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Pivot to Recovery: Five Priorities for Chief Human Resource Officers

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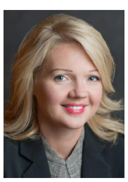

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As the COVID-19 crisis begins to weaken globally, companies are beginning to discuss how and when to re-open facilities and bring employees back to work. This pursuit is not as simple as unlocking the doors and calling employees to return to their jobs. Chief Human Resource Officers (CHROs) face a variety of strategic decisions as we pivot our companies from crisis to recovery.

Companies have looked to their CFOs – their cash czars – to preserve liquidity during this crisis. While cash management will continue to be a theme as we move toward recovery, the CHRO will play a critical role as companies balance managing liquidity with flexibility to optimize revenue – which is ultimately driven by employees.

As businesses prepare for the “new normal” post COVID-19, these five priorities should be top of mind for every CHRO:

1. Establish the pace and criteria for reopening offices and facilities

Your pre-COVID-19 workforce management strategy may not fit your return-to-work needs. Much is unknown about the new normal. Has demand for your product or service changed in light of the economic downturn? Has your supply chain been disrupted so that fewer employees are required to handle decreased throughput? Will your employees be able to deliver services to your customers given the future social distancing restrictions? This current market uncertainty is leading many employers to adopt a phased approach to reopening: begin slowly, bring employees back in pre-determined phases (starting with those most critical to operations) as you better understand and adjust to market conditions, and build from there.

Additionally, your offices and facilities might require temporary or permanent modifications prior to reopening for business. In the early phases of the new normal, you may need to create workplace solutions that increase distance between employees, and between employees and customers. You may need to operate alternate shifts to limit the number of employees in the facility at any time. You may need to restrict use of conference rooms, break rooms, and modify policies around team meetings and group events. If you shuttered your business prior to shelter-in-place orders, you may not have implemented the Occupational Safety and Health Act (OSHA) guidance on how to prepare workplaces for COVID-19. Additionally, while health screens (e.g., temperature checks, etc.) were permitted by the CDC during the crisis, these exams could previously have been subject to penalties if not job-related and consistent with business necessity. In order to keep your employees and customers safe, you will need to develop specific criteria for what must be in place prior to reopening the doors.

2. Support your workforce and secure your talent

It cannot be over-emphasized that clear and consistent communication is critical not only during the crisis, but also during the recovery. Messaging to employees should be transparent and wholly aligned with the company's actions. If you plan to bring employees back to work over time, then this should be clearly stated to them. Explain your plans and management's intentions. Honesty will help leaders maintain and build trust with employees during this challenging period. Keep in mind that people often do not process messages as quickly during stressful situations, so be prepared to share the same message multiple times using varied channels to increase comprehension and retention.

In addition, consider the fact that while your business is preparing to return to work, other elements of the real world might not be doing the same. For many states and municipalities, schools will stay closed, home schooling may continue, and childcare options could remain uncertain. Work with your leaders to provide flexibility for employees during these unprecedented times. As employees return to work following this stressful quarantine, your actions can either increase stress levels or improve morale.

As you start to rebuild your workforce, it will be essential to keep those resources critical to operations in place. If you adopt a phased return-to-work approach, these individuals should be the first to come back. Use this time to let them know how important they are to the company, that they will be the backbone of your recovery. Think about implementing a retention incentive (monetary or non-monetary) for these select employees who will be working above and beyond their normal duties to bring your company back from the crisis. As you review your workforce, you can also use this opportunity to identify talent gaps and fill key roles from the furloughed talent pool in the market.

In this time of uncertainty, it's likely that some companies will not be able to bring back all furloughed employees. Under the federal WARN Act, a temporary layoff of less than six months (i.e., a furlough) does not trigger the 60-day notification period (or pay in lieu of notice) and other external notice requirements. Generally speaking for applicable large employers, the federal WARN act may be triggered if the furlough extends past six months and the number of impacted employees (not including part-time workers) is (a) 50 or more employees at a closed facility, (b) 500 or more workers at a single site of employment during a 30-day period, or (c) 50-499 workers and the layoffs are 33% or more of the employer's total active workforce at a single site of employment. While the federal WARN Act provides exemption for "unforeseeable business circumstances," no specific guidance has been issued by the federal government. Moreover, 14 states have mini-WARN Acts with various provisions related to temporary and permanent labor reductions. It is essential to work closely with labor counsel to navigate these federal and state regulations.

3. Address remote work and attendance policies

One positive outcome of the COVID-19 crisis is that many employees were able to successfully work remotely during the shutdown. Now that companies have seen that working from home does not impact output or quality of work, it might be time to allow teleworking as part of the new normal for certain functions. Review your mix of on-site versus remote settings and ensure that remote workers have the necessary technology (e.g. appropriate computer hardware and network speed) to operate at home. There could be opportunities to reduce real estate spend or office space capacity and use that cash to help the recovering company.

