

# Back-to-Work Checklist

## *For Returning Employees to Work after the COVID-19 Pandemic*

Returning employees to work after the COVID-19 pandemic subsides will involve careful planning. We have identified some key issues that employers should consider in crafting their return-to-work plans.

### **1. COMMUNICATION AND PLANNING**

Consider a welcome back message to reorient employees and communicate changes in policy and other “rules” the employees will need to be aware of. Disseminate, as appropriate, CDC, WHO, OSHA, and local health authority guidance, releases, and other relevant information, including the CDC’s guidance on preparing workplaces for COVID-19 [osha.gov/Publications/OSHA3990.pdf](https://www.osha.gov/Publications/OSHA3990.pdf)

In addition:

- Detail what training on new workplace safety and disinfection protocols have been implemented.
- Have exposure-response communications ready to go to any affected employees and customers.
- Have media/employee communications ready to release on topics such as return-to-work timetables, safety protections in place, and how else the company is supporting workers and customers. Prepare to respond to media/employee inquiries.

### **2. WORKPLACE SAFETY**

Employers should make workplaces as safe as possible for its employees and customers, if applicable. This will minimize potential claims from alleged exposure in the workplace.

Safety measures might include:

- Implementing procedures to screen employees
- Encouraging best hygiene practices
- Providing personal protective equipment such as masks, gloves, face shields, hand sanitizer, etc.
- Acknowledgments by employees to utilize personal protective equipment (PPE) and maintain social distancing and well as acknowledge risk of COVID-19
- Implement cleaning procedures and process for procuring ongoing supplies
- Review physical layouts and reconfigure to establish social distancing, including modification of work stations, modification of shifts to allow for fewer people at the location, staggering break times, implementing one-way traffic patterns in the workplace, and modifying restrooms and common gathering areas to maintain social distancing
- Institute protocols for visitors and customers including: limit number of customers, mark locations to guide social distancing, use videoconferencing instead of in-person meetings, eliminate handshakes, arrange for contactless pickup of goods
- Review travel policies and potentially restrict business travel, except for essential travel (which should be defined)
- Eliminate employee gatherings whether for business or social reasons in the workplace
- Develop response plan in event of exposure to COVID-19 in the workplace

### 3. PROCESS FOR RECALLING EMPLOYEES

Organize a plan to return employees to the worksite in compliance with applicable law. Returning every employee at the same time may be unsafe. Also, use objective criteria and evaluate skills in determining who to bring back to avoid discrimination claims.

Items to consider:

- Use seniority system or objective criteria
- Create a plan for employees in high-risk categories for infection to return to work:
  - Consider allowing them to work from home or remain on leave until they feel comfortable to return
  - Determine increased measures to protect them when working onsite, including isolated workstations, additional PPE as requested, fewer days in the office, etc.
- Notify state unemployment agency regarding return-to-work dates for employees, as well as those who are choosing not returning to work
- Determine how to handle those employees who are unable or unwilling to come back to work
- Review demographics of those brought back to determine whether there are any disparate impacts to employees in protected classes

### 4. POLICY REVIEW

Review and evaluate policies and provisions in your employee handbook for potential updates:

- FFCRA policies and forms (if applicable)
- Remote work (monitor FLSA considerations)
- Work hours including start/stop time, breaks, lunch times, flexible hours, and staggered work hours
- Timekeeping including clock in/out procedures
- Travel policies including business and personal travel
- Information technology and usage
- Paystubs and pay codes may need to be updated and adjusted to reflect line item for EPSL or EFMLA
- Make sure required workplace postings are current

### 5. EMPLOYEE BENEFITS AND COMPENSATION

Whether the employee stayed on employer benefit plans or not, changes in eligibility should be identified and communicated to employees and certain notices may be required to remain compliant.

- Group health insurance: Review whether furlough or layoff impacted eligibility; consider how to recover premium payments from employees if applicable
- 401-k plans: Evaluate whether layoff or furlough affected eligibility; review any potential loans employees may want to take
- Leave policies: If FFCRA is provided, create forms and tracking system; determine if other leaves such as PTO should be adjusted or modified in light of any new state legislation instituted during the pandemic; communicate the interplay of the leaves to employees
- Compensation:
  - If changing, provide any applicable notices that might be required under state laws
  - Determine whether you will make up any pay increases or reverse cuts that were instituted during the pandemic
  - Verify that employees are properly classified as exempt or non-exempt

## 6. TELECOMMUTING

Implement a telecommuting policy if you do not already have one. If personal appearance is required for the job, the job description should specify the requirement. Other considerations:

- Consider continued telecommuting for at-risk employees
- Consider public transportation concerns
- Update technology to support telecommuting
- Nonexempt employees should carefully track hours and take required breaks (FLSA)
- Consider IT security and whether company data is being stored on personal devices
- Consider whether your state requires reimbursement for work-related expenses incurred while working from home and set up a process to reimburse employees

## 7. NEW-HIRE PAPERWORK

Employees returning to work who remained on the payroll would generally not need to complete new paperwork. However, for those separated from employment, such as laid off workers, it may be best to follow normal hiring procedures. If you are hiring:

- Determine whether orientation is necessary—consider virtual or online
- Address I-9 issues:
  - If completed remotely, complete in person upon return to the workplace
  - Update any expired work authorization documents or make note of which need updating as soon as employee receives new documents
  - Determine if you will have employees complete Section 3 of their original I-9 or complete a new I-9 form

## 8. BUSINESS CONTINUITY PLAN

The last few months have been filled with learning experiences for most employers. Take the opportunity revise business continuity plans, anticipating that you may need to activate them again.

- Implement a business continuity plan, including infectious disease control, if your company does not have a plan
- Amend existing plans to include the latest emergency information, such as updates on epidemics and workplace considerations or changes in protocols for responding to global disasters
- Update plan resources and contact information to ensure accuracy
- Survey employees about work during the pandemic and use feedback to improve plan
- Plan for an emergency closure that may be triggered by a surge in COVID-19 cases

## 9. WORKERS' COMPENSATION AND PERSONAL INJURY CLAIM CONSIDERATIONS

Evaluate whether the company is adequately covered by the insurance coverage in place. Be mindful of timely reporting any claims that arise to your broker or carrier. Monitor changes in workers' compensation law in your jurisdiction. If you have employee screening, preserve the records in the event a claim is filed.

## 10. WORKPLACE PRIVACY CONSIDERATIONS

Develop procedures for collecting information relating to employee screening such as temperature checks. Maintain any medical records or information separate from the employee's personnel file.

## 11. UNION CONSIDERATIONS

In a non-union workplace, engage in strategy to maintain positive employee culture to dissuade a union campaign and train managers to recognize potential union activity. Identify any potential sources of dissatisfaction or gaps in policies that could encourage employees to form a union. In a unionized workplace, review recall provisions in the collective bargaining agreement in determining which employees return to work. Evaluate whether there are any additional changes that may need to be made to the collective bargaining agreement to better address issues that arose during the pandemic. Consider whether to re-open to address unexpected financial losses due to the pandemic and potential concessions. Review and evaluate no-strike and lockout provisions.

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