Welcoming Your Employees Back

• Preparing Your Workspace
  • Supplies, Spacing, Signage, etc.
• Preparing Your Workforce
  • Setting Expectations
  • Scheduling/Timing
• You're Open--Now What?
  • EEOC Q & A
  • Other Issues

Preparing Your Workspace

Hand Sanitizer

• To be used when soap & water is not available
• Near Copiers
• In offices/cubicles/reception desks, designated spaces on your production floor

Healthcare Considerations

• Agency Guidance
• HIPAA Special Enrollment Rights
• COBRA
Preparing Your Workspace

Traffic Flow

- Can hallways be designated one-way?
- Have visitors call ahead
- Adjust start/stop times and lunch to minimize people traffic
- Have mail and packages left in a designated spot instead of personally delivered

Preparing Your Workspace

Signage

- Proper "respiratory etiquette"
- Proper hand washing reminders
- "Actions we are taking" postings

Preparing Your Workspace

Other Supplies

- Trash can outside of restrooms so paper towels can be deposited following use to open doors
- Tissues throughout your location
- Hand washing stations if you’re in a manufacturing or other environment where there’s not easy access to a sink
- Disposable masks
Preparing Your Workspace

Work Stations

▪ Can non-office workstations be moved?
▪ Can schedules be staggered?
▪ Are additional barriers possible?

Preparing Your Workspace

Cleaning Schedule

▪ Designate a person and create a schedule for routine wiping down of common surfaces in addition to any routine daily cleaning
  ▪ Door knobs/handles
  ▪ Phones
  ▪ Microwaves touch pads
  ▪ Coffee maker handles/pots
  ▪ Vending machine pads/buttons
  ▪ Hand rails, etc.

Preparing Your Workspace

Meetings Spaces

▪ Ensure chairs and tables are spaced apart
▪ Encourage virtual meetings even if everyone is in the same building
▪ Make sure meeting spaces are on your designated cleaning schedule
▪ If food is being brought in, do boxed lunches instead of buffet lines
Preparing Your Workforce

Setting Expectations

- Frequent handwashing
- Respiratory Etiquette
- No meetings with inadequate distancing
- Discourage or eliminate handshakes
- No unnecessary travel
- Tell them if they are sick to notify you and stay home

Preparing Your Workforce

Child Care Issues

- School Year still in session?
- Summer camps – lowering participants
- Cost may become prohibitive – can you/should you subsidize?
- Can these workers continue to telework?

Preparing Your Workforce

Establishing Schedules

- Build in time in schedules for hand washing, such as a relief person for cashiers, receptionists, front line food workers, etc. so these individuals have time to wash their hands
- For staff in cubicles or other open areas, look for ways to transition these workers so that they’re not all together – stagger days/times
- Establish other breaks and meal periods to ensure staff have sufficient space without overcrowding break rooms
Signs & Symptoms of COVID-19

According to the CDC, COVID-19 can have a wide range of symptoms. These symptoms may appear 2-14 days after an individual contracts the virus. These symptoms include:

- Fever
- Cough
- Shortness of breath or difficulty breathing
- Chills
- Trouble breathing
- Persistent pain or pressure in the chest
- New confusion or inability to arouse
- Bluish lips or face

Individuals should seek immediate medical attention if they display the following advanced symptoms:

- Repeated shaking with chills
- Muscle pain
- Headache
- Sore throat
- New loss of taste or smell

FFCRA Reminders

Emergency Paid Sick Leave

Six Reasons having to do with COVID-19 where the employee:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. Is caring for an individual who is subject to an order as described in (1) or has been advised as described in (2);
5. Is caring for a son or daughter who school or place of care has been closed or whose child care provider is unavailable due to COVID-19 reasons;
6. Is experiencing any other substantially similar condition specified by the Secretary of health & Human Service in consultation with the Secretary of the Treasury and the Secretary of Labor.

Employers may exclude employees who are health care providers or emergency responders from taking paid sick leave.
FFCRA Reminders

Expanded FMLA (EFMLEA)
Applies to ALL employers with 500 or fewer employees

Very narrow circumstances:
• EFMLEA is solely leave taken to care for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for a COVID-19 related reason.
• This is a paid leave

Employers may exclude employees who are health care providers or emergency responders from taking paid sick leave.

You’re Open – Now What?

Q: What can I ask my employees about COVID-19 before entering?
• A positive result or other diagnosis for COVID-19
• Symptoms associated with – fever at or above 100.4°F, cough, chills, shortness of breath, sore throat, etc.
• Whether they’ve had "close contact" (as defined by CDC) with anyone who has tested positive or has been diagnosed with COVID-19 in the past 14 days
• Whether the employee has been asked to self-quarantine by a medical professional in the last 14 days
• Whether the employee has traveled to, or stopped over in a country with a Level 3 travel notice
• Whether the employee is considered "high risk"
• Use a Questionnaire

You’re Open – Now What?

