

1. Planning and Communication

- Decide the right time to reopen**
 - Monitor federal, state, and local closure orders, re-opening guidelines, industry practices, and geographic considerations
 - Comply with state and local orders regarding return to work and capacity limits
- Formulate return-to-work plan based on business needs and employee communication**
 - Consider surveying the employee population to gauge attitudes regarding returning to the workplace
 - Return to work plan options include:
 - Returning all employees to in-office work on the same timeline
 - Returning employees in an incremental timeline, based on employees' willingness and desire to return to the office
 - Staggering days or weeks employees are on the job site
 - Transitioning certain workers or jobs to remote only positions
- Prepare communication to employees regarding return to work plan**
 - Announce return to work details in advance to allow employees to plan ahead
 - Establish a plan for employees to maintain communication with management
 - Communicate details regarding COVID-19 safety precautions and protocols and their duration
 - Review any applicable collective bargaining obligations to make changes to the workplace upon re-opening
- Maintain a written protocol for confirmed or suspected COVID cases**
 - Protocol should include at minimum:
 - Employees should not come into work if sick
 - Identify necessary notification procedure if symptomatic
 - Designate point(s) of contact for reporting and questions
 - Communicate with employees impacted by potential exposure
 - Identify remedial sanitization measures for impacted employee(s)
 - Identify triggering events for quarantine procedure
 - Establish the duration of quarantine and conditions for return
 - Assess reporting obligations under OSHA and state workers' comp. laws (note: new OSHA guidance states that it will not enforce recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022)
- Anticipate employee anxiety, rumors, misinformation, and plan accordingly**
 - Leaders should be visible
 - Communicate frequently with employees (low cost options may include anonymous surveys).
 - Remind employees of any existing Employee Assistance Programs
 - Consider providing additional alternative resources (e.g. counseling, working parent discussion groups, etc.) to help employees manage stress and anxiety
 - Prepare employer's response for possibility workers may refuse to work, simultaneously call in sick, strike or walkouts.
 - Train key management on protected concerted activity in a union and non-union setting

2. Workplace Safety

- Review applicable OSHA and CDC standards**
 - Monitor local and federal guidance for best practices and requirements for employers ([OSHA guidance](#), [CDC guidance](#))
- Continue encouraging employee hygiene and social distancing measures**
 - To the extent possible, implement social distancing requirements, such as staggered shifts, breaks, spacing between desks and community areas
 - Consider adapting the workspace as much as possible to facilitate social distancing
 - Limit large in-person meetings in favor of virtual meetings where possible
 - Minimize physical contact (i.e. handshakes, cough etiquette, etc.)
 - Limit gatherings in common areas (e.g. breakrooms or kitchens)
 - Intensify janitorial sanitation, particularly in commonly areas, touched surfaces, and make hand sanitizer, wipes, and soap readily available
 - Make efforts to increase air exchange in the building, if possible
 - Educate employees regarding best hygiene practices (e.g. proper handwashing, avoid touching face, practice social distancing)
 - Promptly respond to any safety related concerns raised by employees
 - Comply with protocol for confirmed or suspected COVID
- Consider whether face masks, gloves, or other protective equipment are mandatory or optional**
 - If mandatory* - determine whether company will provide or reimburse employees for masks, gloves, and other protective equipment
 - If optional* - determine whether employer will place any limitations or restrictions on employee created protective equipment or the type of masks, gloves, or protective equipment permitted
 - Ensure protective equipment does not otherwise pose a safety concern
- Consider temperature checks and COVID screening for employees and/or visitors**
 - Results of temperature checks are a medical record and (if recorded) must be treated with appropriate confidentiality and recordkeeping
 - Consider whether screening time is compensable
 - Alternatively, consider requiring employees to check their own temperatures and stay home if it they have a fever
 - Implement a visitor's policy and require visitors certify they are not experiencing symptoms of COVID-19, regardless of vaccination status, and will wear a face covering when present at the worksite
- Consider a policy restricting non-essential employee travel**
 - Minimize non-essential travel for work
 - Consider how essential travel is defined
 - Consider mandatory notification of personal travel
 - Continue to follow government travel guidelines
- Assess changes to hiring and training processes required by social distancing obligations**
 - Train managers regarding "do's" and "don'ts" of pre-employment inquiries concerning medical conditions

3. Vaccinations

Mandatory or Voluntary?

