Employers and employees are facing significant workplace disruption, limits on mobility, increased expenses, and reliance on benefits related to COVID-19. Employers’ first priority was the health and safety of their workforce, with most moving to work-from-home arrangements where possible. Organizations are now beginning to consider various reward and mobility issues that may arise in the coming weeks and months. Each organization and industry has unique concerns and will need to adapt to the shifting environment while also continuing to review and evaluate the rapidly evolving situation.

The following list provides a framework to begin evaluating short- to long-term actions

- Create a cross-functional committee to evaluate actions and timeline and to coordinate communication strategy.
- Monitor, enhance, or develop work-from-home protocols.
- Consider relocation of assignees in affected or high-risk locations.
- Consider tax-efficient assistance to affected employees and communities (e.g., direct assistance for additional expenses, loans, leave sharing, charitable giving).
- Monitor evolving rules and regulations across all applicable jurisdictions.
- Assess permanent establishment (PE)/nexus exposure, including potential legislative/procedural relief.
- Evaluate current compensation structures and policies in light of changing retention concerns, reductions in force, and stock price deterioration.
- Evaluate performance goals and earnings (e.g., for sales teams).
- Evaluate incentive plan performance goals for management and broader workforce.
- Consider equity replacement or adjustment of awards to mitigate lost equity value.
- Continue to assess efficacy and responsiveness of policies and actions.
There are important considerations to keep in mind at each stage of the process:

- Expense management/governance
- Uncertain duration (and therefore cost) of disruption
- Certain processes take time and may be further delayed due to government slow downs
- Securing internal (e.g., board, committee) approvals
- Disruptions to business operations
- Supply chain and demand disruption
- Potential costs to the organization
- Accounting impact
- Tax impact
- Maintaining privacy of personal information (e.g., health)
- Employee morale
- Pay equity issues resulting from changes in pay policy
- Communication regarding actions and policy changes
- Shareholder response
- Shareholder representative (ISS) assessment
- Investor relations
- Administrative burden and complexity of implementation
- Compliance risks and additional compliance efforts
- Applying complex U.S. federal, state, and non-U.S. rules
- Impact on and needs of the community
- Needs of the organization’s customers or clients

Committee creation

Form an employee support committee to evaluate issues, alternatives, timing, and compliance as well as to coordinate communications strategies. Consider representation from key stakeholders:

- Human Resources
- Compensation and Benefits
- Global Mobility
- Finance
- Accounting
- Legal
- Tax
- Investor Relations
- Internal communications
- Corporate Development (in a transaction context)
- Marketing/Sales.

Governance

- Monitor and report on tax, legislative, and procedural changes (e.g., extension of deadlines, changes in tax rates, tax holidays, etc.) and determine whether opportunities for tax or other benefits may be available.
- Maintain requirements related to employee privacy (e.g., HIPAA).
- Monitor evolving legal and regulatory requirements, by jurisdiction.
- Plan, monitor, and budget for changes to workforce, including:
  - Unemployment tax exposure changes
  - Unpaid, part-paid leave, sick leave, and/or severance
  - Remote or telework will likely make it more difficult to track and control overtime
  - Remote or telework that may cause unique confidentiality concerns
  - Strict rules by jurisdictions regarding employee safety and workplace environment, which may not be relaxed in a remote or telework situation.
- Policies need to be applied fairly across the organization, but will have to be adapted for various groups such as shift workers, interns, and seasonal employees.
Workforce relocation

To the extent possible, shift employees to a remote or telework arrangement:
- Enhance or develop work-from-home or other flexible work arrangement policies.
- Employees may begin working in states where the company is not registered to do business; payroll setup and business registrations should be considered.
- Multi-state tax withholding may be necessary (consider reciprocity agreements).
- Consider what home office and telecommunications equipment are needed.
- For assignees, determine whether they will be (1) staying in host location, (2) returning to home country, or (3) relocating to a third country:
  - For assignees relocating to a third country, the first priority should be to determine and resolve immigration work status.
  - Consider new treaty combination and associated tax implications (e.g., sourcing).
  - Review assignment letters for potential changes in allowances or expense items.
- Consider whether employees’ “tax home” and/or residency has, or will, change.
- Assess costs related to relocations and remote work support; update cost projections.

Policy review

Employees working in new locations (home or alternative business location) may incur expenses not anticipated under the current expense reimbursement policy.
- Current policies may limit certain reimbursements that should be reconsidered in light of COVID-19 (such as work-at-home-related expenses).
- Reconsider character of expenses as business or personal in light of new environment.
- Consider limiting nonessential travel to comply with applicable travel restrictions.
- Consider additional restrictions on certain expense reimbursements that may assist to reduce costs and ease financial strain in light of other unanticipated expenditures.
- Review and consider how to provide employee assistance such as loans, leave sharing, sick leave, short-term disability, unpaid leave and/or furlough, contributions to charities/foundations, and/or disaster relief payments (section 139).
- Review Corporate Citizenship/Social Responsibility plans and reassess priorities given new opportunities for demonstrating community engagement and support.

