



Legal Considerations and Risks: From Working from Home to Reopening Businesses

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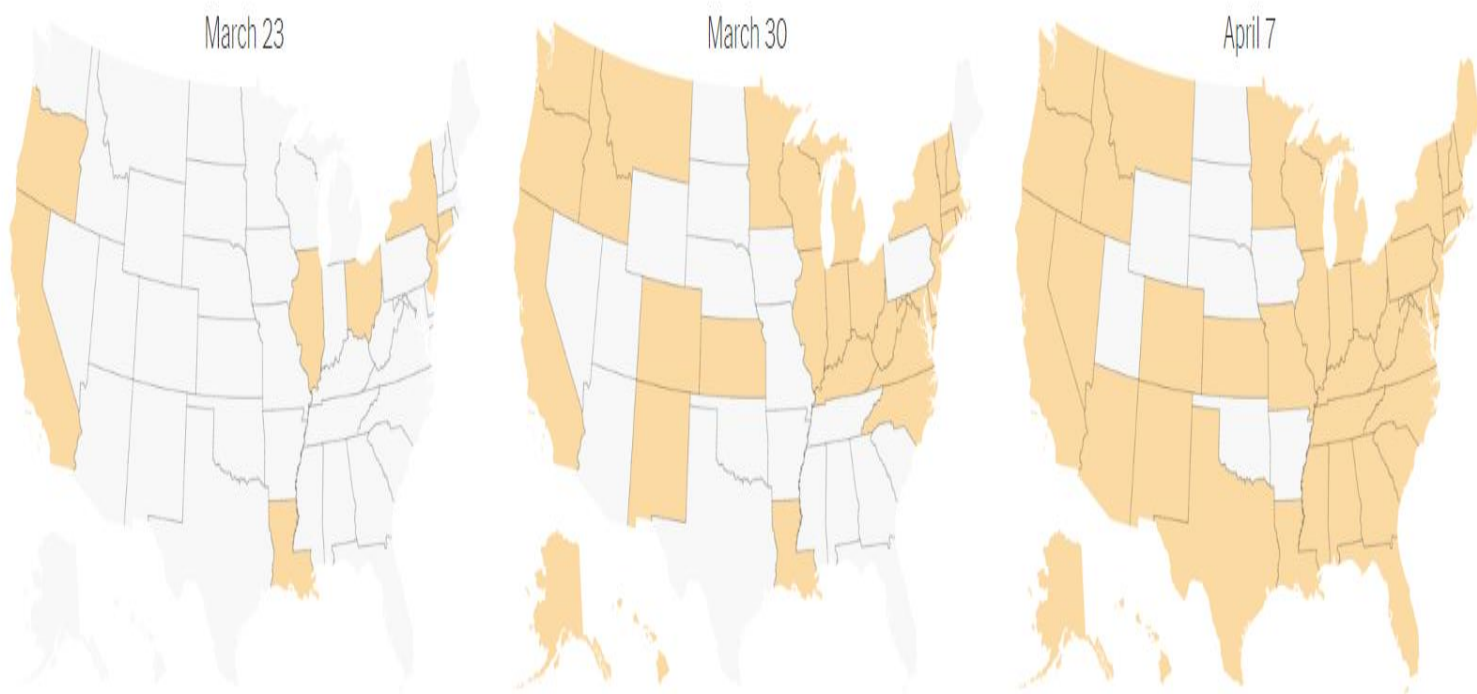


Agenda

- **Overview of Reopening Nationwide**
- **Recalling Employees to Work**
- **Recruiting, Hiring, and Onboarding in the COVID-19 environment**
- **Workplace Health and Safety Protocols**
- **Review and Development of Handbook/Stand-alone Policies**



Reopening Nationwide





CALIFORNIA

- CA Stage 2: Lower-risk workplaces
- Local Variance- Expanded Stage 2 with Attestation
- Hotels and lodging establishments for leisure and tourism reopen (June 12, 2020) in many counties.



NEW YORK

- New York City is in Phase 2. All other regions are in Phase 3 of reopening.
- State issued guidelines apply to non-essential businesses in regions that are permitted to reopen and essential businesses that were previously permitted to remain open.
- Industry specific guidelines.



WHO HAS REOPENED? (POLL)

A) Fully Reopened

A) Partially Reopened/Reopened for Limited Purposes

A) Not Reopen



RETURNING TO WORK: RECALLING, HIRING, AND ONBOARDING





Recalling the Workforce

- Focus on core operational concerns post-COVID-19
- Operational units
- Skills, skills, skills.
 - What kind of people can succeed in this “new normal?” Flexibility, compassion and resiliency are at a premium.
- The seniority tiebreaker
- Those on the outside looking in will be anxiously watching. Not your typical failure to hire claim.



Recalling the Workforce

- Unionized workforce? Proceed with caution and check the CBA.
- Review other contractual obligations.
- Run an impact analysis to check demographics of the selected and unselected. Are we skewing?
- Document the recall plan.



Recruiting New Employees





Recruiting New Employees

- Pre-COVID-19, the labor market was hot with unemployment near record lows.
- For those in a position to hire, there is an unprecedented amount of talent available.
- Generally, employees who were terminated, do not have a recall right.
 - Preferential treatment for former employees?
 - Risk if recruiting and hiring before full recall?



