Getting Back to Work: Considerations for Returning to the Workplace After COVID-19 Shutdowns

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• The material presented in this webinar is our best understanding of the information at the time of the presentation (5/11/2020).

• Information on re-opening is changing by the day. This means that you should check to make sure that the information presented today is still accurate if you choose to refer to it in the future.

• This presentation **DOES NOT** cover all of the considerations of returning to the workplace. You should not consider this presentation or PowerPoint a full analysis of, or reference for, all of the issues to be considered when you re-open your workplace.
Re-Opening
Re-Opening

There are many things to think about, but given the time constraints of this webinar, we will focus on:

- Safety of Your Workforce
- Safety of Your Physical Location
- Leaves of Absences/ Requests for Time Off
- A Few Things To Expect When You Return To Work
Safety
Safety

• How will you know when it is safe to return?

  • Will need to follow federal, state and local guidance. No organization should re-open its workplace without a government order that allows it.
  • Re-openings will likely be in phases. Businesses will need to follow the requirements of their phase.
  • Just because a business can open, doesn’t mean it has to or should. You will need consider your workforce and ability to meet government requirements.
Safety

• Federal & State Guidance:
  
  • Federal: [https://www.whitehouse.gov/openingamerica/](https://www.whitehouse.gov/openingamerica/)
  • New Jersey: [https://covid19.nj.gov/](https://covid19.nj.gov/)
  • Connecticut: [https://portal.ct.gov/coronavirus](https://portal.ct.gov/coronavirus)
Safety

- Industry-Specific Guidance:
  - Consider whether your industry has issued guidance. Possibly trade associations or other local advocacy groups.

- Collective Bargaining Agreements:
  - CBAs will need to be considered. If you have a CBA, this is probably not the webinar for you.
Safety

• What are some of the laws that apply?
  • OSHA: requires that employers provide a workplace free from recognized hazards that are causing or are likely to cause death or physical harm to employees.
  • Americans with Disabilities Act
  • Anti-Discrimination Laws
  • Of course, it is important to follow the law, but much of this analysis that you will undertake to determine how to return to work will be based on guidance from various agencies like the CDC, OSHA, EEOC, FDA and state and local governments and agencies.
Some Safety Issues You Should Think About Before Returning to the Workplace
Safety

- Who is going to decide when to reopen your workplace?
  - You should have a team in place that is up to date on guidance and who will implement the re-opening process.
- Which employees will return and when?
  - How will you address vulnerable populations?
  - Will you open the office in shifts?
  - Will some people continue to work remotely to lessen chance of contagion or to help decrease density?
  - Will you allow travel? What travel restrictions will be in place?
  - Don’t forget that you still need to follow the ADA, anti-discrimination laws, etc. when determining who comes back to work.
Safety

• What precautions have been taken to ensure safety in the physical workplace?
  • Will you need to reconfigure the office in order to maintain social distancing standards? Spacing? Barriers?
  • Will you require employees to wear face masks/coverings? Gloves? Other PPE?
  • Do you have an adequate supply of cleaning products? Hand sanitizer?
  • Will you allow visitors, clients, customers, etc., on your premises? If so, how will you handle them?
  • How will you handle communal spaces like copy rooms, break rooms, lunch rooms, lobbies, waiting rooms, conference rooms, bathrooms?
Safety

• What precautions have been taken to ensure safety in the physical workplace (cont.)?
  • What protocols are in place for general cleaning?
    • Does the landlord/property manager/property owner (and that might be your nonprofit) have a cleaning plan for increased general cleaning? A plan for increased cleaning of “high touch” areas like lobby doors and elevator buttons?
    • Is there a cleaning plan if someone in the workplace is diagnosed with COVID-19 and has been in the workplace recently? Will you need to provide a “deep clean” of the premises?
    • Is there a protocol for elevator use other building common areas like hallways, stairwells?
Safety

- Do you have a plan for a known COVID-19 case or possible exposure in your workplace?
  - How will you communicate to employees? Clients? Other key constituents? Remember you can not disclose the name of an employee who tests positive.
  - Will you close?
  - Will you remain open with limited staff? Increased cleaning protocols?
  - Will you relax time off options for employees who do not want to come/ can not come to work because of possible exposure?
  - Do you have a back-up work plan if a number of your employees get sick?
  - Do you have a communicable disease policy?
Safety

- Are you going to implement a screening protocol for employees before they can come back to the workplace?
  - Temperature checks? Diagnostic testing? Questionnaire?
    - If you are, you’ll need to implement a protocol for doing so and it should comply with CDC recommendations.
  - What are the objective criteria for the test?
  - Where will you get supplies if considering testing?
  - Who is going to conduct tests?
  - What do you do with the results?
  - How do you keep the result confidential?
  - How do you ensure uniformity in the testing process?
  - Don’t forget the ADA and anti-discrimination laws.
Safety

• Do you have a plan for another full office closure? It would not be surprising if there were “rolling closures” for a period of time

  • Will employees telework?

  • If that is the case, consider what has worked and what has not worked and make improvements now.

