

Legal issues may hinder reopening businesses

By JACK FICHTER
Cape May Star and Wave

Cape May County Chamber of Commerce on June 4. He said he believed employers would be dealing with COVID-19 issues for a significant period of time into the future. In preparing for the return of staff, he said, a business should perform a risk assessment relating to the safety of employees and customers. Lichtenstein said a business should determine its ventilation system is operating appropriately for the size

and nature of the business, making sure filters are clean. He said a business must decide if plexiglass barriers between employees and patrons are necessary. The use of masks and gloves may be considered along with proper training of using personal protective equipment (PPE), Lichtenstein said. Before a business is opened it should develop a set of rules prohibiting personal contact, he said. "Handshaking, hugging, confined meeting spaces, other physical contact," Lichtenstein said. Personal items should not be shared, Lichtenstein said. In a restaurant, pens should not be shared and in an office, papers and computers should not be shared. For retail shops, he recommended one-way only movement in aisles to avoid close contact between customers. Lichtenstein said at the Cooper Levenson office in Atlan-

tic City, common gathering areas such as lunchrooms were eliminated. "Among the reasons people come to work is for the socialization aspect of work," he said. "We are asking them to avoid contact with other employees, many of whom have worked with you for a long time." Cleaning rules need to be established for common equipment such as copiers, fax machines and items that are frequently touched by many persons, Lichtenstein said. He said Cooper Levenson removed at least half of the seating capacity from conference rooms. He said thought needs to be given to working with staggered schedules to keep employees separated during the workday. He said it may actually help productivity in terms of big projects. Hand-washing stations and sanitizer should be made

available for employees, Lichtenstein said. "As a matter of law, employers are permitted to require employees to comply with sanitary practices," he said. It is positive to reassure employees that everything is being done to keep the business safe, Lichtenstein said. "Customers and clients need to have some level of comfort in what you are doing as an employer to protect them from an outbreak or infection related to COVID-19," he said. Store owners may need to require employees and customers to wear masks, Lichtenstein said. An employer must handle enforcement of the PPE rules. He said a business owner has the right to refuse service to someone not wearing a mask. Lichtenstein said a business may need to establish occupancy limits. He said the state may provide that answer, limiting occupancy to certain retail establishments to a certain percentage of what occupancy was previously. He said the most significant piece of legislation to affect the ability to address COVID-19 issues is the Americans with Disabilities Act, as well as rules set up by the Occupational Safety and Health Administration (OSHA). OSHA requirements mandate that employers maintain a workplace that is reasonably safe for employees, Lichtenstein said. An employer can ask employees returning to work whether they have been exposed to COVID-19, have any symptoms of the virus or if they live with someone who was diagnosed with COVID-19, he said. ADA requires information relating to medical conditions that comes into the possession of an employer to remain confidential. Lichtenstein said that is a problem because an employer is going to need to inform other employees they have been working with someone who has been exposed to COVID-19 or has been diagnosed with the coronavirus. The employer may inform employees without identifying the infected or exposed employee. He said employers are permitted to take the tem-

perature of employees as they enter the workplace. He suggested an employer invest in scanning thermometers that do not touch the skin. An employer can require an employee to be tested for COVID-19 before they return to the workplace. "The practical problem is that the testing is not readily available and so if you're going to require people to be tested for COVID-19 before they come back, you're going to have difficulty staffing up because those tests, particularly in our nonurban areas, are not generally available," Lichtenstein said. He said it is permissible to require medical clearance documents for an employee returning to work. Lichtenstein said it would be difficult to accomplish from a practical standpoint to get medical clearance documents in light of the general unavailability of testing. A question Lichtenstein said he has received frequently concerns having an employee that has emphysema or other condition that lends itself to them being infected more than other members of the population. "What can I do with respect to that employee?" he said. "The answer is that the mere fact that an employee is more susceptible to the virus than others is not the basis to either not allow them to return to work or perhaps create other restrictions unless they present a direct threat either to themselves or others in terms of their health and the health of other people in the workplace." Lichtenstein said the direct threat analysis requires a significant level of proof. He suggested an employer check with an employment law professional. If an employee is sick with COVID-19 and should not be in the workplace, does the employee get paid or not? He said it depends on the employee's length of employment and their use of sick leave with any accumulated or unused paid time off available either under New Jersey sick leave law, under a collective bargaining agreement or under a policy or practice of the employer. "Absent that entitlement, there is no obligation of an



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11	12:45	1:29	7:09	7:12
12	1:37	2:25	7:59	7:12
13	2:30	3:20	8:48	9:10
14	3:25	4:11	9:35	10:08
15	4:18	5:00	10:20	11:02
16	5:09	5:44	11:02	11:52
17	5:58	6:26	11:43	

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