As of April 2020, coronavirus was the leading cause of death in the United States this year. At the same time, many of us rightly fear the damage being done to the economy and the financial health of individual businesses and families as the stay-at-home orders continue. What will happen if business and life resume too quickly?

April 2020

“Exactly how the pandemic will end depends in part on medical advances still to come. It will also depend on how individual Americans behave in the interim. If we scrupulously protect ourselves and our loved ones, more of us will live. If we underestimate the virus, it will find us.”
As of April 2020, coronavirus was the leading cause of death in the United States this year. At the same time, many of us rightly fear the damage being done to the economy and the financial health of individual businesses and families as the stay-at-home orders continue. What will happen if business and life resume too quickly? We fear many companies that otherwise have the ability, and the opportunity, to continue to operate remotely will go back to business as usual too soon despite many well-thought-out efforts to keep their staff and visitors safe. According to the New York Times article:

“Until a vaccine or another protective measure emerges, there is no scenario, epidemiologists agreed, in which it is safe for that many people to suddenly come out of hiding. If Americans pour back out in force, all will appear quiet for perhaps three weeks. Then the emergency rooms will get busy again.”

...“The tighter the restrictions, experts say, the fewer the deaths and the longer the periods between lockdowns. Most models assume states will eventually do widespread temperature checks, rapid testing and contact tracing, as is routine in Asia.”

A National Agenda for Opening Up America

The White House Coronavirus Taskforce, on April 16, announced its guidelines for Opening Up America. The decisions as to the timing of when each state will reopen will be left to state governors. However, the taskforce proposed three phases of reopening. Each new stage will be triggered by meeting various standards, called “gating.”

For employers, the guidelines for all phases include directives to develop and implement appropriate policies, by following federal, state, and local regulations and guidance and informed by industry best practices, regarding:

- Social distancing and protective equipment
- Temperature checks
- Sanitation
- Use and disinfection of common and high-traffic areas
- Business travel

The guidelines also recommend that employers monitor their workforce for indicative symptoms and not allow symptomatic people to return to work physically until cleared by a medical provider. Employers also should develop and implement policies and procedures for workforce contact tracing if an employee tests positive for COVID-19 test.

We believe companies that can and do maintain social distancing protocols, long after their states reopen to business, will safeguard their workforce. This will result in fewer exposures, health issues and deaths due to coronavirus.

However, many industries do not have the luxury of continuing to operate with employees working from home. What are they to do? How are they to prepare to reopen? What other things must they
consider in addition to the taskforce’s guidelines?

There are many protocols and industry regulations to consider for your business.

*Note to Pennsylvania Employers: Click here to learn about Governor Wolf’s plan to reopen PA businesses.*

**Start with Planning – How to Return to Work After COVID-19**

Like crisis planning and management, returning to work after a pandemic requires planning and coordination by company leadership and may require input from additional experts, including general counsel.

Dr. Tom Frieden, the former CDC director and Resolve to Save Lives president and CEO, released a detailed action plan to contain the COVID-19 pandemic and gradually reopen society.

The World Health Organization (WHO) recommends actions to take before, during and after a pandemic in its publication, *Pandemic Influence Preparedness and Response*. The WHO also has published *Getting Your Workplace Ready for COVID-19*.

For example, the global commercial real estate services firm Cushman & Wakefield formed a Recovery Readiness Task Force to develop best practices, products and partnerships to prepare clients for post-COVID-19 recovery and the eventual return to the workplace. The task force has published a Readiness Guide available to readers who opt-in. Additionally, the firm launched a new office design concept on its website, which can be found at www.SixFeetOffice.com, showcasing a new social distancing program developed by the firm and piloted in the Netherlands.

Cushman & Wakefield’s guide includes six readiness essentials for real estate owners and tenants across the globe.

1. Prepare the Building: cleaning plans, pre-return inspections, HVAC & Mechanicals checks
2. Prepare the Workforce: mitigating anxiety, policies for deciding who returns, employee communications
3. Control Access: protocols for safety and health checks, building reception, shipping and receiving, elevators, visitor policies
4. Create a Social Distancing Plan: decreasing density, schedule management, office traffic patterns
5. Reduce Touch Points and Increase Cleaning: open doors, clean desk policy, food plan, cleaning common areas
6. Communicate for Confidence: recognize the fear in returning, communicate transparently, listen and survey regularly

These items, among others, are addressed further in this article.
Order Personal Protective Equipment and Sanitation Supplies

To reopen, companies will need supplies such as health check equipment (no-touch thermometers) and personal protective equipment — the “PPE” we have all heard so much about these past few months. This includes face masks and gloves which non-health care businesses probably have not stocked much before. Soap supplies must remain adequate and businesses will need to make hand sanitizer and surface sanitizers available throughout all spaces.

Companies also should consider how they will handle the cleaning of all surfaces such as desks, telephones, keyboards and other computer peripherals, monitors, doorknobs, light switches, and other common-use surfaces.

Also necessary are supply chain management implementation and training for proper protocols and usage.

