



BACK TO BUSINESS AN EMPLOYER'S CHECKLIST FOR REOPENING SAFELY

The following is a checklist of suggested practices for businesses to consider during the reopening process. Before implementation, all practices and policies should be evaluated by counsel to ensure they comply with applicable federal, state and local law and guidance. Please note that state and local ordinances may have additional or differing requirements than outlined in this checklist.

STEP 1: Establish a Return-to-Workplace Planning Committee and Designate a Qualified Workplace Coordinator

- The Committee and Coordinator will be responsible for COVID-19 assessment and control planning.
 - The Committee should include representatives from management and relevant departments (e.g., legal, human resources, facilities, technology, and communications).
 - The Coordinator will be responsible for communicating with governmental health authorities, and establishing workplace contact tracing.
- Designate a point person to monitor updates in relevant guidance from local, state, and federal authorities regarding ability to reopen the workplace and recommended or required safety precautions for employers.
 - Federal, state, county, and local public health agencies and labor departments have issued continually evolving rules and guidelines for transitioning employees back to the workplace. As a best practice, follow the strictest rules and monitor for updates as these standards are constantly changing.
- Set a timetable for completing a return-to-workplace plan relative to a target date for reopening, taking into account the various legal, human resources, facilities, and technological needs of the business and its workforce.
- Determine which personnel (such as management and human resources) should be trained on return-to-work protocols before reopening the workplace.
- Carefully document processes developed for shifting to remote work and returning to the workplace to be prepared for possible cycles of quarantining in the event of future outbreaks.
- Evaluate any industry-specific guidance.
 - The CDC has provided specific guidance for [healthcare settings](#).
 - OSHA has provided [guidance](#) on steps all employers may take to reduce workers' risk of exposure in the workplace, and it has provided specific recommendations for employers and workers based upon the level of risk involved in certain jobs, i.e., low, medium, high and very high exposure risks. OSHA has also provided guidance specific to the [construction industry](#), as well as alerts for [rideshare/taxi/car](#)

[services](#), [retail pharmacy workers](#), [nursing home and long-term care facility workers](#), [dental industry practitioners](#), and [restaurant/food and beverage businesses providing curbside pickup and takeout](#).

- The CDC and OSHA have jointly issued [Interim Guidance for Manufacturing Workers and Employers](#).

STEP 2: Determine Timing and Procedures for Returning Employees

Analyze the workforce and prioritize the order of return, considering which categories of employees are most essential for on-site operations and how many are needed in each category.

Decide when and how to return employees to the workplace, considering a phased approach where some employees will be permitted to continue teleworking and/or employees will opt-in for initial return.

Consider conducting a pre-return survey of employees to determine their ability to return to the workplace and on what schedule, vis-a-vis health, child care, commuting, or other obstacles to returning.

Assess restoring employees to their prior duties and adjusting the employment status of any individuals who were recently furloughed, laid off or on leaves of absence, including consideration of the following:

- Assess the workforce and determine (1) which employees will be recalled at the end of the furlough or temporary leave of absence and which employees (if any) may need to be terminated, and (2) what positions and salaries recalled employees will have. Also consider any applicable state or local predictive scheduling laws.
- If some or all furloughed employees may not be recalled due to changing business conditions, work with counsel to perform a disparate impact analysis, assess whether additional obligations may be triggered (such as WARN Act notifications, termination payments, etc.), and decide whether to provide severance to separating employees in exchange for a release of claims.
- Document objective decision-making criteria for recalling or terminating employees to protect the company from potential discrimination claims. Decisions to recall certain employees cannot be based on apparent higher risk of COVID-19 complications (e.g., older or pregnant employees).
- Provide a furlough recall letter to furloughed employees to whom re-employment will be offered. The furlough recall letter should include the following:
 - Employment offer;
 - Return-to-work date;
 - Terms of employment, such as position, supervisor, salary, hours, and exempt/non-exempt status;
 - Identification of anything that has changed in the employee's offered position, as compared to the employee's pre-furlough position;
 - Benefits status, including how the recall from furlough affects benefits, accrued PTO, and sick leave (being mindful of existing company policy and applicable law);
 - Information regarding the company's accommodation request process should an employee need a reasonable accommodation upon the employee's return to work;

- Any new policies and procedures relating to re-opening, such as staggered shifts, work from home, social distancing, regular cleanings, personal hygiene, reduced customer capacity, and any industry-specific or government-mandated requirements;
 - Appreciation for the employee's commitment to the company and his or her understanding and flexibility during this trying time; and
 - Contact information for follow-up questions.
- Update payroll provider about changes to active status of employees that accept offer to return.
 - Re-train employees who are recalled on proper safety guidelines.

