

# Your Return to Work Blueprint

May 8, 2020

**Fredrikson**  
 & BYRON, P.A.

# Agenda

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- Business needs and employee selection
- Preparation, preparedness plan, communication and training
- Health Screening
- Anticipated and unanticipated employee/employment issues
- Iowa and North Dakota Issues



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# Evaluation and Selection



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# Evaluation

- Business needs
  - Areas of business
  - Locations
  - Timing – full or phased opening
  - Risk levels – operating limitations
  - Financial and legal considerations



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# Selection

- Key talent – talent retention
- Volunteer, availability
- Team
- Length of service
- Performance and skills



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# Selection

- Risk assessment
- Human rights laws
  - Sex, race, age, disability, pregnancy
- Adverse impact
- Other legal considerations



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# Preparation, Preparedness Plan, Communication and Training



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# Preparedness Plan

- Create a COVID-19 Preparedness and Response Plan
  - Workplace plan
  - Employee policies and training
  - Employee safety – PPE's, hygiene
  - Employee Communication
  - Confirmed/Suspected COVID 19 response plan



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# Preparedness Plan

- In Minnesota, the plan must include:
  - Employees who can work from home must
  - Increase social distancing
  - Sick workers stay home – health screening
  - Personal hygiene and source control
  - Cleaning and disinfection
  - Customer controls/protectations



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# Preparation

- Policies and protocols
  - Employee hygiene, disinfecting, cleaning,
  - Sick leave, stay at home, reporting, health screening
  - Guest and visitor / customer controls
  - PPE requirements
  - Accommodations
  - Complaint procedures



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# Preparation

- Workplace – social distancing
  - What will it look like?
    - Meetings
    - Social spaces
    - Elevators
    - Employee scheduling
    - Masks



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# Communication



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- Employees
  - Clear communication
  - Provide new and revised policies
  - Provide safety guidance for return to work and arrange for training
    - In office
    - Sick employees

# Training

- All workers should be trained on safety protocols and procedures
  - In MN, they must be trained
    - Sick / stay at home protocols
    - Social distancing
    - Hygiene / cleaning
    - Customer controls
  - Proper use, donning, doffing of PPE



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# Health Screenings



**Kristin LeBre**

**Fredrikson**  
 & BYRON, P.A.

# Health Screening



Kristin LeBre

- In Minnesota, health screening is required for RTW
  - MN Executive Order 20-40 requires planning and providing a “safe work environment”
  - RTW plan must include health screening policies and procedures for keeping sick employees out of workplace
  - Applies to critical and non-critical businesses



# Health Screening

- Develop screening plan/policy
  - Who should stay home
  - Who will be screened
  - What type of screening will be done
  - Where/when screening will take place
  - Who will conduct screening
  - What to do with results



Kristin LeBre

# Health Screening

- Who should be screened?
  - All employees who return to the workplace (also owners, contractors, vendors, volunteers, interns)
  - Inform all of policy and procedure before return or entry into workplace



Kristin LeBre

# Health Screening



Kristin LeBre

- Which screening tool should be used?
  - Written questionnaire – CDC identified symptoms and risk factors
  - Temperature taking – now expressly permitted during pandemic by EEOC guidelines
  - Future option? Antibody test just approved by FDA

# Health Screening

- Which screening tool should be used?
  - Considerations
    - Accuracy
    - Ease of administration/reporting
    - Confidentiality
    - Safety



Kristin LeBre

# Health Screening

- When/where will screening be performed?
  - At home?
  - Before entering work place or clock-in
    - Staggered shifts
    - Best practice – pay employees
  - In private location so personal health information is not disclosed



Kristin LeBre

# Health Screening

- Who will conduct the screening?
  - Health provider, nurse or supervisor
  - If supervisor, seek input from health professional and provide proper training
  - Must administer *safely*
    - Provide PPE for those administering tests



Kristin LeBre

# Health Screening



Kristin LeBre

- What to do with results
  - Employee health information must be kept confidential – per ADA – separate from personnel file
  - Establish clear rules – communicate *prior* to screening
    - What symptoms/answers will result in employee not being permitted to work?

# Health Screening



Kristin LeBre

- What to do with results
  - Establish clear rules, cont.
    - Follow most recent guidance of CDC and local health authority
    - Apply rules uniformly – don't discriminate
    - Keep FFCRA and other laws in mind



# Health Screening



Kristin LeBre

- Other key takeaways
  - Monitor guidance from health authorities
    - Assign someone to monitor CDC, MNDOH guidance
  - Testing is evolving
    - New tests – must be FDA approved
    - EEOC: testing must be “reliable and accurate”

# Anticipated and Unanticipated Employee Issues



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# Employee Issues

- Availability
  - Fear-based concerns
  - Health/disability
  - Family
  - Financial



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# Employee Issues

- Adaption
- Mental and physical health
- Resistance to protocol
- Adjustment
- COVID-19 developments



