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COVID-19 and Practical Guidance for Medical and Dental Offices

Day Pitney is pleased to offer this practical guide for medical and dental offices seeking useful information related to the impact the novel coronavirus disease (COVID-19) may have on office/practice operations. This guide is intended for small businesses, particularly medical and dental practices, and covers critical employment, financial and tax, and operational considerations.

Employment Considerations

Layoff vs. Furlough

- Your practice may consider the decision to lay off (terminate) or furlough (retain employees in an inactive status on your payroll). Before making that decision, consider available resources, such as assistance with covering payroll and certain tax credits (as discussed below in Financial and Tax Considerations). If you decide on a layoff, you may be required to provide notice of the termination and certain forms, such as unemployment insurance forms, to terminated employees. The law also varies from state to state regarding when employees are entitled to receive their final paycheck. If you decide to furlough employees, you may be able to maintain their group health benefits depending on the terms of your benefits plans.
- Laying off employees may have long-term consequences for your practice. Before terminating any employees, consider staffing needs to keep your office running, and have staff available to provide services following the pandemic.
- Depending on the state in which your practice operates and the size of your practice, layoffs may implicate federal or state Worker Adjustment and Retraining Notification Act statutes.
- You may also consider reduced employee work schedules or reduced pay. If the practice reduces employee schedules or full-time status, an employee may become eligible for partial unemployment benefits depending on applicable state law. Special considerations apply when reducing the work schedules of employees who are classified as exempt under state and federal laws.

Employees with COVID-19

- While the Occupational Safety and Health Administration mandates that an employer provide a workplace free of recognized hazards that are likely to cause death or serious physical harm to its employees, this is balanced with the employee's protection under the Americans with Disabilities Act. Therefore, if your practice becomes aware that an employee has tested positive for COVID-19, to ensure employee privacy and to encourage other employees who may have tested positive to disclose such information, have human resources (or some other central contact point) provide an anonymous message to staff about the positive test and the protocols to follow. Any individuals who test positive for COVID-19 should be quarantined for 14 days, regardless of whether they exhibit symptoms.
- For more information, please visit here.

Employee Leaves

- Employers should be aware of federal and state leave laws to ensure they are providing employees all applicable benefits.

- For more information about the new federal leave and benefits available, please visit here.

Prohibition from Penalizing Employees for COVID-19 Leave

- Certain state and federal laws prohibit employers from retaliating against employees for taking protected leave during the COVID-19 pandemic. For an example of such a state law, please visit here.

Information to Employees

- We recommend providing frequent updates to your staff via email. Updates can address office hours, adjusted work hours/wages, policies related to having contact with patients and encouraging/unifying messages.

Unemployment

- Unemployment considerations will vary by state, but generally, during the pandemic, employees may receive unemployment benefits if they have been laid off or furloughed or had their hours significantly reduced.
    - Sole proprietors and independent contractors may also receive unemployment benefits in some states during the federal emergency.

Financial and Tax Considerations

Coronavirus Aid, Relief, and Economic Security (CARES) Act Relief

The CARES Act makes loans available to small businesses through its Paycheck Protection Program (PPP), which provides the following:

- There is $349 billion available for forgivable loans to any business with 500 or fewer employees.
- The maximum loan amount is 2.5 times the average monthly payroll costs (looking back over 12 months), up to $10 million.
- Funds used for payroll costs, paid sick or medical leave, insurance premiums, and certain mortgage interest, rent and utility payments are eligible for forgiveness and do not have to be repaid.
- The forgivable portion of these loans is excluded from the gross income of the borrower for federal income tax purposes.
- Current Small Business Administration (SBA) lenders and other financial institutions authorized by the Department of the Treasury will make the loans.
- The program waives the customary personal guarantees and collateral requirements.
- For more information on the PPP, please visit here.

Economic Injury Disaster Loan (EIDL) Program

- The SBA oversees the EIDL program, which can provide up to $2 million of low-interest financial assistance (actual loan amounts are based on amount of economic injury) to small businesses or private, nonprofit organizations that suffer substantial economic injury as a result of the declared disaster, regardless of whether the applicant sustained physical damage.
- Loans cover fixed and variable expenses including payroll but not lost sales or revenue. While both the EIDL program and the PPP include loans for payroll and other expenses, we recommend separating eligible PPP expenses from EIDL program expenses and using them as a basis for forgiveness under the PPP.
- The SBA charges no upfront fees or early payment penalties. Recipients' ability to repay the loan will determine their repayment terms.
- For more information on the EIDL program, please visit here.

Small Business Loans

- The SBA is providing aid to certain business that have been negatively impacted by COVID-19. For more information, please visit here.
- The availability of additional small business grants and loans to assist businesses impacted by COVID-19 will vary by state.
- For example, Connecticut offered qualifying businesses and nonprofit organizations with 100 or fewer employees access to no-interest loans of up to $75,000 or three months of operating expenses (whichever is less). Unfortunately based on demand, the state is currently not accepting additional applications.

