Beyond the curve: Returning to work

EMPLOYMENT PRACTICE GROUP
Introduction

With a vaccine still potentially months (if not years) away, health experts predict we will be living with the coronavirus disease 2019 (COVID-19) for some time, not to mention its aftershocks. Nevertheless, employees across the nation will be returning to work as pressure to reopen the economy builds. While still dealing with the day-to-day impacts of the current pandemic, employers are preparing for what comes next.

• What does a return to work look like?
• Who comes back to work, when and how?
• What structural measures and policy changes should companies consider to protect the health and safety of employees in the workplace?

The following pages offer some broad considerations for US employers as they develop their back-to-work plans.

As federal, state and local governments draw up plans to relax stay-at-home orders and reopen workplaces, requirements will vary widely across industries and geographies. Employer plans will also vary and may involve workplace modifications, changes to policies and procedures, and enhanced training and communication. Above all else, employers will want to be nimble. There is no “one size fits all” solution.

We look forward to continuing to partner with you during these unprecedented times to respond to the latest guidance and conditions on the ground. And, of course, the entire landscape could change in a moment. By staying nimble and working together, we can emerge from this crisis stronger, with more innovative solutions to support businesses, workers and communities.

We are here to help, and look forward to discussing your needs and sharing strategies and best practices specific to your location, industry, size, workforce, policies and culture.

Thanks very much and stay safe,

Brian Kaplan
Chair, US Employment practice
brian.kaplan@us.dlapiper.com
T +1 212.335.4515

Cassie Boyle
Director, US Employment practice
cassie.boyle@us.dlapiper.com
T +1 312 368 7915
Planning the reopening

Get organized
- Create a cross-functional task force to address key issues
- Identify applicable state and local requirements and other relevant guidance (e.g., CDC, OSHA, industry groups, think tanks)

Build a company-specific plan
- Consider business and workforce readiness
- If remote work is possible, weigh the costs and benefits of reopening

Consider a phased approach
- Decide what percentage of workers to bring back
- Evaluate flexible work options (e.g., telework, staggered shifts or work days) to ease logistical challenges, promote social distancing, and allow for plan adjustments
Decide “who” will return
• Make selections based on legitimate business considerations (and any applicable CBAs)
• Discuss options with employees who express concerns and consider obligations under applicable federal, state and local laws

Develop contingency plans
• Consider what changes may be appropriate to help the business respond going forward
• Prepare for potential future shutdowns based on infection spikes

Focus on employee communication and engagement
• Ensure frequent and transparent communication, with clear channels for employee questions and concerns
• Develop education and training plans on new policies and procedures
Preparing the workplace

### Implement physical distancing measures
- Consider changes to the physical workplace (e.g., desk/cubical layouts, partitions, floor markings)
- Review gathering policies (e.g., limit use of communal areas, use videoconferencing in lieu of meetings)

### Prioritize health and safety
- Implement good hygiene and infection control practices
- Adopt robust cleaning and disinfecting protocols

### Determine PPE needs
- Consider whether to require PPE (cloth masks, gloves, etc.) based on requirements and guidance from federal, state and local governments
- Ensure a reliable supply of PPE and monitor recommendations, which may change
Decide on screening/testing protocols
• Determine methods (e.g., questionnaire, temperature checks, COVID-19 testing, antibody tests) after considering requirements, needs and risks
• Be mindful of privacy issues and store data as confidential medical information

Plan for exposure issues
• Develop a protocol for symptomatic or COVID-19+ employees consistent with CDC and state and local guidance
• Determine procedures for notifying potentially exposed employees

Review policies and procedures
• Determine whether changes may be necessary based on changed circumstances, including new laws (e.g., FFCRA), ways of working (e.g., telework), health and safety protocols, and litigation risks
• Carefully craft policies and related employee communications prior to implementation
Learn more

Employers will want to continually monitor relevant jurisdictions to understand reopening processes and assess how restrictions and health and safety standards may impact their business model, workforce, and capability to reopen. Reopening plans may also shift as states and localities respond to hospitalization rates and public health impact during implementation.

To discuss any of these issues further please reach out to any member of the DLA Piper Employment group or your DLA Piper relationship partner. You can also email us at CoronavirusEmployment@dlapiper.com with any comments or questions.

Additional key federal resources for employers include:


- **Wage and Hour Division COVID-19 and the American Workplace**, including FAQs related to the Families First Coronavirus Act (FFCRA), Fair Labor Standards Act (FLSA) and Family and Medical Leave Act (FMLA)


- **Occupational Safety and Health Administration (OSHA) Coronavirus Resources**, including [Guidance on Preparing Workplaces for COVID-19](https://www.osha.gov/SLTC/covid-19/)

- **Employee Benefits Security Administration (EBSA) Response to COVID-19**, including [COVID-19 Relief and Guidance for Employee Benefit Plans](https://www.dol.gov/esa/coronavirus) and FAQs regarding implementation of various health plan mandates under federal pandemic-related relief legislation

- **Internal Revenue Service (IRS) pronouncements** regarding pandemic-related relief considerations, including liberalizing rules for high deductible health plan covered services and defined contribution retirement plan provisions for plan loans and in-service distributions