

The Road to Reopening: A Thoughtful, Strategic Approach to Resuming Operations

Monday, May 11, 2020

The background of the slide is a diagonal split. The top-left portion is a solid red color, while the bottom-right portion is an aerial photograph of a paved road with a yellow center line, curving through a dense, green forest. The road is visible from the bottom center towards the top right.
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Today's Panelists



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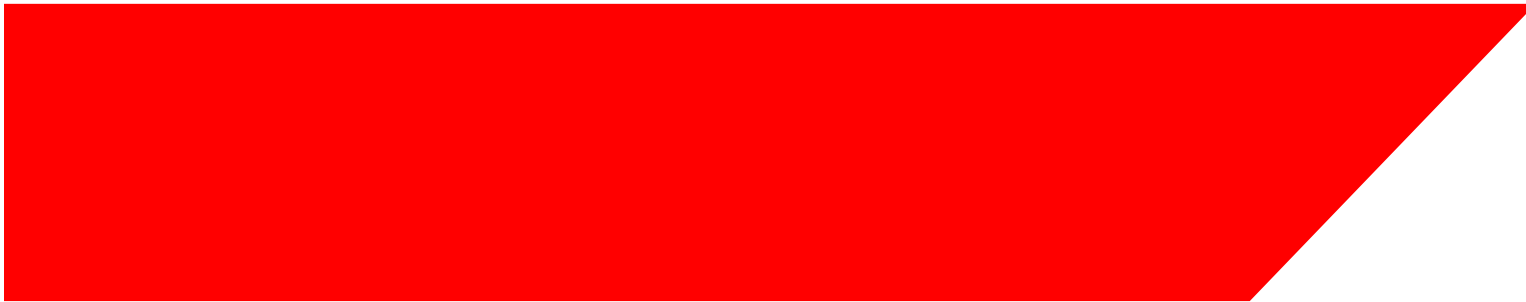
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Agenda

- Common Issues Employers Face in Recalling the Workforce During an Uncertain Time
- Necessity of a Holistic Plan that Encompasses New Policies, Procedures, and Approaches in the COVID-19 Era
- Steps Employers Can Take to Mitigate COVID-19 Spread While Maintaining a Healthy, Productive Work Environment
- Considerations Related to Benefit Plans, Space Configurations, Vendor Management, and Purchasing of Testing Equipment
- Adapting a Plan to Provide Consistency Across Geographies, While Meeting State and Local Requirements

Part One: Common Issues Employers Face in Recalling the Workforce During an Uncertain Time





TIME

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Scared to Return to Work
Amid the COVID-19
Pandemic? These Federal
Laws Could Grant You Some
Protections



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N.Y.C.'s Subway, a 24/7 Mainstay, Will Close for Overnight Disinfection

The system has fully shut down only twice in the past decade, both times as a result of hurricanes.



47 states have ordered or recommended that schools don't reopen this academic year

By Nicole Chavez and Artemis Moshtaghian, CNN

Updated 4:04 PM EDT, Wed May 06, 2020



(CNN) — Most governors in the United States have ordered or recommended that statewide school closures continue for the rest of the academic year to help reduce the spread of the novel [coronavirus](#).

Key Areas of Concern

- Employee fears about health and safety
- Employee concerns about the logistics of getting to work and finding childcare
- Questions about how operations will resume and how it will be different from familiar routines
- Job security concerns

The Philadelphia Inquirer

My employer has called me back to work. Do I have to return?

by [Andrew Maykuth](#), Updated: May 7, 2020- 11:20 AM



TIM TAI / STAFF PHOTOGRAPHER



Some employers are reopening and [calling furloughed workers back](#) to the job. That's good news, right?

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How Best To Manage Employee Concerns

- Listen to your workforce
- Communicate your plan
- Consider a phased approach
- account for variations amongst your worksites
 - a plan that works for your corporate headquarters may be deemed inadequate as applied to frontline employees
- designate a responsible person (or committee) to ensure a consistent approach and timely resolution of issues as they arise
- ensure that the company has adequate equipment and supplies to execute the return to work plan



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The Atlantic

HEALTH

Work From Home Is Here to Stay

The future of jobs after the pandemic is a blurry mix of work, life, pajamas, and Zoom.

OLGA KHAZAN MAY 4, 2020



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Employers Face Hard Decisions

- Who will be permitted to continue to telework?
- Who will be brought back first?
- If you cannot continue to employ everyone, who will you let go?
- Is everyone employed at will or are there employment contracts?
- Is there a collective bargaining agreement?

Part Two: Necessity of a Holistic Plan that Encompasses New Policies, Procedures, and Approaches in the COVID-19 Era



EDITORS' PICK | May 7, 2020, 11:00am EDT

COVID-19: What Should Employers Consider As They Draft A Return To Work Policy?

