



Preparing for the New Workplace Paradigm: a Roadmap for Employers in the Time of COVID-19

May 1, 2020

SPEAKERS



David Barmak

Member / Chair Emeritus
Employment, Labor & Benefits
Washington, D.C.

DBarmak@mintz.com //
202.585.3507



Katharine O. Beattie

Member
Employment, Labor & Benefits
Boston, MA

KOBeattie@mintz.com //
617.348.4445



Andrew J. Bernstein

Member
Employment, Labor & Benefits
New York, NY

AJBernstein@mintz.com //
212.692.6742



Jennifer B. Rubin

Member
Employment, Labor & Benefits
San Diego, CA

JBRubin@mintz.com //
858.314.1550

HOUSEKEEPING NOTES FOR AUDIENCE

- The webinar will be recorded.
 - The recording and slides will be sent to all participants after the webinar.
- If you cannot hear the presentation, please go to the "Quick Start" tab and click "Connect to Audio".
- If you are calling in through your computer, please be sure to turn up the computer's volume.
- Questions will be answered after the presentation in the interest of time.
 - Use the Q&A application to submit a question.
- The code required for CLE credit will be announced at a random point during the presentation.

A satellite view of Earth at night, showing a dense network of city lights across the continents. The sun is visible on the left horizon, creating a bright glow and lens flare. The text "Preparing to Prepare – Google Earth View" is overlaid in the center-left.

Preparing to Prepare – Google Earth View

“

“Plans are worthless, but
planning is everything.”

”

– Dwight D. Eisenhower

Preparing to Prepare – Google Earth View

Preparing for the Transition to the “New Normal” and What to Expect

- Employers should begin preparing now for a transition to a “new normal” in the American workplace.
- While we do not know exactly what the “new normal” will look like, we know that there will likely be critical shifts in the way we communicate, how we occupy the physical workplace, and the way we handle health and safety concerns, among others.
- Employers should begin to think about the issues that will confront them, how they will address those issues, and how they will facilitate an orderly return to the workplace.

Preparing to Prepare – Google Earth View

Planning is everything: Creating a COVID-19 Task Force

- Employers should empower a person or group to plan for the “new normal.”
- E.g., a COVID-19 “task force” to plan for and oversee the reopening of the workplace and the return to work.
- Or, consider designating a “Chief COVID-19 Officer” or a similar leadership role, to lead the company’s efforts.
- Having a designated task force and/or individual will ensure consistency in COVID-19 related communications as management will be equipped to synchronize communications and adjust as necessary.

Preparing to Prepare – Google Earth View

The COVID-19 Task Force (Cont'd)

- Task force should be multi-disciplinary. E.g., Operations + human resources + information technology + facilities management + legal.
- Members of the task force should be fluent in applicable CDC, EEOC and OSHA guidelines and applicable state and local public health regulations and executive orders.

Preparing to Prepare – Google Earth View

Plan for Communicating to Employees

- Employees will be concerned about their professional and personal lives, including: health and safety in the workplace, job stability, commuting to and from the workplace, taking leave, their families and caregiving, among other related issues.
- Employers should begin “issue spotting” and preparing for how they will communicate with employees, build on the communications to date.
- Communication with employees is, and will be, critical – employers should strive to keep open channels of communication, such as pre-planned conference calls, “town halls,” or emails to address employee concerns generally, or memorandums addressing specific areas of concern.
- Communication should be consistent and management should be flexible and adaptable to the evolving situation.

Preparing to Prepare – Google Earth View

Plan for Changes to the Physical Workplace

- Plan for workplace adjustments early and communicate these changes to employees.
 - “Big picture” planning – who, what, when, why, where, and how
 - Workspaces may be rearranged – how will employees react?
 - Some may be selected to return before others – or work in shifts
 - Identification of employees whose presence on-site is essential and those who can continue to WFH
- Planning for how work is done – in-person meetings – internal and external

Preparing to Prepare – Google Earth View

Plan for Changes to Staffing

- Assume that the entire workforce will not simultaneously return to the physical workplace.
 - Future regulations, orders or guidance may require “staggering” employees
 - E.g., gradually return 25%, then 50% of your employees, etc.
- If laid off or furloughed employees will be reinstated, how will this be done?
 - If incrementally, consider potential discrimination issues.
 - Are there payroll, benefits, and insurance implications, that require time and coordination?

Preparing to Prepare – Google Earth View

Plan for Other “Big Picture” Issues

- If layoffs do not prove temporary, will you have a WARN Act issue? Have you documented those layoffs in a way that will allow you to quickly send WARN notices in an orderly fashion?
- Have you reviewed handbook policies and updated them to address new realities around WFH, business travel, leaves, etc.?
- Have you considered whether training is necessary for your managers to educate them on accommodation requests and other pandemic-related matters?

