last week I had the pleasure of being a speaker to a group of business owners regarding various COVID-19 related issues. The best part was having the chance to listen to my partner, Joseph T. Ortiz, talk about the anticipated labor and employment issues which businesses will likely face as they re-open. Joe is a partner in our Labor and Employment group, and is the guy I turn to when employment questions come up.

I thought it would benefit all to share Joe's tips regarding what employers may do, and should not do, as they re-open. Here are Joe's key "can's and cant's", with some of my additional thoughts *in italics*:

- ▶ You can ask employees if they are experiencing COVID-19 symptoms (*be careful when and how you do this – remember that employee medical information is confidential – if at all possible, ask them privately, and have two people present so there is a witness as to what is said*)
- ▶ You can send employees home if they are ill (*if you have not done so already, adopt a written policy about this and give it to the employees – tell them that if they are sent home because they have a fever or other symptoms, they should immediately go and get a COVID-19 test and report the results confidentially to you – have a list of testing sites available for them*)
- ▶ You can send employees home if they are in a group designated by a governmental authority as subject to quarantine or isolation (*a great resource for this and other questions is the California Labor & Workforce Development Agency website at <https://www.labor.ca.gov/coronavirus2019/>*)
- ▶ You can take temperature for limited purpose of evaluating the risk to others as a result of the COVID-19 pandemic. (*Only use a non-invasive temperature taking method*)
- ▶ You can require employees to use PPE (*if you do decide on a PPE requirement, post it for all employees to read and have them sign a copy of it so they acknowledge that they must follow the requirement and realize that failure to follow it could result in discipline up to and including termination*)
- ▶ You may not violate privacy by identifying by name employees who test positive

- ▶ May notify employees in way that does not reveal PHI (for example, a notice saying that “This is to inform you that one of our [employees] [vendors] has tested positive for COVID-19 and appropriate steps are being taken by the company to address this circumstance” – then consult with experts as to what the “appropriate steps” might be – could be anything from closing a very small business for 14 days so all can self-quarantine to confidentially telling employees who were in contact with the diagnosed employee – without revealing who got the diagnosis – and suggesting that they be tested and perhaps also self-quarantine for 14 days)
- ▶ Follow local, state or federal PHI recommendations

Good luck to all who are able to re-open, and stay safe!

 **D. Brian Reider**
 Partner
 brian.reider@bbklaw.com
 T: (909) 466-4908 C: (909) 229-8681
 www.BBKlaw.com  
 2855 East Guasti Road, Suite 400
 Ontario, CA 91761

Fax: (909) 944-1441

D. Brian Reider is a partner in the Business Services practice group at Best Best & Krieger LLP. Based in Ontario, he provides business solutions for legal problems to private business clients, including manufacturing, distribution and technology companies.

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