

COVID-19: Best practice considerations for resuming work in an office setting

By Barbara Jean D'Aquila | May 19, 2020

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Introduction

Many businesses quickly shifted to remote work, where possible, and abandoned operations in an office setting when COVID-19 became a pandemic or when jurisdictions required or encouraged people to stay at home. Now, as these businesses contemplate resuming operations in the general office setting, they are grappling with a myriad of issues and concerns.

Although not all-inclusive, this article sets forth some basic considerations for resuming work in the office setting.¹ This article lists best practices to consider, but such practices may not be possible, practicable, or appropriate in various work environments, and every company should determine its own protocol consistent with applicable legal requirements.

This article is not providing legal or other professional advice, and indeed, the prudent employer will obtain appropriate professional advice for its specific office environment and location, including but not limited to seeking advice from legal, HR, medical, occupational safety and health, industrial hygiene and HVAC consultants. The applicable federal, state and local laws and guidance documents in general and for particular industries and settings should also be considered in making appropriate determinations. This article is based on information available as of May 19, 2020, and, as we have seen, the situation is often rapidly changing. Thus, new information, laws and guidance should also be considered and appropriate professional advice should be received at the applicable time that office work will resume.

Determining when to reopen

Laws and guidance

Consult applicable federal, state and local laws and guidance that specifically govern reopening in general and specifically as to your company's industry and location(s); consult government information including, e.g. "Opening Up America Again," the CDC worksheets, and other guidance including federal, state and local government information; make sure office work may resume in the particular jurisdiction.

Plans and procedures

Have plans and procedures in place before reopening, including a COVID-19 Infectious Diseases Preparedness Procedures and

Response Plan (which may be an addendum to your OSHA-required Safety Plan or Injury & Illness Prevention Program).

Professional team

Consider identifying a team of professionals (e.g. Legal, HR, Medical, Risk, Occupational Safety & Health, etc.) to develop plans, monitor compliance, assess effectiveness and make changes as appropriate.

Applicable employment-related laws

Consider all applicable laws including federal, state and local equal employment opportunity laws (e.g. the Americans with Disabilities Act, the Family and Medical Leave Act, etc.); consider applicable federal, state and local laws governing COVID-19; consider applicable federal, state and local occupational safety and health standards and guidance (e.g. OSHA).

Need

Determine the need for reopening, including what functions should resume and what personnel are necessary.

Timing

Be careful not to return people to the office space too soon, as there are litigation and practical risks (e.g. the health of the workforce, worker morale, etc.); check the applicable jurisdiction, as some (e.g. New York) prohibit employers from returning to work before state and local ordinances permit and others (e.g. Minnesota) have executive orders that require any employee who can work from home to continue to do so.

Loan considerations

If the company participated in any federal, state or local loan or stimulus program (e.g. PPP and EIDL programs), analyze the applicable requirements related to such program; obtain appropriate advice, as needed.

¹ Considerations include items identified by the author and her Norton Rose Fulbright US LLP colleagues, as well as considerations identified in Norton Rose Fulbright US LLP's "[Emerging strong on the other side of the pandemic. A checklist of preparatory considerations](#)" (Frank Taylor, Barbara D'Aquila and Julie Firestone), AIHA Protecting Worker Health, Reopening: Guide for General Office Settings Guidance Document, Version 2 (May 6, 2020) and Fisher Phillips FP Beyond the Curve: Back-to-Business Checklist (2020).

Examining the physical layout and determining modifications

Building entrance, elevator, and stair access to office

Work with the building management to (or if the company owns the building) address concerns about entrance to the company office (e.g. what is the building's plan for how many can be in an elevator at one time; whether people have to wear protective equipment such as masks/face coverings or gloves; whether building access is limited to building occupants; etc.); instruct employees and visitors to wait for an uncrowded elevator and to maintain physical distancing while waiting; request the building management provide appropriate signage.

HVAC, temperature, and humidity

Consider examining items such as ventilation, temperature control, humidity, and other factors relating to the HVAC system; consider whether there is adequate airflow; consider obtaining proper advice regarding ventilation, filtration, temperature, and humidity in all areas, including the restrooms; at a minimum, recognizing that the company may not own the office space, consider obtaining certification from building management that the HVAC and other systems are in compliance.

Reception area

Examine the entrance to the office, including how access is gained, whether to eliminate or reduce seats in the reception area (including removing seats as appropriate to facilitate physical distancing), and whether to make other modifications (e.g. Plexiglas to protect the receptionist) to the reception area; establish protocols; determine what signage is needed; establish a system for ascertaining when people accessed and left the office (e.g. a log); if guests are allowed, consider requiring guests to arrive at a specific time/call before arriving; determine how frequently to clean and maintain the areas during the workday (it is wise to ramp up maintenance significantly); require entry to be quick and efficient and discourage or prohibit socializing; consider providing equipment upon entrance to those who do not have it (e.g. masks/face coverings); have disinfectant hand liquid available.

