



# COVID-19: Return to work questionnaire

In light of the COVID-19 pandemic, many US businesses remain shuttered or operating at reduced levels. While the ultimate decision to allow employees to return to “in-person” work will likely involve a staggered, multi-faceted, jurisdiction-by-jurisdiction approach, on April 16, 2020, the federal government nevertheless announced a three-phase plan for “re-opening America,” including guidance for state and local officials.

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In the **first phase**, businesses are encouraged to continue remote work, returning to “in-person” work in phases. For businesses that do reopen “in-person” operations, common areas should remain closed and strict social distancing protocols should be enforced. Non-essential travel should remain limited. Special accommodations are recommended for workers who are at high risk. In the **second phase**, business should continue to encourage remote work and, for “in-person” operations, keep common areas closed. Moderate social distancing protocols should be enforced and businesses can resume non-essential business travel. Special accommodations for high-risk workers should continue. During the **third phase**, in states and regions with no evidence of a rebound of COVID-19 cases, employers can resume unrestricted “in-person” staffing of worksites.

State and local governments are recommended to monitor symptoms, active COVID-19 cases and hospital resources in determining when to implement each phase. As noted, the requirements for reopening will vary by jurisdiction and possibly by industry as well; in other words, there will likely be no “one size fits all” approach. Perhaps most importantly, businesses that do reopen “in-person” operations need to ensure that appropriate healthy and safety safeguards are implemented prior to reopening their doors. Rushing to re-open before taking adequate measures to protect workers and customers could have serious ramifications.

This questionnaire is designed to provide a high-level overview of the issues you will need to consider in preparing to reopen your business. **It is not, however, a substitute for consulting with a Reed Smith employment lawyer regarding the “reopening specifics” that will apply to your business. We look forward to working with you during this process and helping you navigate the new normal of your workplace, whatever form that may take.**

## Determining when to reopen

The Center for Disease Control and Prevention (CDC) has issued guidance to assist employers in making decisions regarding reopening. According to the CDC, you should not consider reopening unless and until you can answer yes to each of the following questions:

	Yes	No
Are you in a community no longer requiring significant mitigation? (Review and analyze state and local orders)		
Will you be able to limit non-essential employees to those from the local geographic area?		
Do you have protective measures for employees at higher risk (e.g., teleworking, tasks that minimize contact)?		

**Assuming you can answer yes to all three questions, assess the risk of reopening now by considering the following:**

- What is the infection rate in your community and, if known, your workforce?
- How effective has your remote working policy, if any, been functioning? Are they ways of transitioning to remote work as a preliminary step, rather than bringing some or all employees back into the workplace?
- Will you have sufficient business activities on premises to justify reopening and the attendant risk to employees and/or the public?

## Preparing the workplace

### Are your facilities safe for your employees?

- What disinfecting/decontamination measures need to be taken prior to allowing employees back in the workplace?
- What social distancing measures are you required to implement by law in your jurisdiction? Are there additional measures that may be helpful?
- Are masks required in your jurisdiction? Are you as the employer required to provide them?
- How will you handle high vulnerability populations among your workforce?
- What steps will you take to remediate if COVID-19 exposure occurs in your reopened workplace?

### Are your employees healthy and able to work?

- How will you screen returning employees for illness or exposure events?
- Are you required to implement tracing protocols in your jurisdiction?
- What questions can you ask and what steps can you take within the boundaries of the law?

### How will you make customer-employee interactions safe?

- Can you make special social distancing enhancements for customer-facing roles?
- What rules will you impose on customers?

## The returning workforce

### Which employees will you be bringing back?

- How will you decide which departments/jobs/employees to bring back? Articulate and document the reason for these decisions in writing.
- Will some employees be terminated rather than returned to work? Articulate and document the reason for any termination decisions in writing.
- Will HR need to address work performance concerns or other investigative issues for any returning employees? Are there any pending HR investigations/complaints that will need to resume when furlough returns? Were there any performance concerns that were not addressed because of the furlough? Performance improvement plans that expired?

### What practical considerations must you consider, including return to work administrative requirements?

- Will employees return to the same position? Have there been any changes to their job description?
- Will employees return to the same shift and work location?
- Will employees be entitled to the same pay and benefits?
- Will there be any other material changes in employees' work?
- From what status will employees be returning? (Is the returning employee continuing employment (*i.e.*, the employee was working remotely or furloughed) or was there a severing such that this is a rehire (*i.e.*, the employee was laid-off or fired)?)
- Which of the following need to be prepared/completed prior to the employee returning to work (this will depend on the circumstance of the return, jurisdiction and industry)?
  - Recall letter
  - Form I-9
  - Form W-4
  - Pre- or re-hire diligence measures (e.g., background checks, drug testing)
  - Other licensing/certifications
  - New restrictive covenant/confidentiality agreements

### Are there benefits issues you need to consider?

- Do you need to notify the insurance provider?
- Will any employees need to reenroll or update benefit/commuter information?
- If you "advanced" the employee portion of the cost of health insurance premiums for employees on furlough, consider whether you will collect the advance or forgive it. And if you want to collect it, does your jurisdiction permit this to be done by paycheck deduction (many do not)? There are also tax considerations associated with this decision.

### Are your wage and hour policies up to date? Do they address potential new compliance issues?

- Comply with wage and hour laws regarding time spent for handwashing breaks, temperature taking, etc.
- Consider whether the shutdown impacted bonuses or other compensation plans.

### Is part or all of your workforce unionized?

- Do your plans comply with your obligations under relevant collective bargaining agreements?
- Have you notified the union and/or are you required to bargain over any changes that you may be making?

**Will you need to update your employee handbook, or revise or issue workplace policies to address changes in the workplace?**

- Review wage and hour, attendance and sick leave policies, among others, to determine whether they are appropriate or need revision.

**Is your IT department prepared?**

- Will you need to reactivate users?
- Do you have IT resources you may need for remote workers?

**How will you address return of equipment and reimbursement issues?**

**Other considerations**

**How will you handle refusals to return to work?**

- Do you have a process in place that addresses compliance with federal and states laws, including but not limited to FFCRA, FMLA and other leave laws, as well as the ADA and state or local anti-discrimination laws/laws that may require reasonable accommodation?

**Do you have a communication plan?**

- In addition to communications to returning workers, consider communications to workers who may not be returning.
- Should you prepare a press release or other announcement for public relations purposes?

**Do you have a plan in place in the event of another temporary closure?**

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