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# Iowa Considerations



**Bridget Penick**

# Iowa Proclamations of Disaster Emergency



Bridget Penick

- March 9-May 6, 2020: Governor Reynolds issues 14 emergency proclamations
  - No shelter in place order; Iowans encouraged to stay home
  - May 6 proclamation effective May 8, 2020, until it expires (presently May 27, 2020)
    - Various businesses in all 99 counties may reopen, some with varying restrictions

# Iowa Businesses Reopening



Bridget Penick

- No mandatory screening
- Iowa businesses reopening *must*
  - Observe current applicable directives in proclamations
  - Follow 4/27/20 IDPH Reopening Guidance
  - Follow CDC guidance related to Cleaning and Disinfection for Community Facilities

# Iowa Businesses Reopening



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- 4/27/20 IDPH Reopening Guidance
  - *Encourage* and provide supplies for hand washing and sanitizing by employees and public
  - *Remind* employees and public to social distance and mark 6 feet intervals when possible
  - *Post* signage that no one *should* enter who has symptoms or has been around anyone with a confirmed COVID-19 diagnosis in last 14 days



# Iowa Businesses Reopening



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- 4/27/20 IDPH Reopening Guidance
  - *Ask* employee or member of public who becomes ill to share information with management, leave and call HCP
  - *Consider* using cloth face coverings (public and employees) if staying 6 feet apart is not possible
  - Anyone who is high risk *should* stay home
    - Age 65+ or serious underlying conditions

# Iowa Businesses Reopening



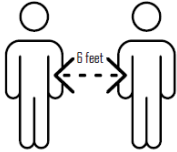
Bridget Penick

- 4/27/20 IDPH Reopening Guidance
  - *Should* follow IDPH business guidance related to preventing, detecting and reporting outbreaks
  - *Should* use messaging” to remind employees of steps they should be taking to protect their own health while at work

# IDPH “Messaging”

## In the Workplace

Use social distancing when possible.



Keep at least six feet apart from other people as much as possible.

Stay home if you are feeling ill.

Wash your hands.



Wash your hands often for at least 20 seconds.

If soap and water are not available, use hand sanitizer that contains 60% alcohol.

Avoid touching your face, nose and eyes.

Wear face masks.



Wear a face mask covering your nose and mouth while at the workplace.

If working at a health care facility, follow guidelines for use of other PPE, such as gloves, gowns, etc.

Clean and disinfect your workplace.



Clean and disinfect common spaces regularly.

Give attention to high-touch areas.

Do Your Part. Stay Healthy Iowa.

Preventing the Spread of COVID-19 While in the Workplace



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# IDPH “Messaging”



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## Using Personal Protective Equipment (PPE)

### Gloves

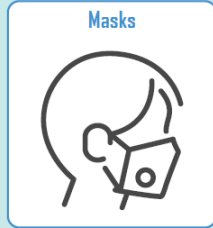


Pull gloves up over the wrists of the gown or clothing sleeves.

Remove by pinching and holding the outside of the glove near the wrist and pulling down, turning it inside out.

Dispose of gloves immediately and wash your hands.

### Masks



Cover your mouth and nose securely with the face mask. Fit mask snug to your face and below the chin.

Remove the mask by the straps. Do not touch the front of the mask.

Discard your mask immediately and wash your hands.

### Face Shields

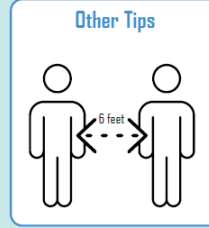


Place over your face and eyes. Adjust to fit.

Remove the shield by lifting the head band or ear pieces.

Place in receptacle for reprocessing and reuse or dispose immediately. Wash your hands.

### Other Tips



Practice social distancing. Keep at least six feet apart from other people as much as possible.

Stay home if you are feeling ill.

Clean and disinfect your workspace regularly.

Do Your Part. Stay Healthy Iowa.

Preventing the Spread of COVID-19 While in the Workplace



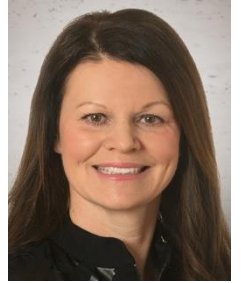
# Iowa Workforce Development



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- Iowa Workforce Development continuing to modify its position on unemployment eligibility – FAQs updated frequently
- Refusing to return to work due to concern (not quarantine) disqualifies workers from unemployment
- Voluntary Workshare Program – be cautious

# North Dakota Considerations



**Beverley Adams**

# North Dakota Emergency Orders

- March 13, 2020 – Governor Burgum issues an Executive Order declaring a state of emergency. The Order activated the North Dakota State Emergency Operations Plan.
  - All those who tested positive and their family and household members were required to self-quarantine



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# North Dakota Emergency Orders, Cont.

