

Restart, Reengage, Rehire: Strategies for Successfully Opening Your Business

5.1.20



Overview

- How To Prepare Your Workplace for Reopening
- How To Recall Your Employees and Rehire
- How To Handle Workplace Exposure
- What Is Coming In The Future



Preparing Your Workplace

- Work Safe – Think Safe
- Develop a prevention, preparedness and response plan specific to COVID19.
- Communicate the plan to your employees on a regular basis
- Recommendations are changing quickly, monitor the developments and update your plan as necessary
- The plan should be strategic and address the sequence in which you roll out or open



Your Workplace

- Consider how you will control the movement of your people
- Limit the size of all gatherings
- Employees must continue to social distance and keep at least 6 feet apart
- Use technology if you need to meet. Use the phone, Ring Central, Zoom, etc.
- Consider staggering shifts, breaks and lunches
- Add handwashing and sanitization stations at entrance and throughout workspace
- Limit the use of co-workers sharing equipment
- Look for kick-touch pedals on trash receptors, restroom doors and other doors
- If staff can continue to telecommute or work from home, they should continue



How To Clean and Disinfect Your Workplace

- Break and lunchroom areas should be cleaned constantly or at least once a day, using proper Personal Protective Equipment (PPE)
- Proper PPE includes wearing gloves made from nitrile, latex or vinyl gloves
- Frequently touched items such as door handles, toilet seat, counters, copy machines, etc. should be cleaned frequently
- Order cleaning supplies in advance, they may be challenging to get.



Temperature Checks

1. The EEOC has issued updated guidance specifically regarding COVID19, the ADA and the Rehabilitation Act.
2. The EEOC has indicated that “If Pandemic Influenza symptoms become more severe than the seasonal flu, or if Pandemic Influenza becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees’ body temperature.
3. Wage & Hour: Time spent waiting and being screened maybe compensable in many states. Beware of reporting pay responsibilities in your state.
4. Notice should be sent out to all employees prior to coming into the workplace – some states will mandate the notice requirement.



Face Coverings

- In some states such as RI it will be mandated
- In RI all employees with customer and client facing businesses, non-profits and office-based businesses
- All businesses must provide at their expense face coverings or material to make face coverings for their employees
- Employees may make their own face coverings if they chose to



Face Coverings

Not needed if:

- The employee can easily, continuously and measurably maintain at least six (6) feet of distance from other employees for the duration of their work (i.e. private office)
- Wearing the face covering could cause damage to the employees health



Face Coverings

- All employees must wear face coverings in any entry, exit or common areas of the business including but not limited to check-in, registration, reception, hallways, bathrooms, breakrooms, timeclock areas, elevators, stairways, etc.
- CDC recommends that individuals wear cloth face coverings in public settings where social distancing measures are difficult to maintain such as in grocery stores or pharmacies.



Recalling and Hiring New Employees

- Create a strategic plan in deciding what employees and when to bring them back to work. If you have applied and been approved for the PPP, you will need to rehire and maintain your payroll for the 8 week duration.
- If you have a CBA, you will need to follow the terms of the CBA.
- Otherwise, consider operational needs or performance based. Seniority with a company is typically not the best approach.



Recalling and Hiring New Employees

- Businesses that will use performance-based recalls should create an internal document outlining the specific parameters that will be used such as attendance, overall grade on performance reviews, etc.
- Then decide the order in which employees will be recalled based on the standards.
- Review the list to ensure that the criteria does not have a disparate impact on any specific group.
- When recalling based on operational needs, employers should be prepared to justify why those being recalled are needed by the business at that time.



How Do I Re-Hire Employees

- You will bring employees back onto your payroll as though there was no break in service.
- If employees were removed from benefits, they should be put back on your plans.
- If retirement plans stopped, they should be restarted
- If your employees don't have their regular work to do, consider other project work that they can help out with. Be cautious of having Exempt employees working on non-exempt tasks as it may cause them to lose the Exempt designation.



Form I9 - New Hires

USCIS has stated that during this time of COVID, employers do not need to view original documents or have the new hire come into the employer's office to have it completed.

Employers can now have a family member or friend complete section 2 and you can accept copies of documents.

Keep in mind that the employer is still responsible for compliance with the I9 Form.



Form I9 – Re-Hires

- DHS will likely consider returning employees to be continuing in employment when they are rehired and a new Form I9 will not be needed.
- Employers should continue as though there was no break in service and if you are required to use E-Verify, no new E-Verify cases should be opened as long as one was opened when the employee was originally hired.
- Employees who have had documents expire will need to provide new documentation to update Form I9.



