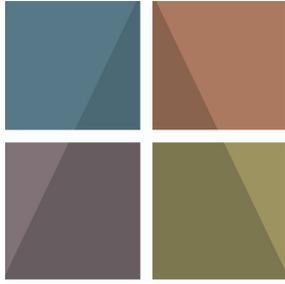


COVID-19 PANDEMIC:

THE EMPLOYER'S GUIDE
TO RETURNING TO
THE WORKPLACE



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INTRODUCTION

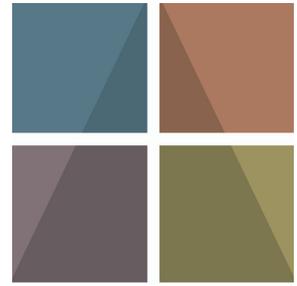
Employers have experienced a tremendous impact to operations as a result of the coronavirus (COVID-19) pandemic. As employers consider resuming normal business activities, or a phased approach, there are a variety of resources available for guidance. Returning to work will look different for each employer; factors such as number of employees, industry, risk of exposure, and physical location, among others, must be considered in order to ensure a smooth and safe return for employees.

In this publication, we have provided some best practices to consider as you undertake this unprecedented action.



STEPS FOR EMPLOYERS TO TAKE BEFORE EMPLOYEES RETURN TO THE OFFICE

1. PREPARE A RETURN TO WORK ACTION PLAN
2. PREPARE AND IMPLEMENT SAFETY MEASURES
3. COMMUNICATE POLICIES AND PRACTICES
4. TRAIN SUPERVISORS AND MANAGERS



1. PREPARE A RETURN TO WORK ACTION PLAN

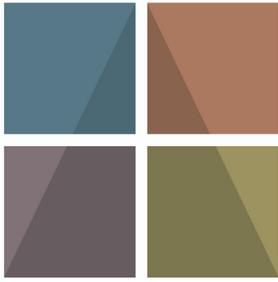
One of the top concerns for employers is employee safety and the transmission of COVID-19 in the workplace. There remain many local, state and federal requirements that employers must be aware of as they begin to reopen. It is now imperative to prepare and develop a COVID -19 action plan for the workplace.

The Centers for Disease Control and Prevention (CDC) and Occupational Safety and Health Administration (OSHA) have issued guidance for employers to follow to mitigate the chances of employees contracting COVID-19 in the workplace. Developing a COVID-19 plan and communicating that plan to employees is paramount for employers to mitigate risk of exposure to liability.

2. PREPARE AND IMPLEMENT SAFETY MEASURES

Pursuant to the Occupational Safety and Health Act (OSHA), employers have a “general duty” to maintain a safe working environment. Although there is no individual cause of action under OSHA, a violation of OSHA, such as a failure to follow specific OSHA rules for personal protective equipment, could be used in some jurisdictions to establish “negligence per se” in a wrongful death or injury action or might result in an “intentional” action by the employer that could void workers’ compensation protection for the employer.

The most effective way for employers to mitigate risk is to closely track and follow health guidance concerning safe workspaces including the CDC, OSHA and state and local guidance to determine when and how the workplace should reopen. Employers are advised to adopt measures to promote a safe and healthy work environment. OSHA has recently adopted Guidance on Preparing Workplaces for COVID-19.



OSHA GUIDANCE - LEVELS OF RISK EXPOSURE

Worker risk of occupational exposure to COVID-19 varies from low to very high risk. To help employers understand their risk exposure and recommended safety precautions, OSHA has divided job tasks into four levels of exposure.

RISK OF EXPOSURE

RISK LEVEL DEFINED

Low Risk of Exposure

Jobs do not require contact with people known to be, or suspected of being, infected with COVID-19, nor frequent close contact with (i.e., within 6 feet of) the general public.

Medium Risk of Exposure

Jobs require frequent and/or close contact with (i.e., within 6 feet) people who may be infected with COVID-19, but who are not known or suspected COVID-19 patients; includes those who have frequent contact with international travelers returning from locations with widespread COVID-19 exposure.

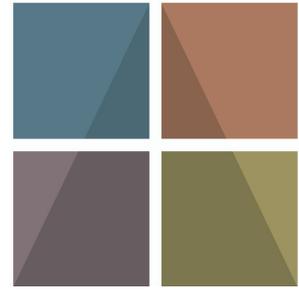
High Risk of Exposure

Jobs with high potential for exposure to known or suspected sources of COVID-19; including healthcare delivery support staff, medical transport workers and mortuary workers.

Very High Risk of Exposure

Jobs with high potential for exposure to known or suspected sources of COVID-19 during specific medical postmortem, or laboratory procedures; including health care workers, laboratory personnel, and morgue workers.

3. COMMUNICATE POLICIES AND PRACTICES



RETURN TO WORK PRACTICE

Create a culture that actively encourages and supports a flexible work schedule and a stay at home policy for sick workers.

Workers who exhibit symptoms of COVID-19 should be separated from all other workers and sent home.

Be flexible with sick-time, accrued time off, or other out of office policies and allow workers to use any type of leave available.

