

Beyond Business as Usual Return-to-Work Checklist for Employers

Employers everywhere are turning their attention to resuming business and allowing their employees to “return to work.” However, as they recognize, developing a return-to-work plan is no easy task.

Several weeks ago, the Centers for Disease Control and Prevention (“CDC”) issued a three-part plan for re-opening businesses, only to quickly take it down while it and other arms of the federal government draft new plans for general businesses and for specific sectors and industries, such as restaurants, schools, and churches, in light of rapidly changing information.

Because guidelines by local and state governments in California are still in the preliminary stages and workers’ compensation and general liability insurance carriers may also recommend best practices for allowing employees to return to work, this checklist provides preliminary guidance of general processes and safeguards which we anticipate will be recommended, if not mandated, when official recommendations and orders for returning to work are issued.

Key goals of implementation should be *safety, communication, and flexibility.*

Employers should assure employees that they can report concerns about their own medical conditions and health concerns, company safety policies, and/or the conditions of the workplace or of other workers without fear of retaliation.

RETURN TO WORK CHECKLIST

1. **Always follow guidance of local, state and federal authorities.**

A federal loosening of isolation orders does not mean that cities/states are in agreement. Cities and states may provide specific guidelines for returning to work and may issue penalties for failure to comply. Multi-state employers should keep in mind that they may have to follow different guidelines in different locations.

2. **Manage Expectations.**

While it is encouraging to hear about anticipated softening of shelter-in-place orders, it is important to remember that the process will be gradual. California, for example, has announced plans to enter into “Phase 2” for curbside retail and related manufacturers as early as this week. However, that does not allow for all businesses to reopen just yet. Offices, seated dining at restaurants, and shopping malls are not part of this phase.

California’s public health experts caution that the re-opening will take place in phases over at least several months, and local leaders will be given discretion to make decisions based on their own communities’ needs, factoring in testing, tracing, infection rates, hospital availability and capacity to protect the most vulnerable residents, and ability to provide physical distancing and proper sanitation. California is expected to issue more guidance later in the week, which we will share on our [Coronavirus Resource Center](#) page.

3. **Be flexible and mindful of safety, disability, discrimination and leave laws in deciding who will return to the workplace.**

Once “non-essential” businesses are allowed to re-open, employers and employees should expect to resume operations gradually and mindfully. Even when restrictions are lifted or softened, employers may not have the economic resources or materials to resume full operations, and many employees may have health concerns and/or family demands that could prevent them from immediately returning at full capacity. To that end, employers should:

- Advise employees that they will not be retaliated against for inquiring about their rights with respect to safety and/or accommodation of any disability or medical condition.
- Engage in an interactive process with employees who are unable to return to work due to medical or childcare issues. Employers should be aware that there may be an increase in mental disabilities, such as anxiety and depression, which may require accommodation.
 - On May 5, 2020, the Equal Employment Opportunity Commission updated its guidance entitled “[What You Should Know About COVID-19, the ADA, the Rehabilitation Act, and Other EEO Laws](#)” to provide clarification about the

accommodations that employers may need to provide if an employee is at higher risk of serious illness due to COVID-19.

- Avoid making assumptions about which employees can or cannot return to work based on things like childcare needs, caregiving responsibilities, or “high-risk” employees.
- Decide who may return to work in a non-discriminatory manner based on legitimate business needs and other objective criteria.
- Be aware of state or local ordinances which further dictate the process for selecting which employees may return to work first. For example, the Los Angeles City Council has passed [Right of Recall](#) and [Worker Retention](#) ordinances, which are expected to be signed by the Mayor soon, which require certain employers in the hospitality, property management and airport industries to re-hire based on seniority. (Both ordinances, which were initially proposed to apply citywide, are now limited to the hospitality, property management and airport industries.)
- Consider flexible schedules and intermittent leave for employees who can still work from home, especially if they have to care for children or sick family members. Certain employers may be required to provide paid leave under the federal [Families First Coronavirus Response Act](#) and [city](#) and [county](#) ordinances.
- Consider allowing employees who can effectively work while telecommuting to continue to telecommute temporarily and/or work in staggered schedules in and out of the workplace to reduce the number of people in the workplace at any given time.
- Be cognizant of the risks for and by employees who use public transportation to travel between work and home as employers consider the viability of continued telecommuting. Employers should also assess transportation alternatives and/or the provision and use of personal protective equipment by employees while commuting.

4. Check the workplace and facilities before allowing employees to return.

Many offices were closed suddenly and left unattended. Owners/management should thoroughly inspect buildings and equipment for any damage or issues caused by the prolonged vacancy. Building owners should restart equipment that was not operative for an extended period and assess the physical condition and operation of equipment and services such as:

- Mechanical systems.
- Water and plumbing systems, making sure that there are no blockages in lines, leaks or standing water.
- HVAC systems and air filters, including increasing the air flow to decrease stagnant air and replacing air filters.
- Security systems.