- Limited who was permitted in these residences, and
- Need approval to leave residence from the North Dakota Department of Health



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# Since March 13, 2020...

- 39 additional COVID-19 Executive Orders have been issued by Governor Burgum



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# Since March 13, 2020



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- Employment related executive orders
  - 2020-06 – March 19, 2020 – Limited Access to state facilities, on-site dining establishments and recreational facilities
  - 2020-08 – March 20, 2020 – Expanded eligibility for unemployment benefits related to COVID-19

# Since March 13, 2020

- Employment related executive orders
  - 2020-12 – March 25, 2020 – Expanded workers' compensation coverage to first responders and health care providers who contract COVID-19



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# Since March 13, 2020



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- Employment related executive orders
  - 2020-06.1 – March 27, 2020 – Business closures includes salons, tattoo, and massage facilities
  - 2020-15 – March 27, 2020 – Suspension of unemployment tax payments and interest charges

# Since March 13, 2020

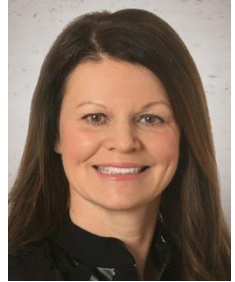


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- Employment related executive orders
  - 2020-18 – April 1, 2020 – Waiting period for unemployment benefits is waived
  - 2020-06.3 – April 15, 2020 – Access restrictions for businesses and state facilities extended to April 30, 2020

# Since March 13, 2020

- Employment related executive orders
  - 2020-12.1 – April 16, 2020 – Extends workers' compensation coverage to funeral directors and funeral home workers who contract COVID-19



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# Since March 13, 2020



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- Employment related executive orders
  - 2020-06.4 – April 29, 2020 – North Dakota Smart Restart protocols for businesses returning to or continuing operations:
    - Universal protocols
    - Industry specific protocols

<https://ndresponse.gov/covid-19-resources/covid-19-business-and-employer-resources/nd-smart-restart/nd-smart-restart-protocols>



# North Dakota Smart Restart Protocols for Business Resuming or Continuing Operations

- Executive Order 2020-06.4
  - Department of Commerce and the State Health Officer developed the rules and guidelines known as “ND Smart Restart”



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# North Dakota Smart Restart Protocols for Business Resuming or Continuing Operations



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- Executive Order 2020-06.4, cont.
  - Rules and guidelines known as “ND Smart Restart”
    - Prevent the spread of the coronavirus for businesses operating during the pandemic
    - If standard and industry-specific protocols are adopted and rigorously followed businesses temporarily closed under Executive Order 2020-06.3 may begin to re-open

# North Dakota Smart Restart Protocols for Business Resuming or Continuing Operations



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- Executive Order 2020-06.4, cont.
  - Rules and guidelines known as “ND Smart Restart,” cont.
    - Businesses not temporarily closed by Executive Order are strongly encouraged to adopt and follow the North Dakota Smart Restart standards for all industries
    - Workplace assessment tool to help employers / workplaces develop policies to protect its employees and the public

# North Dakota Smart Restart Protocols for Business Resuming or Continuing Operations



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- Executive Order 2020-06.4, cont.
  - Other considerations...
    - Wage and hour laws for employees standing in line to get temperatures taken or filling out questionnaires or entering information in phone apps
    - Medical tests required of employees in North Dakota have to be paid by the employer  
N.D. Cent Code § 34-01-15
      - Violation is an infraction

# North Dakota Smart Restart Protocols for Business Resuming or Continuing Operations



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- Executive Order 2020-06.4, cont.
  - Other considerations, cont.
    - North Dakota non-discrimination laws for engaging in lawful activities off work premises after work hours
      - N.D. Cent Code § 14-02.4-01
    - Employees may be more litigious when unemployment rates are higher. Easier to just get another job before.

# North Dakota Smart Restart Protocols for Business Resuming or Continuing Operations



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- Executive Order 2020-06.4, cont.
  - Other considerations, cont.
    - HIPPA if you are using a covered entity to conduct employee testing
    - Privacy considerations – GINA
    - Testing employees may not be allowed under ADA once COVID-19 threat has diminished

# North Dakota Smart Restart Protocols for Business Resuming or Continuing Operations



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- Executive Order 2020-06.4, cont.
  - Other considerations, cont.
    - Ask questions if an employee is hesitant to return to work as there may be an underlying legally protected reason (ADA, FMLA...) for their failure to come back to work
    - No knee-jerk reactions
    - Be slow to make a decision but once the decision is made act on it

# Takeaways

# Takeaways

- Create your return to work plan now
  - Analyze who will return and why
  - Comply with applicable state law on preparedness plans
  - Be prepared to be nimble and make adjustments



# Takeaways

- Communicate with your workers
- Be vigilant and follow health agency recommendations
- Respond promptly to confirmed or suspected cases of COVID-19 in the workplace

# Questions & Answers

# Contact Information



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