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Business Roundtable Releases Roadmap For Resumption of Economic Activity

Background

The coronavirus pandemic has forced the business community to implement and abide by unprecedented restrictions in an effort to maintain their continuity and, in some cases, their viability, while safeguarding the health and welfare of employees, clients, and the general public. But more recently, the attention of the business community has shifted to the equally daunting task of planning for the eventual reopening of the economy.

Business leaders initially looked to public officials for a detailed, coordinated, and pragmatic framework for the widespread resumption of economic activity, but none has been forthcoming. On April 16, the White House released its Guidelines for Opening Up America Again, but that document presents a largely conceptual approach for a phased resumption of economic activity. It was far from the detailed and concrete plan many in the business community had sought. In the absence of governmental guidance, the influential Business Roundtable, comprised of the CEOs of many of our nation's largest corporations, has taken it upon itself to develop a plan for reopening the economy.

Yesterday, the Business Roundtable released its [proposed framework](#), which seeks consistent guidelines on workplace and public safety with the goal of building confidence among workers and consumers that they can safely return to work and public activity. The framework appears as an attachment to a letter to Vice President Pence urging the federal government to provide guidance and direction on critical issues businesses face as they resume normal commercial activities. The Business Roundtable specifically requests guidance from the CDC on recommended approaches to protect worker and customer safety. The framework is also attached to a letter being sent to the governors of all 50 states that urges close collaboration and consistency among all levels of government.

The Business Roundtable's framework is an important and thoughtful effort, albeit one that appears more aspirational than achievable, based on the current state of affairs in our country. As with the White House Guidelines, the Business Roundtable envisions a phased approach to the resumption of business activity, and carefully outlines the innumerable challenges and considerations that must be addressed at each stage. Foremost among them is the recognition that progress in public and private spheres is inherently interconnected. As a result, returning to business as usual necessarily requires significant progress in safeguarding and reopening the infrastructure that supports the American workforce, including the healthcare system, childcare, public education and public transportation.

The Business Roundtable carefully considers various categories of guidelines that state and local governments could adopt to facilitate the resumption and restoration of business activity, and evaluates particular measures designed to promote each. For example, in each phase of the recovery, the Business Roundtable considers how best to implement guidance on physical distancing, limitations on gatherings, and restrictions on travel. It also gives attention to considerations such as the use of protective equipment, cleaning protocols, and accommodations for vulnerable populations. And it evaluates the potential need for screening and testing (e.g., temperature checks), contact tracing, and protocols for sharing information with public health officials. Some of the proposed safeguards, such as a universal medical testing requirement, appear unrealistic at present and require access to vast resources that are currently unavailable and are not likely to be available in the near-term.

The Business Roundtable framework operates at a high level and provides illustrative model safeguards in a series of templates for broad categories of business environments: offices, retail, manufacturing, and construction. In this section of the roadmap, the Business Roundtable appropriately recognizes that businesses will need to confront a host of challenging practical issues, particularly in the early phases of the economic recovery. For example, employers will need to consider such measures as phased returns, implementation of shifts, and potential modifications to the work environment to allow for physical distancing. Decisions will need to be made about the use of protective equipment to reduce the risk of transmission. Cleaning protocols will need to be developed, especially for heavily trafficked areas and high-touch surfaces (e.g., doorknobs, elevator buttons, etc.). Employers will also need to decide on screening measures for employees, clients, customers, and vendors before access will be granted to business premises.

The Business Roundtable framework includes a series of questions about which it solicits governmental and public health guidance. For example, the Business Roundtable asks how the restrictions for gathering size should be adjusted to account for the use of protective equipment. It seeks recommendations on reducing constriction points, including entryways and elevators. It wrestles with the relevance of differences between positions that are customer facing and those that are not. And it ponders the interplay of health-screening guidance and laws governing privacy of health information.