Alonzo Martinez Senior Contributor ⓘ

Careers

I provide a concise analysis of legal issues affecting employers.



As employers prepare to reopen their workplaces,... [+]
GETTY

With the White House unveiling its [guidelines for opening up America again](#), responsibility has been

Your Plan Should Address

- Timing of reopening – how to decide who will come back when
- Information employees will need to review in advance
- Paperwork they will need to complete in advance
- Procedures for requesting accommodations
- New screening procedures for entering the worksite
- New policies and procedures for safety (equipment, protocols)

A Dollar Tree worker told a man he needed a mask, so he wiped his face on her shirt, police say

By Alec Snyder, CNN

Updated 4:26 PM EDT, Tue May 05, 2020



(CNN) — Police in Holly, Michigan, have arrested a 68-year-old man on assault charges after he entered a

Plan for the unexpected and be ready to pivot

- Assess the risks on an ongoing basis
- OSHA Guidance
- CDC Guidance
 - Masks
 - Symptoms
 - Recommendations for safe return
- Varies by nature of workplace
- Local guidance

Part Three: Steps Employers Can Take to Mitigate COVID-19 Spread While Maintaining a Healthy, Productive Work Environment



Coronavirus Live Updates

THE CORONAVIRUS CRISIS

As Businesses Reopen, A Fight Is Brewing Over Worker Safety Lawsuits

May 6, 2020 · 12:15 PM ET



SCOTT HORSLEY



4-Minute Listen



Fume Bistro owner Terry Letson enters his restaurant in Napa, Calif., on Tuesday. A handful of businesses in Napa have made the decision to begin reopening their dining rooms with occupancy limits

Jessica Christian/The San Francisco Chronicle via Getty Images

Steps Employers Should Take to Mitigate Spread of COVID-19

- Develop a plan
 - There is no one size-fits-all plan
 - Involve supervisors, managers, and front-line employees
- Assess risk level
 - Very high, high, medium, and lower risk

Steps Employers Should Take to Mitigate Spread of COVID-19

- Account for the following components:
 - Responsibility
 - Employee compliance
 - Communication
 - Hazard Assessment
 - Exposure Investigation
 - Hazard Correction
 - Training and Instruction
 - Recordkeeping

Steps Employers Should Take to Mitigate Spread of COVID-19

- Personal protective measures
 - Handwashing, cough etiquette, and cloth face coverings
 - Regular health checks
- Social distancing
 - Eliminate or alter services to eliminate or minimize interaction with the public
 - Continued telework, staggered shifts
 - Restricted use of shared spaces
 - Decrease social contact
 - Limit non-essential travel
- Staying home when ill
 - Flexible leave policies
- Environmental surface cleaning

Looking For A Path To Reopen, Employers Weigh COVID Testing Of Workers

By [Phil Galewitz](#) • MAY 8, 2020

REPUBLISH THIS STORY DISPONIBLE EN ESPAÑOL



(KHN Illustration/Getty Images)

CORONAVIRUS

Sniffing out infections

Dogs are being trained to detect cases



By **Karin Brulliard**

April 29 at 10:38 AM ET

As some states [move to reopen](#) after weeks of shutdowns, infectious disease experts say the prevention of future coronavirus outbreaks will require scaling up testing and identifying asymptomatic carriers.

What Screening Procedures Might You Consider?

- Implement screening protocol for employees and visitors
- Consider what you will measure, how, and where
- Consider safety issues for screeners
- Special issues presented by certain technology

US & Canada



Coronavirus at Smithfield pork plant: The untold story of America's biggest outbreak

By Jessica Lussenhop
BBC News

🕒 17 April 2020



Coronavirus pandemic



How did the biggest cluster in the US emerge in a corner of South Dakota? Infections spread like wildfire through a pork factory and questions

What Happens When an Employee Is Sick at Work?

- Protocol for when and how people will be sent home
- Protocol for how exposed individuals will be notified
 - Florida's re-opening task force recommends that employers implement policies and procedures for workforce tracing
- Protocol for whether workspace will be closed and disinfected
- Protocol for when people can return
 - CDC criteria to discontinue self-isolation is evolving as we learn more about the virus

Part Four: Considerations Related to Benefit Plans, Space Configurations, Vendor Management, and Purchasing of Testing Equipment





The Pandemic May Mean the End of the Open-Floor Office

As businesses contemplate the return of workers to their desks, many are considering large and small changes to the modern workplace culture and trappings.



