

Reopening For Business - FAQ

Many companies are now planning to reopen for business. Opening your business during the coronavirus pandemic can create challenges for both your staff and operations. Below are the most frequently asked questions that our Human Resource and Safety Experts have received from our clients relating to their plans to reopen for business.

Frequently Asked Questions

1. Should I clean and disinfect my place of business before employees return?

Yes. Reducing the risk of exposure to COVID-19 by cleaning and disinfecting your business is an important part of reopening public spaces. Properly cleaning and disinfecting your workplace will require you to develop and implement a plan. It will also require you to maintain and revise the plan since guidelines keep changing. Please [refer to the latest CDC guidance](#) for detailed instructions on best practices for cleaning and disinfecting.

2. Are there any supplies I should have on hand before calling employees back to work?

In order to comply with CDC guidelines, it is important to keep cleaning supplies such as disinfectant sprays and wipes, hand sanitizer and soap for hand washing at your worksite. The CDC *recommends* that you supply masks or cloth face coverings to employees to be worn at work. However, some state and local authorities *might require* the wearing of face masks at work. Lastly, if you are going to take the temperatures of your employees, you should have thermometers on hand and be prepared to conduct temperate readings before shifts start in a safe and sanitary way.

3. What challenges might I face with following CDC and Department of Health guidelines when my employees return?

Face masks: An employee may request not to wear a face mask for medical reasons. Employers will need to be prepared to respond to these requests. This may include requiring a note from a healthcare provider verifying that the mask is problematic due to a health issue. In that case, the employer will need to talk with the employee and/or the healthcare provider to determine if there is a reasonable accommodation that will not cause the employer an undue burden. In addition, employees should not be made to wear a mask if it impedes their vision or if it would create an unsafe condition in the execution of a task.

Break Rooms: Employees should physically distance when they take breaks together. Ensure they stagger breaks and do not congregate in the break room. Employees should not share food or utensils. In addition, all frequently touched surfaces (microwave, refrigerator, coffee pot, chairs, tables, doorknobs, etc.) should be cleaned throughout the day in accordance with CDC guidelines.

Enforcing Social Distancing: Employees should continue to practice and maintain a social distance of at least 6 feet at work. Be sure to stagger breaks and start and end times when possible. Create a 30-minute buffer between shifts, if possible, to allow for cleaning and eliminating contact during shift transitions. Signs and floor markers can help indicate where

employees and/or customers should stand in order to maintain social distancing. Have separate contractors and vendors from regular employees use separate bathroom and entrances if and when possible. [The CDC provides good guidance for employers on their website.](#)

4. What is the process to officially recall my employees back from a furlough?

You should send a furlough recall letter to all returning employees. This letter should include a return to work date and any changes in compensation, duties, benefits or safety procedures. If you do not return all employees from furlough, it is important to note that the process to select which employees return must be done in a non-discriminatory manner. If a furloughed employee feels they were not selected to return because they are in a protected class or are being retaliated against, this will create a risk for a legal claim.

5. Should I ask employees returning from furlough to undergo any pre-employment testing?

Employers should review their re-employment policies. You may want to consider completing a new background and/or pre-employment screening, such as drug tests or criminal background checks, if you normally complete these checks and the employee has been out on furlough for a particular period of time. This should be a consistent process to avoid discrimination claims. If you waive these background checks, you will want to have a policy and enforce it consistently to avoid claims of discrimination.

6. How do I handle an employee without an underlying health condition who does not want to return to work because they fear they will get COVID-19?

Talk with your employee and review all the safety protocols recommended by the CDC, Department of Health and other government authorities which you have implemented to reduce the risk of employees getting COVID-19 at work. If the employee still refuses to return, you have a few options. You may want to offer the employee an unpaid leave of absence. The other option would be to discipline the employee under your attendance policy. You will need to remain consistent with how you respond to this request to minimize the risk of discrimination claims. Please note that employees not wanting to return to work because they have a mental health disability may be entitled to a reasonable accommodation such as working from home or a leave of absence.

7. What should I do if an employee with an underlying health condition is afraid to return to work because they fear they will get COVID-19?

If your employee produces a medical note that shows they are particularly vulnerable to COVID-19, the Families First Coronavirus Response Act (FFCRA) may require the employer to provide paid sick leave to the employee. After paid sick leave is exhausted, employers can support vulnerable employees by allowing flexibility when possible and being open to a request for a reasonable accommodation, such as teleworking. Telework will not be feasible for some jobs, so extra steps to keep everyone safe will be key. If the vulnerable employee does not want to return and telework is not an option, the employee's status after paid leave is exhausted under the FFCRA will depend on the employer's policies and other applicable laws.

8. How do I handle an employee who is afraid to return to work because they have a spouse or child with an underlying health condition?

Have a conversation with your employee to reassure them you are following all safety guidelines recommended by the CDC and the Department of Health which reduce the risk of employees getting COVID-19 at work and bringing it home. If the employee still refuses, there are two options. The first is to consider offering the employee an unpaid leave under the employer's policies. The second is to discipline the employee under its attendance policy. Employers should remain consistent with how they respond to this issue to minimize the chances of a discrimination claim. However, there are two situations where the law may dictate how the employer should respond. If the employee produces a medical note that shows they have a child that is vulnerable to COVID-19 and the employee must care for that child, the FFCRA may require the employer provide paid sick leave to that employee. For more information on the FFCRA, [please see our previous blog here](#) . In addition, if the employee is refusing to return based on a reasonable fear of getting COVID-19 at work, it can create a legal risk to discipline that employee.

