



Employer Dos and Don'ts: Getting Employees Back to Work During the Pandemic

By: Matthew J. Hammer



Employers that provide a safe work environment are more likely to have their employees return to work during the pandemic and less likely to encounter problems once they do. Clear communication with employees can reduce absenteeism, promote safety and efficiency, and protect both employers and employees. Below are some Dos and Don'ts for returning employees to work during the pandemic.

✓ DO: Require Social Distancing

Businesses that can open should require distancing to prevent the spread of COVID-19. There are many effective steps employers can take beyond reminding employees to remain six feet apart. For example, to increase physical distance, employers may allow teleworking, stagger start times, implement flexible working hours, or organize workers into teams with alternating schedules. This also will allow employees to avoid crowded trains and buses during rush hour commutes.

Office modifications also may provide protection. Employers may move, cordon off, or remove cubicles and workspaces; close kitchens and breakrooms or limit their capacity; improve ventilation; install physical barriers, like clear plastic guards; and install hand sanitizer stations around the office.

Hazard analyses can identify potential risks, sources of exposures, and solutions to mitigate those risks. OSHA makes available job hazard analysis forms here - <https://www.osha.gov/Publications/osh3071.pdf>. OSHA also has issued a guide to risks and mitigation strategies, which is available here - https://www.osha.gov/SLTC/covid-19/hazardrecognition.html#risk_classification.

✓ DO: Require Hand Washing, Sanitizers, Face Coverings, and Clean Surfaces

To prevent transmission of COVID-19, employers also should require employees to practice coughing and sneezing etiquette, to sanitize or disinfect their hands and workspaces, and to regularly wash their hands. Visual and verbal reminders can improve compliance with hygiene practices and reduce rates of infection. Employers should post signage regarding hygiene in restrooms and high traffic areas of the workplace. To that end, the CDC offers free hand washing posters, fact sheets, and other signage that employers may wish to post. <https://www.cdc.gov/handwashing/campaign.html>

Employers should provide resources and an environment that promotes hygiene by providing soap, hand sanitizers, disposable towels, and disinfectants, when possible, for workers to clean their work surfaces.

EEOC guidance also allows employers to require personal protective equipment, like face coverings, during the pandemic. In fact, Illinois' stay-at-home order requires that "essential businesses and manufacturers

provide face-coverings to all employees who are not able to maintain six-feet of social distancing.” Employers may not require employees to wear respirators or surgical grade masks, however. Cloth coverings are sufficient. Be prepared to discuss reasonable accommodations to such requirements.

✓ DO: Train Employees on Potential Risks and Steps to Mitigate those Risks

Educate and train workers regarding potential occupational exposures to the virus, associated hazards, and appropriate policies and procedures to prevent or reduce the likelihood of such exposures, including distancing, face coverings, and hygiene. Training need not take a significant period of time, but it should cover social distancing and hygiene policies and the reasons for such policies. Training must be offered during scheduled work times and at no cost to the employee. Informed workers who feel safe are less likely to be unnecessarily absent.

✓ DO: Document Steps Taken to Protect Employees, Clients, and Visitors

Employers should document any hazard analyses regarding their workforces and workspaces and each of the steps taken to protect workers, clients, and visitors. They also should draft policies that require social distancing, face coverings, and other safety measures and post those policies in high traffic areas of the workplace. Documentation assists in communicating safety measures and expectations to employees and may prove helpful in responding to investigations or lawsuits arising out of an employer’s pandemic response.

Employers also should post a visitor policy regarding the workplace’s social distancing and hygiene policies. The visitor policy should mirror the workplace’s social distancing and hygiene policies and be posted at the front door or other entryway. Employers may consider keeping entryways locked and allowing visitors to proceed only through a front door to ensure compliance.

✗ DON’T: Allow Sick Employees to Come to Work

EEOC and CDC guidance allow employers to send home employees who have symptoms associated with COVID-19. Further, employers may bar such employees from the workplace until it is safe to return. While employers can require such employees to provide fitness-for-duty documentation from a health care professional before returning to work, this may not be practical during the pandemic. Instead, employers are encouraged to allow employees to return to the office when they met CDC guidelines for when it is safe to return to work after experiencing COVID-19 symptoms. CDC guidelines are available here - <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>

Employers may ask employees who report feeling sick questions about their symptoms to determine if they may have COVID-19. Employers should encourage employees who have symptoms, or who have been exposed to others with symptoms, to stay home. It should be noted that the Genetic Information Nondiscrimination Act prohibits employers from asking employees medical questions about family members. The EEOC makes clear, however, that employers may ask employees if they have had contact with anyone who has COVID-19 or who may have symptoms associated with the disease.

X DON'T: Reveal an Employee's Confidential Health Information

As with all medical information, the EEOC and CDC require employers to maintain the confidentiality of employees with COVID-19 or related symptoms. Information regarding an employee's symptoms or diagnoses may be stored in an existing medical file, separate from the employee's personnel file.

Notifying those who may have been in contact with such an employee does not require disclosing the employee's name. Instead, an employer representative may interview an employee to get a list of people with whom the employee possibly had contact in the workplace. The employer can then notify those who may have been in contact with the employee. Employers should not reveal or confirm the identity of the employee with COVID-19 or related symptoms. They must maintain confidentiality.

X DON'T: Fire an Employee Because You Believe He or She May Be Susceptible to COVID-19

Discrimination, harassment, retaliation, and whistleblower laws will continue in full force during the pandemic. Employers cannot take adverse employment actions against employees because they are believed to be at high risk for complications from COVID-19. The Age Discrimination in Employment Act, for example, prohibits employment discrimination against workers 40 and over. The law would not permit employers to bar workers from the workplace, to require them to telework, or to place them on involuntary leave if the reason for such action is older age. Title VII and the ADA similarly protect other workers. Employers should be prepared

to discuss reasonable accommodations with such employees.

X DON'T: Panic

As always, Daley Mohan Groble is in it with you. We will continue to provide important updates during the pandemic and are available to assist you in getting your employees back to work. Please contact us about returning your employees to work during the pandemic and with other questions regarding the CARES Act, FFCRA, and other employment issues.