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Employment Question of the Day: April 24, 2020

Legal Update

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By Anne M. Radolinski and Erin M. Edgerton

Question

How does Minnesota's Return to Work Order for Non-Critical Sectors (Executive Order 20-40) issued on April 23, 2020, affect my business?

Answer

Yesterday, April 23, 2020, Governor Walz issued Executive Order 20-40 "Allowing Workers in Certain Non-Critical Sectors to Return to Safe Workplaces."

The order allows workers, effective as of Monday, April 27, 2020, to return to **industrial and manufacturing** workplaces and **office-based businesses where workers do not directly interact with customers**, provided that the employer has created and implemented a COVID-19 Preparedness Plan and certain other conditions are met.

Senior management responsible for implementing the Preparedness Plan must sign and certify the plan, confirming their commitment to implement and follow the Plan. Importantly, the order further requires, among other matters, that employers:

- ensure that all workers who can work from home continue to do so;
- conduct health screening of employees upon entry each day in conformance with the Americans with Disabilities Act and other applicable law;
- provide training to workers on the contents of the Preparedness Plan;
- provide a copy of the Preparedness Plan to employees and post the Plan at all business workplaces so that it is readily available for review by all employees; and
- supervise employees to ensure adherence to necessary precautions to prevent COVID-19 transmission.

The order directs employers to the Minnesota Department of Employment and Economic Development (DEED) website, which has a template Preparedness Plan as well as FAQs for Employers and other helpful information.

Some of the questions we have received from clients include:

- My workplace is not an office, industrial or manufacturing workplace. Can we implement a plan and reopen?
 - No, not at this time. Only the businesses described in the order may reopen. Critical sector businesses may remain open and do not need to implement a Preparedness Plan.
- Do I need to have my Preparedness Plan approved?
 - No, approval of these plans is not required. However, the Minnesota Department of Labor and Industry may ask to review your plan at any time.
- Do I need to post my Preparedness Plan?
 - Yes, your Preparedness Plan should be posted at each worksite so that it is easily accessible to all employees. When physical posting is not possible or is impractical, the Plan can be posted electronically, provided that it is received by and remains readily available to all employees.
- The Preparedness Plan requires daily employee screening—what questions should I ask my employees about their health?
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 - The DEED Q&As cite to CDC guidelines regarding health screening questions and indicate that an employee should be sent home if the employee answers “yes” to any of the following questions:
 - Do you have a new fever (100.4°F or higher), or a sense of having a fever?
 - Do you have a new cough that you cannot attribute to another health condition?
 - Do you have a new shortness of breath that you cannot attribute to another health condition?
 - Do you have a new sore throat that you cannot attribute to another health condition?
 - Do you have new muscle aches that you cannot attribute to another health condition nor a specific activity, such as physical exercise?
- How do I train employees on my Preparedness Plan?
 - The order provides general guidance on the training requirement. The employer must cover the contents of the Plan to make sure that all employees understand and are able to adhere to the precautions necessary to protect themselves and their coworkers. The training must be easy to understand and in the appropriate language and literacy level for employees. Employers must also keep documentation of the training provided, which must be made available upon request by regulatory authorities and public safety officers, including by the Department of Labor and Industry.

For more information about EO 20-40 or for assistance with your Preparedness Plan, please contact any member of Fredrikson & Byron's Employment & Labor team.

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