Despite your best efforts to provide a safe workplace, some workers may be afraid to come back to work. Can they refuse to return? The answer is not necessarily a clear yes or no, so it is best to consult with your labor counsel to determine the correct response. Under OSHA, employees may refuse to work if they believe that they are in imminent danger. Section 13(a) of OSHA defines imminent danger as "any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act." If an employee has reasonable belief that there is a real danger of contracting COVID-19 at the workplace (for example, because of a confirmed or suspected case in the workplace), he or she might qualify for protection under OSHA from discipline or discharge. Note that this situation may not be considered as grounds for paid leave, only protected leave. Additionally, it is possible that this level of fear and anxiety could trigger reasonable accommodation under the ADA or protected leave under FMLA. Determine the path forward in close coordination with your labor counsel.

Apart from the legalities, the company's response to employees' reasonable and unreasonable anxieties will set the tone for employee morale. In the wake of COVID-19, we are navigating unchartered territory, and organizations that actively and visibly put their employees' needs first will reap the rewards. Continue remote working opportunities as appropriate. Urge leaders to provide flexibility to employees and collaborate openly with them as the changing landscape of the new reality unfolds.

4. Align your total rewards programs

Like many businesses during this pandemic, you have likely made some tough decisions to maintain liquidity over the past few months. You may have had to cut salaries or put a moratorium on merit increases. As we enter the recovery phase, you will want to begin thinking about when to reinstate some of these elements, either retroactively or for future service. Liquidity is critical, so reinstatement should be tied to certain cash thresholds. Work with your finance team to determine those target levels.

With market uncertainty, some of your existing incentive programs may no longer make sense in the new normal. As you adjust to shifts in supply and demand conditions, it is likely necessary to reset short-term incentive targets and sales quotas. Targets that are unattainable will not drive motivation or results. Remember that these are cash programs, so you will need to understand their impact to liquidity and ensure that certain thresholds are met before moving ahead.

Equity compensation should also be reviewed under the new normal conditions. Many companies are facing a significant hit to enterprise value due to COVID-19, and employee stock options may be underwater. This greatly impacts employee engagement and morale. While large corporations might think about offering supplemental full-value share grants to compensate employees for the value loss of their equity, this approach creates dilution issues for private equity-held companies. Another option to consider is exchanging underwater stock options for new at-the-money options, repurposing outstanding equity. This approach helps manage the dilution issue but typically requires shareholder approval, increasing the time to implement.

As you align equity compensation, you might also consider utilizing equity pools as a replacement for cash compensation for some executives to provide additional liquidity to the recovering company. Given the likely hit to enterprise value from COVID-19, there is tremendous upside potential to new equity compensation as we move into the recovery phase, which makes this option palatable for many executives. Remember that this path may be limited for private equity-held companies as a result of dilution considerations.

5. Revisit employee health/welfare, retirement and ancillary benefits

Over the past few months, you have likely halted discretionary benefit spending but were unable to make short-term changes to annual employee benefits such as health/welfare and ancillary plans. As you look ahead into the 2021 plan year, carefully evaluate your liquidity needs. Your benefits broker may be able to present alternate plan designs that offer PPACA-compliant medical/welfare benefits for your employees at a lower employer cost, which would provide additional liquidity for the company. Do not forget to review ancillary insurance benefits as well. Anecdotal evidence suggests that some basic life/AD&D insurance renewals are considerably higher than in the past. Additionally, if the employee population participating in medical benefits has changed by 10% or more, your insurance carrier might be able to re-rate your current group health plans, impacting your 2020 run-rate cost.

Take time to also review the COVID-19 impact on retirement benefit programs. Review the break in service rules under ERISA. If you have laid off 20% or more of your workforce you could be facing partial plan termination for your 401(k) program. Under the CARES Act, organizations will need to communicate their intent to honor extended hardship or regular loans from 401(k) plans, even though the plan amendments may follow in future periods.

Finally, keep an eye on government stimulus programs and how they can offer relief. The CARES Act provides relief for defined benefit/pension plan sponsors, including a delay for minimum annual required contributions (ARCs) that would otherwise be due from single-employer defined benefit plans during this calendar year. Subsequent stimulus rounds could provide additional relief related to benefit plans.

As we plan for the new normal post COVID-19, the CHRO's actions will impact not only employee engagement and productivity, but also the financial liquidity that is needed to keep the recovering company moving forward. It is essential that CHROs surround themselves with experts – from labor counsel to compensation and benefits advisors – to help navigate the way. Intentional and strategic planning and execution related to human capital will be vital components of the company's recovery blueprint.

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