Key Takeaways

In its roadmap, the Business Roundtable unquestionably has identified important challenges presented by the eventual resumption of economic activity. It is not enough to simply flip over the “closed” signs that currently adorn shop windows and businesses across the country. Businesses must take reasonable steps when reopening to protect their customers, employees, and business partners. In the absence of federal or state guidelines, the Business Roundtable has identified a number of potentially relevant safeguards businesses could consider implementing as they begin to resume normal operations.

But as the Business Roundtable tacitly recognizes, the reasonableness of any safeguards will depend on the relevant circumstances. Reasonable precautions unavoidably will vary by the characteristics of the business

in question and must afford flexibility. The cost and practicality of many of the proposals outlined in the framework will be prohibitive for all but the largest corporations. There can be no one-size-fits-all solution. The exhibits created by the Business Roundtable themselves speak to the need for customized solutions. While those exhibits operate at a high level and appear to contemplate large-scale operations rather than small businesses, they illustrate that appropriate practices to protect the health of all stakeholders will depend on the unique circumstances presented by the business operation in question. Just as office-based activities differ from work on the factory floor, so too will large, densely packed workspaces differ from smaller, dispersed spaces. Safeguards should be tailored to the relevant environment. Construing the Business Roundtable's framework as anything more than illustrative would frustrate its purpose and gloss over the reality that appropriate safeguards will depend on the unique circumstances and available options facing each business in question.

Amplifying the concerns of many business owners, the Business Roundtable urges policymakers at the federal and state levels to provide guidance and coordinate their efforts to re-open the economy. Policymakers have a clear role to play in providing guidance and assistance to business owners attempting to re-open. Such national and regional guidelines can be critical to disseminating important considerations and can provide insight into safeguards that business should consider adopting when re-opening. While guidance from federal and state authorities can be helpful, compliance with that guidance may not be feasible or advisable in certain instances and, even where it is, such guidance is unlikely to afford businesses a safe harbor from liability. In the current political environment, the odds are remote at best that immunity from liability will be provided to businesses that re-open in compliance with government guidelines. It is therefore incumbent on businesses to identify the particular risks presented by the nature of their operations and develop safeguards that reasonably address their individualized risk profiles. There are no shortcuts around a reasoned evaluation of the risks and identification of appropriate remedial measures.

Finally, any remedial measures must be in harmony with existing laws and regulations. As the Business Roundtable observes, any efforts to monitor infection among employees or others must not run afoul of HIPAA and other provisions protecting privacy rights. Likewise, any physical barriers or distancing techniques should contemplate ADA requirements and accessibility regulations. To the extent special provisions are made for vulnerable employees, they should consider anti-discrimination laws, EEOC guidance, and other regulations. Careful consideration will be required to make sure remedial measures are both appropriate and lawful.

Ultimately, all businesses must make individualized assessments of the risks presented by resuming normal activities and take appropriate safeguards to protect the health of employees, customers, and others. The Business Roundtable framework, while reasoned and valuable, should not be seen as prescribing a standard against which all businesses will be judged or providing a safe harbor for businesses that comply with its recommendations.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Justin Anderson
+1-202-223-7321

janderson@paulweiss.com

Robert A. Atkins
+1-212-373-3183

ratkins@paulweiss.com

Scott A. Barshay
+1-212-373-3040

sbarshay@paulweiss.com

Paul M. Basta
+1-212-373-2023

pbasta@paulweiss.com

Bruce Birenboim
+1-212-373-3165

bbirenboim@paulweiss.com

Michael E. Gertzman
+1-212-373-3281

mgertzman@paulweiss.com

Jeh Charles Johnson
+1-212-373-3093

jjohnson@paulweiss.com

Brad S. Karp
+1-212-373-3316

bkarp@paulweiss.com

Loretta E. Lynch
+1-212-373-3000

Valerie Radwaner
+1-212-373-3425

vradwaner@paulweiss.com

Jeannie S. Rhee
+1-202-223-7466

jrhee@paulweiss.com

Daniel J. Toal
+1-212-373-3869

dtoal@paulweiss.com