



COVID-19: Return to the Workplace  
Webinar Series

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## Return to the Workplace: Considerations for Investment Managers

*Charles J. Daly*

*Eric G. Hoffman*

*Laurin Blumenthal Kleiman*

*Katherine A. Roberts*

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# What We Will Cover

- Issues Relating to Physical Spaces
  - Making the Workplace Safe
  - Complying with OSHA
  - Permanent Work-From-Home Arrangements
- Issues Relating to People: Employees and Clients
  - Protecting and Accommodating High-Risk Employees
  - Overcoming Employee Obstacles and Objections
  - Liability to Employees and Visitors
- State and Local Considerations – One Size Does Not Fit All
- Special Considerations for Investment Managers
  - Registered Investment Advisers (RIAs)
  - Commodity Pool Operators (CPOs) and Commodity Trading Advisors (CTAs)



# Physical Spaces: Making the Workplace Safe

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- Occupational Safety and Health Act: What does the law require?
- Best practices: What measures are practical to implement?
- What are your reporting obligations?
- What can you do to facilitate contact tracing?
- Permanent or semi-permanent work-from-home arrangements



# People: Employees and Clients

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## ➤ Protecting and Accommodating High-Risk Employees

- Who is high risk?
- Can employees who are deemed at a higher risk be kept away?
- What should we be requiring from employees as a precondition to accommodating their medical needs?
- Where to draw the line on unreasonable requests?

## ➤ Overcoming Employee Obstacles and Objections

- How do we support employees with childcare issues?
- What should we be doing to facilitate commuting?
- How do we respond to employee fears, some of which may be irrational?

# People: Liability and Exposure

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## ➤ Liability to Visitors

- What is our exposure to risk with visitors?
- Should we screen visitors?
- Should we require clients and vendors to sign waivers?

## ➤ Liability to Employees

- Workers' compensation
- Should we require employees to sign waivers?



# State and Local Considerations – One Size Does Not Fit All

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- OSHA standards are a primary consideration, but be sure to check state and local rules and guidance.
- If you operate in multiple jurisdictions, consider whether your approach to monitoring jurisdictions is adequate.



# State and Local Considerations – One Size Does Not Fit All

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## ➤ For example, NY requires:

- A written safety plan (NY published a template)
- An attestation that employer has reviewed/complying with NY guidance
- Daily health screening (questionnaire, but not necessarily temp checks)
- Maintain a daily log of persons entering the office
- Train employees and post safety signage
- Provide face coverings to employees and require use when not distancing
- Report cases to NYC Test and Trace



# State and Local Considerations – One Size Does Not Fit All

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- Likewise, in California:
  - Site-specific plans
  - Employee training
  - Individual control measures and screenings
  - Disinfecting protocols
  - Physical distancing plans
- In all states, check requirements for remote work and leaves of absence that may fill gaps in FFCRA or create additional rights



# Special Considerations for RIAs, CTAs and CPOs

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- Always apply the three-legged stool of compliance:
  - Reasonably designed policies and procedures
  - Conscientious implementation and monitoring
  - Forensic testing and modification, as necessary
- Continued and uninterrupted provision of advisory services
- Transition: How will return to work be different from remote work arrangements and prior in-office arrangements?
- Contemporaneous documentation
  - Exceptions due to remote work situations with the expectation of a return to prior practice with a return to office
  - Changes based on new practices developed implemented that will continue



# Compliance Program Supervision and Oversight

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- Branch offices/“adequate supervision” and “alternative supervisory methods”
- If remote work arrangement becomes permanent: books and records, business office locations, meeting with clients/investors and tax implications
- Client and investor privacy regulation and protection
- Cyber-readiness and security issues
- MNPI: effectiveness of information barriers on shared systems
- Permanent or semi-permanent work-from-home arrangements
- Is the adviser relying on any COVID-specific relief?
  - Under what conditions is the relief no longer available?
  - When is relief set to expire?

# Special Considerations for RIAs, CTAs and CPOs

- Ongoing assessment of delivery of advisory services
  - Impact to location from where the advisory services are being provided
  - Service delivery impacts
  - Physical space constraints (trading desk, analyst bullpen)
- Staggered return
  - Adequacy of resources in office vs. remote
  - Toxic pairings, cash movement, wires and investments



# Questions?



## Speaker Biographies



### **CHARLES J. DALY**

#### **Counsel**

New York

+1 212 839 6727

[charles.daly@sidley.com](mailto:charles.daly@sidley.com)

CHUCK DALY is counsel in Sidley's Investment Funds practice. He has extensive experience working with traditional and alternative investment advisers on regulatory compliance requirements, structures and programs, ongoing compliance monitoring, testing protocols and the management and coordinating of regulatory exams and reviews. His work with investment advisers focuses on the practical design, implementation and ongoing administration of compliance programs for registered and unregistered advisory firms. In providing those services to investment advisers, he has gained experience drafting and editing policies and procedures and disclosure documents for managers offering a multitude of products and investment strategies across a variety of asset classes. Chuck's regulatory support covers SEC, NFA, CFTC, CME, FINRA, FCA (UK) and CIMA (Cayman) regulations and reporting.