Q: Can I take my employees’ temperature before allowing them to enter the workplace?
• Yes.
• Employers must ensure that the temperature checks are designed to reduce the threat that an employee with COVID-19 poses to the workplace. These checks must be uniform and reliable and administered in a non-discriminatory manner.
You’re Open – Now What?

Q: What do I do if my employee refuses to answer the questions or allow his/her temperature to be taken?

▪ Under the circumstances, the ADA allows the employer to bar an employee from having a physical presence in the workplace if the employee refuses to answer questions about whether he/she had COVID-19, has been tested for COVID-19, has symptoms associated with the disease, and/or refuses to have his/her temperature taken.

You’re Open – Now What?

Q: May a manager ask only one employee, as opposed to asking all employees, questions designed to determine if she/he has COVID-19, or require that her/his temperature be taken?

▪ Ensure you fully understand and can document why you want to do this.
▪ The employer must have a reasonable belief based on objective evidence that this person might have COVID-19. For instance, if this person has a persistent, hacking cough (a common symptom of COVID-19) you can ask whether they have spoken to their doctor, or if they know whether they’ve been exposed. You can use the screening questionnaire that we talked about earlier to help guide this conversation.

You’re Open – Now What?

Q: May an employer ask an employee who is physically coming into the workplace whether they have family members who have COVID-19 or symptoms associated with COVID-19?

▪ From a public health perspective, asking about only family members unnecessarily limits the possible exposure. The better question to ask is whether the individual has had contact with anyone who has been diagnosed with the symptoms associated with COVID-19. The EEOC’s position is that the broader question is “more sound.” If you limit yourself to inquiries just about family members, you could find yourself in violation of GINA.
Q: An employee who must report to the workplace knows that a coworker in the same workplace has symptoms associated with COVID-19. Are they allowed to report it or will that violate the ADA?

• Reporting this information to a supervisor is not a violation of the ADA. The supervisor should contact their management to determine next steps.

Q: May an employer exclude from the workplace an employee who is age 65 or older because the CDC has identified that age group as being at higher risk?

• No. The Age Discrimination in Employment Act (ADEA) prohibits discrimination in job-related decisions simply based on age.

Q: Must an employer grant a request to telework to an employee aged 60 or older because the CDC says this group is at greater risk? What about pregnant women?

• No. With regard to age, the Age Discrimination in Employment Act (ADEA) does not have an accommodation provision built in. With regard to pregnancy, Title VII of the Civil Rights Act (which has been amended to include pregnancy discrimination) says “women affected by pregnancy shall be treated the same” and should be treated accordingly.

• However, if you are allowing other groups of employees to telework, then do not treat these segments of your workforce differently.
Q: What are an employer’s ADA obligations when an employee says he/she has a disability that puts them at greater risk of contracting COVID-19 and asks for a reasonable accommodation?

- Engage in the interactive process as you would for any other request. The EEOC has asked employers to be a bit more flexible with timeframes getting documents back from providers as many providers have a more difficult time getting documentation back in a timely manner.

Q: What are an employer’s ADA obligations when an employee says he/she lives with someone who due to a disability is at greater risk of contracting COVID-19 and asks for a reasonable accommodation?

- The ADA only provides an employee with a right to reasonable accommodation for their own disability, not for those of their family members.

Q: I took my employee's temperature and he/she has a fever. Can I refuse entry to the workplace to this person?

- Yes. You should send them home and recommend they reach out to their primary care provider. You can also refer them to the CDC’s guidance to walk them through their symptoms. The CDC has a “self-checker” with important information for your employees. You can find it at https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html
- If they become sick during the workday, separate them from other employees/customers and send them home.
Q: A manager learns and confirms an employee has COVID-19, or symptoms associated with the disease. The manager knows it must be reported but is concerned about violating ADA confidentiality. What should the manager do?

- The ADA does not prevent the manager from reporting to the appropriate company management so that the company can take actions consistent with CDC guidance. Share the information on a “need to know” basis with senior management. Managers must make every effort to limit the number of people who get the name of the employee. Be sure to interview the employee to determine with whom he or she has had direct contact. You will need to notify these individuals without disclosing the name of the employee with the diagnosis.

Q: What should an employer do if an employee is either confirmed or suspected to have COVID-19?

Your building:
- In most cases, you do not need to shut down your facility. But do close off any areas used for prolonged periods of time by the sick person.
- Wait 24 hours before cleaning and disinfecting to minimize potential for other employees being exposed to respiratory droplets. If waiting 24 hours is not feasible, wait as long as possible.
- During this waiting period, open outside doors and windows to increase air circulation in these areas.

