



LEGAL UPDATE Apr 17, 2020

Strategies For Developing A Return To Work Action Plan

By: Liz C. Watson, Ann Marie Zaletel, Christina F. Meddin, and Elizabeth M. Levy

[Sign up for our Coronavirus roundup email.](#)

[Visit our Coronavirus resource page.](#)

Seyfarth Synopsis: *While most of the country is subject to shutdown orders, federal and local leaders are contemplating when and how to bring people back to work. Return to work plans will vary widely, and will require employers to grapple with challenges unique to their workforce and geography. Given the breadth and complexity of these issues, now is the time for employers to lay the groundwork for implementing specific return to work plans.*

Most of the country is currently under some form of a shutdown order in light of the COVID-19 pandemic. Essential businesses have established protocols to allow their employees to continue to work, and nonessential businesses have largely shut down and either transitioned employees to remote work, or placed employees on leave, furlough or layoff. The Centers for Disease Control guidance as well as a myriad of state and local orders continue to change at a dizzying pace. This poses significant challenges for employers looking to keep businesses afloat, remain in compliance, and keep employees and customers safe.

At some point, the shutdown orders will be lifted, and businesses will be cleared to reopen and return employees back to the workplace. What will return to work look like? We do not yet know exactly what guidance the CDC will provide or what restrictions the federal, state, and local governments will place on return to work. What is clear is that, just as the shutdown created unprecedented legal and practical

challenges for employers, so too will the process of reopening businesses and returning employees to the workplace.

Now is the time for employers to start planning ahead and thinking about what return to work protocols will look like for their businesses. Any return to work plans will require flexibility, creativity, and consideration of complicated legal, logistical, and practical issues. A return to work will also likely require many businesses to navigate a whole new normal in how employees work, where they work, and tools for work.

There will not be a single one-size-fits-all solution. Protocols will need to be employer-specific and consider a number of factors such as the applicable industry, the nature of the work and the workforce. Employers will need to take into account OSHA requirements, CDC and other federal guidelines, as well a growing patchwork of state and local requirements.

Below is a list of some of the key issues employers will want to consider when developing a Return to Work Action Plan.

Plan For Bringing Employees Back to Work

- Determining when to return employees and whether to implement a phased return. How will employees be notified, and with how much notice?
- Selection of employees to return to work. Decisions regarding furloughed and recently laid off employees.
- What will the job look like when employees return (i.e., full-time, part-time, in-person, remote, reduced schedules or wages, changes in duties).
- Process for determining if individual employees are safe to return (i.e., self-certifications, temperature or other screenings, testing if available, etc.). Protocol for returning employees who have tested positive or may have been exposed.
- Protocols to address employee logistical challenges, such as lack of child/senior care, limited public transportation, and employees who may fear returning to work.
- Process to handle other re-integration logistics, such as return and inventory of all employer owned or leased equipment (e.g., computers, printers, etc.), return of

all employer confidential information and protection of same, reimbursement of any reasonable and necessary business expenses incurred during the closure, updating payroll and HRIS systems, and distribution of any legally required notices (e.g., wage theft notice to document compensation and other changes).

Development and Implementation of Social Distancing Plan

Such a plan will need to be specifically tailored to the employer and to the industry in which it operates and take into account federal, state, and local guidance and mandates. Features of a Social Distancing Plan may include some or all of the following:

- Changes to open workspace configuration.
- Repurposing of conference rooms, lunch rooms, and other communal spaces to allow for more distance.
- Installation of physical barriers in common areas (e.g., Plexiglass dividers between cubicles, in lunch room areas, etc.).
- Redesign of production lines to allow for more space between employees.
- Reconfiguration of work schedules and/or shifts to limit the number of employees physically present in a specific office, facility, plant, or other work location at any one time.
- Implementation of full-time and/or part-time work-from-home arrangements for positions where it is feasible for employees to work from home, either full-time or a number of days each week.

Development and Implementation of Additional Workplace Health/Safety Protocols

Such protocols will need to be employer-specific and consider a number of factors, including the applicable industry, the nature of the work and the workforce. Employers will also need take into account federal, state, and local guidance and mandates.

