RETURNING EMPLOYEES TO WORK AS COVID-19 RESTRICTIONS EASE

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MAY 15, 2020 WASHINGTON POST HEADLINE

A MAJORITY OF AMERICANS GOING TO WORK FEAR EXPOSING THEIR HOUSEHOLD TO THE CORONAVIRUS

A [Washington Post-Ipsos poll](#) of more than 8,000 adults in late April and early May found that nearly 6 in 10 Americans who are working outside their homes were concerned that they could be exposed to the virus at work and infect other members of their household. Those concerns were even higher for some: Roughly 7 in 10 black and Hispanic workers said they were worried about getting a household member sick if they are exposed at work.

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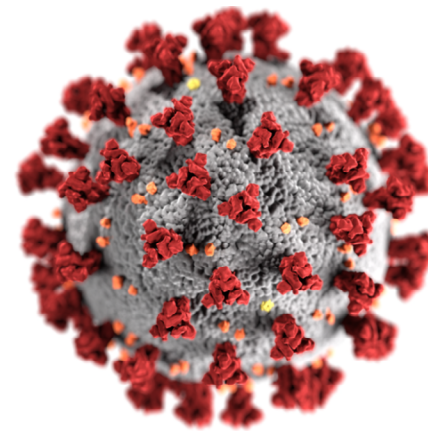# STEPS TO SUCCESS

Plan and Prepare

Communicate and Document

Implement

Monitor

Adapt

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WORKPLACES DURING THE COVID-19 PANDEMIC

The purpose of this tool is to assist employers in making (re)opening decisions during the COVID-19 pandemic, especially to protect vulnerable workers. It is important to check with state and local health officials and other partners to determine the most appropriate actions while adjusting to meet the unique needs and circumstances of the local community.

Should you consider opening?

- ✓ Will reopening be consistent with applicable state and local orders?
- ✓ Are you ready to protect employees at higher risk for severe illness?

ALL YES →

ANY NO ↓

DO NOT OPEN

Are recommended health and safety actions in place?

- ✓ Promote healthy hygiene practices such as hand washing and employees wearing a cloth face covering, as feasible
- ✓ Intensify cleaning, disinfection, and ventilation
- ✓ Encourage social distancing and enhance spacing between employees, including through physical barriers, changing layout of workspaces, encouraging telework, closing or limiting access to communal spaces, staggering shifts and breaks, and limiting large events, when and where feasible
- ✓ Consider modifying travel and commuting practices. Promote telework for employees who do not live in the local area, if feasible.
- ✓ Train all employees on health and safety protocols

ALL YES →

ANY NO ↓

MEET SAFEGUARDS FIRST

Is ongoing monitoring in place?

- ✓ Develop and implement procedures to check for signs and symptoms of employees daily upon arrival, as feasible
- ✓ Encourage anyone who is sick to stay home
- ✓ Plan for if an employee gets sick
- ✓ Regularly communicate and monitor developments with local authorities and employees
- ✓ Monitor employee absences and have flexible leave policies and practices
- ✓ Be ready to consult with the local health authorities if there are cases in the facility or an increase in cases in the local area

ALL YES →

ANY NO ↓

MEET SAFEGUARDS FIRST

OPEN AND MONITOR

PLANNING QUESTIONS & CONSIDERATIONS

When do we start bringing employees back into the workplace?

- State and local law and guidance

- Capacity of some or all employees to telework

- Physical limitations of the workplace

- Availability of employees

- Options for phased return

- OSHA Guidance 3990

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PLANNING QUESTIONS & CONSIDERATIONS

How do we bring workers back into the workplace?

- En masse
- Stagger by departments or shifts
- Essential v. non-essential
- By those workers who are more productive in the workplace
- By job duties and responsibilities
- By services
- By location
- Depending on office size or configuration
- 4 & 10 (4 days in/10 days out)

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PLANNING QUESTIONS & CONSIDERATIONS

What should I be worried about if the company is testing or collecting self-evaluation forms?

- Testing
  - Temperature taking
  - Body scans
  - Anti-body testing
  - Self-evaluation forms

- Who administers temperature taking v. tests, training, decision-making and gathering information

- Voluntary consent forms

- EEOC Guidance on Testing

- Confidentiality of medical information

- Return-to-work guidelines:
  - Fitness certificate
  - Guidelines of CDC or local health authorities

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PLANNING QUESTIONS & CONSIDERATIONS

What should be considered in the communication about returning to work?

- Be clear about and communicate your safety and health plan and explain the rationale

- Consider return-to-work notices
  - Not one size fits all: Furloughed v. Laid Off Worker v. New Hire v. Workers with Employment Contracts

- Content of notice
  - Date of return
  - Any changes in terms of employment (pay/hours/bonuses/commissions, etc.)
  - PPE requirements
  - New policies/mandates
  - Reminder to stay at home if sick
  - At-will employment

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PLANNING QUESTIONS & CONSIDERATIONS

What modifications can/should be made to the physical structure and maintenance of the workplace?

- De-densifying to create social distance

- Cleaning practice

- Creating employee zones

- One way hallways/stairwells

- Elevator limits

- Limiting or closing off communal spaces (kitchens, conference rooms, etc.)

- Ingress and egress (doors, elevators, etc.)

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PLANNING QUESTIONS & CONSIDERATIONS

What type of PPE or other special equipment/products will be required or utilized?

- Masks or face covering (type? required?)

