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Business Reopening and Return to Work Checklist

by Practical Law Labor & Employment

Status: **Maintained** | Jurisdiction: **United States**

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A Checklist of considerations for private employers in the US as they plan for and implement a business reopening or return to the workplace after being ordered to close, reducing operations, or shifting to a fully remote environment in response to a public health emergency, such as the COVID-19 global pandemic. This Checklist addresses employers' legal and regulatory obligations and best practices to implement health and safety protocols to protect employees and prevent further spread of the disease, including social distancing, workplace modifications, vaccination policies, extended teleworking arrangements, and other reasonable accommodations. It is based on federal law but highlights those issues where state or local laws or directives may impose different or additional requirements.

In response to a public health emergency, federal, state, and local governments often impose measures to prevent the further spread of the disease and protect workers and the general public. Those measures may include closing non-essential businesses and issuing shelter in place or stay at home orders, such as those issued in response to the 2019 novel coronavirus disease (COVID-19) global pandemic. Even when not mandated, businesses that can productively do so may transfer all or most of their workforce to remote work arrangements.

Once the public health emergency ends, or conditions sufficiently improve, businesses may prepare to reopen and reengage their workforce, often in a rapidly evolving legal, economic, scientific, and social climate. This Checklist addresses legal and practical considerations for employers as they plan for and implement business reopening protocols to safely bring employees back to the workplace. Employers must comply with state and local directives as part of any reopening plan (see COVID-19: Employment Law and Development Tracker: State Laws and Directives and COVID-19: Select State and Local Business Closures and Reopenings Tracker (US)).

Although this resource was created to address business closures and disruptions resulting from the COVID-19 pandemic, this Checklist may be useful to employers reopening a business after a temporary closure for other reasons, including natural disasters or economic downturns.

For information about potential liability under labor and employment laws when reopening, see Mitigating Employer Reopening Liability Checklist.

For more on COVID-19 and employment generally, see Employment Global Coronavirus Toolkit. For resources relating to COVID-19 generally, see Global Coronavirus Toolkit.

Develop and Communicate Back-to-Business Plan

- For those just beginning to plan reopening, determine the company's overall strategy and approach for resuming business operations, including assessing:

  – any legal limitations on reopening (as was true in the worst of the COVID-19 pandemic);

  – reopening at full or partial capacity; or

  – reopening in stages.

- Assemble a reopening task force or team or use an existing reopening response team, with representatives (or at least input) from various parts of the business, including:

  – human resources (HR);

  – in-house legal department;

  – IT;

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– facilities or operations;

– procurement;

– finance management;

– government relations;

– public relations;

– senior management; and

– line managers.

• Coordinate with third-parties and external business partners, as applicable, and consider their potential involvement and role in the reopening plan. Those individuals and entities may include:

– building management and real estate owners;

– contractors, such as cleaning services;

– government representatives;

– trade or merchant associations;

– insurance providers and agents; and

– outside legal counsel.

• Conduct a risk assessment of the workplace and employees' work activities and document this analysis. Recognize that there is no one-size-fits-all approach and best practice varies and may continue to evolve, depending on:

– whether the business was conducting some level of business operations during the shutdown, as an essential business or otherwise;

– what is permitted, prohibited, and recommended in the jurisdiction if relevant guidance exists;

– the company's industry, such as whether it is customer-facing or production or manufacturing;

– the company's ability both practically and financially to implement safety measures for employees and customers, such as providing physical barriers, face masks, and hand sanitizer supplies if required or if the company opts to implement those ongoing safety measures;

– whether staff or third parties that may be or have been on the premises have been ill with or exposed to COVID-19;

– whether staff or third parties have been vaccinated (be sure to track the latest on vaccine passports and vaccination as a protected class in COVID-19: Employment Law and Development Tracker);

– the location of the company's headquarters and workforce, the density of that area, and the community experience with the virus and any variants and applicable regulations in those locations;

– the workforce size and density within the physical workplace;

– the workforce composition, such as the percentage of the workforce that may functionally work remotely or on a hybrid basis;

– the degree to which employees rely on public transportation for commuting; and

– whether the company employs unionized workers covered by a collective bargaining agreement (CBA).

For more information, see Workplace Hazard Assessment Checklist, COVID-19 Prevention Program in the Workplace Checklist, and Standard Document, Infection Prevention and Control in the Workplace Policy.

• Consult the latest guidance from public health officials, including the Centers for Disease Control and Prevention (CDC) (see CDC: COVID-19 Website and Understand the Applicable Legal Framework). Recent guidance includes:

– CDC: Guidance for Businesses and Employers Responding to COVID-19 (updated March 8, 2021);

– CDC: General Business FAQs (updated May 24, 2021);

– CDC: COVID-19: Businesses and Workplaces: Plan, Prepare, and Respond (updated April 2, 2021);

– CDC: Post-Vaccination Considerations for Workplaces (updated April 2, 2021);

– CDC: Guidance on Limiting Workplace Violence Associated with COVID-19 Prevention Policies in Retail and Services Businesses (updated September 1, 2020);

– CDC: Interim Guidance for SARS-CoV-2 Testing in Non-Healthcare Workplaces (updated March 17, 2021);

– CDC: Workplace SARS-CoV-2 Testing: Consent Elements and Disclosures (updated January 21, 2021);

– CDC: Manufacturing Workers and Employers Interim Guidance from CDC and OSHA (updated February 5, 2021); and

– CDC: COVID:19: Travel (updated April 2, 2021).

– CDC: When You've Been Fully Vaccinated (updated June 17, 2021).

- Consider using the guiding principles iterated by the Occupational Safety and Health Administration (OSHA) in its updated June 10, 2021 Guidance (OSHA: Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace, focusing on protecting unvaccinated and at-risk individuals. (updated January 29, 2021).

  (See also Develop and Implement Workplace Health and Safety Protocols.)

- Determine the company's philosophy on compliance and benefits, such as whether the business intends to:

  - provide the minimum benefits and accommodations required by law or offer greater benefits on a voluntary basis; or

  - comply with minimum safety and health standards or take more aggressive measures to protect worker health and safety beyond what is minimally required.

- Remember that reopening is a process, likely done in phases, not a "grand reopening" event, though this may vary by:

  - jurisdiction and applicable reopening orders and guidelines in addition to requirements specific to vaccination passports and vaccination status as a protected class;

  - vaccination rates; and

  - community infection rates (impacted by surges and the appearance of virus variants).

- Understand that the business reopening is not necessarily an immediate return to pre-pandemic normal operations. Expectations have changed for both employees and customers.

- Build flexibility into plans and protocols to anticipate the potential need for future scale backs or closures, though this likelihood is decreasing as vaccines become more available to the general population.

- Develop or refine business continuity plans to prepare for a resurgence of the virus or virus variants or a change in legal obligations or government directives after initial reopening.

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