

## 1. Planning and Communication

- Decide the right time to reopen**
  - Monitor federal, state, and local closure orders, re-opening guidelines, industry practices, and geographic considerations ([federal guidance](#))
  - If enrolled in the SBA Paycheck Protection Program, remember employers have until June 30, 2020 to restore full-time employment and salary levels for changes made between February 15 and April 16, 2020
- Determine who should return to work first**
  - Identify essential business functions and essential employees
  - In determining essential employees, consider the nature of the job, the functions of the position and ability to return to work safely
  - Consider profitability of certain position to manage cash flow in the near term
  - Consider structuring a phased ramp-up to limit the spread of the coronavirus
  - Determine minimum staff necessary to sustain operations in the event of increased absenteeism
  - Evaluate whether seniority or recall rights are implicated, including furloughs
  - Remind all decision-makers in these decisions of nondiscrimination policies
- Prepare communication to employees regarding return to work**
  - Establish a return to work timeline
  - Establish a plan for employees maintain communication with management
  - Identify and explain to employees steps taken to ensure safety
  - Review any applicable collective bargaining obligations to make changes to the workplace upon re-opening
- Develop a written protocol for confirmed or suspected COVID cases**
  - Protocol should include at minimum:
    - Employees should not come into work if sick
    - Identify necessary notification procedure if symptomatic
    - Designate point(s) of contact for reporting and questions
    - Communicate with employees impacted by potential exposure
    - Identify remedial sanitization measures for impacted employee(s)
    - Identify triggering events for quarantine procedure
    - Establish the duration of quarantine and conditions for return
  - Assess reporting obligations under OSHA and state workers' comp. laws
- Anticipate employee anxiety, rumors, misinformation, and plan accordingly**
  - Leaders should be visible
  - Communicate frequently with employees (low cost options may include anonymous surveys).

- Respond to questions with the information currently available, even if the answer is "we do not know right now" in order to dispel myths and rumors
- Remind employees of any existing Employee Assistance Programs
- Consider providing additional alternative resources (e.g. counseling, working parent discussion groups, etc.) to help employees manage stress and anxiety
- Prepare employer's response for possibility workers may refuse to work, simultaneously call in sick, strike or walkouts.
  - Train key management on protected concerted activity in a union and non-union setting

## 2. Workplace Safety

- Review applicable OSHA and CDC standards**
  - Monitor local and federal guidance for best practices and requirements for employers ([OSHA guidance](#), [CDC guidance](#))
- Take steps to make the workplace more safe**
  - To the extent possible, implement social distancing requirements, such as staggered shifts, breaks, spacing between desks and community areas
  - Limit in-person meetings in favor of virtual meetings where possible
  - Minimize physical contact (i.e. handshakes, cough etiquette, etc.)
  - Limit or close off gatherings in common areas (e.g. breakrooms or kitchens)
  - Intensify janitorial sanitation
  - Make efforts to increase air exchange in the building, if possible
  - Educate employees regarding best hygiene practices
  - Promptly respond to any safety related concerns
- Consider whether face masks, gloves, or other protective equipment are mandatory or optional**
  - If mandatory* - company must provide or reimburse employees for masks, gloves, and other protective equipment
  - If optional* - determine whether employer will place any *limitations* or restrictions on employee created protective equipment or the type of masks, gloves, or protective equipment permitted
  - Ensure protective equipment does not otherwise pose a safety concern
- Consider temperature checks and COVID testing for employees and/or visitors**
  - Results of temperature checks are a medical record and (if recorded) must be treated with appropriate confidentiality and recordkeeping
  - Consider whether screening time is compensable
  - Assess the feasibility and advisability of conducting employer paid Covid-19 testing for employees

- Create a policy restricting non-essential employee travel**
  - Minimize non-essential travel for work
  - Consider how essential travel is defined
  - Consider mandatory notification of personal travel
  - Implement additional documentation requirements for employee movement to make contact tracing more effective and accurate
- Assess changes to hiring and training processes required by social distancing obligations**
  - Train managers regarding “do’s” and “don’ts” of preemployment inquiries concerning medical conditions

### 3. Leaves of Absence and Workplace Accommodations

- Teleworking issues**
  - Consider whether remote work is a necessary reasonable accommodation under the ADA or if a special accommodation is necessary for members of a vulnerable population
    - For example, is there anything unique or special about the employee’s concern for returning to the workplace?
    - Is the employee in a protected class or high-risk population because of age or underlying health condition?
    - Is the employee caring for an individual in a high-risk population?
  - Prepare a response to requests for continued remote work based upon the essential functions of the job
  - Protect data from cybersecurity breaches with a teleworking workforce
- Train management team to ensure understanding of new leave options, eligibility and retaliation concerns**
  - Assess unused leave benefits available under the Families First Coronavirus Response Act (FFCRA)
  - Consider eligibility for additional leave available, including leave under the FMLA
  - Review applicable state or local paid sick leave laws and company vacation and sick leave policies
  - Ensure management understands any negative comments about use of FFCRA leave may support claims of retaliation
- Flexibility in leave policies**
  - Consider new COVID policies relaxing preexisting leave policies that are explicitly intended to be temporary in duration
- Openly communicate the company’s policies and position on leaves of absence**
  - Create a clear process for requesting leave and identifying the amount of leave, if any, available

### 4. Employee Benefits and Compensation

- Review whether any changes need to be made to health and welfare plans**
  - Determine whether employees returning to work will need to re-enroll or update prior plan elections

- For cafeteria plans which may have offered individual spending accounts for a year, determine whether unused portions during an interim absence will be restored upon rehire
- Determine whether any probationary periods apply during which a rehired employee will not be covered (for instance, Union benefit programs)

### **Evaluate whether returning employees owe any portion of health care premiums while furloughed**

- Develop a reasonable plan for employee to pay back health care premiums, if necessary
- Consider state and local laws regarding wage deductions

### **Consider potential issues relating to retirement / pension plans**

- Determine whether employees returning to work will need to re-enroll or update prior plan pre-tax deferral elections
- Review retirement plans and consider whether there has been a break in service and, if so, what the implications might be (vesting, for instance)
- Evaluate the potential need for plan amendments to modify conditions for annual benefit allocations (e.g. minimum hours requirements)
- Manage administration of plan loan program for returning workers (e.g. restart wage deductions for loan repayments)

### **Review employee compensation and bonus programs**

- Determine if any changes to compensation must be made, and review applicable laws relating to notice of wage changes
- Calculate the effect of closure on existing bonus or incentive plans

### 5. Employee Morale

- Communicate Regularly**
  - Communicate the steps the company is taking to ensure safety
  - Remind employees of benefits offered
  - Request feedback and internalize it. Consider anonymous surveys as a low cost and effective mechanism to gauge what is working.
- Address any health and safety concerns brought by employees promptly**
  - Aim to respond to specific employee concerns promptly
  - Establish a communication channels for employees to address concerns
- Remind employees that discrimination and retaliation is strictly prohibited**
  - Review non-discrimination policies and recirculate, as needed
  - Train managers on how to respond to offensive or discriminatory comments regarding the coronavirus and certain groups of individuals