Preparing to Prepare – Google Earth View

Plan for the Unplanned

- Planning for state and local regulations that we do not anticipate – facial coverings; unplanned future SIP orders
- What about regulations requiring employers to purchase x, y and z – but we don't know yet and how (note run on sanitizing products, such as disinfectant wipes and hand sanitizer)
- Procure now what you know you will need (all of the above, thermometers, hand sanitizer, other items that are likely going to be mandated for a safe workplace).
- Review your protocols to learn from your mistakes – what do you know now that you wish you knew then? Game that out

An aerial, top-down view of a dense urban environment. The image shows a grid of streets and numerous multi-story buildings of varying heights and architectural styles. The buildings are packed closely together, with some featuring flat roofs and others with more complex structures. The overall color palette is dominated by the grays and browns of the buildings and streets, with some greenery visible on the right side. A semi-transparent black rectangular area is overlaid on the center of the image, containing the text.

Preparing the Workplace – City View

Preparing the Workplace – City View

Considerations Relating to the Work Location

- The General Duty Clause of the Occupational Safety and Health (OSH) Act of 1970 requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”
- Do employees need to return to a central office location or can they continue working remotely?
- If the company’s offices are located in densely populated urban areas such as New York City, how can the company return employees to work while maximizing safety and minimizing employee exposure to and interaction with others, including on public transportation?
- Temporary relocation of office space to less populated areas?
- Create smaller satellite offices in suburban locations to minimize travel and reduce the number of employees in a single office?

Preparing the Workplace – City View

Navigating Re-Entry to the Workplace

- Should the company provide subsidies for parking and/or rental cars to enable employees to drive to work to avoid public transportation?
- Should the company create ride shares and/or company-sponsored transportation vehicles to take employees to and from work?
- Consider the nature of your business: how much in-person contact occurs on a daily basis? How much of this is necessary vs simply customary? Is client interaction an essential part of the business? How will this be achieved within the framework of social distancing?
- Can you/should you limit meeting sizes? Do you need in person meetings?

Preparing the Workplace – City View

Reconfiguring the Physical Workplace

- How is the company's physical space configured? This may need to be changed significantly to allow for social distancing in the workplace.
- No open floorplans with adjoining cubicles or desks
- Employee seating should be at least 6 feet apart
- Consider installing plexiglass or other physical dividers to limit close employee contact
- Logistics of providing gloves, masks, hand sanitizer, and soap – stations for delivery? What about discarding used equipment?
- Implement policies prohibiting employees from using other workers' phones, desks, offices, or other work tools and equipment

Preparing the Workplace – City View

Reconfiguring the Physical Workplace (Cont'd)

- Consider engineering improvements to minimize the risk of spread, such as installing high-efficiency air filters and increasing ventilation rates in the work environment.
- Consider creating additional entries/exits and one-way hallways
- PropTech – what is it and should you purchase it?

Preparing the Workplace – City View

Managing Employee Interaction in the Workplace

- Consider implementing rotating shifts, where 50% of employees come into the office every other week.
- Limit the number of people permitted in meetings, conference rooms, restrooms, kitchens, elevators and other common areas.
- Create policies re: social distancing and protocols for entering other employees' offices or workspace.
- Implement and inform employees about regularly scheduled cleaning and sanitation procedures.
- Require employees to acknowledge these policies – failure to abide by them may result in discipline, including termination.

Preparing the Workplace – City View

Plan for Screening and Testing

- Screening employees and visitors to the workplace for COVID-19 symptoms will likely be part of the “new normal.”
- Future orders or guidance may require or encourage testing employees for the virus. Consider how this might be implemented in, and affect, your workplace.
 - Screening - Temperature taking
 - How and where will this be done?
 - Employees only or employees and visitors?
 - How and where will records be maintained?
- Expect that requirements and guidance will change and evolve over time.

Preparing the Workplace – City View

Implementing Mitigation Protocols

- Develop an Infectious Disease Preparedness and Response Plan. This should be a living document (under jurisdiction of Chief COVID Officer and/or Task Force).
- If possible, visit the main worksites and record a “day in the life” of the average office worker – what do they touch/how do they enter/exit, and what do they come in contact with?



Preparing the Workforce – Street View

Preparing the Workforce – Street View

Planning for Staffing Levels and Scheduling

- In assessing staffing level needs, reflect on how operations have gone during the stay-at-home period and plan for differing future scenarios.
- If part of your workforce has been furloughed, keep fair employment practice laws in mind when determining which employees to bring in first.
 - Identify various bands of employees, departments, and shifts that are “essential” as business ramps back up.
 - Staffing decisions should be supported by legitimate, non-discriminatory business reasons.
- Consider necessary scheduling or phasing needs.
 - Will your workforce be returning all at the same time, or will you gradually ramp up workplace presence?
 - For instance, does maintaining social distancing in the workplace mean employees will report to work in some form of rotation? Or in shifts?