Assess PE/nexus

Relocating employees’ primary work location to their home states or another location (domestically or internationally) can result in additional corporate tax consequences:
- Consider whether local employee and assignee relocations have created a permanent establishment in or nexus with another jurisdiction (country, state, etc.).
- Continue to reevaluate as employee work arrangements evolve over time.

Compensation and benefits

Consider broad-based strategies to cut costs and mitigate necessity for reductions in force (including furloughs and layoffs), which often impact employee morale.
- Evaluate a salary freeze policy for employees above a certain salary range threshold.
- Evaluate incentive plan and opportunities to limit “above target” payouts.
- Monitor and consider restrictions on overtime within the company’s nonexempt workforce; when working from home, employees can trigger unanticipated overtime costs (e.g., daily status calls, reviewing emails after traditional work hours).
- If applicable, consider performance goals and earnings for sales teams:
  - Evaluate impact of sales slowdown on sales force performance and earnings potential; disruption may be specific to certain segments, channels, or products/services.
  - Identify strategies to support and invest in sales force through recovery, including:
    - Rereforecasting performance levels for balance of the year
    - Reduce thresholds
    - Guarantee a level of fixed pay
    - Special incentives or SPIFFs to be agile as the situation evolves
    - Retention bonuses.
Compensation and benefits

- Review and monitor payroll processes, including:
  - Treatment of disaster-related payments
  - Process for claiming employee-related tax credits or other legislative relief.
- If furloughs or layoffs are necessary, review formal/informal severance plans or policies, state/local rules, COBRA, qualified retirement plans, employment agreements, nonqualified deferred compensation plans, and other benefit plans to understand operation and application as well as need for adjustment.

Executive and management incentive compensation

- Evaluate annual and long-term incentive plan performance goals:
  - If performance targets have been set, consider the impact on performance goal achievement and whether appropriate (and possible) to modify goals or provide discretionary awards.
  - If targets have not been set, review whether it is possible to delay setting targets until uncertainty settles.
  - Consider whether short-term incentives may be useful.
- Evaluate equity arrangements to consider terms of existing awards and, for existing awards, whether replacement awards are appropriate (and possible) to mitigate lost equity value:
  - Evaluate lost “holding power” as a result of market decline—a significant loss in value could have an impact on retention.
  - Performance share value could be lost and stock options (in public companies as well as private pre-IPOs) might have lost material value.
  - If downturn is material and sustained, consider a stock option exchange for existing awards to mitigate impact of underwater stock options (review to ensure section 409A compliance).
  - If equity awards have not been granted for current fiscal year, consider (1) delaying grant and/or (2) how grant price or valuation will be determined.
- Review mix of incentive awards to cash compensation.
- Solutions for executive team versus other employees may need to be evaluated differently.
- Consider revisiting section 409A valuations when there is a sustained material impact (significant reduction of cash flows, etc.).

Qualified retirement plans

Companies that sponsor or provide coverage to employees under one or more qualified retirement plans (such as a 401(k) or defined benefit pension plan) may need to consider additional items, such as:

- Potential implications of a plan freeze or termination (e.g., full vesting of all benefits)
- Whether a partial plan termination has occurred as a result of (1) reduction of future accruals or (2) a significant reduction in plan participants (See Rev. Rul. 2007-43)
- Effect of any downsizing on coverage and “nondiscrimination” testing of qualified plans (e.g., the ratio tests)
- Reduction or suspension of plan contributions, including safe harbor contributions
- Timing of plan contributions and deductions
- Plan terms and procedures around participant loans, including:
  - Repayment requirements for employees on a leave of absence
  - Whether terminated employees may repay with severance pay
  - Whether there is any federal relief available to ease the procedural requirements and administrative burden
- Procedures and availability of hardship distributions to participants
- Potential withdrawal liability for multiemployer defined benefit pension plans.
Evaluation of processes

As with any change in circumstances or implementation of new policies or arrangements, it is important to periodically evaluate what is or is not going as planned:

— Schedule time for a committee debrief to consider:
  - The status of financial position and business forecast
  - Whether each new policy or change in policy is trending toward the intended effect
  - Employee retention and morale
  - Whether specific employee concerns are being effectively gathered and addressed
  - Whether current employee and stakeholder communication strategy is effective
  - Internal or environmental changes that merit a renewed look at existing strategies
  - Identify areas for improvement based on experience to date.

— Develop or enhance policies and programs to reflect the evolving internal and external environment on a going-forward basis. For example, consider:
  - Maintaining a telework program
  - Developing an employee assistance program
  - Adopting a standing emergency or disaster plan.

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To talk through these or any related concerns, contact your local KPMG adviser or any of the professionals listed below.

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