

Return-to-Work Employer Checklist

The health and economic conditions created by the COVID-19 crisis have caused unprecedented disruption in the workforce. Now, as some employers begin to bring employees back to work, they are faced with a new set of challenges. This checklist is designed to help employers think about the multitude of issues posed as employees return to work after temporary layoffs, leaves of absence, and furloughs. The checklist is divided into two parts: Part 1 covers important employment law and HR issues, and Part 2 focuses on employee benefits concerns.

Part 1: EMPLOYMENT LAW AND HR ISSUES

Posting and Policies

- Post the Families First Coronavirus Response Act (FFCRA) poster in a visible place. Where employees will remain working from home, send by email or post to Company intranet or employee website.
- Review and revise hiring practices and policies:
 - Have staffing needs changed?
 - Do you need to change benefits or pay to become more competitive?
 - Use remote interviewing techniques as much as possible.
 - Update onboarding practices.
 - If you are recalling only some workers who were laid off or furloughed, ensure that your practices for determining whom to recall do not discriminate against any group of employees.
- Review and revise leave policies:
 - Know how the FFCRA affects your previous policies and practices.
 - Consider implementing PTO/vacation rollovers and/or grace periods, and revise guidelines for usage if vacation is forfeited when not used by year end.
 - Consider implementing or revising bereavement leave policies.
 - Ensure that all employees have access to and an understanding of all leave policies that may apply to them.
- Review and revise work-from-home and childcare policies.
- Update work travel policies in light of any new orders in your state and any new practices being implemented in the workplace to keep employees/customers safe.
- Distribute all new or revised policies to all employees.

Health and Safety

- Explain company policies and procedures related to illness, cleaning and disinfecting, and work meetings and travel.
- Educate employees on how to reduce the spread of COVID-19 at home and at work (follow Centers for Disease Control and Prevention [CDC] recommendations).

- Make sure employees who are returning to a worksite understand what's expected of them in the workplace.
 - For example, must they wear face masks or face coverings? Will protective items and hand sanitizer be provided? Are workplace hours different? Will you be taking employees' temperatures each day when they arrive? Is teleworking or staggered shift work allowed/encouraged?
- Ensure that all employees who are currently ill or have contact with an ill family member stay home (follow CDC recommendations for length of time).
- If an employee becomes sick at work, send them home.
- Promote safe social distancing in the workplace by encouraging employees to:
 - Remain at least 6 feet away from each other.
 - Email, message, call, or video call rather than meeting face-to-face.
 - Clean computer equipment, desktops, phones, and workstations often.
- Provide hand sanitizer, cleaning supplies, and face masks or face coverings (where appropriate/necessary) and no-touch disposal receptacles.
- Discourage handshaking.
- Place posters throughout the business to encourage social distancing and proper hand hygiene.

Best Practices

- Be aware of any local public health or other orders related to COVID-19 that may affect your business.
- Ensure that your workplace cleaning company is up-to-date on current methods of safely removing COVID-19 hazards.
- Communicate frequently and as transparently as possible with employees:
 - Provide expected timelines for recalling/rehiring employees.
 - Provide returning employees with recall or offer letters.
- Train managers to deal with employees who may face increased personal challenges during this time, such as bereavement and loss, childcare and school-cancellation challenges, financial stress, and other dependent care and support needs.
- Offer flexibility wherever possible and adjust workloads to be reasonable.
- Be prepared to quickly investigate and stop discriminatory speech or acts in the workplace.

- Consider contracting with an employee assistance program (EAP) if you do not currently have one.
- Designate a workplace coordinator who will be responsible for COVID-19 issues and their impact at the workplace.
- Develop a plan to operate if absenteeism spikes or if another shelter-in-place or stay-at-home order is given in the future:
 - Implement a plan to continue essential business functions.
 - Implement flexible work schedules and leave policies.
 - Cross-train employees on performing essential business functions.
- Develop emergency communications plans, including a way to answer workers' concerns.

