

Back to Business: Part 3

PUBLISHED ON
May 7, 2020

Note: This is the third in a three-part series on what business should be considering as they prepare to reopen - whenever that day comes. You can read [Part 1 here](#) and [Part 2 here](#).

Employee health and welfare will be one of the biggest changes for companies when employees return to work, and the business community small and large should start preparing for those changes now.

This will especially include items such as medical clearance for returning employees. If an employee is confirmed or suspected to have COVID-19 or has been required to quarantine by a doctor because of his/her proximity to an individual with COVID-19, employers can require medical clearance before the employee returns to in-office work. For employees who have not been ill, businesses should consider requiring employees to self-certify that the employee is and has been symptom-free and not in close personal contact with anyone who has been quarantined for COVID-19.

Other items which need to be addressed include:

Managing employee concerns about returning to the worksite is key: Employees may object to in-office work. Be prepared to respond to employees who refuse (or are hesitant) to return to the physical workspace. If an employee has an underlying medical condition making them more susceptible to becoming ill or who claims mental health issues resulting from a return to work, employers should engage in the Americans with Disabilities Act interactive process to determine if they must accommodate a longer period of teleworking. Prepare for how to handle an employee who does not have any underlying disability but is still fearful of becoming ill by working in the office. Employers will need to balance these requests for additional flexibility against the precedent it will set for other employees.

Policies: Before employees start returning to work onsite, employers need to define the new normal by creating or revising policies to address a range of critical workplace issues. Human resources should build communication strategies that are welcoming to returning employees, such as if and how the organization will conduct temperature checks and COVID-19 testing, whether it's done directly, through a third party or by self-reporting. Employers also need to consider how employers will clean workspaces, what personal protection equipment will be available to employees and social distancing in the workplace.

Businesses also should consider requiring employees to sign and acknowledge the organization's policies on preventing the spread of the coronavirus, such as abiding by any required safety measures and not reporting to work if feeling ill. Employers should communicate with their workforce and act in ways that demonstrate genuine concern for employee health and safety which could reduce risk of worker illness or further outbreak and increased productivity as the workplace phases back to required output.

Employers should prepare to address potential disability accommodation requests for employees with medical restrictions, or even about face mask requirements. As employees are asked to return to the physical worksite, it is likely that some may raise concerns for their safety at work. As when cases were initially being reported and employers were facing these concerns, it will be important to regroup and be prepared to think through the various potential legal entitlements, such as ADA, the Family and Medical Leave Act, the Occupational Safety and Health Administration, unemployment compensation, workers' Comp and company policy as well as how those are impacted by new legislation such as the Families First Coronavirus Response Act when responding to employee requests.

One of the most important parts of returning to the "new normal" is staying informed and seeking guidance from counsel, if necessary, about any government orders and how they interact with the company's decision to increase operations in various jurisdictions, staying aware of COVID-19 specific government orders or regulations relating to employment laws, and monitoring the websites for updated state and federal guidance.

If you have any questions about how your company can safely and responsibly return to business, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).