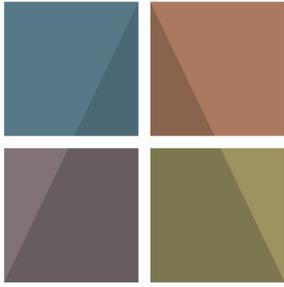
Modify the workplace to help reduce COVID-19 contamination and encourage social distancing.

Consider accommodations for workers with elevated risk for serious illness from COVID-19.

EMPLOYEE SCREENING

Employers are allowed to ask all employees if they or any member of their family is at risk of being sick or carrying COVID-19. Management may ask certain questions or have employees self-certify in a daily log.

Employers should create a policy when employees exhibit symptoms related to COVID-19, have communicated that they have been in contact with persons who have COVID-19, or refuse to answer the required screening questions. Any employee record of personal medical information should be maintained in the employee's personnel medical file.



BEST PRACTICES FOR EMPLOYEE TEMPERATURE CHECKS

Establish a consistent process and written policy.

Consider whether to use a third party or a designated employee to conduct testing (with appropriate confidentiality agreements in place).

Provide private space for conducting checks.

Use no-contact thermometers or thermal scanners, and ensure proper disinfection.

Ensure social distancing if employees must wait in line.

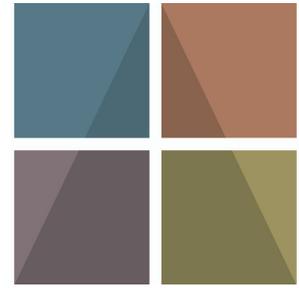
Compensate non-exempt employees for time spent waiting, if applicable.

Establish a policy for fever of 100.4 degrees or higher, or for employees who refuse to have temperature taken.

Determine whether to conduct checks as a “go/no go” or to keep a log of results.

Ensure compliance with EEOC guidance regarding collection and storage of results and other medical information.

Notify employees that a COVID-19 free workplace is not guaranteed, even if temperature checks are conducted.



BEST PRACTICES IF AN EMPLOYEE TESTS POSITIVE FOR COVID-19

Express sympathy and clearly communicate your support.

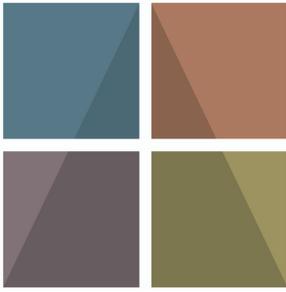
Act quickly to minimize risk of spread; isolate employee, send employee home or require employee to remain at home.

Advise employee to seek medical attention.

Identify other employees in close contact with the positive employee.

Communicate to workers that an employee (without revealing the employee's identity) has tested positive and advise anyone who has been in close contact to self-isolate, monitor for symptoms and contact medical professionals as needed.

At all times, protect the confidentiality of all employees.

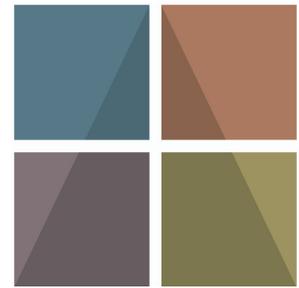


CAN I REQUIRE MY EMPLOYEES TO SIGN A WAIVER UPON RETURNING TO WORK?

Employers may wonder whether, to limit liability, they can ask employees to sign advance waivers of liability before bringing them back to work. Prospective waivers of claims by employees in favor of their employers are generally considered void as against public policy because of the unequal bargaining power of the parties, and are typically unenforceable. Moreover, employees cannot be asked to waive their access to their workers' compensation benefits. Independent contractors, on the other hand, can be asked to sign waivers; most contracts between employers and contractors already contain indemnification provisions in favor of the employer.

The most effective way for employers to mitigate risk is to closely track and follow health guidance concerning safe workspaces including the CDC, OSHA and the state and local guidance to determine when the workplace should reopen. Employers are advised to adopt measures to promote a safe and healthy work environment, and communicate with employees about the safety measures the employer is taking, which could include, implementing prescreening procedures for employees attending work; adopting social distancing measures in the workplace; and revising policies concerning schedules, leave and telework.

4. TRAIN SUPERVISORS AND MANAGERS



Management must set the tone and serve as a resource for employees returning to the workplace. Managers and supervisors will need to encourage employees' health and safety as well as communication regarding the transition back to work and possible leave requests.

If an employee is diagnosed with COVID-19 management must communicate to the employee that the employee stays home until cleared by a medical provider. Emergency Paid Sick Leave may be available where required by Families First Coronavirus Response Act (FFCRA).

The Company will monitor and respond to absenteeism at the workplace. Implement plans to continue essential business functions if higher than usual absenteeism.

Supervisors may need to cross-train personnel to perform essential functions so that the workplace is able to operate if key staff members are absent.



This interim guidance is based on what is currently known about COVID-19 as provided by the Centers for Disease Control and Prevention (CDC). The CDC will update their guidance as additional information becomes available. The Occupational Safety and Health Administration (OSHA) also offers guidance on preparing the workplace to protect employees from COVID-19.

Additional information can be found on both www.osha.gov and www.cdc.gov.

We are here to assist you in developing a personalized return to work plan for your business or organization. Please let us know how we can help you navigate these unprecedented times or, if you have additional questions, please contact us at 410.995.5800 or at covid19answers@darslaw.com.