

Reopening the Workplace Amid the COVID-19 Pandemic

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COVID-19 has created significant workplace challenges, as employers have had to restructure their workforces in light of the pandemic and governmental stay-at-home orders. However, as those orders are lifted and many employees begin their return to work, a new set of challenges and considerations must be addressed. It is vitally important for employers to establish a return to work plan unique to its business and workforce, being mindful of and ensuring compliance with the employer's legal duties and obligations.

First and foremost, employers should stay informed and continue to monitor the [Centers for Disease Control](#) and [Department of Labor](#) websites for the most up-to-date information regarding COVID-19 and the necessary precautions to combat its spread. These organizations frequently update their websites, so employers should frequently monitor these websites.

Employers should also create and implement a safety plan in compliance with their obligations under the Occupational Safety and Health Act (OSHA), which generally requires all employers to provide a place of employment which is free from "recognized hazards that are causing or likely to cause death or serious physical harm." OSHA has specific guidelines for certain industries and types of jobs, and some states have more stringent safety requirements that should be consulted. In doing so, employers should consider some or all of the following:

- Requiring the use of personal protective equipment including face masks, respiratory protection, goggles, gloves, and/or face shields.
- Implementing non-invasive employee screening, including temperature checks and symptom questionnaires when entering the workplace – keeping in mind confidentiality and retention obligations of the screening results.
- Requiring 6 feet social distancing wherever possible and installing barriers where social distancing is not possible.

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- Continuing teleworking for certain employees or a percentage of the workforce if possible and modifying or staggering work schedules to help maintain physical distance among employees, including staggering breaks.
 - Educating employees on handwashing hygiene and respiratory etiquette and providing hand sanitizer at strategic locations.
 - Closing or limiting admission to common areas such as conference rooms and break rooms and limiting the amount of people in the bathroom at one time.
 - Implementing a cleaning and sanitizing schedule of all common touchpoints and shared equipment like door handles, elevator buttons, copy machines, staplers, and water coolers.
 - Restricting non-essential travel and/or requiring reporting of all travel (including personal travel) while reserving the right to impose quarantine restrictions on those who have traveled to certain hot spot areas.
 - Limiting deliveries and visitors including customers and clients.

This safety plan should be well documented and clearly communicated to employees so they understand the precautions being taken and what is expected from them. And of course, employees should be required to self-monitor for signs and symptoms of COVID-19, and identify and isolate sick employees or employees who may have been exposed to COVID-19.

In creating and communicating the safety plan to employees, employers should identify a team of trusted and trained individuals to serve as their designated COVID-19 taskforce. The taskforce should be identified as the designated points of contact for any questions and issues relating to reopening the workplace and safety concerns.

Importantly, employees raising concerns and complaints about safety must be taken seriously and may constitute legally protected activity under the Occupational Safety and Health Act and the National Labor Relations Act even in non-union settings.

Though the workplace may reopen, employees may need to continue to take time off from work for various reasons, including COVID-19 related issues. In evaluating time off requests, employers should determine the applicability of and ensure compliance with the recently enacted federal paid leave law – the Families First Coronavirus Response Act (FFCRA) – , and continue compliance with the Americans with Disabilities Act and Family and Medical Leave Act. Depending on the reason for the time off request, certain documentation may need to be collected from the employee or his or her healthcare provider. Such documentation is particularly important for FFCRA leave as support for the tax credit reimbursement by the government. To assist in collecting this documentation, employers should create request forms employees must complete prior to taking time off. Employers should also review their existing policies to determine the availability of company-provided paid time off, and may consider amending these policies prospectively to address economic concerns.

As always, employers should remain cognizant of the potential for discrimination and harassment relating to any protected class, including taking time off for COVID-19 related issues. Employers should proactively combat potential discrimination and harassment, and consider training for supervisory staff relative to responding to comments about COVID-19 and employees who may have

been affected.

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