Address Social Distancing Policies and Workplace Layout including Common Areas

An excellent resource for workplace resources is the Society of Human Resource Management (SHRM), which has made its coronavirus resources widely available during the pandemic. SHRM offers a simple poster for social distance guidelines at work. It covers meetings, travel, gatherings, watercooler and dining area, public transportation, and recreational activities. Their website includes Q&As, HR forms, sample employee policies, and more.

In addition, among ten things for employers to consider before reopening after coronavirus, Julie Savarino reminds companies to “review and reconfigure office cubicles and seating and to consider installing barriers to allow for six to 15 feet of physical distance between employees.”

When evaluating your workplace’s physical space, here is a checklist of areas to consider when developing your return-to-work plan. Download the checklist as a PDF here.

- Breakrooms cafeterias and kitchens
- Building reception (requires visitor policies)
- Client/customer/patient waiting areas
- Childcare facilities
- Company vehicles
- Conference rooms
- Copy room
- Drop off and pick up areas
- Elevators
- Exercise facilities and locker rooms
- Hallways
- Kiosks
- Libraries
- Lobbies
Provide Flexible Work Schedules and Work-From-Home Options

The White House Coronavirus Taskforce guidelines remind all vulnerable individuals to continue to shelter in place. Households with vulnerable people are told that “by returning to work or other environments where distancing is not practical, they could carry the virus home and put their loved ones in danger.” Individuals are encouraged to take precautions to isolate themselves from vulnerable residents.

However, there are many industries where individuals are unable to do their jobs from home, and thus, must return to work.

Employers are encouraged to allow employees to return to work in phases, minimize non-essential travel, adhere to CDC guidelines regarding isolation following essential travel, and consider special accommodations for personnel who are members of a vulnerable population. Determine who must return to the physical location of your business, how to handle requests for people to return, and who needs special permission to return. In addition, consider putting policies in place for all employees to sign before returning to the location of your business.

One of Furia Rubel’s law firm clients will limit the number of attorneys to one per office quadrant (they have four separate quadrants on two floors) and one professional staff member per quadrant on each day. One receptionist will work each day. This means there will be eight lawyers and eight staff members in the two-floor, eight-quadrant building each day and all others should work from home. If essential workers, such as those who work in the mailroom, are needed, only one person will be permitted in the room each day. The firm has added sanitization measures and will allow anyone who requests to work from home due to “personal necessity” to do so. This is just one approach of many that businesses are taking.

Address Travel and Travel Restrictions
Government and health care experts discourage non-essential travel. Anyone who must travel should be required to adhere to CDC guidelines. Travel guidance includes things to consider before, during and after travel.

If travel remains essential, first, consider your risk tolerance. Companies should educate those employees on best travel practices and how to avoid contracting or spreading coronavirus and other infectious diseases.

The Transportation Security Administration announced changes to its procedures for the summer travel season. These changes to the security screening process aim to reduce the potential for cross-contamination at the security checkpoint in an effort to help prevent the spread of COVID-19. Read more about precautions in Air Travel and Tribulation in the ‘Now’ Normal.

Tips for essential travel include:

- Wear a cloth face covering
- Limit exposure and avoid close contact with others
- Practice good hand hygiene
- Get all recommended vaccinations
- Wipe down communal surfaces with disposable antimicrobial wipes
- Carry and use disposable tissues and discard in trash
- Plan for 14 days of isolation upon return

In addition, the White House Taskforce guidelines advise individuals “to avoid socializing in groups of more than 10 people in circumstances that do not readily allow for appropriate physical distancing (e.g., receptions, trade shows).”

**Consider Childcare Obstacles and Options**

For many, returning to work is not an option if they don’t have childcare. No one knows yet when schools, daycare facilities, summer camps and the like will reopen. What should companies do if they need workers to return to do their jobs? Employers need to consider whether they should offer childcare to their employees, and if so, how they will keep the children and their families safe from contracting COVID-19.

The International Finance Corporation issued a whitepaper on Childcare in the COVID-19 Era: A Guide for Employers which is “interim guidance for employers in a rapidly changing global situation.” The guide covers:
UNICEF, the International Labor Organization and UN Women have compiled Family-Friendly Policies and Other Good Workplace Practices in the Context of COVID-19. It includes guidance on how to support working parents with childcare options that are safe and appropriate in the context of COVID-19.

**Implement Heath Testing Resources and Temperature Checks**

Once testing is widely available, it may become commonplace to be screened for COVID-19 before being permitted to return to work. According to the New York Times article cited earlier:

“Soon the government will have to invent a way to certify who is truly immune. A test for IgG antibodies, which are produced once immunity is established, would make sense, said Dr. Daniel R. Lucey, an expert on pandemics at Georgetown University’s law school. Many companies are working on them.”