Prior to joining Sidley, Chuck led Constellation Advisers' regulatory and compliance practice. He was the head of regulatory and compliance services at JPMorgan Chase Bank, where he led a team of professionals that provided fund administration, regulatory, and post-trade compliance support for investment company, investment advisory and pension plan clients. He also served as the chief compliance officer and general counsel at Ironwood Investment Management and senior regulatory counsel at BISYS Fund Services. Chuck began his legal career at another global firm, where he assisted investment company and investment advisers with the interpretation of and compliance with federal and state laws and federal securities registration and regulatory compliance.



### **ERIC G. HOFFMAN**

#### **Counsel**

New York

+1 212 839 5939

[eric.hoffman@sidley.com](mailto:eric.hoffman@sidley.com)

ERIC HOFFMAN is counsel in the Litigation group in New York, where he focuses his practice on employment and labor law issues. Eric previously served as in-house employment counsel to Barclays. He brings to bear both his considerable experience as a litigator and his insight from serving as in-house counsel, to solve problems for clients in an efficient and effective way. Eric has represented and counseled clients in a diverse range of industries with respect to a wide variety of labor and employment matters, including federal and state anti-discrimination statutes, wage payment and overtime laws, whistleblower statutes, the Family and Medical Leave Act, collective bargaining and other labor relations issues. Eric has defended collective action and class action cases, as well as single-plaintiff cases, both in court and in arbitration proceedings. Eric also regularly advises clients on the enforcement of restrictive covenants, and has prosecuted and defended numerous unfair competition cases involving breach of fiduciary duty, breach of non-compete/non-solicit obligations, and trade secret misappropriation.

## Speaker Biographies (cont'd)



### **LAURIN BLUMENTHAL KLEIMAN**

#### **Partner**

New York

+1 212 839 5525

[kleiman@sidley.com](mailto:kleiman@sidley.com)

LAURIN BLUMENTHAL KLEIMAN is a global co-leader of Sidley's Investment Funds practice team. She advises a wide range of domestic and international investment funds and managers on regulatory, compliance and enforcement issues. Laurie is a frequent speaker on investment manager and fund regulation and compliance, as well as on issues relating to the advancement of women in law. Her practice encompasses advice to both U.S. and non-U.S. managers to investment products of all types — including hedge funds, mutual funds, private equity funds, real estate funds, collateral managers and managed accounts — with respect to both U.S. federal and state investment manager registration, regulation and compliance; organization and registration of U.S. registered investment companies, including mutual funds, money market funds and closed-end funds; advice to financial institutions with respect to investment fund and manager compliance and governance issues and fund and manager mergers, acquisitions and reorganizations; and assistance to investment managers in connection with SEC examinations.

Strong advocacy on behalf of her clients has earned Laurie acknowledgment in numerous industry publications, including *Best Lawyers in America* (2016–2020); *Chambers USA* (2010, 2016, 2020), where she is currently ranked as a Band 1 lawyer for her work in Investment Funds: Regulatory & Compliance; *Chambers Diversity* (2016); *The Legal 500 US* (2015–2017) and *U.S. News & World Report* (2016–2018).



### **KATHERINE A. ROBERTS**

#### **Partner**

Los Angeles

+1 213 896 6039

[kate.roberts@sidley.com](mailto:kate.roberts@sidley.com)

KATHERINE A. ROBERTS is the co-chair of Sidley's Labor, Employment and Immigration group and a partner in Sidley's Los Angeles office. She also serves on the firm's COVID-19 Task Force. Kate's experience extends to all aspects of employment litigation, counseling and labor relations. She routinely handles wage and hour class and collective actions involving state and federal overtime exemptions, meal and rest period claims and claims under the California Private Attorney General Act (PAGA). Kate also defends employers against claims of discrimination, harassment, wrongful termination, failure to accommodate and other causes of action arising under state and federal law. Kate partners with her clients to complete efficient, timely factual investigations and legal evaluations to help them make informed decisions about litigation strategy and deployment of resources.

Kate has extensive experience representing management in traditional labor matters arising under the National Labor Relations Act including, negotiating and administering complex collective bargaining agreements, guiding employers targeted by strikes and other job actions, handling union representation and decertification elections, advising clients on union avoidance, defending employers against unfair labor practices and representing management in grievance arbitrations. In addition, she regularly counsels healthcare, waste/recycling, retail, media and performing arts clients on labor relations issues.

Kate serves as chair for the Committee on Retention and Promotion of Women of Sidley's Greater Los Angeles offices.

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