Space Planning and Vendor Considerations

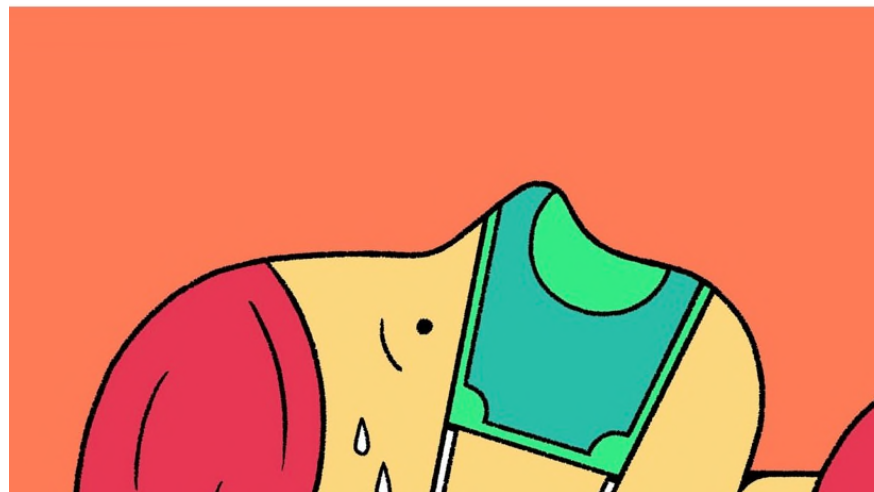
- Reconfiguring space
- Hiring space planners
- Physical distancing reminders and visual cues
- Elevator and other rules
- Food delivery protocol



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Health Savings Accounts Add Options in Pandemic, Including Telehealth

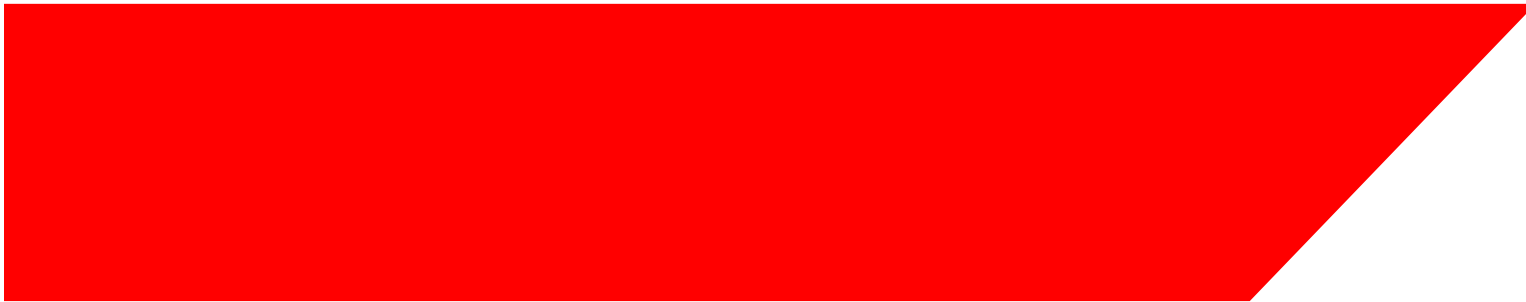
Insurance plans with H.S.A.s may also cover coronavirus testing while keeping the tax perks.



Employee Benefit Plan Considerations

- ERISA Plan issues with use of onsite clinics
- Eligibility provisions of plan and coordination with furloughs
- Coverage of COVID testing and treatment
- Legal changes to afford more flexibility to American workers
 - Flexible Spending Account reimbursements
 - 401k distributions and loans

Part Five: Adapting a Plan to Provide Consistency Across Geographies, While Meeting State and Local Requirements



Some States Look to Reopen, but Others Want More Testing First

Attorney General says Justice Department would consider backing those who claim states' coronavirus policies violate their rights

WORLD

By Jennifer Calfas ⁺, Arian Campo-Flores ⁺ and Ruth Bender ⁺

Updated April 21, 2020 09:33 p.m. EDT

U.S. governors are pursuing different routes to restart local economies hit by the coronavirus pandemic, with several Southern leaders moving to reopen businesses while others voice concern about taking such steps without more robust testing capacity.

In Georgia, gyms, bowling alleys, barbers and other nonessential businesses were preparing to open as early as Friday, even as some mayors pushed back against the governor's new order. Some retailers in South Carolina were already open, and affected businesses in most Tennessee counties will be able to open their doors on May 1.

Governors in Florida, Alabama and Mississippi were looking to task forces to guide their next steps,



In Georgia, gyms, bowling alleys and barbers and other nonessential businesses are preparing to open as early as Friday.

also working to [expand testing and contact-tracing teams](#).