Part 2: Employee benefit Issues

Plan Eligibility and Contribution Issues

- Clarify return-to-work eligibility rules for unique participant situations.
 - For example, determine whether those who previously waived or voluntarily dropped coverage during the break, or those for whom coverage was terminated due to nonpayment during the break, will get another opportunity to enroll, or whether that opportunity will be offered only to those who were previously enrolled and lost eligibility during the break.
 - Be sure to coordinate any changes to plan eligibility with the carrier (or stop-loss vendor).
- Check Waiting Period Rules – Employers of all sizes are permitted to impose a new waiting period of up to 90 calendar days each time an employee becomes eligible. However, applicable large employers (ALEs) with 50 or more FTEs must also consider the break in service rules imposed under §4980H, which may limit the ability to impose a new waiting period.
 - A “break in service” is a period of time during which the employee is not receiving any pay (due to termination of employment, furlough, or leave of absence).
 - Following a break in service of less than 13 weeks (26 weeks for educational organizations), employees must be treated as continuing employees. If they were covered prior to the break in service, coverage must be made available no later than the 1st of the month following their return to an eligible position; nothing is required for those who previously waived coverage.
 - Following a break in service of 13 weeks or more (26 weeks for educational organizations), employees may be treated as new hires, meaning the employer may impose a new waiting period or initial measurement period.
- ALEs who use the look-back measurement method to determine full-time status should consider how the change in employment status might affect eligibility in the next plan year.
 - Employees with reduced hours or a period of time with no pay might average less than full-time hours over their measurement period and not be considered full-time for the employer’s next stability period.
 - Some employers may choose to exclude such period of time from their measurement period, or impute hours equal to the employee’s regular average, to ensure that those who are normally considered full-time employees will continue to be full-time in the next stability period.
- Consider any payroll deduction adjustments that may be required.
 - For example, if employees are required to make catch-up contributions, employers may need to consider allowing employees to make them over several payrolls if the amount due is significant, both to help employees and to avoid violating any state wage and withholding requirements.
- Pay attention to extended HIPAA Special Enrollment deadlines.
 - New rules allow employees to request a HIPAA special enrollment for up to 30 or 60 days (depending on the HIPAA special enrollment event) after the end of the National Emergency + 60 days.

- Check the status of Health FSA and DCAP elections on reinstatement.
 - If employees discontinued contributions during the furlough or layoff, reimbursement is not available for qualifying medical expenses incurred during the furlough or layoff unless catch-up contributions are made upon return.
 - If the return is within 30 days or less, Section 125 rules generally require employees to step back into their previous elections; however, if the return is beyond 30 days, there is flexibility to allow new elections if allowed by the plan.

- Clarify HSA contribution arrangements for returning workers.
 - Employers have significant flexibility regarding employer contributions to employee HSA accounts. How will temporary layoffs and furloughs affect employer HSA contributions?
 - Employers must allow employees to adjust their own payroll deduction contributions on at least a monthly basis, so employees may want to make up missed contributions.
 - Because the tax filing deadline was adjusted, individuals have until July 15, 2020, to make contributions up to the annual limit for 2019.

- Follow Section 125 election change rules.
 - Employment status changes typically trigger an allowed election change according to Section 125 rules. Employers should be ready to address various employee requests that may come regarding changing to pre-tax elections and should understand what §125 rules permit.
 - Note that changes to Health FSA election are generally more restrictive than other changes, whereas changes to DCAP election are typically more permissive.

- Consider making permanent adjustments to plan eligibility rules in case similar situations arise in the future.

Other Issues

- Properly administer expanded COBRA deadlines.
 - New rules allow qualified individuals to elect COBRA until after the end of the declared national emergency + 60 days, with coverage effective retroactively to the COBRA event date.
 - New rules also prohibit an employer from terminating COBRA coverage for non-payment until after the end of the declared national emergency + 60 days.

- Prepare for unique 2020 employer reporting challenges.
 - Many employers experienced events that will complicate 2020 employer reporting, including extending special eligibility to normally ineligible participants, furloughs, employees taking advantage of extended FMLA, and more. Many changes were made quickly and did not fit neatly into existing payroll and enrollment systems. Additional data collection and manipulation will be required to properly complete 2020 employer reporting due early in 2021.