Kitchen and cafeteria areas

Determine whether to allow access to the kitchen/cafeteria, and if access is permitted, how to limit access so that there is physical distancing; establish protocols; determine whether to provide disposable supplies such as coffee cups, drink cups,

plastic silverware and paper dishes; consider modifying items such as providing automatic soap dispensers; consider providing gloves if appropriate; determine whether to allow seating in the kitchen/cafeteria, and if permitted, how to limit seats so that there is physical distancing, including removing seats as appropriate to facilitate physical distancing; consider using an attendant to monitor compliance with rules and to assist as needed; determine how frequently to clean and maintain the areas during the workday (it is wise to ramp up maintenance significantly); if the cafeteria is closed, consider providing box lunches; ascertain whether to and if so how to provide water, coffee, snacks, etc. to reduce people using coffee pots, water fountains, etc.; if vending machines, coffee pots, or the like are to be used, consider providing disinfectant materials or sanitizing wipes; do not provide communal food and if food is provided, make sure the packaging is individualized; do not use ice machines that involve a handheld scoop; discourage or prohibit people from lingering; place appropriate signage in a visible location, including reminding people to practice hygiene measures such as handwashing.

Restrooms

Determine whether to limit the number of people who may be in a restroom at one time, including consideration of whether it makes sense, depending on the size of the restroom, to limit access to one person at a time and if done, provide a mechanism (e.g. a foot kick or other safe procedure) that displays when the restroom is occupied; establish protocols; consider safety procedures, such as modifying the doors for electronic or kick-foot access or providing wipes or paper toweling that may be used to open and close all doors and to touch faucets, with waste cans nearby for discarding the wipes or paper toweling; consider modifying certain items, such as providing automatic soap dispensers; provide appropriate signage reminding people to practice good hygiene (e.g. handwashing, cleaning surfaces that have been touched, etc.) and to report issues; consider obtaining occupational health advice as to what best practices should transpire; determine how frequently to clean and maintain the areas during the workday (it is wise to ramp up maintenance significantly).

Floorplans

Study floor plans and the specific needs of the workers to use the particular space; identify if the workspace needs to be reconfigured in any way and take appropriate measures to do so; remove or block access to furniture/areas as necessary to enhance social distancing; reconfigure open workspaces or limit access to them (e.g. decide that every other cubicle may be occupied) so employees are physically distant and not facing each other; provide partitions as appropriate; consider whether to use floor wardens.

Copiers, scanners and other equipment

Consider how to reduce or limit access to equipment, while still providing the needed function; provide disinfectant materials or sanitizing wipes nearby.

Meeting space/conference rooms

Determine how many people can safely occupy a meeting room with appropriate physical distancing and take steps to obtain compliance, including removing seats as appropriate to facilitate physical distancing; place appropriate signage in a visible location to remind people to be physically distant and otherwise comply with protocol; require or encourage remote meeting with virtual tools where employees remain in their workspace but attend a virtual meeting; limit the size and location of any in-person meeting; if larger space is needed and a meeting must take place in person, consider renting large hotel conference rooms that enable the appropriate physical distancing; if conference rooms are used in the office, clean between uses, making sure all surfaces that may have been touched are disinfected; require meetings to be quick and efficient and discourage or prohibit socializing before and after.

Information technology needs

Consider information technology (IT) changes that may need to be made; if IT help is needed by an employee and/or visitor, IT should provide such services remotely, where possible, and observe physical distancing and other protocol, where not possible.

General maintenance

To the extent not covered in connection with specific areas, use appropriate disinfectants and establish a specific maintenance routine; consider consulting an industrial hygienist to determine the appropriate procedures; if the company's building owner provides the maintenance, ascertain what the procedures are and that they are adequate, and, further, consider adding your own maintenance procedures; pay particular attention to high traffic surfaces (e.g. door handles, appliances, countertops, etc.); consider using a maintenance checklist to ensure compliance.

Other considerations

Investigate odors, water intrusion and other potential areas of concern, and take appropriate steps to address if these items present problems that should be remediated; ensure sufficient waste cans are present and that waste is properly

discarded and removed; decommission any common spaces that are not to be used; if employees have to use their own equipment for any reason, follow appropriate legal requirements regarding reimbursement.