Consider any needed cross-training of functions to account for fewer employees present at the worksite.

Consider whether to require self-certifications, medical clearance, or certificates of immunity for employees who have tested positive for COVID-19 before they may return to the workplace.

Consider developing online training on any protective equipment and/or workplace safety protocols that will be required and mandating completion of training before return to the worksite is permitted.

STEP 3: Devise Workplace Safety Protocols

Facilities: Identify areas in the workplace for regular cleaning, and consider installing protective shields or other barriers, maintaining or improving HVAC systems, providing touchless hand sanitizers and wipes, and other measures to prepare the workplace for employees' return. Assess plan and contract for frequent daily cleanings, particularly in shared or high traffic spaces.

Screening: Evaluate potential screening measures for employees entering the workplace and craft reasonable screening procedures such as questionnaires for employees to report symptoms of or exposure to COVID-19, daily temperature checks or thermal screening, or on-site diagnostic COVID-19 testing.

- Employers may exclude those with COVID-19, or symptoms associated with COVID-19, from the workplace.
- When employees enter the workplace, employers may ask them whether they have COVID-19 symptoms or have had contact with anyone who has been diagnosed with COVID-19 or is experiencing COVID-19 symptoms. However, employees who telework are not physically interacting with others; therefore, the employer would generally not be permitted to ask them questions about COVID-19 symptoms.
- If an employee refuses to answer questions about their COVID-19 symptoms or exposure, or refuses to allow their temperature to be taken, the ADA permits the employer to bar the employee from physical presence in the workplace.
- If implementing testing, employers should (1) ensure the tests are accurate and reliable, (2) consider the incidence of false-positives or false-negatives associated with a particular test, and (3) bear in mind that accurate testing only reveals whether the virus is currently present, and a negative test does not mean an employee will not acquire the virus later.

- If implementing a temperature testing procedure for employees to ensure no one comes into the workplace with a fever, consider the following:
 - Adopt a written temperature testing policy.
 - Ensure that the employee administering the temperature tests is protected. For example, depending on how the test is administered, the employee may need to wear gloves, a gown, a face shield or goggles, and either a face mask or a respirator (e.g., an N95 filtering facepiece).
 - Consult with counsel to determine requirements of applicable state privacy notification laws, which may entitle employees to notice at the time of collection describing what information is being collected (body temperature) and the purpose(s) for which the information will be used (to maintain a safe work environment).
 - Provide a private setting for screening and ensure that all communications between screener and employee are confidential. Consider having employees who do not pass the screening test move to a safe and private location to review next steps, including return to work criteria.
 - Consider implications of storing information that is collected during the screening process and minimize the information that is collected (i.e., consider when information should be recorded and, if recordation is necessary, limit to factual health-related information, and treat information as a confidential medical record).
- In the event that reliable COVID-19 antibody testing becomes widely available, consult with counsel and applicable federal, state, and local guidelines regarding the company's ability to request, require, disseminate, and/or use employee antibody test results in the workplace. The EEOC currently does not provide guidance on COVID-19 antibody testing of employees, but it may issue guidance for employers as this testing becomes more widely available.
- Maintain medical information (including COVID-19 testing information) confidentially and separately from personnel files.

Prepare employee notices of measures that will be implemented and any needed signage/postings.

- Reinforce how employees can protect themselves and others from COVID-19 by communicating the following:
 - If you have symptoms, notify your supervisor and stay home.
 - If you are sick, follow CDC-recommended steps, and do not return to work until you meet criteria to discontinue home isolation.
 - If you are well, but have someone in your household who has COVID-19, notify your supervisor and follow CDC recommended precautions.
 - Wash hands often with soap and water for at least 20 seconds, or use hand sanitizer with at least 60% alcohol if soap and water are not available.
 - Avoid touching eyes, nose, and mouth.
 - Cover mouth and nose with a tissue or inside of the elbow when coughing or sneezing, immediately throw tissue in trash, then wash hands.

