

June 15, 2020

We Are Open

Practical Guidance for Retailers

Employers across the country are making plans to resume operations as soon as governmental closure orders permit. For retail employers these plans will need to address the physical workplace, social distancing, interactions with customers, employee health and safety, and scheduling among others. The following checklist provides a starting point for employers as they plan for the reopening of their retail locations and the return of employees that were furloughed or working remotely.

Visit [Jackson Lewis' COVID-19 resource page](#) for more information.

What Considerations Must Be Addressed Before Employees Return to Work?

- Create a compliance plan for CDC and OSHA requirements and guidelines to mitigate potential exposure in the workplace, including the establishment of new or revised safety protocols and policies for infectious disease control.*
- Determine criteria for selecting employees who will return and include necessary information in written communication to your employees:
 - Return date, pay and hours, exempt/non-exempt status, PTO/paid leave, benefits, unemployment information, and at-will disclaimer.
 - New policies and procedures for exposure mitigation, employee/customer screenings, safety protocols, etc.
 - Timely confirmation of intent to return to work, consequences of delayed or lack of response.

*NOTE: Even as restrictions are eased, employers must be mindful of current and evolving state and local business closure orders, capacity limitations, mass gathering and social distancing restrictions, PPE and posting requirements, unemployment notification requirements and other mandates.

How Do We Ensure a Safe Workplace for our Employees and Customers?

- Implement enhanced sanitation and cleaning procedures, including the processes and timing of cleaning frequently used surface such as checkout areas, fitting rooms, breakrooms and appliances, and bathrooms
- Provide facial coverings, disposable gloves, and hand sanitizer at workstations and store entrances (required by many states)
- Mitigate potential exposure in high-traffic areas through increased space between and/or staggered open cash registers, minimum distance in customer queues, plexiglass separators, contactless payment options, breakroom configurations, barriers or aisle closure for restocking, and separate area for product returns, and delayed restocking to limit exposure related to customer handling of products.
- Visible signage, stickers, and decals for social distancing, one-way shopping aisles and hygiene practices for customers and employees,
- Equip bathrooms with touch-free faucets, toilets, soap/paper towel dispensers, and placement of waste baskets near exit to permit use of paper towel to open the door

- Establish new safety protocols and train employees on compliance expectations with respect to cleaning and disinfection, hand hygiene, respiratory etiquette, PPE requirements, pre-shift health screenings and temperature checks (possible compensation requirements as “hours worked”), exposure response plans, circumstances in which employees should not report to work due, and visitor guidelines.

How Shall We Prepare for Health, Disability, and Leave Issues?

- Develop protocol for handling safety concerns related to employees who become ill or symptomatic, have close contact with individuals with confirmed or suspected COVID-19 infection, or engage in high-risk behavior or activities (e.g., mass gatherings, travel)
- Create plan for leave requests to care for dependent minors whose schools or daycare are closed, due to residence in vulnerable population, and other factors.
- Ensure accommodation of employees with high-risk conditions (e.g., diabetes, respiratory issues).
- Comply with ADA, FMLA, FFCRA, confidentiality requirements, and other applicable laws.

What Should We Do if an Employee Refuses to Come to Work?

- Employers will be justified relying upon existing leave policies in making employment decisions and can require employees to come back to work if:
 - The employee does not present with a risk factor which could increase their risk of contracting COVID-19 (i.e. compromised immune system),
 - The employee has not been advised by their doctor that they have a pre-existing condition which makes them more susceptible to complications if they contracted COVID-19, and
 - The employer is following federal and/or state mandates regarding protection of employees, employers can require that employees come to work.
- As operations resume and work is offered to furloughed employees, there is no longer a basis for claiming unemployment as a voluntary termination even if they are earning more money as a furloughed employee on unemployment.
- If available work is refused, consider modifying separation status to an involuntary termination. If valid, alternative reasons exist for an employee’s unavailability, e.g., childcare issues due to COVID-19, there may be alternative resources available.

What Other Issues Should I Consider?

- Ways to improve and support employee morale.
- Heightened risk of union organizing and concerted activities protected by the National Labor Relations Act.
- Workshare arrangements if permitted by law.

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