Communication and training considerations

Communication to employees

In advance of returning the employees to the office space, determine what employee communications should take place, on what subjects, how and how often; effective communication is critical to ensure that employees understand important items and that they feel comfortable with the practices and procedures; explain what is being done to address the COVID-19 situation, what the employees' roles are in ensuring compliance, what the ramifications of noncompliance are, and what the procedures are for reporting concerns, questions and the like; explain procedures that will be used for admitting employees, for employees who have symptoms or COVID-19, for any contact tracing, etc.; make sure supplemental communications transpire as needed; encourage employees to stay home if they are sick.

Training

Train employees on new procedures (doing so in a fashion that maintains physical distance, such as a computer training program that the employee views in his/her office); consider what OSHA-related training is advisable, such as providing awareness training on cleaning and disinfectants used; train on hygiene expectations (e.g. washing hands frequently, using masks/face coverings, covering mouth and nose when sneezing, etc.); make sure supplemental training transpires as needed; consider what, if any, OSHA-related information must be provided orally and/or in writing; consider providing online training before the office re-opens, so employees know what to expect.

Communication from employees

Determine the procedures (e.g. to whom, how, etc.) that should apply for the employee to communicate with the company, including appropriate communications relating to self-monitoring, symptoms, and inability to return to work.

Devices, protocols and mechanisms

Identify the devices, protocols and mechanisms that will be used for critical employee communications.

Communication with third parties, including clients

Consider what communications should or must be made with third parties; explain the circumstances to avoid confusion and to provide necessary information to key business partners, clients and vendors.

Bringing employees back

Union issues

If any returning employee's employment is governed by a collective bargaining agreement, study the agreement obligations; consult a labor lawyer, as appropriate; determine if any planned concepts for returning require communication or other procedures with the applicable union.

Functions

Determine what functions and/or people will return; if less than the entire workforce will return, it is advisable to ascertain what functions are most important to resume rather than focusing on the specific people; use legitimate non-discriminatory considerations for determining whom to return to work.

Voluntary v. directed return to work

If the entire workforce is not being returned at the same time, determine whether employees will be permitted to volunteer to return or be directed to return; if requiring any employee to return, make sure the return is handled in a fashion that complies with applicable laws (e.g. if an employee wants to remain working from home for disability-related reasons, ascertain if such must be permitted; if an employee wants to return but the company is concerned about the employee being at high-risk for COVID-19, recognize that, absent obtaining legal advice that the company may legally use different procedures or take a different action (based on a direct threat assessment), the company should treat a Covid-19 at-risk employee the same as other similarly-situated employees, being mindful of applicable laws and EEOC guidance on the subject (see <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>); in all decision-making, in addition to applicable laws, study relevant guidance such as that from the EEOC, the DOL, the local labor commission, OSHA, the CDC, the WHO, and state or local equivalents of federal agencies, etc.; when returning people to work, use legitimate non-discriminatory reasons; be objective if possible; consider appropriate items such as specific skills, tenure, performance, and other legitimate business considerations.

The reluctant employee

Be prepared to determine how to respond to the employee who is reluctant and/or unwilling to return to the workplace; recognize legal obligations, if applicable in the specific circumstance (e.g. when the employee has a relevant underlying medical condition, determine whether a reasonable accommodation is legally required); provide appropriate education and information about the company's measures, as that may satisfy the reluctant employee; consider staffing, morale, loss of valuable employees, and other factors when determining what to do; be consistent in decision-making; determine what steps the company may take (e.g. allowing the person to work from home for a period of time; giving the employee the opportunity to remain at home and determining whether that should be with or without pay; determining whether to require compliance with the return-to-work direction and what consequences will transpire if the employee does not return to work, etc.).

Start and end times, shifts and hours/after-hour access

Considering staggering start and end times; consider employing shifts even if your company previously did not utilize shifts; consider flexible schedules, such as having employees work one week on, two weeks at home; remember any legal requirement to make reasonable accommodations as appropriate; provide information for the employees to understand the procedures to use for entering the building, using common spaces such as the elevator lobby and elevator, etc.; determine how decisions impact wage-hour factors (including pay, overtime, and meal/rest periods, where applicable), unemployment compensation and other benefits; determine whether the company will restrict the number of hours any employee may be on premises in a given day; determine whether the company will permit an employee to access the office space after hours or when not scheduled to be at work.

Remote work

Determine whether remote work may or must (e.g. reasonable accommodation of a disability) continue; follow applicable laws, including jurisdictions that have an order or law requiring that remote work continue where possible; consider morale issues; determine how to measure productivity and performance of remote work; consider developing specific remote working/telecommuting policies if your company does not have them; determine how to measure compliance with company requirements and supervisory instruction, productivity and performance; determine if working from home is legitimately suboptimal and consider documenting issues.