Hiring New Employees (POLL)

Can we refuse to hire someone who refuses to work onsite or from home?



Hiring New Employees (POLL)

Can you screen job applicants for
Coronavirus?



Recruiting and Hiring Guidelines (POLL)

If an employer is hiring, may it screen applicants for symptoms of COVID-19?



Recruiting and Hiring Guidelines (POLL)

May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?



Recruiting and Hiring Guidelines (POLL)

May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?



Recruiting and Hiring Guidelines (POLL)

May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?



Onboarding New Employees

- Relaxed I-9 requirements
 - Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee's identity and employment authorization documents in the employee's physical presence.
- Extend orientation for remote environment employees
 - Employees typically supplement their onboarding experiences by interacting with peers; difficult to do in remote environment.



Wage and Hour Considerations

- Provide appropriate notice to employees regarding any changes in pay.
- If bonus programs or plans, have been suspended, amended or resumed, provide notices to employees.
- If bonuses or one-time payments are made, take into consideration how that effects the employees' regular rate of pay.
- Consider state and federal minimum salary thresholds when adjusting exempt employee salaries.



Workplace Health and Safety Protocols





Workplace Health and Safety Protocols

- Consult local and state requirements, CDC, OSHA and EEOC guidance while developing return to work playbook
 - Certain states have industry specific guidance.
 - California <https://covid19.ca.gov/pdf/guidance-hotels-lodging-rentals.pdf>





Workplace Health and Safety Protocols

- PPE-required to provide to employees or reimburse employees?
 - Handling PPE modification requests
 - Enforcement of PPE policies
- Workplace configurations
- Cleaning regime and frequency
- Signage and floor markings for distancing, breakrooms, conference rooms and other common areas



Workplace Health and Safety Protocols

- Staggered shifts
- Doors, knobs and hardware upgrades, hands-free technology
- Copiers, shared equipment
- Air exchange in building
- Continued telecommuting when possible
- Drop off/pick up of packages and meals through vendors
- Limitation and screening of visitors in workplace



HOSPITALITY SPECIFIC POLICIES (California)

- If possible, baggage deliveries should be done when guests are not in their rooms.
- Hotel and lodging operators should allow housekeepers extra time to clean rooms without loss of pay to account for required precautions and to allow them to conduct more thorough cleaning and disinfection of rooms between guests.
- Hotels should take steps to ensure guests are fully aware of the facility's new policies and procedures prior to their arrival.



Temperature Checks and Screenings

- Develop record keeping policy (all results, positive results, how maintained).
- Maintain confidentiality of records in accordance with legal requirements.
- Communicate policy to all who are affected.
- Require individuals to sign consent forms.



Temperature Checks and Screenings

- Definition of fever and evolving symptoms (CDC guidance)
- Temperature Checks Protocol
 - Where? Who does it? How often? Who is tested?
 - Wage and hour considerations for non-exempt employees
 - Be mindful of potential privacy considerations (California)
- Questionnaire
 - What questions to ask? Where does this form get maintained? Symptom checker? Travel questions?
- COVID-19 testing for employees is permissible
 - What if employee refuses?



Handling COVID-19 Reporting

- Distribute written guidance to employees, encourage hand washing, social distancing, staying home if sick, other protocols
- Distribute policy to employees about reporting positive COVID-19 test results, living with someone with positive COVID-19 test result and direct contact with someone with COVID-19
- Point of contact (s) and decision-making matrix



Handling COVID-19 Reporting


- Develop plan for someone who becomes ill at work with suspected COVID-19
 - Quarantine
 - Investigation
- Determine who else needs to be notified (health officials, other agencies)
 - Maintain confidentiality
 - Signed release from employee permitting disclosure to other employees
- Analyzing OSHA reporting requirements and investigations of workplace deaths



Communicating With Employees / Updating Policies

What You Can do if You are at Higher Risk of Severe Illness from COVID-19
(Print Resources Web Page: <https://www.cdc.gov/coronavirus/2019-ncov/communication/print-resources.html>)

Are You at Higher Risk for Severe Illness?




Based on what we know now, those at high-risk for severe illness from COVID-19 are:

- People aged 65 years and older
- People who live in a nursing home or long-term care facility


People of all ages with underlying medical conditions, particularly if not well controlled, including:

- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions
- People who are immunocompromised
 - Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications.
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease


Here's What You Can do to Help Protect Yourself




Stay home if possible.




Wash your hands often.



Avoid close contact (6 feet, which is about two arm lengths) with people who are sick.




Clean and disinfect frequently touched surfaces.



Avoid all cruise travel and non-essential air travel.

Call your healthcare professional if you are sick.
For more information on steps you can take to protect yourself, see CDC's [How to Protect Yourself](#).



cdc.gov/coronavirus

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Communication

- Frequency
- Postings in workplace
- COVID-19 memoranda and updates
- Webinar for employees before return to work
- Continued reassurance to employees about safety in the workplace and measures being taken



POLICY REVIEW

- FFCRA policies and forms (if applicable)
- Remote work (monitor FLSA considerations)
- Work hours including start/stop time, breaks, lunch times, flexible hours, and staggered hours
- Timekeeping procedures
- Travel Policies including business and personal travel
- Information technology and usage
- Paystubs and pay codes may need to be updated and adjusted to reflect EPSL and EFMLA
- Make sure workplace postings are current



Q&A

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