Additional Relief

- *Employer retention credits*. The CARES Act provides eligible employers with a credit against employment taxes equal to 50 percent of wages paid or incurred after March 12 and before January 1, 2021. An employer is eligible for this credit if (i) its operations are partially or fully suspended by a government order due to COVID-19 or (ii) its gross receipts for the calendar quarter declined by more than 50 percent year over year. The total credit is limited to $10,000 per employee.
- *Payroll tax deferral*. Employers and self-employed individuals are permitted to defer payment of the employer share of the payroll tax from March 28 through December 31, provided the employer does not have indebtedness forgiven under the CARES Act. Any payroll taxes deferred must be paid over the next two years (50 percent due by December 31, 2021, and the remainder due by December 31, 2022).
- *Coronavirus-related distributions*. Employees who participate in an employer's qualified defined contribution plan may take coronavirus-related distributions of up to $100,000 on a tax-favored basis between January 1 and December 31, based on the individual or his/her spouse or dependent(s) receiving a SARS-Cov-2 or COVID-19 diagnosis or experiencing adverse financial consequences related to the pandemic. These distributions can be included in income ratably over a three-year period and can be recontributed to the plan within three years. The plan must be amended to reflect this change.
    - *Plan loans*. Employees who satisfy the requirements for coronavirus-related distributions may take a loan from the plan within 180 days of March 27. The loan cannot exceed the lesser of (i) $100,000 or (ii) the greater of $10,000 or 100 percent of the employee's vested account balance. The plan must be amended to reflect this change.

Other Loan Forgiveness Options

Forgiveness or forbearance for certain loans will vary by state. In New York, for example, state-regulated banks are required to grant 90-day forbearances to certain borrowers. For more information, please visit here.

Tax Considerations

- The federal government extended the due date to file all domestic income tax returns to July 15. Information returns are still due on April 15.
- Several states have also extended reporting deadlines.
- Employers are generally required to withhold taxes from employees' wages; however, employers will be temporarily able to retain an amount of payroll taxes equal to the amount of qualifying COVID-19-related leave the employer has paid.
    - If the amount of qualifying paid leave exceeds the amount of payroll taxes the employer would otherwise deposit with the Internal Revenue Service, the employer is entitled to an accelerated refund from the IRS.
    - Employers can take a tax credit for wages paid after a date selected by the Treasury secretary within 15 days following enactment (March 18) and before December 31. For more information, please visit here.
- *Family Medical Leave Act tax.* The Families First Coronavirus Response Act (FFCRA) requires employers with fewer than 500 employees to provide employees with paid family leave and paid sick leave if they (or their families) are affected by COVID-19. Employers providing paid leave pursuant to the FFCRA are entitled to refundable tax credits, which are

designed to immediately reimburse them for the cost of providing COVID-19-related leave and maintaining health insurance coverage for affected employees. For more information, please visit here.

Operational Considerations

In the majority of states, physician and dental offices are considered essential businesses and will remain open; however, please consider to the greatest extent possible whether employees can work remotely and whether certain services can be provided via telehealth.

If an employee tests positive for COVID-19, depending on the state, the department of public health (or a similar agency) may require your office to close (and not reopen until authorized by the department or agency) and go through special sterilization procedures.

In most states, physicians do not have an obligation to report whether their patients have COVID-19; hospitals and labs performing COVID-19 tests tend to have reporting obligations. If your office is performing COVID-19 tests, standard reporting obligations apply.

Many ambulatory surgery centers are required to reschedule elective procedures. For more information on postponing elective procedures, please visit here.

Properly managing personnel during the pandemic is essential. We suggest assigning employees to teams to help deal with fatigue. Appoint a team leader for each group who can assist in disseminating information to staff.

Quickly assess your contracts (office leases, equipment leases, recurring supply orders, etc.) and consider whether they can be canceled or payments deferred. **Please consult a Day Pitney attorney to assist in reviewing your agreements.** For more information, visit here.

The Health Insurance Portability and Accountability Act still applies during this pandemic. Although the federal government has announced various waivers and enforcement discretion, the overwhelming majority of waivers apply only to facilities such as hospitals. Physician and dental offices should continue to operate as usual.

Provide relevant information to your patients to keep them informed about your office, including revised operating hours, the availability of telehealth services, useful hygiene/wellness tips to reduce the spread of germs, and encouraging messages.

General helpful resources

Day Pitney Alerts

Department of Labor Wage and Hour Division Issues Employment Law Guidance Relating to COVID-19

HIPAA Considerations When an Employee Tests Positive for COVID-19

Preparing Your Business for the New Coronavirus, COVID-19

Industry Sources

A Physician's Guide to COVID-19

Practice Guidance for COVID-19

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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