Today’s Speakers

Moderators:

James Klein
President
American Benefits Council

Ilyse Schuman
Senior Vice President, Health Policy
American Benefits Council

Guest Speakers:

Lydia Boyd Campbell
Vice President and Chief Medical Officer, Corporate Health and Safety
IBM

James R. Parretti, Jr.
Shareholder
Littler Mendelson P.C.
IBM Return to Workplace
Playbook

Dr. Lydia Campbell, MD, MPH
IBM Vice President and Chief Medical Officer
IBM Corporate Health & Safety
- Much is unknown about the Novel Coronavirus (COVID-19), the situation and information is rapidly evolving;
- Everything presented here is based upon what is known at this time;
- Check updated information from local government and reliable international resources, e.g. CDC, WHO, are highly recommended;
PRESENTATION OVERVIEW

+ IBM’s Approach to Pandemic Preparedness and Response
+ Pandemic Governance Construct
+ Return to Workplace Playbook
+ Perspectives from North America and Around the World
+ Returning Safely to the Workplace
  - COVID-19 Testing Scenarios and Applications
  - Voluntary US COVID-19 Testing
IBM’s Approach to Pandemic Preparedness and Response

**GOALS**

+ Protection of Human Health
+ Maintenance of Business Continuity

**Employee** health is the top priority

Our plan and response are **evidence-based** and **scientific** in approach

We continue to comply with **Government** requirements and/or instructions

**Business Continuity Plan (BCP)** and response are based on identification and maintenance of **Critical Operations** in the setting of **Reduced Resources**.
GOVERNANCE CONSTRUCT FOR SUCCESSFUL PANDEMIC MANAGEMENT

- Senior Executive Pandemic Leadership Team
- Corporate Crisis Management Team (CCMT)
- Local Crisis Management Teams
- BU Leaders
- Human Resources
- Communications
- Legal
- Corporate Health and Safety
- Real Estate Operations
- Procurement

Corporate Health and Safety Team - SMEs
Performs assessment and research on situation and risk
- Comprised of 200 medical and safety professionals
- Develops recommendations and IBM position
- First point of contact for employees (Ask Health & Safety)
- Confirmed / Suspected case management
- Consultation on PPE, Sanitation Practices, and IAQ
- Travel and Meeting Guidance
Why return to the workplace?

While most employees have effectively transitioned to working from home during the pandemic, a return to the workplace is beneficial in some unique situations:

- Roles that need access to secure infrastructure or other systems that are installed in the workplace
- Site-based hardware development and manufacturing roles
- Roles that need access to significant networking capacity
- Researchers who need access to labs, equipment, and infrastructure
- Client-facings sales and delivery teams that require multiday/week dedicated sprints where a virtual experience may be less effective
KEY CONSIDERATIONS INFORMING RETURN TO WORK STRATEGIES

+ Outbreaks will not follow the same pattern everywhere.

+ Data increasingly supports that measures that limit person to person contact slow the spread of COVID-19. These include social distancing, mask usage, and limiting gatherings.

+ Universal/widely adopted approaches to contact tracing have not emerged yet.

+ While testing capacity has improved, there is still inconsistent access to testing for asymptomatic individuals and testing capacity is not sufficient for widespread screening.

+ As interaction in the community and in workplaces increases, we will continue to need to manage confirmed or suspected cases including investigating, contact tracing, and sending employees/teams home to self-isolate.
How we will initiate Return to the Workplace

+ We already have essential employees working on IBM and client sites
+ Government lifting stay-at-home orders is the first gate to reopening a workplace beyond essential employees
+ IBMers will return to the workplace in a phased approach
+ Employees identified to return first will be those that would see a material productivity or innovation benefit from returning, even with masks/social distancing
+ IBM will have uniform global enhanced health and safety standards for screening, masks, space planning, and building services
+ IBM locations will meet IBM’s global standards in addition to following any government or health authority requirements
+ CHQ sets the global standards and maintains the Return to Workplace playbook; local Crisis Management Teams implement on the ground
A safe and prioritized progression for return to the workplace

| Wave 0 | Wave 1-Wave 2 | Wave 3 |
| <8% onsite | ≥ 4 weeks | >50% |

### Onset of the virus, “stay at home orders”
- Stay at home orders
- Essential employees only onsite

### Flattening of the curve, governments begin lifting stay at home orders
- Stay at home orders begin to lift; governments begin phased economic re-openings
- Some localized hotspots may develop
- Masks required by many jurisdictions
- 2m/6’ social distancing

