

1. Decide When to Reopen and Which Employees to Call Back

- Review available government guidance (CDC, DOL, OSHA, state/local agencies)
- Decide when to re-open, considering federal, state and local law, and whether the employer is an essential or non-essential business
- Consider whether certain employees can continue to telework
 - Encourage telework whenever possible and feasible, even if only part-time
 - Consider incorporating formalized teleworking agreements, identifying work hours, productivity and communication expectations, logging hours, and protection of the employer's confidential information
- Decide the employees who should return to work first
 - Identify essential business functions and key employees
 - Use seniority or other non-discriminating factors as a basis to avoid a discrimination claim
 - Avoid stereotyping in deciding whether to recall those from "vulnerable populations," defined as "[o]lder adults and people who have severe underlying chronic medical conditions like heart or lung disease or diabetes"
 - Notify employees of their return date and COVID-19 related policies and procedures (discussed below)
 - Confirm in writing that each recalled employee intends to return to the workplace. If an employee does not intend to return, explore the reason why and proceed appropriately in light of the situation.
 - Determine employee schedules, with consideration toward establishing work shifts or rotating schedules to minimize the number of employees in the workplace at any given time. Consider having employees acknowledge any modified schedule in writing
 - Clearly document the return to work plan
 - Train management on implementing the plan and policies

2. Safety Precautions and Policies

- Decide upon safety precautions appropriate for the workplace (look to CDC/OSHA guidance [HERE](#) and [HERE](#) as well as state/local law)
- Review the floorplan of the workplace, determine high risk areas, such as the elevator lobby, waiting rooms, restrooms and entry/exit hallways ("High Traffic Areas"), and increase office cleaning and disinfection
- Evaluate physical workspaces and determine if modifications should be made, i.e. staggering placement of employees at workstations, moving workstations, or installing partition walls
- Make cleaning and sanitizing supplies available to employees, customers and visitors
- Implement a social distancing policy. Consider limiting meeting sizes, staggering breaks and closing gathering spaces, such as lunchrooms or breakrooms, unless such spaces are used for single occupancy or social distancing is strictly enforced
- Implement a policy restricting non-essential travel and observe [CDC isolation periods](#)
- Decide whether face coverings, gloves or other protective gear is required or optional
 - Be sure the policy is in compliance with applicable [CDC guidance, state or local law](#) recommending face coverings in public settings where social distancing measures are difficult to maintain
 - If protective gear is required by the employer, the employer may be required to pay for such gear
- Consider whether temperature checks are appropriate and feasible
 - Decide whether testing will be performed by the employer or an outside company
 - Ensure that the testing device is touchless
 - Apply the testing policy consistently to all employees and visitors, unless a reasonable accommodation is required
 - Provide appropriate protective gear to the person taking temperatures
 - Ensure that temperatures are kept confidential

- Be mindful that the time it takes a non-exempt employee to have his or her temperature checked may be compensable, unless that time is *de minimis*
- Develop a protocol for suspected or confirmed COVID-19 cases
 - Understand the symptoms of the virus, including: fever, chills, cough, shortness of breath, sore throat, new loss of smell or taste, as well as gastrointestinal problems, such as nausea, diarrhea and vomiting
 - Instruct employees to stay home if they are exhibiting symptoms of COVID-19
 - Immediately send home an employee with symptoms
 - Enact a policy requiring employees to immediately advise management if they or someone they have come in contact with have exhibited symptoms of COVID-19 or tested positive
 - Notify employees of a confirmed case of COVID-19, without disclosing the identity of the infected employee
 - Send employees home who had direct prolonged contact with someone who tested positive for COVID-19 and follow [CDC guidance for home isolation](#)
 - Allow employees to return to the office in accordance with CDC guidelines [HERE](#) and [HERE](#)
- Communicate safety plan to employees, customers and visitors, such as through posting notices in the workplace or by email
- Confirm the safety measures being taken by the employer's landlord, including limiting access to the building, cleaning protocols, use of common areas, air filtration, COVID-19 notification and response policy
- Manage Employee Anxiety and Morale
 - Acknowledge and immediately address employee concerns about health and safety
 - Consider frequent updates as to the steps being taken by the employer to maximize safety

3. Managing Employees Who Refuse to Return to the Workplace

- Be prepared to manage employees who refuse to return to the workplace due to COVID-19

- Best practice is to talk with the employee to gather further information about the reason why they do not wish to return to the workplace, keeping in mind the requirements of applicable law, such as the ADA, FMLA, and Families First Coronavirus Response Act ("FFCRA")
- Pay special attention to requests to telework or to be placed on leave based on a disability or membership in a vulnerable population. A reasonable accommodation may be required under the ADA
- Consider implementing interim policies to address COVID-19 issues, such as relaxing attendance policies and allowing employees to telework, and clearly note that these policies are temporary

4. Employee Benefits

- Determine if any employer-sponsored benefit plans should be modified, such as 401(k) or pension plans, as a result of new legislation, including the CARES Act
- Review eligibility and election issues due to layoff/furlough
- Determine if employees who were furloughed owe any amounts for insurance premiums during the time they were off of work and the terms for repayment
- Understand FFCRA paid leave benefits available to employees through December 31, 2020, and train managers on the FFCRA
- Communicate any policy or plan changes to employees

5. Be flexible, reassess your plan and adjust accordingly as circumstances change

- Recognize that the COVID-19 pandemic is unique and fluid and that policies may need to be adjusted as health conditions, laws, regulations and guidance change
- Consider polling employees, or groups of employees, to assess effectiveness of COVID-19 policies, and adjust accordingly

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