Leave, vacation and other legal considerations

Consider all applicable leave laws (e.g. sick leave, parental leave, military leave, FFCRA, etc.) when making decisions regarding return to work; comply with laws and policies governing vacation; pay attention to specific COVID-19 leave laws including emergency leave and paid sick leave laws; task HR and Legal with ensuring compliance.

Screening

Determine whether the company will use screening procedures each day that the employees return to work (e.g. temperature taking); determine the equipment that will be used (e.g. handheld individual thermometers, no-contact infrared or laser handheld thermometers; infra-red thermal scanning monitors, etc.); determine whether the company will use a questionnaire (e.g. do you have symptoms, have you been exposed to people with symptoms or COVID-19, have you traveled and if so, where, etc.); determine whether any testing procedures (e.g. virus testing including a nose swab or saliva swab; antibody testing; etc.) will be used and if so, who will administer (there are requirements relating to who can administer testing); determine the protocol to be used for implementing such screening procedures and what to do with the information obtained, including what actions will be taken if the information is of concern and whether the information will be retained or just used for the day; make sure you comply with all applicable laws; specifically evaluate HIPAA and other employee privacy issues.

Positives and contact tracing

Require employees who are positive for COVID-19 to remain out of the workplace and based on medical information available at the time, establish protocol for returning the employee to work (consider CDC and other government/medical guidelines, such as applicable guidelines regarding being symptom-free and/or days passed from when symptoms first appeared, negative testing, or clearance by a medical professional if available); consider appropriate maintenance (e.g. deep cleaning of areas); determine what to do when an employee identifies as having symptoms (e.g. do you send the employee home, for how long, with or without pay, etc.; also make sure you follow applicable law as circumstances may require the employer to pay the employee to stay home) and, based on medical information available at the time, establish protocol for returning the employee to work (consider appropriate government/medical guidelines); consider using an occupational health professional to determine what should transpire; determine whether contact tracing will be employed to trace the people with whom the potentially ill employee may have been in contact during the workday, and

determine what to do with the information obtained (regarding contact tracing in the workplace, tracing by contacted people v. location tracing is likely preferable); determine whether any obligation exists to record the situation (e.g. on an OSHA 300 log) or to make a report to authorities such as OSHA (e.g. when there is hospitalization or death); consider applicable laws, including privacy-related laws; determine whether office closure is appropriate or advisable for a period of time; determine whether third parties (such as visitors, building personnel, etc.) must or should be notified; develop a matrix for procedures so they are known and easier to follow.

Consent forms

Consider whether and when to use consent forms, covering items such as procedures to be used, limitations on what they show, confidentiality considerations, and the potential need/authority to make disclosure relating to the person's condition, etc.; make sure to obtain appropriate legal advice, including regarding privacy, HIPAA, and other considerations.

Immigration

Consider applicable immigration issues relating to the COVID-19 situation that the company has experienced and will experience; consult an immigration lawyer.

Meals and breaks

Consider staggering meal and break times; consider implications for any applicable laws and/or collective bargaining agreement requirements.

Physical distancing

Provide appropriate signage; consider marking off areas for physical distancing; train and explain what is required; determine how to proceed if six feet or more of distance cannot be maintained.

Ombudsman, HR, other and/or emergency contacts

Make significant efforts to ensure someone is available and knowledgeable to answer employee questions and concerns; establish emergency contacts in the company and publish their names and how to contact them.

Protective measures

Follow medical guidance regarding personal protective equipment (PPE) or other measures; ensure employees and visitors are

aware of office protocol before coming to work or entering the premises and/or provide the PPE to employees for their use (follow laws regarding whether the employer must provide the employee with appropriate PPE and/or reimburse the employee for such equipment).

Other measures

Consider what else should or may be done to make the employees' return to work as comfortable as possible, with a goal toward reducing stress.

Enlist employees' help

Educate employees with current COVID-19 important information and enlist their help in following procedures (e.g. constant hand-washing, not touching face, physical distancing, covering a sneeze or cough, etc.) and in identifying potential issues (e.g. evaluating their own health situations proactively).

High-risk individuals

Consider whether to implement special procedures for employees at high-risk because of age, underlying illness, or an immune-compromised situation; work to ensure any procedures comply with law; be mindful of EEOC guidance on the subject.

The non-compliant employee or visitor

Determine concepts for handling the non-compliant employee or visitor; use legitimate non-discriminatory considerations; be consistent in application; consider providing information regarding the impact of non-compliance.