5. Prepare to educate employees about—and enforce—safety and hygiene practices in the workplace.

Employers can take several actions to allow employees to socially distance and minimize contact and exposure to each other and to the virus. It is critical for employers not only to determine which protective measures they will take, but also to communicate those plans to the workforce thoroughly and frequently. Remember that many employees will be nervous about returning to work and being in closer contact with others after sheltering in place for an extended period. Sharing these safeguards with employees and providing training/reminders will go a long way in easing concerns.

Suggested health and safety practices may include:

- Staggering work hours and breaks to limit the number of employees in workplaces or areas of workplaces at any given time.
- Requiring use of masks by all individuals while they are in public or common areas (including walking through halls), and/or creating barriers with plexiglass partitions and/or closed doors.
- Enforcing physical distance between people in the workplace:
 - Consider moving desks or adding desks/workspaces to former conference/break rooms to separate people at least 6 feet.
 - Eliminate/reduce in-person meetings and visitors; continue to meet “virtually.”
 - Ban personal touching (handshakes, high-fives, hugs, etc.).
 - If visitors are allowed, require masks and post signs to advise visitors not to enter if sick and to avoid personal contact (“touch free zone”). Decide what additional measures visitors will be subject to, including, but not limited to, temperature checks.
 - Create one-way directions for walking through offices/workplaces.
 - Close rooms or remove seats where employees might congregate (breakrooms, conference rooms) and/or schedule staggered use of kitchens/break rooms.
 - Minimize deliveries and/or direct deliveries to a single location, and train designated people regarding safety procedures for receiving and disinfecting deliveries.
 - Consider scanning and electronic distribution of business mail to reduce in-person deliveries. Sign up for paperless delivery of bills and other applicable invoices and mail when possible.
- Providing personal protective equipment (“PPE”):
 - Provide PPE such as disposable gloves and paper masks, and provide instruction on the proper use, removal, disposal or sanitization of PPE.

- Designate someone to be in charge of PPE and other safety supplies and to control distribution and enforce sanitization.

- Bolstering sanitation and hygiene practices:
 - Follow recently published [CDC guidance](#) for cleaning and disinfecting public places, including work places.
 - Remind employees about basic hygiene and safety procedures, including frequent hand-washing, covering coughs and sneezes and other practices [as recommended by the CDC](#).
 - Increase breaks for the specific purpose of encouraging frequent hand-washing and cleaning of personal supplies.
 - Post signs and/or send timed emails/texts/calendar notices to remind employees to wash hands, disinfect phones and keyboards, etc.
 - Support and provide supplies for daily personal cleaning of cell phones, ipads, keyboards, phones and other personal devices.
 - Increase sanitation stations and provide supplies (wipes, sanitizing gel, government approved disinfectants).
 - Increase frequency of cleaning in common areas (kitchens, bathrooms, breakrooms, etc.) and for commonly used equipment (e.g. copiers, phones) and limited shared equipment and tools.
 - Ban shared food and beverages, including “community” containers of condiments and other supplies in kitchens and break rooms.
 - Require employees to use disposable dishes, cups and utensils, which should be safely disposed of by the employees who used them.
 - Provide hands-free garbage cans and bathroom equipment, such as soap dispensers and paper towels that can be accessed with minimum contamination of others.
 - For doors with door knobs or handles, consider installing foot-controlled levers or affixing doors in open position. Frequently sanitize door knobs that must be used.
 - Update MSDS books to account for new cleaning supplies/substances being used.
 - Install dirt removal mats (for shoes) at entrances throughout building.
 - Limit non-essential business travel.

6. Monitor employee health.

Failure to take all reasonably necessary actions to protect employees from sick co-workers will not only interfere with business and morale, but may also subject an employer to claims for providing an unsafe workplace. To mitigate risk, employers should:

- Educate employees about new [CDC guidelines](#) regarding self-checking symptoms.

- Implement hands-free daily temperature taking for employees at the beginning of each workday.
 - The CDC states that a temperature of 100.4 Fahrenheit is considered a fever.
 - Temperature checks should be administered consistently to all employees and people entering the workplace.
 - Remember that hourly employees may need to be compensated for the time it takes to check their temperatures.
- Issue and reiterate explicit policies that sick employees must stay home and that employees who have a fever or develop symptoms must immediately go home.
 - Remember that hourly/non-exempt employees who are sent home early may be entitled to reporting time pay.
- Follow [CDC guidelines](#) regarding ending home isolation when determining how and when to allow a previously sick employee to return to work.

7. Make a plan for future outbreaks/closures.

Unfortunately, COVID-19 will not be eradicated before businesses re-open, and people will continue to fall ill. Individual workplaces may have to temporarily close for disinfection after an employee is believed to have or tests positive for the virus, or if cities or states re-issue widespread shelter-in-place orders if outbreaks reach dangerous levels again. To prepare for the occurrences, employers should:

- Compile an emergency contact list for all employees.
- Create a detailed plan for responding to exposure to COVID-19 in the workplace, including but not limited to:
 - Having a method to notify employees quickly of a workplace outbreak or exposure and any resulting office closure.
 - Identifying a vendor(s) for emergency disinfection services.
 - Quickly transitioning employees to work from home to the extent possible.
 - Obtaining temporary help in the event that a subset of the full-time workforce becomes unavailable, including policies and practices around accepting and training temporary workers.
 - Notifying clients or customers of any temporary interruptions in business or service.