- Federal employment laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII or the ADA. State laws should also be reviewed.
- If an employer elects to maintain a voluntary vaccination policy, it may offer incentives (*e.g.* PTO, bonuses, prizes, etc.) so long as they are not coercive. Because vaccinations require disclosure of potential disability related questions, overly large incentives could pressure employees to disclose protected medical information.
- If an employee seeks an exemption from the vaccine requirement due to pregnancy, the employer must ensure the employee is being treated the same as others who are similar in their inability to work, meaning they may be entitled to job modifications (including telework), changes to schedules or leave to the extent such modifications are provided for other employees unable to work.
- Employers should ensure their vaccine requirement (if any) does not treat employees differently, or have a disparate impact upon them, based on their race, color, religion, age, sex or national origin.
- Employee vaccination information is considered confidential medical information and should be appropriately protected.

Vaccine Reasonable Accommodations

- In some circumstances, Title VII and the ADA require an employer to provide reasonable accommodations for employees who, because of a disability or a sincerely held religious belief, do not get vaccinated for COVID-19, unless providing an accommodation would pose a direct threat (29 C.F.R. 1630.2(r)) or an undue hardship (29 C.F.R. 1630.2(p)) on the operation of the business.
- Potential reasonable accommodations could include requiring the employee to wear a mask, work a staggered shift, making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees), permitting telework if feasible, or reassigning the employee to a *vacant* position in a different workspace.

4. Workplace Accommodations

Teleworking (if applicable)

- Ensure any Teleworking, Vaccination, or Return to Work policy includes language allowing employees to request a reasonable accommodation.
- Consider the following questions when evaluating requests for continued teleworking post-pandemic:
 - Is the employee themselves (or caring for someone) in high-risk population because of age or underlying health condition?
 - Does the requested teleworking accommodation allow the employee to perform the essential functions of their job? (The employee's prior performance of his/her essential functions while teleworking during the pandemic is relevant to this analysis. See [EEOC Guidance](#) at D.16)
 - Does continued teleworking reallocate or eliminate the essential functions of the job? (Temporarily suspending essential job functions due to pandemic teleworking does not permanently change a job's essential functions. See [EEOC Guidance](#) at D.15)
 - Are their alternative accommodations available besides continued teleworking? Remember, the employer – not the employee – decides the accommodation to be granted.
- Protect data from cybersecurity breaches with a teleworking workforce

Preparation for a Physical Return to Work

- Update documentation on essential job functions (job postings, internal job descriptions, etc.) in anticipation of physical return to work policy rollout and additional requests for a reasonable accommodation.
- Articulate and document justifications for the physical return to work. For example, fewer mentorship opportunities, less visibility and collaboration with co-workers, blurred boundaries between work and home life, limited opportunities to get to know colleagues (particularly new hires), etc.

Reminders

- It is unlawful for an employer to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.
- All documentation relating to an employee's disability or reasonable accommodation (including the interactive process), must be treated as confidential and stored in a medical file separate from the personnel file.

5. Employee Benefits and Compensation

Review whether any changes need to be made to health and welfare plans

- Determine whether employees returning to work will need to re-enroll or update prior plan elections
- For cafeteria plans which may have offered individual spending accounts for a year, determine whether unused portions during an interim absence will be restored upon rehire
- Determine whether any probationary periods apply during which a rehired employee will not be covered (for instance, Union benefit programs)
- If special COVID-19 related benefits were offered under the health plan (for example, reduced co-pays and deductibles for COVID-10 care), confirm whether the health plan document needs to be amended and a Summary of Material Modifications (SSM) issued to participants

Evaluate whether returning employees owe any portion of health care premiums while furloughed

- Develop a reasonable plan for employee to pay back health care premiums, if necessary
- Consider state and local laws regarding wage deductions

Consider potential issues relating to retirement / pension plans

- Determine whether employees returning to work will need to re-enroll or update prior plan pre-tax deferral elections
- Review retirement plans and consider whether there has been a break in service and, if so, what the implications might be (vesting, for instance)
- Evaluate the potential need for plan amendments to modify conditions for annual benefit allocations (*e.g.* minimum hours requirements)
- Manage administration of plan loan program for returning workers (*e.g.* restart wage deductions for loan repayments)
- Confirm whether "auto enrollment" and "auto-escalation" features under the 401(k) plan will be properly implemented for returning employees

Review employee compensation and bonus programs

- Determine if any changes to compensation must be made, and review applicable laws relating to notice of wage changes
- Calculate the effect of closure on existing bonus or incentive plans

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