- Develop a cleaning and disinfecting plan.
- Clean and disinfect frequently touched objects and surfaces at the beginning and end of each shift.
- Avoid using other employees' phones, desks, offices, or other work tools and equipment. Clean and disinfect between employees if sharing occurs.
- Avoid large gatherings and stay at least six feet from others when possible.
- Use cloth face coverings (if appropriate) when social distancing is not possible, and especially in areas of with high levels of cases.
- Open all doors, where feasible, to reduce points of contact.

Social distancing: Implement social distancing measures tailored to the employer's facilities and specific workplace issues, paying close attention to compliance with measures recommended or required by applicable public health agencies or other governmental orders.

- Examples of social distancing features may include restructuring open-floor layouts, situating desks and tables at least six feet apart, staggering or rotating employee shifts, limiting the number of employees permitted together at the worksite or in shared spaces (elevators, bathrooms, breakrooms, cafeterias, shipping and receiving areas), implementing a one-way flow of traffic through the facility or certain hallways, revising work processes to limit contact, and posting social distancing decals and signage throughout the workplace.

Personal protective equipment (PPE): Prepare a hazard assessment in accordance with applicable OSHA requirements, determine what PPE must be provided to employees (if any), and develop a plan to implement all required training on the use and care of PPE.

Face covering policy: Assess whether employees will be required to wear face coverings in the workplace and whether the employer will, or must, provide this equipment. Review any required training or distribution protocols.

Hygiene and sanitization: Establish effective hygiene and infection-control procedures consistent with [OSHA](#) and [CDC](#) recommendations, as well as the [EPA's guidance](#) on use of disinfectants.

- Follow the [CDC's Guidance for Cleaning and Disinfecting](#) to develop, implement, and maintain a plan.
 - Clean all frequently touched surfaces at the beginning and end of each shift, at minimum.
 - Clean dirty surfaces using a detergent or soap and water before you disinfect them.
 - Disinfect using EPA-registered disinfectant that is effective against SARS-CoV-2 [31].
 - Provide disposable disinfecting wipes so employees can wipe down commonly used surfaces before each use.
 - Store and use disinfectants in a responsible and appropriate manner according to the label.
 - Do not mix cleaning and disinfection products together.
 - Advise employees to always wear gloves and other PPE appropriate for the chemicals being used.

Guests/visitors: Develop plans regarding guests and visitors in the workplace, including screening measures, number of guests permitted at any one time, and policies addressing prioritization of clients/customers/third parties for on-site meetings.

Develop an action plan for suspected/confirmed cases.

- Determine when an employee with a suspected/confirmed case may discontinue isolation and return to work.
 - The CDC's [guidance](#) addresses the conditions under which an individual may discontinue isolation depends on whether their COVID-19 diagnosis was based on their symptoms or testing.
 - If the employee was not tested:
 - At least three days (72 hours) have passed since the resolution of the employee's fever without the use of fever-reducing medicine; AND
 - The employee's other symptoms (e.g., cough, shortness of breath) have improved; AND
 - At least seven days have passed since the employee's symptoms first appeared.
 - If the employee was tested and experienced symptoms:
 - At least three days (72 hours) have passed since the resolution of the employee's fever without the use of fever-reducing medicine; AND
 - The employee's other symptoms (e.g., cough, shortness of breath) have improved; AND
 - The employee has had negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two consecutive upper respiratory swab specimens collected at least 24 hours apart (a total of two negative specimens).
 - If the employee had laboratory-confirmed COVID-19 but did not experience any symptoms:
 - At least seven days have passed since the date of the employee's first COVID-19 diagnostic test; AND
 - The employee has not experienced any subsequent illness and remains asymptomatic.
 - Note: for three days following discontinuation of isolation, these persons should continue to limit contact (i.e., stay at least six feet away from others) and wear a barrier mask (such as a bandana, scarf or cloth mask) covering their nose and mouth whenever they are in settings where other persons are present.
 - Employers may request employees to certify truthfully to the above requirements and ask for medical certification.
- Develop a plan for what to do if an employee is sick at work.