Form I9 – Re-Hires

- If the employment authorization stated in section I has expired or if list A or List C documents in section 2 has expired, reverification must be completed.
- US Citizens, non-citizen nationals and lawful permanent residents should not be reverified. List B documents should not be reverified.
- Form I9 – if you have reemployed an employee within 3 years from the date the form was executed, you may use the previous I9 or have the employee complete a new I9 form.



Form I9 – Re-Hires

- If the employee remains employment authorized as indicated on the previous I9 form, the employee does not need to provide additional documentation. Complete section 3 with the employee's rehire date, any name changes if applicable and sign and date the form.
- If the employment authorization from Section I or employment authorization documentation from section II that is subject to reverification is expired, then reverification of employment authorization is required in section 3 in addition to providing the rehire date. If the previous version is not the current version of the I9, you may complete section 3 on the new form I9 and staple it to the old form.
- If you already used section 3 on the previously executed I9, but are rehiring the employee within 3 years, you may complete section 3 of the new I9 and attach it to the old form.



New Hires

- Employers should look to conduct interviews via technology solutions rather than in person.
- EEOC has stated that employers can conduct medical screening after an offer of employment is made.
- Employers may delay a start date for a new hire or has exhibited symptoms. The CDC has stated that if someone has symptoms, they cannot be in a workplace.
- The EEOC has stated that the employer can withdraw a job offer if it needs someone to start immediately and the person cannot start due to COVID19 symptoms or a diagnosis.



New Hires

- The EEOC has stated that the employer can withdraw a job offer if it needs someone to start immediately and the person cannot start due to COVID19 symptoms or a diagnosis.
- CDC and the EEOC has not yet been addressed this question of whether employers will be able to prioritize hiring people based on positive tests for antibodies.



Wage & Hour Issues

Working from Home:

- Non-exempt employees must carefully track their time, and make sure they are recording times for breaks and lunch periods.
- Ensure that all Exempt employees meet the duties test for the exemption and don't spend the majority of their time on Non-Exempt Duties



Wage & Hour Issues

Keep In Mind:

Exempt employees still challenging. The salary test requires minimum pay regardless of hours worked, some states are over \$1,000 per week. Salary also must be 'bona fide' can't be tied to quality or quantity of work. An employee has to be paid their full salary for any week where they do ANY work

We have more flexibility with non-exempt employees



WARN Acts

Worker Adjustment Retraining and Notification Act

- Required 60 day notice for plant closing or mass layoff
- Rule of thumb: 50/90/100
 - If at least 50 employees will be laid off;
 - Within a 90 day period
 - Employ at least 100 people – look at WARN Act to determine if notice is required



WARN Acts

- Furlough's – there is an argument that a furlough does not trigger the WARN Act since there was no cessation in employment – very few employers have provided WARN notices
- Keep in mind that many furlough's will turn into layoffs so employers need to be conscience of the WARN Act.



How To Handling an Exposure In The Workplace

1. If an employee is in the workplace and was diagnosed with COVID19
2. Isolate the employee and send them home and have them contact their Doctor
3. Contact your local Department of Health
4. Identify other employees who may have been exposed



How To Handling an Exposure In The Workplace

5. Send out a notice to other employees advising them that someone in the workplace was diagnosed with COVID19
6. Do not disclose the name of the employee
7. Disinfect and sanitize the workplace
8. Consider quarantining employees that were exposed



How To Handle Secondary Exposures

You may have an employee who has a family member, spouse, partner or friend is diagnosed with COVID19 that they have been in close contact with in the last 14 days

1. Determine if the diagnosed individual has been instructed to self quarantine by the local Department of Public Health or the CDC
2. Identify employees who may have been exposed, or who are waiting for test results to be returned
3. Clean and sanitize the workplace
4. Determine if others need to be quarantined



Critical Infrastructure Employers and Employees

The CDC has guidelines for employers regarding safety practices for “critical infrastructure” workers who may have been exposed to a person with a suspected or confirmed case of COVID19.

The CDC is now advising that employees who have been exposed to the virus can continue to work, provided they are asymptomatic. The CDC advises that employers should adhere to the following practices prior to and during work.



Critical Infrastructure Employers and Employees

- Measure temperature prior to entering the facility
- Regularly monitor asymptomatic employees
- Have employees wear a face covering or mask in the workplace for 14 days after an exposure – the employer must provide
- Have employees socially distance – six feet apart as work duties permit
- Routinely disinfect work areas



OSHA Recommended Cleaning Protocols

- Asymptomatic – if the presumed positive or confirmed cases was asymptomatic the last time they were at the workplace, conduct a general cleaning of areas – bathrooms, offices, common areas – used by the confirmed case focusing on frequently touched surfaces
- Symptomatic – if the presumed positive or confirmed cases was symptomatic the last time they were at the workplace, the CDC recommends the following cleaning and disinfecting procedures are triggered.