### Experience during Wave 1 (IBM site and client site) supports scaling to/through Wave 2
- Experience during Wave 1 (IBM site and client site) supports scaling to/through Wave 2

### Continued reduction in public health risk, improved health care system capacity
- Testing, contact tracing widely available
- Health care system able to manage illness peaks
- Proven, widely available treatments
- Reevaluate masks and distancing

### Government & Health/Clinical Guidance

<table>
<thead>
<tr>
<th>Who is onsite</th>
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<tbody>
<tr>
<td>Essential employees only onsite</td>
</tr>
<tr>
<td>95% of employees work from home</td>
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<table>
<thead>
<tr>
<th>Wave 0</th>
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<tr>
<td>Wave 1-Wave 2</td>
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<td>Wave 3</td>
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Assessing Site Readiness for Reopening
Return to Work Playbook Checklist Categories

- Government and Health Authority
- Clinical
- Local Industry Actions
- Employee Sentiment & Employee Relations
- Health Screening Standards
- Social Distancing Measures
- Building Services
- Communications & Change Management

Step 1: Is your site ready to open?

Government and Health Authority

Critical showstoppers

Has the local, regional, state, and/or national government cancelled a mandatory "stay home" order that was previously in effect? If so, when?

- Yes
- No

Has the government allowed businesses to reopen their premises? Is it only a subset of businesses or all businesses?

- Yes
- No

Additional questions

Does your location have a dependency on public transportation? If so, are there transportation restrictions still in effect, such as public transportation (trains, subways, buses)? If so, what temporary actions need to be deployed to get employees to their work location, if any?

- Yes
- No

Are local schools, camps, daycare or childcare closed or impacted? If so, what temporary actions need to be deployed to enable employees to be able to return to their work location, if any?

- Yes
- No

Does the local, regional, state, and/or national government or health authority require advance approval of "return to work" by location?

- Yes
- No
FACTORS AFFECTING RETURN TO WORK GLOBALLY

+ Health system infrastructure
+ Contact Tracing Practices
  + Aggressive contact tracing and enforceability of quarantine (South Korea, Singapore, etc. vs. US, areas of India, Africa)
  + Mask use requirement / recommendation (Asia vs. Europe, US, New Zealand)
+ COVID-19 Testing
  + Employer availability
  + Screening eligibility
  + Processing capacity
  + Reliability/Accuracy of tests
+ “Covidiocy” - Willingness of citizens to follow government measures (Asia vs. US)
+ Culture and health behavior
COVID-19 Testing: Assessing its Role in Safely Returning to the Workplace
## POTENTIAL TESTING SCENARIOS

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Organizer</th>
<th>Test</th>
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<tbody>
<tr>
<td>1</td>
<td>IBM</td>
<td>RT-PCR</td>
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<tr>
<td>To expedite RTW for the high-risk individuals:</td>
<td></td>
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<tr>
<td>+ Temperature screening positive</td>
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<tr>
<td>+ COVID-19 related symptoms</td>
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<tr>
<td>+ Close contact</td>
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<td></td>
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<tr>
<td>+ Returning travelers from areas with high community spread</td>
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<tr>
<td>+ COVID-19 positive but no re-testing available locally</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>a. IBM</td>
<td>Following clients/government requirements if no significant issues $^1$</td>
</tr>
<tr>
<td>To meet clients and/or government RTW testing requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>IBM</td>
<td>Not established $^{2,3}$</td>
</tr>
<tr>
<td>Potential future scenario: Targeted testing of returning enhanced essential employees (for immune status)</td>
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</table>

$^1$ Significant issues: e.g. legal non-compliance, significant medical/practical/privacy protection issues

$^2$ At this time, the performance of the antibody test is not good enough. Even more important, we do not know whether the detectable antibodies are protective, the degree and durability of protection, and how much the variation to expect among different groups, such as those had an asymptomatic infection.

