

Legal Issues Checklist in Returning to Work

Contact



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Plan

- Determine if your business is permitted to resume normal operations under applicable state orders and whether any restrictions apply. Make sure to check both state and local guidelines.
- Stay informed of the information coming from the CDC, WHO, OSHA, and other reliable sources of COVID-19 information as the current status is evolving.
- Stay abreast of industry developments. Certain industries have more specific guidelines in place. Make sure you are aware of them and incorporate as appropriate to your business.
- Understand how other businesses in your community are responding.
- Assess your particular workplace and determine areas that are high risk. Plan how you will mitigate those risks.
- Determine who is responsible for your workplace maintenance and cleaning. Do you own the building or do you have a landlord? Will you work with a vendor or do the cleaning yourself?
- Is there brand or reputational risk to your business for reopening? Should you consider waiting?
- Consider workers' compensation issues. Under your applicable state law, what will your workers' compensation insurance cover?
- Keep in mind there are anti-discrimination laws still in effect, so make sure any policies and protocols implemented do not discriminate against members of a protected class.

Communicate

- Clearly tell your employees what changes have been made and what to expect.
- Over-communicate. This is new for everyone and many changes are happening quickly. Make sure you are communicating in ways that your employees are most likely to receive and understand the information. Consider using more than one communication channel.
- Designate a point person to handle questions.
- Provide timely updates to your employees and solicit feedback from your employees.
- For judgment calls based on the specifics of your business, explain your rationale.

- Determine whether any signage around the workspace is mandated by law. Determine whether optional signage would be helpful to maintain policy adherence.

Document

- Draft and implement written policies. Make sure that the policies are being implemented uniformly across your business. If there are exceptions to rules, make sure they are documented.
- Update your emergency response plan. If you did not have one yet, now is a good time to put one together. Your response plan should include:
 - Key team members and responsibilities.
 - Alternative plans if there is a supply chain disruption or vendor issues, which impact your business. Identify those alternatives and plan for same.
 - Communication plan. How is information going to be conveyed to your key stakeholders?
- Protocols to consider:
 - Reporting guidelines for sick employees. Is there an HR team member responsible for handling this or how is this information going to be kept confidential? How will other employees be notified if they were exposed to a sick employee? Will you need to notify customers?
 - Cleaning/Disinfecting. Who is going to handle the cleaning and disinfecting and what are the specific steps and materials needed. If using a vendor, who at your business is responsible for supervising their work?
 - Visitors. If you have visitors at your business normally, how are you going to handle? Consider a no visitors policy at this time. If you are consumer facing business, how are you going to limit the number of people coming into close contact?
 - Screening. Consider temperature screening protocol for your employees. Will you provide thermometers to your employees? Will you check temperatures once at work? Who will be doing the checking? How will the information be kept private? Consider using a third party healthcare provider vendor to conduct the screening to limit your liability.
 - Personal Protective Equipment. Are you providing to your employees? For employees working in close proximity with others, providing PPE is likely a good idea (although not legally mandated in most jurisdictions). Make sure employees know how to use it. How is the policy going to be enforced?
 - Social Distancing. Consider limiting the number of people in your workspace at any one time such that social distance of at least six feet can be maintained. If there are roles that cannot be completed with social distancing, how are you going to mitigate the risk? Consider providing enhanced PPE to employees in roles where there is unavoidable social proximity.
 - Work From Home. What is your policy on employees teleworking? Are there certain job descriptions that can and that cannot? Spell those out clearly so there is a uniform plan as to who is permitted to work from home. Are there going to be special considerations for high risk employees? Make sure any exceptions are documented and check all policies against existing anti-discrimination laws to ensure compliance.
 - Travel. Document your business's policy as to travel. Will employees have heightened screening if they have traveled? Are there additional precautions that need to be taken if traveling on business? Consider limiting all non-essential travel.
 - Common Spaces. What is the plan on how to handle common areas, including breakrooms and restrooms? Will there be enhanced cleaning? Are the number of people allowed in the areas at one time limited?
- Update policies frequently and as needed. As you see how the policies and protocols work in practice, revise them as needed to best suit your business. Try and document the changes and rationale as much as you can.

For additional information on the legal issues surrounding reopening your business or assistance with your return to work plans, please contact [Sara Tucker](#). Sara has specific experience advising Fortune 500 companies related to product liability risk, FDA regulatory counseling, and emergency response planning.

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