

Preparing for Your Employees to Re-enter the Workplace

The way the world did business in March 2020 changed within weeks as the COVID-19 pandemic forced a shutdown of large parts of the global economy. In the U.S., over 300 million people across 40 states were under some form of a stay-at-home order. Now, just after U.S. businesses had a chance to find a rhythm to their new virtual workplaces and reduced in-person staffing, they must prepare for the gradual easing of stay-at-home and quarantine restrictions that were suddenly imposed on them. The loosening of these restrictions brings a new set of HR and legal concerns as employers must again re-tool and re-think how they do business to allow a larger workforce on-site in the midst of a public health crisis.

Until a vaccine is procured, the post-pandemic workplace will look very different as employers try to navigate new state and local executive orders and public health and regulatory guidance from agencies such as OSHA. There is no one-size fits all solution because the varying nature of each business will require its own bespoke solution to ensure a safe and compliant workplace. Retail businesses may have to ensure certain personal protective equipment such as masks are available for its public-facing employees while businesses with open office areas will have to socially distance its seating.

Physical Distancing

While each state or county or industry may have its own requirements, most businesses will want to engage in some form of enhanced social distancing. Such measures include but are not limited to markers indicating proper social distancing in any area where employees congregate; staggered meal and rest breaks; limiting the number of employees in meetings; placing shields or barriers in places such as reception areas or lunchrooms; and re-orienting work points to avoid employees facing each other. Employers would also be well-served by reviewing guidance for workplace cleaning and disinfecting that has been provided by the U.S. Centers for Disease Control.

Inevitably, it is likely that most businesses will face a situation where an employee develops COVID-19 symptoms, tests positive for the illness, or comes into close contact with someone who has COVID-19. Each business should have a response plan in place that covers topics such as self-quarantining, contact tracing, and cleaning protocols to limit exposure to a wider workforce.

Balancing Employee Concerns

As U.S. businesses begin to ramp up their in-person workforce, employers may not only have workers who are reluctant to return but also face leave and accommodation issues from employees who have a serious health condition or who have concerns about their health or a family member's health condition. In addition to their own leave policies or any state or local municipality requirement, employers may face obligations under the ADA, FMLA, or the Families First Coronavirus Response Act (FFCRA). For example, an employee who cannot work or telework because of coronavirus symptoms may be required to be provided leave under the FFCRA while an employee who has a history of severe anxiety and sits next to a co-worker who just contracted COVID-19 may be required to be provided an accommodation under the ADA.

The re-introduction of employees into the workplace will force employers to balance a host of concerns related to efficiency and productivity, worker safety and health, and compliance and legal. Any new policy or practice should be examined with legal counsel to understand potential pitfalls. For example, while temperature checks may now be acceptable for the EEOC, new wage and hour liabilities might result if employees are waiting for such a procedure before beginning work and not being paid during that time. In addition to being proactive in understanding local and state executive orders and new employment-related obligations such as the FFCRA, employers should run COVID-19 response exercises and examine all aspects of operations to determine whether it should be re-tooled for compliance and public health purposes. If these steps are taken, employers can ensure that legal exposure will be minimized, employee anxiety in the workplace will be diminished, and that it will not incur lost productivity, negative press, or worse because its lack of policies and practices unnecessarily exposed employees to COVID-19.

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