- Gloves (required?)

- Hand sanitizer, wipes and other cleaning supplies (availability?)

- Who will be responsible for providing?

- What about customers, vendors or other visitors?

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PLANNING QUESTIONS & CONSIDERATIONS

What if an employee refuses to wear PPE?

- Discuss why?

- ADA analysis:
  - Is there a physical or mental health reason?
  - Is there a reasonable accommodation?

- If not an ADA issue, what options exist?
  - Leave
  - Furlough
  - Termination

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PLANNING QUESTIONS & CONSIDERATIONS

What other modifications can/should be made to the way we conduct business?

- Employee shifts and overlap

- Greetings

- Site visits and travel

- Customers, vendors and visitors to the workplace

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PLANNING QUESTIONS & CONSIDERATIONS

How will we identify and address potential risk areas?

- Employee self-checks

- Employee testing

- Employee self-reporting requirements

- Employee questionnaires

- Visitor screening

- Visitor questionnaires

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PLANNING QUESTIONS & CONSIDERATIONS

How will we respond if an employee tests positive, is exhibiting symptoms or has been exposed to COVID-19?

- Quarantine

- Leave

- Notice to other employees/ contact tracing

- HIPAA privacy issues

- Return to work certifications

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PLANNING QUESTIONS & CONSIDERATIONS

How will we implement and enforce any new measures?

- Pre-return communications

- Updating written policies

- Manager/supervisor oversight

- Employee reporting system

- Notice of consequences

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WHAT ABOUT EMPLOYEES WHO CAN'T/DON'T WANT TO RETURN TO WORK?

Identify the reason

Assess any leave rights

Assess any accommodation obligations

Communicate with the employee

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EMPLOYEE NON-RETURN: IDENTIFY THE REASON

HEALTH RISKS

Employee is at high risk for severe COVID-19

Employee lives with someone who is high risk

FINANCIAL OR PROFESSIONAL

Employee is making more on unemployment

Employee's job duties or compensation have changed

CAREGIVING RESPONSIBILITIES

Employee is caring for children, an elder or somebody who is sick

PERSONAL

Employee is not high risk but is scared about returning to work

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SUMMARY OF ISSUES TO CONSIDER AND COMMUNICATE FOR RETURN-TO-WORK

- Describe the safety protocols in detail:

  - How will employees communicate with you if they are sick or experiencing symptoms at home?

  - How will employees communicate if they are sick or experiencing symptoms at work?

  - How will employees be isolated if they are sick at work until they can be sent home?

- Describe special provisions for those who may be in at-risk categories or have such family members or have other reasons to request to continue remote work

- Describe what the company is doing to use telework or flexible work hours to accommodate employees with school-aged children at home

- Describe the company's travel policy in light of COVID-19

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SUMMARY OF ISSUES TO CONSIDER AND COMMUNICATE FOR RETURN-TO-WORK

- Describe any plans to administer health assessments for employees, customers or other visitors entering the workplace

- Describe how the company will provide or request use of PPE and disinfectants

- Describe all required hygienic practices and the supplies that will be available in the workplace

- Describe the company's policies on conference rooms, break rooms, hallway/stairwell traffic, elevators, other "public" spaces and policies on congregating and in-person meetings

- Describe the company's visitor policies

- Describe the company's cleaning protocols and schedules

- Describe physical distancing policies and physical distancing work plans

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LEAVE CONSIDERATIONS

- FMLA (50 or more employees)

- FFCRA Emergency FMLA (any size)

- FFCRA Paid Sick Leave

- State or Local Paid Sick Leave

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NEW POSTING REQUIREMENTS

- **Families First Coronavirus Response Act**

FAQ: https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions

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REASONABLE ACCOMMODATION CONSIDERATIONS

- Under the ADA (and state/local equivalents), an employer must provide a reasonable accommodation to an employee with a disability unless doing so would pose an undue hardship on the employer

- A reasonable accommodation may include allowing the employee to telecommute, work on a reduced schedule or take leave

- Mental health issues may qualify as a covered disability

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COMPENSATION AND BENEFITS ISSUES

- FLSA (exempt v. non-exempt classifications)

- Compensation for time spent on COVID-19 related tests or protective measures/steps

- Benefit eligibility (health Insurance, 401k, leave, etc.)

- Employment agreements and contractual obligations

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TELECOMMUTING POLICIES

- Review and update telecommuting policies and procedures

- Consider requirements for exempt v. non-exempt worker

- Determine whether the company will use any monitoring equipment or applications

- Consider a telecommuting agreement

TELECOMMUTING POLICIES: CONTENTS

A good telecommuting policy should:

- Explain how decisions are made about telecommuting
- Note that not all jobs are suitable for telecommuting
- Address what equipment the company will and will not provide
- Make it clear that telecommuting may be temporary and doesn't set a precedent
- State that employees must continue to abide by all employer policies
- Address job duties and work hours
- Explain that telecommuting is not a substitute for dependent care
- Address safety issues
- Address information technology and confidentiality issues

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ADDITIONAL CONSIDERATIONS

PRACTICAL

Employees who typically take mass transit to work

Employees who left the area or the country

LEGAL

Business liability

Discrimination claims

FINANCIAL

Impact of planning decisions on PPP loan forgiveness

EXISTENTIAL

Impact of reopening actions on business image/reputation

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THANK YOU!

Please don't hesitate to contact us with questions!

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