- Strategizing for potential furloughs, layoffs, and telecommuting that might be required by a “second wave” of shelter-in-place orders.

□ 8. **Be mindful of new data and cyber-security issues.**

Cyber criminals quickly began to try to take advantage of businesses and individuals by preying on their fears about COVID-19 and/or by capitalizing on the fact that people may allow themselves to fall victim to a scam when they are distracted by other serious health and financial concerns. The United States Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA) and the United Kingdom’s National Cyber Security Centre (NCSC) have issued a [joint statement](#) summarizing recent scams and cybercrime attempts and providing advice to mitigate risk.

CISA has also [recommended actions](#) for companies to defend themselves, including encouraging individuals to remain vigilant and take the following precautions:

- Avoid clicking on links in unsolicited emails and be wary of email attachments.
- Use trusted sources—such as legitimate, government websites—for up-to-date, fact-based information about COVID-19.
- Do not reveal personal or financial information in email, and do not respond to email solicitations for this information.
- Verify a charity’s authenticity before making donations.

Employers should designate an employee or vendor to be aware of these risks and assess vulnerabilities. In addition, employers should:

- Designate someone to whom employees can report suspicious emails and who will keep up-to-date on potential scams and advise employees accordingly.
- Train employees regarding common scams and phishing, and be cautious upon receiving emails that appear to be from outside organizations such as the World Health Organization or the CDC.
 - CISA released an [alert reminding individuals to remain vigilant](#) for scams related to COVID-19. Cyber actors may send emails with malicious attachments or links to fraudulent websites to trick victims into revealing sensitive information or donating to fraudulent charities or causes. Employees should exercise caution in handling any email with a COVID-19-related subject line, attachment, or hyperlink, and be wary of social media pleas, texts, or calls related to COVID-19.
 - CISA released an [alert encouraging organizations to adopt a heightened state of cybersecurity](#) when considering alternative workplace options for their employees. Remote work options—or telework—require an enterprise virtual private network (VPN) solution to connect employees to an organization’s information technology (IT) network.

- Employers should also consult CISA's [Risk Management for Novel Coronavirus \(COVID-19\)](#), which provides a tool to assist executives in thinking through physical, supply chain, and cybersecurity issues that may arise from the spread of COVID-19.
- Be diligent about deploying patches and systems updates to protect against viruses and other malware.

9. Beware of wage and hour and other employee litigation traps.

Many employees have had their pay reduced and/or fear future termination and/or wage loss, and employees may have greater incentive to litigate employment claims. To mitigate against the risk of future litigation, employers should:

- Have a plan to address employees who refuse to follow the return-to-work plan and safety protocols in a uniform, non-discriminatory manner.
- Remember to protect and balance employees' medical privacy rights with the safety needs of the company.
- Engage in the interactive process and proceed with caution when an employee seeks assistance with his or her own physical, emotional or mental condition or the condition of a family member.
- Properly onboard previously terminated employees who are re-hired.
- Document any changes in employment terms (e.g. benefits, pay, hours, duties, reporting and management structure, etc.) for returning employees and make sure that changes in those terms do not require the reclassification of employees from exempt to non-exempt.
- Understand that employees who have been telecommuting may need some time to adjust to a formal work environment and communicate expectations clearly.
- Be aware that employees may have become accustomed to the casualness associated with telecommuting, so plan to refresh employees' understanding and training on workplace expectations.
- Make sure that telecommuting non-exempt employees properly record their meal breaks and hours worked.
- Ensure that employees properly record and report leaves of absence, including intermittent leave.
- Monitor and resolve difficult tensions and misunderstandings among employees that may be fueled by anxiety regarding the COVID-19 crisis.

Conclusion

Preparing to resume business operations requires considerable work. Employers may benefit from designating a team of employees to attend to the areas of focus listed above by identifying and connecting with local COVID-19 information sources such as medical and occupational safety professionals, legal counsel, and local and state governments and agencies.

Employers may also consider assigning a designated point person(s) as the primary point of contact for employees who have questions or concerns about the plan to return to work.

These are predictions rather than final guidelines. Because the world's collective knowledge about COVID-19 is rapidly changing, readers should check back on our Coronavirus Resource Page and the OSHA and CDC websites frequently for updated information. We will continue to issue Client Alerts as new information becomes available. Our Employment Department's attorneys are available to answer your specific questions.

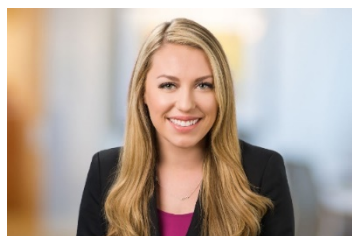
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