The White House taskforce guidelines list “vulnerable individuals as the elderly” (with no definition of what “elderly” means) and “individuals with serious underlying health conditions including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy.” Does this mean that individuals with compromised immune systems and other underlying conditions are now required to report those conditions to their employers before returning to work?
To protect American workers, the U.S. Equal Employment Opportunity Commission (EEOC) on April 17, 2020, issued new guidance on the potential application of the Americans with Disabilities Act. In general, the EEOC says that businesses probably can continue taking precautions, such as checking an employee’s temperature and asking whether an employee is experiencing any COVID-19 symptoms, before allowing employees to enter the workplace.

Still, these procedures raise questions regarding the privacy of health information. It is worth taking the time to consult the FAQs provided by the EEOC and perhaps seek the counsel of an experienced employment attorney.

For more information about temperature checks and health testing, read: Temperature Checks and Health Testing in the Coronavirus World.

**Include Behavioral Health Resources**

In an April 20, 2020 article, the American Journal of Managed Care (AJMC) addressed How COVID-19 Has Affected Mental Health, Severity of Stress Among Employees. It states, “Nearly 7 in 10 employees indicated in a survey by mental health provider Ginger that the coronavirus disease 2019 (COVID-19) pandemic is the most stressful time of their entire professional career, which has aligned with stark increases in new prescriptions of antidepressant, antianxiety, and anti-insomnia medications.”

Renee Branson, founder and principal of RB Consulting, and Certified Resilience Coach (CReC), spoke with Furia Rubel in a podcast about resilience. She said, “Resilience is the ability to bounce forward from crisis, change or challenge. If we bounce back from something, we’re back to where we began. If we’re bouncing forward from something, we experienced that [situation], and we’ve grown from it. We’ve learned from it. We’ve become stronger from it. And that’s the key.

Worried workers are distracted workers. They are less engaged at work, more fearful, less innovative, and less inclined to dream up the bold, audacious ideas needed to propel businesses forward. Employers should provide mental health resources, including tools and techniques for resilience. Besides there being a compelling business case to do so, if you genuinely care about your people, it is the right thing to do.

This briefing note on addressing mental health and psychosocial aspects of COVID-19 Outbreak summarizes key mental health and psychosocial support considerations regarding the pandemic. It was produced by the Inter-Agency Standing Committee (IASC), an inter-agency forum of UN and non-UN humanitarian partners. The IASC outlines an intervention pyramid for mental health and psychosocial support. It starts with social considerations in basic services and security and strengthening community and family supports and builds up to the need for focused person-to-person, non-specialized supports, and, finally, specialized services. In addition, the briefing note lists 14 globally recommended activities that should be implemented as part of the response to COVID-19.

Also, the American Psychiatric Association and Center for Workplace Mental Health published resources for mental health and well-being for working remotely. As employers bring people back to
work, companies will need to make mental health tools and resources available to their employees. For example, in response to the COVID-19 pandemic, Starbucks has transformed its mental health benefits for U.S. employees. Starbucks’ U.S. employees and eligible family members will receive 20 mental health sessions with a therapist or coach each year beginning April 6, 2020.

**Update Employment Policies and Insurance Policies**

For months, professional service providers have been churning out new guidance and protocols for employers facing the upheaval of the pandemic. Lawyers are crafting new employment policies, insurance companies are updating policy provisions, and bankers and accountants are offering guidance on federal loan applications and tax implications.

Pennsylvania and New Jersey labor, employment and workers’ compensation law firm Willig, Williams & Davidson is publishing updates for workers regarding the Families First Coronavirus Response Act and the Coronavirus Aid, Relief & Economic Security, or CARES, Act.

Midsized business law firm McGlinchey Stafford notes that “employers must be ready to address the delicate balancing act that must be performed between ensuring that workers have a safe (disease-free) workplace and protecting employee rights, particularly confidentiality.”

Am Law 200 law firm Stoel Rives has created a COVID-19 resource hub to “examine the legal implications and business disruptions that COVID-19 is causing across industries.” The resources are categorized by industry, topic, and state, so information is easy to find.

**Learn To Be Agile – It is a Long Road Ahead**

It is an interesting – and profoundly unsettling experience – to be living through a historical event, particularly one of this duration. Living through a pandemic already is changing the way we behave. Watching, for example, commercials or TV shows produced before the pandemic that show large crowds of people packed close together is enough to make us shudder. Greeting with a handshake may be gone forever.

The changes, driven by the COVID-19 pandemic, to the way we think, act, and do everyday life and business still are developing. In response to this state of constant change, we must be ready to change, too.
We must equip ourselves better to grapple with the VUCA world – volatile, uncertain, complex, and ambiguous. The VUCA concept originated at the U.S. Army War College to describe the volatility, uncertainty, complexity, and ambiguity of the world after the Cold War, and it is highly relevant now.

To thrive on the other side of this massive upheaval to our world, we must be agile. We must embrace change. If you are working from home, make physical distancing time productive for your business. It can be done.

Leaders who share information with their teams, share decision-making, speed up interactions, and quickly and simply evaluate options and make decisions (eliminating 100-page reports and three-hour-long meetings) will adapt well to the new reality and be prepared to handle whatever the next phase of our social and business evolution will bring.