$^3$ Ref. *BMJ*. 2020;370:m2516, 2655; *Lancet Infect Dis*. Published online July 17; *NEJM*. Published online June 5
VOLUNTARY US COVID-19 TESTING

Motivation: How COVID-19 testing can play a role in detecting workplace infections to prevent outbreaks in IBM office settings

Objectives measured via voluntary post-testing survey

+ Evaluate employee preferences and sentiments around COVID-19 testing method offerings

+ Evaluate employee willingness to undergo regular workplace testing as a means for safely returning to work

+ Evaluate experiences of employees with different service providers

+ Evaluate IBM CH&S management’s experiences with different service providers
Lessons Learned
What have we learned since the pandemic started...

...about Reopening Workplaces

• The RTW playbook and processes enabled local CMTs to assess readiness to reopen, prepare the workplace using consistent standards, and initiate a safe return to the workplace.

• Early, regular, culturally-relevant communication is key to not only effective response, but for building trust and understanding the employee sentiment regarding return to the workplace

• We need to be flexible and innovative in evaluating new ways of working and using IBM workplaces differently based on the needs of the business and our clients.

• Use of technology for capturing, reporting, case management, and contact tracing is critical to evolving effective response to potential workplace exposures

• Regular cadences and updates with both internal and external experts, networks, and member organizations to validate response systems and share best practices
Return to Work: Legal Considerations

James R. Parretti, Jr.
Shareholder
Littler Mendelson P.C.
Update on Legislation: Enacted Laws

- Coronavirus Preparedness and Response Supplemental Appropriations - $8.3 billion emergency funding for HHS, CDC
- Families First Coronavirus Response Act (FFCRA) - paid sick leave, Family and Medical Leave Act expansion
- Coronavirus Aid, Relief, and Economic Security (CARES) Act – Paycheck Protection Program, unemployment expansion, industry loans
- Paycheck Protection Program and Health Care Expansion Act (PPPHCEA) – additional $310 billion for PPP; more $ for EIDL, health care, tracking
Update on Legislation: Pending

• “HEROES Act” – passed by U.S. House May 15, 2020
  - $3 trillion package
  - Hazard pay
  - Extended UI at $600/week
  - Extends and expands FFCRA paid sick and family leave provisions
  - $$$ for state and local governments

• “HEALS Act” – package introduced in U.S. Senate July 27, 2020
  - $1 trillion
  - Liability protections
  - Limited extension of UI
  - Allows existing CARES money to be used by states
Liability Protections in HEALS Act

• Broad COVID-19 “exposure” protection
  – Plaintiff must show non-compliance with guidance and if business did not comply, must prove by clear and convincing evidence that defendant’s gross negligence or willful misconduct led to injury
  – Preemptive of state law
• Liability protection for health care providers
• Employment/Labor Law liability protections
Return to Work: ADA Issues

- Testing
- Other screening
- Documentation
- Reasonable Accommodation Requirements
  - ADA as well as Title VII (religion)
Return to Work: Other EEO Issues

• Age Discrimination in Employment Act
• Pregnant Workers
• Other Title VII Considerations
Return to Work: Leave and Benefits Issues

- Existing Family and Medical Leave Act
- FFCRA Paid Sick/Emergency FMLA Requirements
- Reasonable Accommodation
Return to Work: WARN Act

• Federal WARN obligations
• State “Mini” WARNs (many amended)
Return to Work: OSHA

- COVID Guidance, Industry Specific
- General Rules still apply
- National Standard to follow?
Return to Work: Mask-arades!

- OSHA General Duty Clause

RESOURCES

- [https://www.littler.com/coronavirus](https://www.littler.com/coronavirus)

**Featured COVID-19 Resources**

- **COVID-19 Labor & Employment Litigation Tracker**
  - Littler Insight | Updated Regularly

- **Bouncing Back: A List of Statewide Return to Work Protocols**
  - Littler Insight | Updated Regularly

- **Facing Your Face Mask Duties – A List of Statewide Orders**
  - Littler Insight | Updated Regularly

- **Employee Temperature and Health Screenings – A List of Statewide Orders**
  - Littler insight | Updated Regularly

- **Stay on Top of “Stay At Home” – A List of Statewide Orders**
  - Littler ASAP | Updated Regularly

- **Littler COVID-19 Flash Survey Report**
  - Littler Report | March 30, 2020