Your employees who have had “close contact” meaning within 6 feet of a person with COVID-19:
- Potentially exposed who have symptoms: self-isolate and use the CDC’s self-checker. Recommend they contact their primary care provider.
- Potentially exposed who do not have symptoms: self-isolate and practice social distancing for 14 days. Monitor for symptoms.
- All other employees should self-monitor for symptoms. If they develop symptoms they should stay home, seek out the CDC guidance as above, and contact their primary care provider.

Be sure to review the full CDC guidance.
You’re Open – Now What?

Other Issues – Communication

Be sure you are talking to your employees

✓ Ask them how they’re doing
✓ Encourage your staff to talk about their fears
✓ Ask them if they need anything
✓ Ask for their suggestions

Healthcare Considerations—Overview of Agency Guidance

On April 28, 2020, the DOL’s Employee Benefits Security Administration (EBSA) and the U.S. Department of Treasury issued the following:

1. EBSA Disaster Relief Notice 2020-01 (the “EBSA Notice”) – Relief for plan filings, delivery of plan notices and electronic delivery requirements

2. Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak Final Rule (the “Final Rule”) – Suspends various plan administration deadlines

3. COVID-19 FAQs for Participants & Beneficiaries (the “COVID-19 FAQs”) – Intended to help employees and participants understand how the EBSA Notice and Final Rule may affect them

Outbreak Period

Period during which deadlines are suspended

• Began March 1, 2020 the date National Emergency was declared
• Ends 60 days after the end of the National Emergency

National Emergency
March 1, 2020

60 Days After the End of Outbreak Period
HIPAA Special Enrollment Rights

**Employee/Participant Relief**

Deadlines to request enrollment in a group health plan due to marriage, birth or adoption, the loss of other health coverage, or certain Medicaid/CHIP events are suspended.

**Implications**

A special enrollment window does not begin to run (or run again) until the day after the Outbreak Period ends.

Suspension applies to events occurring before March 1, 2020 if the applicable enrollment window extended into March.

The only special enrollment event providing for coverage retroactive to the date of the event that can be paid for by an employee on a pre-tax basis is a birth, adoption, or placement for adoption.

HIPAA Excepted Benefits:

HIPAA special enrollment rights are usually limited to medical coverage.

Note:

Example – HIPAA Special Enrollment

**The Situation:**

- Jennifer works for Employer A
- Employer A’s medical plan provides 31-day special enrollment for birth
- Assume National Emergency ends May 31, 2020

COBRA

**Participant Relief**

The following deadlines are suspended:

1. 60-day deadline for an employee or QB to notify the plan of a divorce or loss of dependent eligibility
2. Deadline for an employee or QB to request a disability extension for COBRA continuation coverage
3. 60-day deadline to elect COBRA
4. 45-day deadline to pay the initial COBRA premium; and
5. 30-day deadlines for subsequent monthly COBRA premiums.

**Implications**

No deadlines to elect or pay for COBRA during the Outbreak Period.

The guidance does not indicate a plan must pay claims before premiums are received.
Example – COBRA Enrollment

- Chris works for Employer A
- Chris is furloughed from Employer A and loses eligibility for the group health plan
- Assume National Emergency ends May 31, 2020

IRS Relaxed Mid-Year Election Change Rules

Amnesty qualifying life event (QLE) allowed for 2020, and plan may permit employees to:
- Enroll in Coverage
- Change an existing election
- Drop coverage with attestation that employee is enrolled or will enroll in other coverage

An employer has flexibility to limit which benefits and elections are available under amnesty QLE and when

Amnesty QLEs are prospective
Guidance permits amnesty QLE retroactive to January 1, 2020, but this is intended to “bless” changes employers already allowed as exceptions and not to permit new election changes retroactively

Amendments: the deadline to amend plans is December 31, 2021

Flexible Spending Account Relief

Amnesty QLE also available for FSAs, but employer does not have to permit change/drop below amount already reimbursed (guidance does not support refund)

IRS will permit employers to amend plans to allow the use of 2019 plan year FSA funds through December 31, 2020 as an extended grace period
- IRS did not waive potential HSA conflicts
- IRS did permit extended grace period and carryover for same FSA
- Relief applies to both health care and dependent care FSA

Health care FSA carryover amount revised to $550 (from $500) for carryovers from 2020 to 2021 and indexes the amount for later years

Amendments: the deadline to amend plans is December 31, 2021

Note:
Welcoming Your Employees Back

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Useful links
- https://www.eeoc.gov/coronavirus