OSHA Recommended Cleaning Protocols

- Take measures to improve ventilation in an area or room where someone was ill or suspected to be ill with COVID will help shorten the time it takes respiratory droplets to be removed from the air. If possible, wait 24 hours before beginning cleaning and disinfecting.
- Cleaning staff should clean and disinfect all areas used by the confirmed case focused on frequently touched areas. Including shared electronic equipment such as tablets, touch screens and keyboards used by the ill person.



OSHA Recommended Cleaning Protocols

- Ensure that cleaning staff has the appropriate PPE – PPE does not include respirators but does include disposable gloves and gowns for all staff, including handling the trash.
- Gloves and gowns should be removed carefully to avoid contamination of the wearer and the surrounding area
- Cleaning staff should report breaches in PPE or any potential exposures to their supervisor



What Does The Future Hold

Lawyers predict a HUGE EXPLOSION of class action lawsuits over COVID19

- So far:
- Employees for the government
- A hand bell factory
- A hair salon
- Have all filed class action lawsuits
- Lawyers predict many more to come with more than 22 million people file for unemployment



Lawsuits

In Sioux Falls South Dakota a pork processing plant was a hot spot for COVID19 – the first case was the end of March and 228 cases by April 18th, 55% of the cases in the state are from this one plant

The plant took action including sanitizing, staggering shifts and temperature checks

- Employees allege that employees with fevers were allowed to continue to work and avoided temperature checks by going through a side door
- They allege that they worked on a line 1 foot apart that than 6 feet apart
- Lawsuits will be coming



Discrimination Claims

The CDC has advised “to prevent stigma and discrimination in the workplace, use only the guidance from the CDC to determine risk of COVID19. Do not make determinations of risk based on race or country of origin, and maintain the confidentiality of people with COVID19.

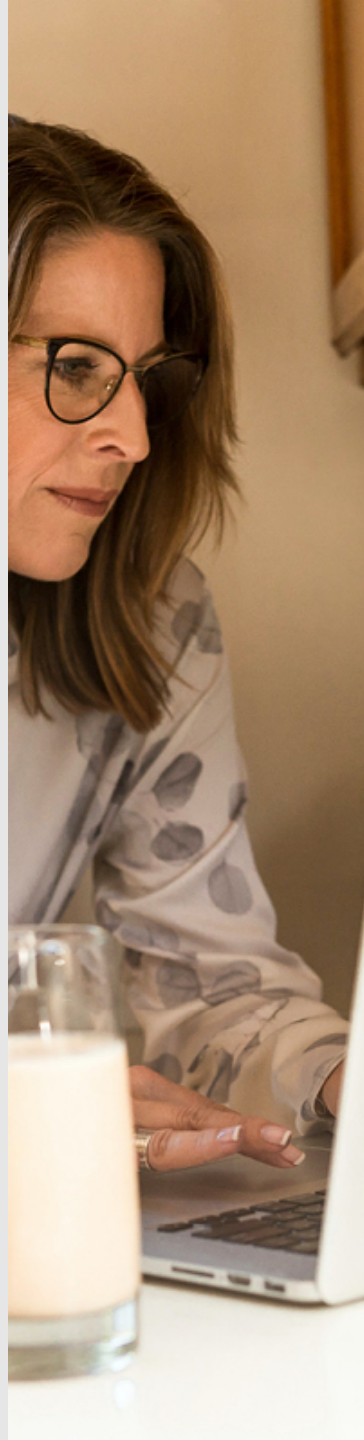
The law prohibits excluding any person from work or work-related activities, as well as from any type of customer or client interaction based purely on race or national origin without evidence of illness or recent travel to a high-risk area.

Employers should review travel policies to ensure that any communicable disease or travel policies do not implicate anti-discrimination laws not only based on race, color, age, pregnancy or national origin, but also on disability or other protected basis.



Telework As a Reasonable Accommodation

- Before the pandemic, employers had a general consensus that physical presence in the office was an essential function of most jobs and employees working from home was not a reasonable accommodation
- Telework - after a long period of teleworking, there will be questions about working from home as a reasonable accommodation
- Reasonable accommodations – those that previously were against telework will need to rethink the widespread use at this time
- Employers would need to state why it didn't work – technology, productivity issues, etc.
- What if employees want to work from home due to underlying medical conditions.



Other Considerations

- Update telework policies
- Tax issues related to remote employees
- Establish how to deal with workplace safety complaints
- Consider Hazard Pay for critical employees
- Determine how you will handle an increase in absenteeism
- Determine how you will handle the increase in Cyber Threats. A high alert has been issued and employers need to prepare for and combat the rise in cyber threats with remote workers



Thank You



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