

## Transitioning Back to The Workplace FAQ

Utilize the information below for frequently asked questions related to returning your employees back to the workplace. This includes questions that were discussed during April's "Transitioning Back to the Workplace" client webinar. Please reach out to your Customer Experience contact if you have additional questions.

### Worksite Employees Returning to the Workplace

#### **Q1. What measures can I take if an employee expresses concern about returning to the workplace?**

A1. First, talk to the employee to identify their specific concerns so you can directly address them in a productive manner. Allow the employee to feel heard, demonstrating you understand and care about their concerns.

Consult your local or state health and safety requirements and recommendations and look into potential policy changes that can help ease employee concerns and foster a safer work environment. Some ideas include: staggering work hours to limit exposure to other employees, regularly disinfecting common areas and areas frequently touched, space employees' workstations at a greater distance, require your employees to wear masks, provide personal protective equipment when appropriate and limit the number of clients/customers who can be at the worksite at any given time. Consult with your building or property manager, if applicable, to ensure common areas such as parking lots, stairways, elevators and lobbies are going to be maintained in accordance with local guidelines and requirements. Note: Keep in mind that many of these items will likely be mandated by local or state governments as a condition of re-opening a workplace, at least temporarily.

Employers should inform employees of all new policies and measures taken to limit the risks of virus spread well in advance of recalling employees to work. Give them time to adjust to the realities of the workplace. Similarly, if local or state governments or health departments mandate certain new safety practices or protocols as a condition of reopening a workplace, communicate the requirements in advance to your employees to manage their expectations and avoid surprises and potential conflict. This will help ease employee fears of returning to the workplace, so they are more likely to follow the new practices, policies and procedures.

#### **Q2. How do I respond if an employee is unable to return to the workplace due to loss of daycare?**

A2. Under the Families First Coronavirus Response Act (FFCRA), qualifying employers must provide ten weeks paid leave and two weeks unpaid leave for employees who are unable to work because they must provide care to a child or children whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19. Several states and municipalities have also passed laws that go beyond the FFCRA leave

entitlements. Please review state and local laws that may provide additional time off for employees.

If the employee has already used all their FFCRA protected time, the employer may look for alternative ways to accommodate the employee, such as allowing them to work remotely or changing work hours. If no accommodation can be made, the employer may require the employee to report to the workplace. Keep in mind that, at least as far as schools are concerned, many schools end their terms in late May or by mid-June for summer break, and employees typically have prior experience with managing their worktime and school-age childcare during these regular summer breaks.

At the same time, summer camps or similar summer school or community activities that parents may have been relying upon for childcare purposes may not be available. Having and maintaining an open dialogue with employees will be key to discovering and adapting to those temporary challenges. Keep in mind that the Department of Labor (DOL) has issued guidance under FFCRA that if an employee's summer childcare provider is closed – such as camps or other programs in which the employee's child(ren) normally would have been enrolled – the employee may be able to take Expanded Family and Medical Leave in those circumstances. However, paid sick and emergency family and medical leave are not available under FFCRA merely because of regular year-end school closures.

### **Q3. How do I respond to an employee who wants to continue working remotely even though the rest of the company has returned to the office?**

A3. The coronavirus pandemic has caused many employers to completely reconsider what positions, roles and functions must be present at the workplace on a daily or regular basis. Many companies have experienced seamless transitions to remote work arrangements with little to no impact on productivity. However, if you determine that an employee must return to the office, first determine if you can allow the employee to continue to work remotely. This can be a temporary arrangement to provide a transition time. If remote work is not an option, ask the employee the reasons they wish to continue working remotely, as you may be able to meet their needs through other adjustments such as changing their work schedule or taking precautions to reduce their fears of getting sick.

## **Safety Measures to Take Before Worksite Employees Return to the Workplace**

### **Q4. Are there any sanitation measures our company needs to take as employees return to the workplace?**

A4. The [CDC](#) recommends employers perform routine environmental cleaning and disinfecting. Specifically, employers should implement practices that routinely clean and disinfect all frequently touched surfaces in the workplace. Some examples of these types of surfaces are doorknobs, handrails, copy machines, shared office equipment, keyboards and phones. You may also have state- or local-level requirements to take into consideration based on individual state or community re-opening guidance.

The CDC recommends that if the surfaces are dirty prior to disinfecting that they be cleaned with detergent or soap before disinfection. They recommend to then disinfect the surface. Most common household disinfectants should be effective. The EPA has created an [approved list](#) for use against the virus that causes COVID-19.

If an employee is suspected or has a confirmed case of COVID-19, the CDC recommends these [guidelines](#) to clean and disinfect.

Companies should also review their ventilation systems and increase ventilation rates when possible as well as increase the percentage of outdoor air that circulates into the ventilation system.