- Daily temperature checks and other screening protocols.
- Periodic (e.g., weekly, biweekly, monthly, etc.) employer-provided COVID-19 testing when such testing is more widely available for all employees or certain employees

in more high risk positions (e.g., public facing positions, positions involving close contact with other employees or other third parties).

- Voluntary employer-provided COVID-19 antibody testing or reimbursement for any out-of-pocket costs associated with voluntary COVID-19 antibody testing as an incentive to employees to get tested (when such testing becomes available), and privacy considerations regarding the same.
- Development of an action plan in the event an employee tests positive for COVID-19, such as to whom does the employee provide notice if he or she tests positive, what information is the employee required to disclose, how is the information provided and with whom is it shared, how is documentation maintained, and what steps will the company take (contact tracing, notifying employees/visitors, cleaning, etc.).
- Personal protective equipment and other safety equipment (e.g., employer-provided face masks, gloves, disposable desk blotters, etc.).
- Handwashing protocols.
- Periodic deep cleaning of office, facility, plant, and/or other work locations by a professional cleaning service.

Development of Additional Policies and Employee Communication Plans

- Updating COVID-19 related policies, such as COVID-19 related paid sick/paid leave, travel policies, social distancing protocols and safety-related policies.
- Training/educating employees (including management and HR) on return to work protocols prior to return (and consideration of a one day orientation on this topic).
- Confirm accuracy of sick, vacation and PTO banks and ensure compliance with COVID-19 related leave laws.
- Addressing requests for accommodation (anticipate additional work from home requests for disability and personal reasons), additional leave time, and paid leave time.

Considerations for A “New Normal” For Work

- Employees' increased expectations for flexibility in work location and time, following significant changes to many businesses in moving to remote and flexible work.
- Increased focus on a contact-free workplace and economy.
- Following changes to the economy and workplace, needs for reskilling or redeployment of workers.
- Desire for changed / different benefits, including in areas of health and wellness.

Considerations for Other Workers And Visitors When They Are In The Workplace

- Determine how, if at all, the above health and safety, social distancing, and other protocols above for employees will apply to vendors, customers, contractors, delivery workers or staffing agency workers when they are in the workplace.

There are a myriad of other issues employers will need to consider when creating a Return To Work Action Plan, such as privacy rights, tax credits, requirements for loan forgiveness, workers compensation, protected leaves of absence, as well as wage hour and recordkeeping requirements.

For assistance developing a specific Return to Work Action Plan, contact your favorite Seyfarth attorney.

Authors

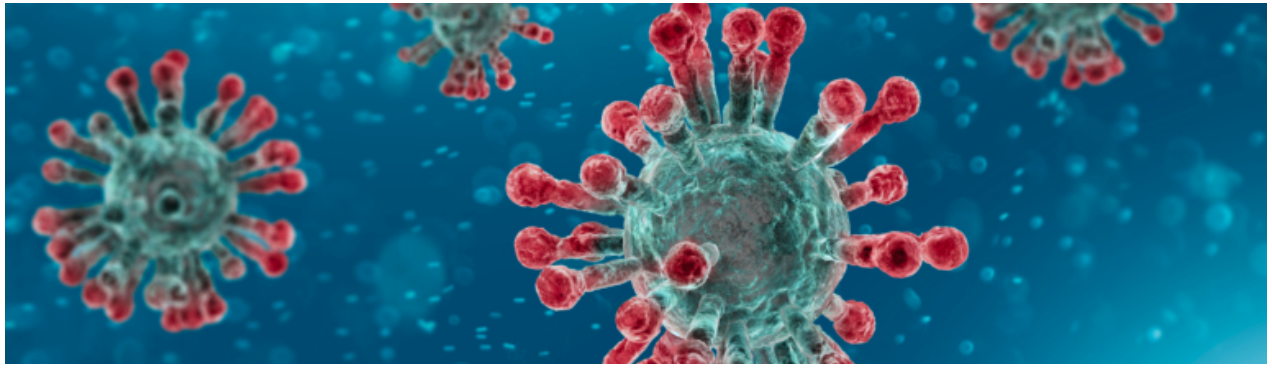
[Meet the Team](#)

Related Practices

[Employment](#)

[Post-Pandemic Recovery & Renewal](#)

Related Trends



Coronavirus (COVID-19)

Copyright © 2020 Seyfarth Shaw LLP. All Rights Reserved.