



RESILIENT LOUISIANA COMMISSION

CO-CHAIR DON PIERSON

CO-CHAIR TERRIE STERLING

Retail and Small Business Recovery Task Force
May 11, 2020
Meeting called to order at 9:30 a.m.

Task Force Members:

- Jessica Elliott
- Mayra Pineda
- Christine Bruneau
- Kelisha Garrett
- Chad Bordelon
- Shawn Brayton
- Jaqueline Brettner
- Trevelayn L Brown
- Brittany Dunn
- Brian Egana
- Edward Encalarde
- Nicholas Felton
- Aaron Franklin
- James Gobert
- Todd Grand
- Edward Harold
- Lisa Johnson
- Jerry W. Jones, Jr.
- Michael Lafitte
- Manard Lagasse, Jr.
- Andrew Lam
- Van Lam
- Teresa Lawrence
- Ryan Leblanc
- Edwin Neill
- Li Pham
- Angelica Rivera
- Blanca Robinson
- Allison Rouse Royster
- Maria Slater
- Ronnie Slone
- Belinda Zhou

- The meeting was called to order by Kelisha Garrett and roll call taken by Mayra Pineda. All Task Force members were present. Kelisha Garrett certified that a quorum was present.
- Minutes from the Task Force’s May 4, 2020, meeting, as corrected on May 7, 2020, were approved.
- Following the minutes, a review and discussion took place regarding the Task Force Initial Recommendations that were submitted to the Resilient Louisiana Commission on May 6, 2020.
 - Review of recommendations by Mayra Pineda
 - Kelisha Garrett:
 - Other industry Task Force and Commission meetings are accessible
 - Immediate needs for reopening; need to submit as soon as possible.
 - Michael Lafitte is the Commissioner assigned to us
 - Michael Lafitte highlighted importance of Task Force work.
 - Mayra Pineda asked if there any recommendations the task force had not considered; what else do members think should be added? No response from members at this time.
- Mayra Pineda introduced guest speaker, Edward F. Harold, Regional Managing Partner, Fisher & Phillips, L.L.P.: Preparing for Opening and Beyond.
 - Mr. Harold:
 - Vast majority of clients represent small businesses. The last 6-8 weeks have been a real struggle, and similar to post-Hurricane Katrina, including a lack of information/bad information and guidance, and have to make a lot of decisions based on that.
 - “Back to business” guidance can be found at www.fisherphillips.com
 - Back to business checklist highlights including:
 - Primary considerations, such as PPE, spacing, closed doors, no use of common areas
 - What are the rules? We’re lucky to have some guidance on what we need to be doing from Governor Edwards
 - Who do we bring back to work, who do we choose, and what happens if people decide that they don’t want to return?
 - Those decisions are subject to the whole panoply of employment laws (sex, race, age, etc.)
 - For example, an employer can’t tell someone who is over 60 and ready to return work that he/she is old and susceptible and can’t come back (doesn’t apply to micro business).
 - On the other hand, for people who are more susceptible to the disease, recommendation is to do what you can to accommodate. Diabetes, hypertension, obesity, and other conditions that are proven to add risk to a person who gets the disease, are covered by ADA. Have to consider if you have someone with one of

those conditions whether you can allow them to remain on leave because they are covered. Very individualized decision. Can you allow them to stay out another 4 weeks without detriment to organization? Might be very difficult decisions for small businesses

- Staggering work hours/days
- What steps if an employee comes down with the disease?
 - If asymptomatic, 14-day quarantine no longer required – can return but must have mask and distance controls.
- Need to educate employees
- Screening? A lot depends on type of business. For example, a small pest control company that is going to send employees into customers' homes probably has a higher duty to screen employees before they go out to others (take temperature, etc.).
 - Once employers decide, they then have to decide what they can and cannot do with the information they get. For example, taking a person's temperature under the is a medical exam under the ADA. Do you keep in medical file? Again depends on nature of business
- Wage and hour issues – might not be able to pay employees as much as before. Might have to change benefits or do away with bonus, vacation time, etc. Key here is communication. 99% of employees in non-union workplaces are at will and you can change work conditions. It doesn't mean that the employees have to accept them (they can quit). But, you cannot change the conditions after the fact; have to do them up front so that the employee can make his/her own decisions.
- If someone can't return to work because of COVID-related disease, can they still get unemployment? Generally yes – see covered conditions under the CARES Act.
- Meals and break times: If you employ minors there are meal and break requirements; otherwise no (do have to make allowance for human needs)
 - consider staggering mealtimes
- Insurance issues (Mr. Harold is not at insurance attorney nor does he handle workers' compensation issues) – employers need to understand what your coverages are with respect to this and how it impacts a return to business.
 - If you have 1099 people (which 99/100 times they shouldn't be) and you don't have them on your workers' compensation insurance, that leads to a whole lot of other problems.
- Lack of child care a reason for receipt of unemployment if reason to not return to work?
 - See Emergency Family Leave Act.

