

WORKPLACE RE-ENTRY: LEGAL AND PRACTICAL CONSIDERATIONS FOR U.S. EMPLOYERS



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Panelists



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Infectious Disease Expert Perspective

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- Current timeline projections
- Priorities for employers
- Public transportation
- Use of new technologies
- Testing options
 - Serologic and virologic PCR testing options
 - Challenges for testing to be effective in stopping transmission
- Testing protocols for employers to consider
- Preparing for a resurgence

Developing a Re-Entry Plan

- Establish a COVID-19 re-entry task force
 - Leadership considerations
 - Human Resources
 - Legal
 - Operations
 - Facilities
 - Managers and employees
- Conduct a risk assessment
 - Rely on OSHA and CDC guidance
 - Be aware of federal, state and local advisories and directives

Developing a Re-Entry Plan

- Closely monitor evolving law, guidance and directives including:
 - Opening Up America Again
 - OSHA Guidance on Preparing Workplaces for COVID-19
 - CDC Interim Guidance for Businesses and Employers
 - CDC Guidance: What to Do if You are Sick
 - EEOC Pandemic Preparedness in the Workplace and the Americans with Disabilities Act
 - EEOC What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws
 - State and local Stay at Home orders and advisories
- Be prepared to act immediately by taking pre-planned steps to mitigate risks when outbreaks occur, including by returning to an earlier phase of the re-entry plan

Preparing Physical Workspaces and Developing and Implementing Pandemic-Specific Work Rules

- Physical changes to offices and worksites
 - Creating barriers/moving workstations
 - Implementing strict rules related to sharing equipment
 - Entry/exit rules including doors and elevators
- Social distancing rules
 - Limit gathering
 - Adjusting schedules
 - Common areas/eating
- Protective coverings, personal hygiene and cleaning
 - Wearing masks
 - Hygiene – frequent handwashing, hand sanitizers, disposing of trash
 - Cleaning procedures – increased frequency, identify areas of risk

Review and Update Employment Policies

- Review policies and consider modifications
 - Telework
 - Flexible paid time off
 - Travel
- Ensure FFCRA compliance
 - Emergency Sick Leave
 - Expanded FMLA
 - Track FFCRA leave usage for compliance
 - Maintain documentation for tax credits
- Create a COVID-19 policy resource

Employee Testing

- Confidentiality and employee privacy
 - Americans with Disabilities Act
 - State-specific privacy laws
 - What can be disclosed and to whom
- Body temperature measurement, viral tests and antibody tests
 - Consistency in selecting employees for testing
 - Wage and hour considerations
 - Establish, communicate and adhere to clear and uniform standards
 - Self-reporting procedures
 - Responses to employees who refuse to be tested
 - Confidentiality of test records
 - Follow developments in COVID-19 related guidance

Screening Inquiries/Contact Tracing

- Daily health screening
 - COVID-19 diagnoses or symptoms of employees and contacts
 - Notifications to vulnerable individuals
- Practices outside of work
 - Social distancing
 - Outside activities/commuting practices
- Contact tracing
 - Public health authorities
 - Employer tracing through interviews
 - Tracking devices
 - Apps for smartphones
 - Wearable devices

Advising Employees and Addressing Concerns

- Effective communication and posting requirements
 - Required postings
 - Communicating pandemic-specific work rules to every employee
 - Multiple forms of reminders
 - Establish reporting mechanisms
- Employee complaints
 - Generalized fear of returning to work
 - Refusal to return based on claims about workplace safety
 - OSHA whistleblower protection
 - Protected concerted activity
- Requests for continued telework

Returning Employees to the Workplace

- Employees with disabilities under the Americans with Disabilities Act
 - Reasonable accommodation obligations
 - Qualified person with a disability
 - Essential functions
 - Undue hardship
- “Vulnerable individuals” under the Opening Up America Again Guidelines
 - Elderly individuals
 - Individuals with serious underlying health conditions including high blood pressure, chronic lung disease, diabetes, obesity, asthma and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy
- Special Issues involving vulnerable individuals
 - Accommodation requests by vulnerable individuals
 - Restrictions on work by vulnerable individuals
 - Accommodating employees who live with vulnerable individuals
- Special cases: Pregnant employees, older employees and other potentially at-risk individuals
- Discrimination issues, e.g.: Age, gender, childcare responsibilities

Thanks for Joining!



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