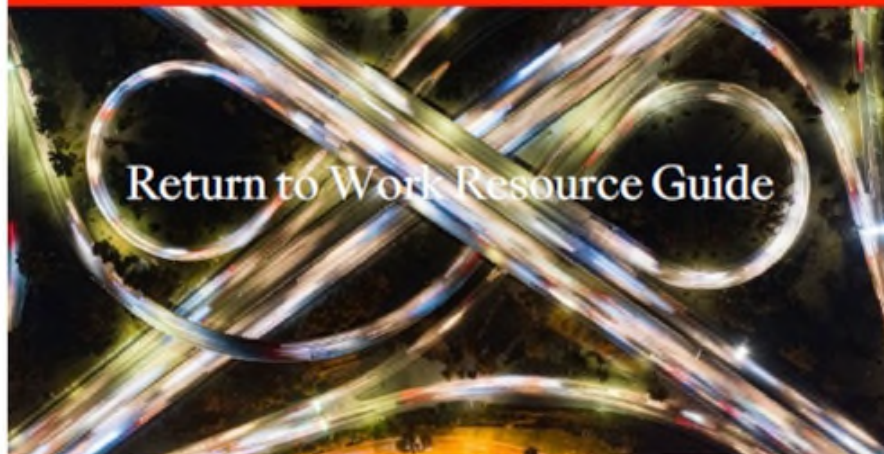
Many officials have warned that reopening too early without extensive testing could lead to a surge in new infections. Public-health experts have asked state leaders to [heed reopening guidelines](#) including a decline in infection rates for at least 14 days, a strong

Wednesday to reopen the economy, and it offers a cautionary note among a number of recommendations.

“Opening prematurely—or opening without the tools in place to rapidly identify and stop the spread of the virus—could send states back into crisis mode, push health systems past capacity, and

Geographic Considerations for Businesses

- Rarely one-size-fits-all
- Multi-district considerations include
 - Community transmission levels
 - State and local agency guidance
 - Florida's Guidelines for re—opening recommends, among other practices, that employers develop and implement training and screen employees and encourage telework until Phase 3 of the re-opening plan
- Most restrictive jurisdiction approach may unduly burden operations and create risk
 - where community transmission is low, invasive screening and collection of medical data may no longer be consistent with business necessity



Resource Center

A Thoughtful, Strategic Approach to Resuming Operations

Employers face enormous complexity as executive orders mandating closures expire or are eased to permit the resumption of commercial activity. Asking the right questions, providing the right answers, and setting policies and guidelines that incorporate guidance from federal, state, and local authorities on practices pose a daunting task to businesses of all sizes.

Akerman's Return to Work Resource Guide provides employers an atlas of key reference materials, form documents, questions, concerns, checklists, policies, and procedures that assist in facilitating a safe and orderly transition to the "new normal." Combined with 24/7 live support from our employer-focused Return to Work team, the Guide provides direction, context, and clarity as the United States "reopens" for business.

Upcoming Webinar - May 11, 12:00 PM ET

The Road to Reopening: A Thoughtful, Strategic Approach to Resuming Operations: As cities and states take different approaches to both the timing and method of easing restrictions, a thoughtful and strategic approach is paramount to safely resuming operations and mitigating risk. Please join us for a virtual roundtable featuring a panel of

The below listing provides an overview of the complimentary section of our library. To review the Guide's content in its entirety and for consultation on the implementation of Return to Work measures, please connect with your Akerman contact or email returntowork@akerman.com.

Important notice: Emailing this address does not create an attorney-client relationship with Akerman. Please do not share confidential or otherwise private information. If your email contains confidential or private information, Akerman may not respond and may consider the email to be unsolicited.

Return to Work Resource Guide - Complimentary Content Reference Guides, Questionnaires, Notices, and Acknowledgements Library:

1. Employee Return to Work Survey
2. Employee Acknowledgement of Conducting Screening, Obligation to Report Symptoms
3. General Notice to Employees of Workplace Exposure to COVID-19
4. Consent to Disclosure of Specific Employee Information Following Positive COVID-19 Test or Known Exposure to COVID-19
5. Authorization/Identification of Potentially Exposed Co-Workers and Others
6. Notice to Exposed Employees of Exposure to Employee With Positive COVID-19 Test at Worksite
7. State Executive Order Tracker

Policies and Related Forms Library:

Families First Coronavirus Response Act (FFCRA) Leave Policies

1. FFCRA Leave Policy (Fewer Than 500 EEs)
2. FFCRA Request for Leave Form (Fewer Than 500 EEs)

Akerman's Return to Work team, who will discuss the many considerations and aspects of resuming business and the components of a complete approach. [Click here to register.](#)



Akerman's Return-to-Work Analysis

- [Reopening for Business: Is Your Workplace Ready?](#)
- [Key Immigration Issues for Employers on Returning to Work](#)
- [About-Face on Face Masks](#)
- [Does Traditional ERISA Fiduciary Liability Insurance Adequately Protect Retirement Plan Sponsors from COVID-Related Cyber Liability? Not Always](#)
- [IRS Issues Helpful Coronavirus Related Guidance for Employers with High Deductible Health Plans](#)
- [Summary of Key](#)