

COVID-19

Return-To-Work Checklist For Employers

This checklist is intended to provide a high-level overview of legal issues to be considered by employers when developing a return-to-work plan in the midst of COVID-19. Every business has different operational needs and requirements; accordingly, this checklist is not intended to be comprehensive of all issues that may arise or require consideration. Please contact [Devon Sharp](#) or [Brenna Leron](#), the authors of this checklist, if you have specific questions.

✓ **Evaluate State and Local “Re-opening” Orders.**

New state and local orders are being issued on a daily basis. When developing your return-to-work plan, consider all applicable orders and address any scope and timing issues. For example, many “re-opening” orders contemplate a phased approach under which businesses in certain industries may reopen (usually with restrictions) on designated dates. Follow the news to ensure you remain aware of any new orders issued.

✓ **Avoid Bias in Rehiring and Reintegration.**

Be mindful of your obligations under federal, state, and local employment discrimination laws. Ensure that your approach to rehiring and/or reintegrating employees is based on legitimate, non-discriminatory business reasons and does not involve bias based on a legally protected characteristic. For example, allowing only younger employees to return to work and requiring older workers considered “more susceptible to infection” to stay home for an additional period of time could invite age discrimination claims. If you plan to rehire or reintegrate some employees but not others, or to bring back employees in waves rather than all at once, consider conducting a disparate impact analysis to ensure your plan does not disproportionately affect members of a protected class under employment discrimination laws. Consult with your employment attorney for assistance.

✓ **Consider a Voluntary Return to the Office.**

If possible, consider making a return to the office voluntary at first. In addition to easing employee concerns, this can allow time to test new health and safety measures (e.g., employee screening and social distancing) on a smaller scale and to identify and correct any issues that may arise.

✓ **Develop a Workplace Safety Plan.**

The Occupational Safety and Health Act (OSHA) requires all employers to provide a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm. Examine your workplace in light of recent guidance from [OSHA](#), [the Center for Disease Control \(CDC\)](#), and state and local authorities, and make any changes that may be necessary to ensure a safe environment for returning employees. This will include, at a minimum, [heightening of cleaning and sanitation procedures](#), considering how to ensure social distancing among employees, and considering whether to implement health screening procedures (see below for more information). Note that [you may require employees to wear personal protective equipment \(e.g., masks and gloves\) and observe infection control practices \(e.g., regular hand washing and social distancing protocols\)](#) – and in some instances, local orders may require face masks or face coverings – but if an employee requests a reasonable accommodation related to a disability or a religious accommodation in connection with personal protective equipment, you must engage in the interactive process and consider whether the requested accommodation can be implemented.

✓ **Consider Work Space Adjustments and Flexible Work Arrangements.**

Consider how to adapt your physical worksite to prevent overcrowding. Changes might include adjusting office layouts, adding protective measures such as Plexiglas dividers, and removing chairs in break areas and lunchrooms. Consider alternative work arrangements, including teleworking or continuing to allow teleworking for some period of time. Consider creative scheduling techniques, including allowing employees to stagger schedules or work different days in the office depending on the workweek.

✓ **Educate Employees Regarding Workplace Safety.**

Raise awareness regarding COVID-19 among your employees and share accurate, helpful information. A well-defined and well-communicated workplace safety plan will help protect your workforce from virus exposure. This will include documenting and communicating to employees the critical aspects and requirements of your new workplace safety measures (see above), educating employees regarding [the basic symptoms of COVID-19](#) and [how best to protect themselves and others](#), and instructing employees to stay home and seek immediate medical attention if they experience COVID-19 symptoms.

✓ **Consider Employee Health Testing or Screening.**

The [Equal Employment Opportunity Commission \(EEOC\)](#) has authorized employers to conduct employee temperature checks, to ask health screening questions of employees related to COVID-19, and to test employees for the COVID-19 virus. Consider whether to implement any of these measures in your workplace, and keep the following points in mind: (1) any testing/screening must be accurate and reliable; (2) if you conduct testing/screening, it should be conducted on all employees without regard to any protected classification or characteristic; (3) take all necessary safety precautions for individuals performing the testing/screening (and consider engaging qualified healthcare or HR professionals to conduct the testing/screening); (3) all employee medical information must be kept separately from employee personnel files and treated as confidential; and (4) even if testing/screening is being conducted, you must still require employees to observe infection control practices such as social distancing and regular handwashing.

✓ **Consider Risks Related to Work Travel.**

Monitor all travel advisories, including those issued by the [U.S. State Department](#) and the [CDC](#), and consider keeping a hold on all business travel that is not truly essential. Note that if an employee refuses to travel for a business purpose for fear of contracting COVID-19, and there is evidence to validate such a concern (e.g., the existence of a Level 4 travel advisory warning), requiring the employee to travel anyway, or imposing discipline for a refusal to travel, carries significant risk. Note, also, that for employees with underlying health conditions, refraining from business travel during this time may constitute a reasonable accommodation under the Americans with Disabilities Act (ADA). Each situation must be examined on a case-by-case basis.

✓ **Handle Leaves of Absence in Accordance with Applicable Law.**

If you have fewer than 500 employees, take note of your obligations to provide paid leave to employees in accordance with the new Families First Coronavirus Responses Act (FFCRA). [The FFCRA requires covered employers to provide paid leave to employees for certain COVID-19-related “qualifying reasons,”](#) including (but not limited to) being advised by a healthcare provider to self-quarantine due to COVID-19 concerns, caring for another individual who has been similarly advised to self-quarantine, and caring for a child whose school has been closed due to COVID-19. Note that FFCRA leave is in addition to any leave an employee may have available under company policy, such as paid time off, and employees may not be forced to use other accrued paid time off before using any available paid leave under the FFCRA. Depending upon where you operate, other state or local leave laws may also need to be considered. While not legally required under most circumstances, you may consider offering extra paid time off to those in self-quarantine, or allowing employees to borrow against future paid time off, to promote self-reporting.

✓ **Develop a Plan for Handling Potential or Confirmed COVID-19 Cases.**

Developing an advance plan for handling potential or confirmed cases of COVID-19 in the workplace will ensure that you handle such situations swiftly and prudently. First, require employees who suspect they have been exposed to or infected with COVID-19 to report their symptoms to HR *before* coming to work. Direct any such employees to remain at home until released to return to work by a doctor. If obtaining a doctor's note isn't possible, [consider following the CDC's guidance for determining when a person may end home isolation](#). Require the infected/symptomatic employee to identify all individuals who worked in close proximity (within 6 feet) of him/her for a prolonged period of time (10 minutes or more) beginning 48 hours before the onset of symptoms. [According to the CDC, these "close proximity" individuals should, if at all possible, stay home until 14 days after the last exposure to the infected person, maintain social distance from others, and self-monitor for symptoms](#). Throughout this process, take steps to maintain the privacy and confidentiality of all employee health information. [Take special cleaning and disinfecting measures if you learn that an employee has or may have COVID-19](#). (Note: [The CDC has issued relaxed guidelines for critical infrastructure workers](#), which you should review if your business falls into one of the specified categories.)

✓ **Be Prepared to Adjust Your Plans.**

The ever-changing landscape of COVID-19 – including legislation, regulations, and guidance being issued on a weekly and sometimes daily basis – requires employers to be flexible and nimble. Be prepared to adjust your plans and maintain frequent and clear communications with employees.



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