

Fitness Industry Reopening: Exercising a New Normal

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As stay-at-home orders in response to the COVID-19 pandemic are lifted and the fitness industry begins to reopen, the industry must review and update employee policies and procedures to follow reopening guidance, as well as ensure continued equal employment opportunity, workplace safety, and compliance with wage and hour requirements.

Who to Return to Work and When

Fitness employers must decide who to return to work and when. This selection process should be based on objective criteria (e.g., seniority) and can be done in phases or all at once. Selection based on subjective criteria (e.g., merit) also may be appropriate, but it is critical to consult experienced counsel to ensure no disparate impact to any protected class.

In addition, employers should consider whether employees can work remotely to help ensure compliance with continued social distancing requirements. If an employer allows or requires some employees to work remotely, it must ensure compliance with certain states' requirements on reimbursement of reasonable business expenses.

Once employers determine who will return to work and when, they should communicate the plans to employees, as needed, following notice requirements related to returning employees who were furloughed or on reduced schedules. While not all jurisdictions require wage payment notices or other documents related to on-boarding employees, employers may consider providing such notices to returning employees to ensure clarity on the reopening process.

Workspace, Operations

Physical changes, including reservation systems, electronic check-ins, employee health screenings, and sanitizing stations, should be considered.

If employers mandate employee health screenings, they must consider how to conduct the

screenings in accordance with state and local laws. These laws often require employers to determine: who will be tested; who will conduct the testing; how will the results be kept private; and will employees be compensated for this time. Employers should work with legal counsel on these issues *before* reopening.

Employers also must consider what personal protective equipment (PPE) will be required (e.g., face masks and gloves), and whether the time for donning, doffing, and maintaining PPE must be compensated.

Regularly cleaning and disinfecting facilities [pursuant to Centers for Disease Control and Prevention guidelines](#) also may be required. Employers must train employees on the new protocols. If employees refuse or fail to follow the new protocols, then employers must be prepared to deal with these issues, including any employee discipline, if necessary.

Consistent with the new cleaning protocols, workplace modifications may be needed to ensure safety and social distancing compliance for employees. For example, facilities may limit exercise equipment or the use of free weights to promote social distancing and allow employees to comply with new cleaning requirements. Group fitness classes may limit attendees, instructor-attendee interactions, and the number of classes offered to improve compliance for its instructors. Staggering employee schedules to minimize exposure and developing protocols for how group class instructors, personal trainers, and other staff may interact with members are other considerations.

Finally, employers should think about what equipment is shared among employees (e.g., phones, timeclocks, and other devices), so protocols can be developed, such as limiting exposure or increasing sanitizing.

Avoiding Claims

Documenting the criteria for selecting employees who will return to work is important to lowering the risk of disparate impact and other claims as the fitness industry reopens.

In addition, the Equal Employment Opportunity Commission (EEOC) has released guidance concerning COVID-19 and related workplace issues under the Americans with Disabilities Act. (See our article, [EEOC Releases Guidance on Workplace Reasonable Accommodations in New COVID-19 World](#).) For example, as many employees are working remotely under stay-at-home orders, there may be an increased number of accommodation requests to continue working remotely. Further, to the extent these requests involve ongoing COVID-19 issues (e.g., to care for dependent minors and vulnerable individuals in the household), state and local laws may apply. In addition, employees may have fears or anxiety about returning to work and employers may be required to engage in the interactive process on reasonable accommodations.

Even in the new COVID-19 era, employers must continue to enforce equal opportunity employment policies, including ensuring employees who may be assumed high-risk are not treated differently.

With respect to health screenings and reasonable accommodation requests, employers must ensure employee privacy is maintained, especially if an employee tests positive for COVID-19. Employers must continue to maintain confidentiality of employee health information even amidst other COVID-19 health safety requirements.

Additionally, employers should examine their compensation plans to ensure they are still pragmatic,

and that employee compensation and duties are aligned with employee classifications.

Finally, employers must ensure they are in compliance with the wage and hour requirements in their local jurisdictions.

Although it may be tempting to reopen as soon as possible, be sure to take the time necessary and to work with counsel to figure out how to exercise a new normal while avoiding potential risks. This will not only ensure a safe workplace for employees, but also help to avoid future litigation.

Reopening orders contain extensive requirements creating compliance issues that can vary significantly depending on the specific state or local jurisdiction.

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