- Required to accommodate employees whose child care is closed.
- Employees' unemployment status: Right now a lot of this is still up in the air. As employers we do not make any unemployment decisions; we simply report the information to the Unemployment Commission and they make the decisions. You can say to an employee, "We are offering you work, want you to return to work, and have the hours, and it "could" impact your unemployment." But, employers cannot determine or advise employees about how it will affect unemployment.
- Benefits – at some point, benefits for furloughed employees might have to end. Be prepared for what is coming.
- Most important for all this is communication. Communication with employees how we are going to keep employees safe, what pay and hours are going to be, what we expect with safety policies. Greatest headaches are when the employees don't want to communicate with the business employees, but we can't control that. We need to be communicating with and training our employees, listen if they have questions, and for them to understand that we don't want them to come back to work and get sick, etc.
- Unemployment benefits end July 31st. We want them to have jobs to come back to.
- Questions:
 - Chrissy Changho Bruneau: Can we post/link Fisher Phillips' website and documents on our various organizations' Facebook pages and websites?
Ed Harold: Yes.
 - Nick Felton: Has anyone addressed unemployment with the Louisiana Workforce Commission?
Ed Harold, Mayra Pineda: We can reach out to LWC to get some guidance.
Nick Felton: Happy to help and reach out as well.
 - Jackie Brettner: Will share some Workers' Comp information documents with the Task Force.
 - Kelisha Garrett: If an employee tests positive for COVID-19, how do you notify other employees? HIPAA violations come to mind.
Ed Harold: Releasing their name is an ADA violation. Many times an employee will sign an authorization to release. Employer has to work with the employee regarding with whom he/she has been in contact, talk to other employees without revealing the positive person's name (although the other employees will likely already know), use CDC guidance. Originally, quarantine for 14 days required, but now much more flexible depending on work conditions.

- Kelisha Garrett: Please continue to send us any information and input you have. We will have additional speakers at these meetings
 - Have asked the Commission for a central repository for documents
- Mayra Pineda: Subcommittee meetings are all set up – reach out to leaders if you feel like you are not receiving notices or documents/information.
- Kelisha Garrett: Task Force meeting times need to be rescheduled to 4 pm on Mondays, to accommodate work schedules and the Legislative Session.
 - Motion made and seconded; vote taken. Motion passed. The new Task Force meeting time is changed from Mondays at 9:30 a.m. on Mondays at 4:00 p.m.

Meeting adjourned at 10:44 a.m.

Zoom Chat transcript:

- From Kelisha Garrett to Everyone: 09:39 AM - Please place your phones/computer on mute
- From Jacqueline Brettner to Everyone: 09:42 AM - Mayra, can you share with us the document you just read from? Or reshare, if you already did so?
- From Mayra Pineda to Everyone: 09:45 AM - Jackie, just resent.
- From Kelisha Garrett to Everyone: 09:53 - AM
<https://www.opportunitylouisiana.com/resilientlouisiana> <https://www.fisherphillips.com/>
- From Jacqueline Brettner to Everyone: 10:01 AM
I assume such a person would remain eligible for unemployment benefits to the extent they are unable to WFH?
- From Jacqueline Brettner to Everyone: 10:07 AM - Both the screening info and any retail PII info taken by NOLA businesses complying with applicable orders present serious privacy concerns. We need to include best practice recommendations for maintaining such records.
- From Jacqueline Brettner to Everyone: 10:13 AM - I encourage everyone to not only speak with your agents but with a coverage attorney to ensure a comprehensive understanding.
- From Jacqueline Brettner to Everyone: 10:24 AM - I have a document that I can share relating to WC benefits/COVID.
- From Jennifer Atkins to Everyone: 10:32 AM jennifer@peonynola.com
- From Blanca to Everyone: 10:42 AM so moved. 4 pm is so much better - thank you!
- From Kelisha Garrett to Everyone: 10:42 AM <https://www.irs.gov/coronavirus/employee-retention-credit>.