



HR TIP

of the week

COVID-19 | APRIL 27, 2020

Return to Work Checklist for when COVID-19 Restrictions Ease



Some states have announced plans to ease restrictions that were placed on businesses and individuals as a result of the COVID-19 pandemic. Regardless of whether your business is located in one of these states, you're probably starting to wonder what steps you will need to take in order to safely reintroduce employees back into the workplace.

Here are some key factors to consider:





read and make sure you understand applicable federal, state, and local orders, directives, and guidelines, including information from [OSHA](#) and the [CDC](#). These may include specific steps that businesses must take before resuming operations, and some may be industry and location-specific. The return to work process will likely occur in phases with certain types of businesses permitted to resume limited operations before others are allowed to do so. If conflicts exist among directives and guidelines, consider consulting legal counsel.

Independently assess your situation.

Even where employers are permitted to allow employees back into the workplace, employers should independently assess whether it is safe to do so, including whether social distancing can be maintained. Employers may also want to consider having employees return to work voluntarily at first to help address employees' needs and concerns, or returning employees to the workplace in waves, starting with the most critical workers first.

Consider screening practices.

Consider various options for screening employees and visitors before they're allowed to enter the workplace, such as temperature checks, COVID-19 testing, and/or self-certifications (see rules below). Employers that intend to conduct COVID-19 testing will also need to evaluate which type of test to use, who will perform it, how it will be administered, and the implications of various testing protocols, consulting local health officials when assessing the different options. Employers should also ensure consistency in applying their screening procedures to applicants and employees. In addition, make sure to treat screening results as confidential medical records.

Determine whether screening is subject to ADA rules.

Many screening practices would be considered medical examinations and therefore subject to certain rules under the Americans with Disabilities Act (ADA) and similar state laws. Generally, medical examinations must be job-related and consistent with business necessity, meaning an employer would need to conduct a medical exam because they have a reasonable belief that: an employee's ability to perform essential job functions will be impaired by a medical condition; or an employee will pose a direct threat due to a medical condition.

Note: As of March 2020, the COVID-19 pandemic has met the direct-threat standard referred to above, according to the [U.S. Equal Employment Opportunity Commission](#) (EEOC). If the CDC and state/local public



screening protocols.

Maintain social distancing.

Consider steps to maintain at least six-feet between individuals in the workplace, adjusting the work environment and office norms if necessary. Options include but aren't limited to:

- Allowing employees to telework whenever possible;
- Offering flexible work hours and staggered start-times and shifts;
- Increasing physical space between employees at the worksite (for example, opening every other cash register);
- Putting up partitions between employees;
- Increasing physical space between employees and customers through physical barriers and/or demarcating six-foot intervals;
- Postponing non-essential meetings or events;
- Prohibiting group gatherings in the workplace and limiting access to spaces where groups tend to gather;
- Implementing restrictions on business travel;
- Delivering services remotely or delivering products through curbside pick-up or delivery;
- Discouraging hand shaking;
- Discouraging sharing tools and equipment and food and drinks; and
- Restricting visitors in the workplace.

Designate a safety lead.

Consider designating a point person responsible for workplace safety during the COVID-19 pandemic and ensure compliance with federal and state occupational safety and health requirements. Make sure



Train employees to practice good hygiene.

Train employees on safety protocols and widely communicate ways to practice good hygiene, including the following:

- Wash hands often with soap and warm water for at least 20 seconds.
- Avoid touching your eyes, nose, and mouth.
- Clean frequently touched surfaces (like doorknobs and countertops) with household cleaning spray or wipes.
- Cover coughs and sneezes with a tissue or the inside of the elbow.
- Stay home when feeling sick.

Thoroughly sanitize the workplace.

Consider more frequent cleaning and implement sanitary practices, including the following:

- Disinfect and clean the workplace regularly.
- Maintain and adjust HVAC systems and increase ventilation.
- Provide tissues and no-touch disposal receptacles.
- Provide soap and water in the workplace.
- Provide hand sanitizers for when soap and water isn't available.

Provide masks and other protective equipment.

Some state and local jurisdictions have enacted emergency rules requiring individuals to wear face coverings in public and in certain businesses. Some also require employers to provide such equipment at the employer's expense. Review applicable rules and assess whether employees need to or should wear cloth face coverings, surgical masks, shields, respirators, or other protective equipment. Employers should



Note: Depending on the job and the circumstances, employers may also be required to provide protective equipment under existing federal and state occupational safety and health regulations.

Require notice of potential exposure.

Employers may ask employees to notify them if they've been in contact with someone who has COVID-19. Also, at this time, the CDC is recommending that people who are close to someone with COVID-19, and develop symptoms of the virus, self-quarantine for at least 14 days. Spell out any notification rules or guidelines in a written policy and continue to monitor guidelines for any changes in notification protocols.


Prepare for potential employee concerns.

Employees may have concerns about returning to work during the pandemic. Employees who refuse to report to work may have protections from adverse action. For example, under the Occupational Safety and Health Act, employees may have the right to refuse to work if **all** of the following conditions are met:

- Where possible, they have asked the employer to eliminate the danger, and the employer failed to do so;
- They genuinely believe that an imminent danger exists;
- A reasonable person would agree that there is a real danger of death or serious injury; and
- There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

Section 7 of the National Labor Relations Act (NLRA), which grants employees the right to act together to improve wages and working conditions, may also come into play in this situation.

Comply with rehire requirements.

Make sure all decisions related to hiring employees are neutral and job-related, and not based on protected characteristics, such as age, race, pregnancy or other factors unrelated to the job. If applicable, send "rehire" letters, provide wage payment notices, and furnish other onboarding paperwork to employees who were previously furloughed or laid off. Also evaluate implications on employee benefit plans and whether notices or contribution changes are needed. Additionally, keep in mind that many leave-of-absence laws 



Provide leave as required.

Employees may be entitled to leave under federal, state, and local rules for various situations related to COVID-19, even when the crisis begins to recede. For instance, if an employee works for an employer with fewer than 500 employees and is unable to work because their child's school is still closed, they would be entitled to paid leave under the federal [Families First Coronavirus Response Act](#). Review policies, procedures, and supervisor training to ensure compliance with applicable federal, state, and local rules on leave.

Provide reasonable accommodations.

The ADA and similar state laws require employers to provide reasonable accommodations to individuals with disabilities, unless doing so would impose an undue hardship on the employer. An employee with a disability that puts them at high risk for complications from COVID-19 may request a reasonable accommodation to reduce their chances of infection, such as asking to telework, for personal protective equipment, or for paid or unpaid leave if their job isn't conducive to telework. Additionally, if the employer requires employees to wear protective equipment, an employee with a disability may ask for an accommodation if they are unable to comply because of their disability. Prepare to respond to such requests in compliance with applicable laws.

Develop protocols for symptomatic employees.

Develop procedures for situations in which an employee is showing symptoms of COVID-19 in the workplace. If an employee shows symptoms, separate them from other employees, send them home immediately, and direct them to speak with their doctor. Additionally, notify other employees of possible exposure. When informing other employees, maintain confidentiality and don't reveal who had the symptoms. In addition, establish and communicate protocols for returning to work after being symptomatic, following CDC guidelines and applicable laws.

Conclusion:

Each workplace is different, so develop a plan for returning to work that is tailored to your particular circumstances, follows applicable guidelines, and ensures safety for your employees, customers, and





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