Taxes

Consider tax implications relating to applicable COVID-19 situations/scenarios (e.g. bonuses, benefits, etc.); weigh FFCRA, CARES and other appropriate considerations; consult a tax lawyer or tax accountant, as necessary.

Resurgence; significant office occurrence

Consider what the company will do should there be a resurgence of COVID-19 in the jurisdiction and/or a significant occurrence in the workplace; obtain appropriate legal and medical advice; have plans for responding.

Other important considerations

Documentation

Consider what documentation should be maintained with respect to all return-to-work matters, procedures, information obtained, steps taken, etc.

Collection of company documents and electronic information

Consider what documents and/or electronic information that the company employees may have maintained at home, and take appropriate steps to collect the information; ensure compliance with any litigation holds or court-ordered document/electronically-stored information requirements.

Protection of intellectual property

Consider what risks may have been incurred with respect to protection of the company's intellectual property (IP) because remote working transpired so quickly; ascertain what steps should be taken to shore up the IP protections.

Federal or state contractor obligations

Consider what special obligations the company may have if the company is a government contractor or subcontractor.

Executives

Consider whether to require certain C-Suite executives or other top management to work from home for coverage reasons (just as the company would not permit all C-Suite executives to travel on the same airplane).

Meetings outside the office

Determine whether to allow an employee to attend a meeting outside the office, under what circumstances, and the protocol that must be followed.

Business travel

Determine whether to allow business travel, under what circumstances, and the protocol that must be followed.

Compensation

Study whether there are compensation issues; if an employee is to be paid additional sums for office work under the circumstances, determine whether to use a bonus system rather than an increase in the hourly wage or salary; decide whether to gross-up any bonuses.

Use a matrix or decision tree

Consider developing a matrix (series of matrices) for the company's procedures, as they are easier to follow, especially in a time-sensitive situation.

Vaccine

Consider what to require, if anything, when a vaccine is available.

Retaining medical information

Obtain legal advice with respect to any medical information the company plans to retain, in order to ensure compliance with applicable laws.

Specific jurisdictions

Consider the laws in specific jurisdictions (*e.g.* in California: the CCPA and Cal OSHA).

Wage and hour considerations

Ascertain whether it is necessary to pay for certain activities (*e.g.* whether it is necessary to compensate for time spent in the screening process); consider if any written notification is required regarding return to work, change in pay, etc.; be aware of federal, state and local minimum pay requirements.

OSHA

In addition to the items listed above, consult relevant OSHA guidance documents and applicable standards to consider what other procedures should be implemented for maintaining a safe workplace (*e.g.* restricting employees from sharing equipment like a headset; one-way lanes in the hallways, etc.); consult an occupational safety and health lawyer and/or industrial hygiene specialist to determine best practices; recognize and consult applicable industry-specific guidance, such as OSHA and CDC guidance for manufacturing workers and employers (<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-manufacturing-workers-employers.html>).

Vendors on site

If your company will use on-site vendor services, such as office services like photocopying, consider how to implement appropriate and consistent protocol.

HR policies and procedures

Determine what written HR/handbook policies and procedures should be amended or supplemented.

Pay attention, be fair and be consistent

Strive for consistency and fairness; recognize that more discrimination and retaliation concerns may exist and that more claims may arise; understand that there may be an increased likelihood of violence in the workplace; pay attention to employee morale and psychological concerns; take appropriate precautions, including training supervisors to have a heightened awareness to potential issues.

Insurance and contract considerations

Consult with your company's insurance broker to determine if any modifications are necessary to any insurance policies, including but not limited to CGL, workers' compensation, and personal injury policies; examine contracts for necessary modifications and/or for invoking a force majeure clause.

Risk assessment

Consider engaging a lawyer or other consultant to perform a risk assessment to identify areas with high risk of litigation and/or detriment to the company's brand relating to COVID-19 and resuming work.

Temporary v. permanent

As the company makes changes, remember to consider the concepts of such changes being temporary v. permanent, and end temporary changes when appropriate; recognize that employees may argue some changes should be permanent (*e.g.* remote working as they may attempt to argue that remote work over the last few months demonstrates that working in the company's office is not an essential job function).

Examine what went well

Take stock of what went well during the period of remote work and ascertain whether the company desires to incorporate some of those changes going forward.

The author gratefully acknowledges the input from labor and employment colleagues, Marjorie Glover, partner, New York and Josh Henderson, partner, San Francisco, OSHA colleague, Kevin Mayer, partner, Los Angeles, and business colleagues, Frank Taylor, partner, Minneapolis and Julie Firestone, senior counsel, Minneapolis.

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