Preparing the Workforce – Street View

Leaves of Absence and Accommodations

- Leave laws have expanded in response to the COVID-19 pandemic. Existing leave policies should be updated, and new policies created if necessary, to account for these changes and anticipated leave requests.
 - Prioritize the creation or updating of your Emergency Leave policy to prepare for any future outbreaks or similar situations.
- Some employees may be afraid to return to work even when stay at home orders have been lifted.
 - Determine what flexibility may be possible, provided its applied consistently. Will employees be able to telework if they prefer? If not, why? Consider drafting a new teleworking policy to address these situations.
 - Determine what reasonable accommodations, either at home or in the workplace, can be made for employees with disabilities under the ADA.
 - Remember that if an employee has been teleworking for some time now, letting them continue to telework could be a reasonable accommodation.

Preparing the Workforce – Street View

Paid Time Off (PTO) Planning

- Employees are returning to work after working from home for several months, during which PTO options were probably under-used. You might face heavier than usual PTO requests moving forward, and should consider what steps to take to manage these requests to avoid business disruptions. Some possibilities:
 - Increase the number of PTO days that can be carried over to next year.
 - Request employees use PTO by certain dates to avoid bottlenecks later on.
 - Decide on specific blackout periods during which PTO cannot be used.
 - Offer to pay employees for some PTO at the end of the year.
 - Incentivize PTO use from home by charging fewer days against their PTO balance if taken from home.
- Always ensure that you are not violating wage laws by changing PTO policies to deprive employees of PTO they have earned.

Preparing the Workforce – Street View

Communication is Key

- The key to a successful transition back to the workplace is consistent, clear, measured communications.
 - Implement a regular cadence of updates.
 - Provide information in advance of changes so employees have time to prepare.
- Ensure that communication with employees is two-way.
 - Make sure employees know how to raise concerns or complaints.
 - If some employees are still teleworking, ensure that the reporting procedures address how they can report issues or voice questions.
- The new workplace will have new policies and procedures, so employee training, virtually or in person, will be required to educate the workforce and get everyone on the same page.

Preparing the Workforce – Street View

Plan for New Realities re: Leaves of Absences

- Anticipate increased requests for leaves.
- Caregiving is likely to be a big issue for employees, especially those with school age kids.
 - Schools and childcare facilities may remain closed, ill family members, their own illness, and/or caregiving requirements.
- Plan now for new, more flexible approaches, including flexible schedules and other flexible work arrangements.

Preparing the Workforce – Street View

Employee Engagement

- Daily life and work have radically changed for everyone in recent months. It is important to keep employees engaged and centered to maintain work productivity.
 - Keep employees informed of benefits available to them.
 - Consider implementing team-building exercises or events.
 - Promote or implement your employee wellness program and offer incentives to participate.
 - Consider modifying existing bonus, commission, or equity plans to increase stability and encourage strong performance.



**Applying the Legal Roadmap to
Business Planning – Traffic View**

What do you need to return your workforce?

Mintz COVID-19 Resources

- Employee Communications
- Safety Policies and Procedures
- Other COVID-related Policies
 - Taking employee temperatures
 - Telecommuting
 - Post-COVID Travel
- FFCRA Compliance guidance
- Recordkeeping guidance
- “PropTech” and privacy guidance
- Revisiting and realigning employment agreements and restrictive covenants
- Benefit plan modification and review

Mintz's Coronavirus Insights Center

Mintz attorneys and professionals are here to help clients respond strategically to the unprecedented business and industry challenges posed by the pandemic.

Our Employment, Labor & Benefits team has prepared a ***Roadmap for Employers in the Time of COVID-19 Series*** that will provide guidance on critical issues employers should focus on as they prepare for what promises to be a very different workplace.

- Chapter 1: Series Introduction
- Chapter 2: Creating a COVID-19 Operations Infrastructure
- Chapter 3 and Beyond...

To follow our roadmap for employers series, subscribe to our blog:
<https://www.mintz.com/subscribe>

Other COVID-19 Business Issues

- Liquidity & Capital Management
- Operational Resilience & Supply Chain
- Navigating Federal, State & Local Government Responses
- Managing Risk, Compliance & Litigation
- Navigating Capital Markets & Public Company Reporting

Thank you! Questions?



David Barmak

Member / Chair Emeritus
Employment, Labor & Benefits
Washington, D.C.

DBarmak@mintz.com //
202.585.3507



Katharine O. Beattie

Member
Employment, Labor & Benefits
Boston, MA

KOBeattie@mintz.com //
617.348.4445



Andrew J. Bernstein

Member
Employment, Labor & Benefits
New York, NY

AJBernstein@mintz.com //
212.692.6742



Jennifer B. Rubin

Member
Employment, Labor & Benefits
San Diego, CA

JBRubin@mintz.com //
858.314.1550