9. When an employee is recalled to work from furlough, what steps should I take if the employee refuses because they are making more money from unemployment benefits?

If your employee is refusing to return to work because they are making more money on unemployment benefits, let them know in writing that work is available and give them a date to return (see question #4). Generally, an employee is ineligible for unemployment compensation for any week in which their unemployment is due to their failure to accept available work. If the employee fails to return by the date indicated in the letter, the employer should promptly notify the unemployment office in writing of the employee's refusal to return to work. The employee should then be ineligible for unemployment compensation benefits.

10. What if I want to use my PPP loan to pay employees on furlough and they complain they are making more money from unemployment benefits?

Employers should first consult with their financial advisors about use and repayment obligations of their PPP loans. However, if employers cannot recall employees from furlough who are receiving unemployment benefits but want to pay those employees with PPP funds while they remain on furlough because work is not available, the employer may be permitted to do so. In that case, the employer should report this information to the unemployment authorities in an effort to cease the employee's benefits. Please note that cessation of benefits is the ultimate decision of the unemployment authorities and may be subject to substantial delays due to the overwhelming amount of activity in those offices during the COVID-19 crisis.

11. What happens if my employees cannot return from furlough because they do not have childcare?

Employers may be obligated to provide the employee with paid leave for up to twelve (12) weeks under the FFCRA, where the employee is unable to work or telework due to need for leave to care for a child under age 18 whose school or childcare provider is closed or unavailable for reasons related to COVID-19. The Department of Labor offers employers a good explanation of FFCRA leave requirements [here](#). Please note there are exceptions to this law for healthcare providers, emergency responders and employers with less than 50 employees.

12. What do I do if an employee does not follow CDC or Department of Health guidelines such as refusing to wear a mask, social distancing rules and/or hand washing?

Employees must comply with safety rules in the workplace. The employer should communicate these rules to all employees through written policies. Materials should be easy to understand and available in the appropriate language and literacy level for all workers. Employers may want to provide video training to returning employees to introduce them to new workplace rules. Employees should acknowledge receipt of rules and training in writing. Human Resources professionals should train supervisors on how to enforce new rules. If an employee does not comply, you should follow your regular internal policy for employees who break workplace rules which may include discipline up to and including termination. Any discipline should be consistent to avoid discrimination claims. The employees should also be retrained to increase the chances of compliance with the rules going forward. When an employee with a disability needs a reasonable accommodation related to PPE requirements, such as face masks, for a medical or a religious accommodation, such as modified equipment suitable for use with religious garb, the employer must engage in the interactive process with that employee. This would include a discussion with the employee and possibly the employee's healthcare provider to determine if the request could be granted without posing an undue hardship on the employer. The EEOC has issued guidance on evaluating undue hardship during the COVID-19 pandemic which can be found [here](#).

13. How do I handle complaints from employees that claim CDC and/or Department of Health guidelines are not being followed?

These complaints should be promptly investigated by the employer. If the investigation reveals that the guidelines were not being followed, the employer should take immediate action to make sure they are followed going forward. A response should then be quickly communicated back to the complaining employee. Do not take any action in retaliation against that employee for complaining such as a demotion, discipline or a termination.

14. How do I respond if employees have been allowed to work at home to slow the spread and now refuse to come back into the office when requested to do so?

A lot of companies have moved employees to remote work in response to COVID-19 to slow the spread. Some employees have gotten used to remote work and will not want to return when it is permissible to do so pursuant to public health orders. In some cases, the employer may be required to allow an employee to continue to work from home if the employee is disabled under applicable state and/or federal disability law and working at home is required as a reasonable accommodation. In addition, if the employee is refusing to return because they have an underlying health condition that makes them vulnerable to COVID-19 or doesn't have any childcare, the employer may be required to give them paid leave under the Families First Coronavirus Response Act. If the employee does not want to return because they prefer to work from home, how the employer responds should be consistent to minimize the risk of discrimination claims. For instance, the employer should either require all employees to come back or allow those who request it to continue to work at home.

15. Are there payroll issues to anticipate with returning employees to work from furlough?

Employers will want to review their paid time off policies to determine if any provisions are included regarding rehiring. Will rehires start to accrue PTO as a new hire, or will they receive a credit for prior years of seniority? If the policy does not specify, consider past practices or establish a plan going forward. Benefit plan documents should also be reviewed to determine if the waiting period for benefits enrollment is waived or not for a rehire. In addition to payroll deductions, some retirement plans are required to give credit for prior service or they may allow an employee to be vested differently. Since benefit and retirement plans vary, it is best to consult with your providers directly.

16. What legal risks related to COVID-19 does an employer have once their employees return to work?

The first is the risk of a workers' compensation claim if the employee contracts COVID-19 at work. In most cases, filing a workers' compensation claim is the employee's sole legal remedy against the employer if the employee gets COVID-19 at work. The second is an OSHA complaint made by an employee that the employer is not following CDC, Department of Health, or other applicable government guidelines related to COVID-19. Even though these are guidelines, OSHA can sanction employers for violating the general duty clause if the employer is not taking action to ensure the workplace is safe for its employees. In addition, if the employer takes a disciplinary action against the employee in response to a complaint that the workplace is not safe as it relates to COVID-19, the employer will be at risk for a retaliation claim.

17. What legal risks does an employer face from its customers related to COVID-19 when it reopens?

Employers can face third party claims from their customers alleging that they contracted COVID-19 at the employer's place of business because the employer breached its legal duty to exercise reasonable care to protect the customer from getting COVID-19. For those reasons, employers should be sure to follow all guidelines from the CDC, Department of Health, OSHA, and other applicable state and local government authorities.