• Do you have a plan for another school closure? What if schools do not open in the fall? How will employees who have school-age children work if they need to be home for childcare reasons?
Safety

• Do you have a plan for communicating with employees about the re-opening?
  • Employees should be trained on new safety protocols.
  • Some people will be scared to return. Do you have a plan to address questions and concerns about your plans?
Leaves of Absence/Time Off
Leaves of Absence/ Time Off

• New Laws Related to COVID-19
  • FFCRA
  • Emergency FMLA
  • NY COVID Law

• Existing Laws
  • FMLA
  • NY PFL
  • CT FMLA
  • CT Sick Leave
  • NJ Sick Leave
  • Westchester County, NY Sick Leave

• Company Policies
  • Will you need to revise them?
FFCRA: Emergency Paid Sick Leave
Emergency Paid Sick Leave

• Provides emergency paid sick leave for COVID-19 related illnesses
• Went into effect on April 1, 2020
• Will expire on December 31, 2020
• Applies to employers with 500 or fewer employees
Emergency Paid Sick Leave

- Applies to all employees, without regard to how long they have been employed.
- Provides for 80 hours of paid sick time (over 14 calendar days)
  - for full time employees (40+ hours per week)
  - prorated paid sick time based on an average of part time employees’ hours worked in the six months prior to taking leave for the employer.
Emergency Paid Sick Leave

For the following reasons:

1. Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine related to COVID-19;
3. Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
Emergency Paid Sick Leave

4. Employee is caring for individual who is subject to an order as described (1) or has been advised as described in (2);

5. Employee is caring for a child if school or place of care has been closed, or child care provider is unavailable, due to COVID-19;

6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
Emergency Paid Sick Leave

- Employee must be paid 100% of their regular rate of pay or the applicable minimum wage, whichever is greater.
- Employers are only required to pay employees two-thirds of their regular rate of pay if they are using leave for reasons (4), (5), or (6).
- The amount of payment for EPSL for reasons:
  - (1), (2), or (3) can be capped at $511 per day and $5,110 in the aggregate:
  - (4), (5), or (6), can be capped at $200 per day and $2,000 in the aggregate.
Emergency Paid Sick Leave

• Employees cannot be retaliated against for using EPSL.
• Employees should be returned to work in the same or substantially similar job they had before they used EPSL, with some exceptions.
• See DOL Guidance: https://www.dol.gov/agencies/whd/pandemic/ffrca-questions
Emergency Paid Sick Leave

- The Secretary of Labor is authorized to issue regulations to:
  - Exclude certain health-care providers and emergency responders from receiving this new EPSL benefit;
  - Exempt small businesses with fewer than 50 employees from providing EPSL for the fifth reason set forth above when providing such EPSL would jeopardize the viability of the business.
FFCRA: Emergency FMLA
Emergency FMLA

- Provides paid time off for certain caregivers for COVID-19 related closings.
- Went into effect on April 1, 2020.
- Will expire on December 31, 2020.
- Applies to employers with 500 or fewer employees.
Emergency FMLA

• The changes to FMLA establish a new category of leave under the FMLA:

  a leave for “a qualifying need related to a public health emergency related to COVID-19,” defined as when an employee is unable to work (or telework) due to a need for leave to care for the employee’s son or daughter who is under 18 years of age if the child’s school or place of care has been closed, or the child care provider of the child is unavailable, due to a public health emergency.
Emergency FMLA

- Employees only need to have been employed for 30 calendar days before they become eligible for a leave related to a public health emergency.

- This is instead of the usual FMLA requirements (that require an employee to have worked for the employer for at least 1 year, worked for 1250 hours in the year before FMLA leave is taken, and worked at a location where at least 50 employees are employed at the location or within 75 miles of the location).
Emergency FMLA

• The first 10 days of the leave are unpaid, though an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave.

• After the initial 10 days of leave, the employer must pay the employee for up to 10 weeks of leave at a rate no less than two-thirds of the employee’s regular rate of pay.

• The amount of paid leave can be capped at $200 per day and $10,000 in the aggregate.
Emergency FMLA

• Employees of employers with 25 or more employees are subject to the same job protections regularly provided in the FMLA.

• Generally speaking, an employer will need to return the employee to the same job or a substantially similar job upon return from leave.

• Employers with fewer than 25 employees are excluded from this requirement if the employee’s job no longer exists due to an economic down turn caused by a public health emergency.

• Employer would be required to try to return the employee to work if circumstances improved during a defined one-year period.
NY COVID-19 Sick Leave

Back At Work
Back At Work

• Encourage/ require employees to stay home when they are sick.
• Implement your cleaning/sanitation plan. CDC has guidance on this topic.
• Encourage proper sanitation procedures while at work:
  • Wash hands often
  • Sneeze/ cough into a tissue or elbow
  • Avoid touching your face
  • Don’t shake hands
  • Frequently clean high touch areas and workstations
  • Engage in social distancing
  • Avoid sharing food, drinks, cups, utensils, etc.
Back At Work

• Some of the many issues that will likely come up…
  • Can you send someone home if they are sick?
  • Can you require an employee provide a doctor’s note to return to work after being sick?
  • What if an employee does not want to come back to work?
    • Afraid of getting sick
    • Lives with or cares for someone who is vulnerable
    • Commuting concerns
  • What if an employee is not following your new safety standards?
  • Have you complied with posting requirements related to new laws?
Final Thoughts
Final Thoughts

- This information in this presentation will change
- Focus on what you can control
- Be flexible
- Stay informed
- Be reasonable
- Be kind
For More Information

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