- Immediately separate employees who appear to have symptoms from others in the workplace.
- Have a procedure for safe transport of a sick employee to home or a healthcare facility.
- If it has been fewer than seven days since the sick employee has been in the facility:
 - Close off areas that have been used by the sick person for long periods of time (e.g., their desk or workstation).
 - Wait 24 hours (or as long as possible), then clean and disinfect the area.
 - Open outside doors and windows to increase air circulation during the waiting period.
- If it has been seven days or more since the sick employee used the facility, additional cleaning and disinfection beyond routine efforts is not necessary.
- Determine whether and which employees may have been exposed to the virus and may need to take additional precautions. Inform employees of their possible exposure to COVID-19 in the workplace, but maintain confidentiality.
- If an employee has been exposed to COVID-19 and is asymptomatic, determine if the employee is a critical infrastructure worker. The sectors deemed critical infrastructure by the Cybersecurity and Infrastructure Security Agency (“CISA”) include (1) healthcare/public health, (2) law enforcement, public safety, and other first responders, (3) food and agriculture, (4) energy, (5) water and wastewater, (6) transportation and logistics, (7) public works and infrastructure support services, (8) communications and information technology, (9) other community or government-based operations and essential functions, (10) critical manufacturing, (11) hazardous materials, (12) financial services, (13) chemical, (14) defense industrial base, (15) commercial facilities, (16) residential/shelter facilities and services, and (17) hygiene products and services. For additional information, consult [CISA guidance](#) and any applicable local orders.
 - If employee is NOT a critical infrastructure worker: Instruct employee to not report to work, and self-quarantine at home for a 14-day period.
 - If employee is a critical infrastructure worker: The company has the discretion, if business needs warrant or require, to follow CDC guidance for safety practices for critical infrastructure workers who are asymptomatic but have been exposed to COVID-19. These CDC guidelines should be confirmed against any state or local orders related to quarantines, workplace operations, stay-at-home, shelter-in-place, and other isolation-related requirements.

Develop procedures for screening applicants/new employees.

- After extending a conditional job offer, the employer may take an applicant’s temperature, screen for conditions or require COVID-19 test, if done for all applicants.
- An employer may delay start of employment if the new employee is symptomatic, or withdraw a job offer if the employer needs the employee to start immediately.

STEP 4: Develop Policies and Procedures to Manage Exposure Incidents

Designate point person(s) to track workplace exposures.

Draft or update any existing policy requiring employee disclosure of exposure to, symptoms of, or diagnosis of COVID-19.

Formulate procedures to identify and isolate individuals who have symptoms of COVID-19 and to seek medical attention for them if needed.

Draft template announcement that will be sent to others in the workplace who may have been exposed to COVID-19 (while taking steps to protect the identity of the infected individual).

Consider methods for identifying close workplace contacts of those who disclose that they have been infected.

Create protocol for recording and reporting COVID-19 exposure incidents if required.

- OSHA considers COVID-19 as a recordable illness, and employers are responsible for recording cases of COVID-19 if the following conditions are met:
 - (1) the case is a confirmed case of COVID-19 as defined by the CDC;
 - (2) the case is work-related; and
 - (3) the case involves one or more of following: (i) death; (ii) days away from work; (iii) restricted work or transfer to another job; (iv) medical treatment beyond first aid; (v) loss of consciousness; or (vi) if it involves a significant injury or illness diagnosed by a physician or other licensed healthcare professional even if factors (i) through (v) are not met.
- OSHA has issued [revised Interim Enforcement Guidance for Recording Cases of COVID-19](#), which provides guidance for employers in making the determination as to whether the case of COVID-19 is work-related and must be reported.

STEP 5: Review and Modify Existing Policies and Procedures to Address COVID-19 Issues

Consider revising policies addressing business travel, childcare, telework, workday start/end times, and other relevant policies in light of travel restrictions, school closures, and limited public transportation.

- Limit travel and advise employees who must travel to take additional precautions and preparations.
 - Minimize non-essential travel.
 - Check the CDC's Traveler's Health Notices
 - Advise employees to check for symptoms of COVID-19 before travel.
 - Ensure employees who become sick while traveling or on temporary assignment know what to do, including calling a healthcare provider for advice, if needed.
 - Notify their supervisor.
 - Follow company policy for obtaining medical care when traveling outside the United States
- Plan meetings and gatherings to lower risk.

