

Blog Post

Re-Opening for Business: Is Your Workplace Ready?

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Employers face a myriad of issues in thinking through whether and how to re-open for business after mandatory closures, or how to thoughtfully phase out teleworking models currently in place for ongoing enterprises. While federal, state, and local authorities haggle over who will decide which businesses can re-open and under what circumstances, employers should start preparing now. In particular for multi-state employers, preparation should already be under way.

Though many return-to-work considerations are evolving, we are confident that the re-opening of America is likely to be staggered, by community, by nature of business, and by the nature of the workers themselves. Regardless, every business will need the basics and should start planning now.

1. Communicate With Your Workforce

Communicate as much information as possible about how and when you expect to resume operations and urge employees to notify you of any concerns in advance. Some employees may be fearful about returning to work; others may be unable to do so pursuant to a doctor's orders. Some may be entitled to an accommodation; others may not. Some may not be needed due to the downturn in business. Some may need help with childcare or transportation. Start communicating in advance of

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bringing them back so you can iron out any issues before you open the doors.

2. Establish Policies and Procedures for Functioning in a COVID-19 Environment

The pandemic requires new policies you may not have had before, covering topics such as:

- Wearing masks and gloves
- Mandatory disclosures prior to entering the worksite
- Regular cleaning and disinfection procedures
- Providing an environment built upon required physical distancing between workers
- Deciding who is to continue to be permitted to telework and under what circumstances
- Limiting travel and imposing requirements upon return
- Restricting the use of shared items and shared spaces, including conference rooms
- Hygiene-related rules, such as requiring workers to wash hands frequently, cover when they cough or sneeze (even with a mask, since cloth masks or scarves do not seal around the face)
- Requiring sick workers to notify human resources and leave work immediately and not return until they meet the current standards set by the Centers for Disease Control
- For employers with fewer than 500 employees, who is entitled and under what conditions to Expanded Family and Medical Act Leave and Emergency Paid Sick Leave under the Families First Coronavirus Response Act, as well as the corollary leave request forms and return from leave forms

3. Decide When and How Staff Will Return

Be careful to consider return decisions in a non-discriminatory way. For example, do not regard all

workers aged 65 and over as “disabled,” or make other assumptions based on stereotypes or generalizations. Similarly, do not assume that parents of young children “don’t want” to come back to work until schools are back in session.

Many employers will take a number of factors into consideration when designing the safest possible physical environments. For example, employers should consider staggered shifts, embracing technology for large meetings, and other means of spreading out workers.

Similarly, employers should establish a protocol for entering the worksite, or re-entering once a worker leaves during the day, with the goal of ensuring that infected or exposed workers are not coming into the workforce. Regardless of the protocol, employees must be notified of that protocol in advance. Will they complete a questionnaire in which they self-report the absence of symptoms and travel? Will you take their temperatures, and if so, will that function be handled in-house or outsourced? What technology will be used? Be careful – some security and temperature scanning systems use facial recognition technology that can implicate biometric data privacy laws in some states.

Finally, employers should determine in advance exactly what steps to take when an employee reports a confirmed or suspected case of COVID-19. Have a communication ready to go to co-workers who were in close proximity, and a plan for physically closing the worksite in accordance with CDC recommendations is advisable.

4. Prepare Your Workspace

Do you need to reconfigure spaces or create one-way traffic flows? Do you need to install hand sanitizer dispensers? Do you need to close or restrict access to communal spaces like the kitchen or conference rooms? Have you thoroughly cleaned carpets, floors, and furniture? What about stairwells and

bannisters? Have you added tissues and wastebaskets to each elevator and clearly instructed riders to depress the selected floor button using that tissue? Do employees have wipes handy to wipe down high touch areas like switch plates and doorknobs? If employees share equipment, what steps will you take to ensure it is thoroughly cleaned between users?

5. Train Your Managers

This is a new normal. Managers need to be sensitive to issues that are likely to arise. They need to be trained to recognize and escalate requests for accommodations under the Americans with Disabilities Act to Human Resources, even when the request is not presented as one. They need to recognize situations that may qualify for traditional FMLA leave or the new Expanded FMLA Leave or Emergency Paid Sick Leave at covered businesses. They need to be prepared to deal with employees who have no legitimate basis for declining to return to work, but may still not want to do so. They need to be ready to distinguish between job duties/positions that can and cannot be performed remotely. They need to understand employee privacy concerns and employer obligations under privacy laws. They need to know about potential pitfalls under the Fair Labor Standards Act, so they can avoid them. Historic management training is simply inadequate in today's shifting legal landscape.

6. Keep Your Eye On The Big (Moving) Picture

Some businesses may cautiously re-open, then be forced to close again with a new outbreak of the virus. Return-to-work planning should specifically contemplate that possibility. This pandemic and public health crisis remains fluid, as is the guidance from federal and state authorities. Businesses should monitor developments from the CDC and the World Health Organization, as well as state and local authorities, and continue to make adjustments along the way.

In some instances, employers may have furloughed workers for the short term, only to determine that even after re-opening that they do not have sufficient work to bring them all back. Careful attention should be paid to determining whom to recall vs. lay off. By summer, if it looks like a furlough or layoff may last more than six months, employers should be mindful of notice obligations under the federal WARN Act or other state statutes. Employee benefit plan eligibility should also be re-examined for longer-than-originally-expected furloughs. Foreign national workers present special issues that should be also be closely monitored for immigration compliance.

When you are ready to begin your re-opening conversations, contact your Akerman lawyer for guidance on these and other issues.

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