- Use videoconferencing or teleconferencing, when possible.
- Cancel, adjust, or postpone large work-related meetings or gatherings.
- When videoconferencing or teleconferencing is not possible:
- Hold meetings in open, well-ventilated spaces.
- Continue to maintain six feet between people.
- Wear cloth face coverings (if appropriate).

Assess existing sick leave, medical leave, and PTO policies and adapt such policies to leaves of absence due to COVID-19 or future pandemics.

Review workplace policies and procedures to address accommodations for employees with underlying health issues or other health-related concerns about exposure to COVID-19.

- If an employee has a medical condition that according to the CDC may put the employee at higher risk for severe illness from COVID-19 and the employee requests a reasonable accommodation, engage in the interactive process with the employee to determine whether a reasonable accommodation can be made without undue hardship.
- After receiving a request for accommodation, an employer may ask follow-up questions or seek medical documentation to determine whether the employee has a disability and if there is a reasonable accommodation that can be provided.
- Common examples of reasonable accommodations for high-risk employees may include: providing additional protective measures or equipment; temporarily modifying the employee’s work schedule; moving the location of where one performs work or increasing the space between an employee with a disability and others; eliminating less critical job duties of the employee; transferring employee to lower-exposure work assignments; allowing the employee to continue teleworking. Consult with counsel to determine other reasonable accommodations and other obligations to your employees under the ADA. The [EEOC](#) encourages employers and employees to be creative and flexible in identifying reasonable accommodations during this pandemic.
- Do not automatically prevent an employee who is considered higher-risk for severe illness from COVID-19 from returning to work if the employee does not request an accommodation. Per [EEOC guidance](#), an employer concerned about an employee’s health being jeopardized upon returning to the workplace may only exclude an employee from the workplace after conducting an individualized direct threat assessment and engaging in the interactive process and determining that there is no reasonable accommodation that would eliminate or reduce the risk so that it would be safe for the employee to return to the workplace while still permitting performance of essential functions.
- Accommodating pregnant employees:
 - Note that the CDC does not specifically identify pregnancy as an underlying condition that puts an individual at “high risk.”
 - Title VII as amended by the Pregnancy Discrimination Act states that “women affected by pregnancy shall be treated the same for all employment related purposes as other persons not so affected but similar in their ability or inability to work.” Thus, a pregnant worker cannot be

denied a needed adjustment that non-pregnant employees receive for other reasons, if the non-pregnant employees are similar in their ability or inability to work as the pregnant employee.

- Pregnancy-related medical conditions sometimes can be ADA disabilities, and may trigger ADA accommodation rights.
- State or local laws may require affirmatively accommodating pregnant workers.
- Family members of employees who are high risk:
 - This is not an ADA issue requiring assessment of reasonable accommodation. However, state law may require accommodation for associational disability of a family member (e.g., California).
 - The employee also may qualify for leave under any applicable state or local family leave law, including FFCRA or FMLA. But the employee generally must be seeking leave to care for a qualifying family member with a serious health condition (i.e., child, parent or spouse).

Remind employees of leave entitlements under the Families First Coronavirus Response Act (“FFCRA”), if applicable.

Evaluate whether any other policies should be revised in light of logistical issues related to returning employees to the workplace, such as policies regarding return of company equipment, business expense reimbursement, and health and wellness.

Clarify (if needed) anti-bias and anti-harassment policies to address potential misconduct or inequitable treatment of employees.

STEP 6: Create Communication Plan Concerning New Policies and Protocols

Craft announcement explaining when employees should return to the workplace, and measures that have been or will be taken to promote workplace safety.

Draft communication to employees describing revisions to workplace policies and procedures, including any required notices under state or local governmental orders.

Consider communication informing employees of any return-to-work orientation or training programs that will be required before they can return.

Inform employees who the company’s COVID-19 coordinator is and how to communicate with that person.

Inform employees they may be disciplined or terminated for failure to follow policies.

Create an avenue for employees to report safety concerns (anonymous, without fear of retaliation).

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