**Q5. How do I enforce social distancing if we have a small office?**

A5. You can stagger start and end times, implement shifts if feasible, or stagger the days employees work in the office in a way that adheres to social distancing guidelines.

**Q6. Can I require COVID-19 tests for employees before they return to the workplace?**

A6. Before implementing a testing policy, you should consider doing five things:

1. Check the latest CDC, OSHA and EEOC guidance, as well as any state or local regulations to ensure you are compliant.
2. Find out if COVID-19 tests are available in your area, and that the tests have been approved by regulatory authorities, such as the FDA.
3. Ensure all employees are being treated the same, that is, all employees are subject to the same tests and same inquiries.
4. Formalize, document, communicate and have the testing policy you would like to implement reviewed by legal counsel before anyone returns to work.
5. Review applicable state-specific privacy laws, particularly in light of any proposed testing method's invasiveness. Certain states, including California, may require additional safeguards, such as a statutory disclosure notice before testing.

The Americans with Disabilities Act (ADA) requires that employers keep all medical information confidential, including information related to symptoms of COVID-19 or a diagnosis of COVID-19, such as COVID-19 test results, temperature screening logs and other medical information solicited from employees. Employers should:

- Limit this information to those who need to know the identity of an individual who is diagnosed with or exhibiting symptoms of COVID-19 and should ensure that the employees understand that such information must be kept confidential.
- Be mindful of the requirement that medical information be stored separately from personnel files and the importance of maintaining confidentiality of this information. Employers may disclose certain employee health information related to COVID-19 to the CDC and other health authorities.
- Review state-specific privacy laws, which may require the implementation of additional safeguards.

**Q7. Can I require that each employee has a negative COVID-19 test result before they return to the workplace?**

A7. Yes. However, at the present time it is unclear the extent to which you can test employees for antibodies for COVID-19, which is a different test than one measuring the presence of the active virus. Keep in mind that if you are requiring testing, at many locations it will be your responsibility to cover the costs of such testing. You may also incur liability after the return to physical work if you elect to test employees before clocking in. Wage laws generally require that employers pay for any time workers spend under their control, which may mean paying workers while they wait for temperature checks or clean personal protective equipment. There will be costs associated with maintaining the enhanced health/safety requirements necessary to operate a safe workplace for as long as the COVID-19 pandemic persists.

**Q8. Can I require each employee be vaccinated against COVID-19, if/when one becomes available?**

A8. EEOC guidelines say that, during a pandemic, you can require vaccinations. An employee may be entitled to an exemption, though, if the vaccine would interfere with a medical condition or violate that person's religious beliefs.

## Protective Gear

**Q9. Can I require my employees to wear protective gear, such as a mask, while they are at work?**

A9. Yes. You may require employees wear protective gear, such as masks and gloves, and observe infection control practices, such as regular hand washing and social distancing protocols. In some cases, state and local legislation requires employers to provide protective gear to their employees.

**Q10. Do I have to allow an employee to wear protective gear?**

A10. In areas that do not have face masks requirements, you should encourage all employees to follow the CDC guidelines concerning masks. Any employee that chooses to wear protective gear should be allowed to do so, provided it does not materially interfere with business operations or the performance of their essential duties.

**Q11. Are there any posting requirements regarding the wearing and/or providing of protective gear?**

A11. Please review the guidelines specific to your state and municipality regarding any posting requirements regarding the wearing and/or providing of protective gear.

**Q12. Who pays for required personal protective equipment (PPE)?**

A12. PPE under OSHA guidelines must be paid for by the employer. Currently, PPE is not required under OSHA guidelines unless the business is subject to PPE standards, e.g., hospitals and other places with health care workers.

Employers who choose to require PPE, but not provide it, are required to formulate a plan for training and monitoring or following up on the use of the PPE, as well as ensuring the PPE is sufficient by inspecting it on a regular basis. Another item for consideration is what employers will do if their employees do not comply with the requirement to use PPE. Rules and consequences for not following the rules will need to be communicated to the workforce before the rules are implemented.

## COVID-19 Infection/Potential Infection

### **Q13. What is our liability if someone, such as an employee or customer, claims they were infected at our place of business?**

A13. The answer to this question is fact-and location-specific and difficult to determine without additional information. Employers should take all the recommended steps outlined by the CDC and OSHA to protect employees and customers.

### **Q14. If an employee is sick and is exhibiting symptoms of COVID-19, can I tell them to go home?**

A14. Yes, employees who become ill with symptoms of COVID-19 should leave the workplace. If an employee becomes sick at work, they should be separated from other employees, customers and visitors and sent home. You may interview the employee to identify the individuals with whom the employee had contact, which will allow you to conduct social tracing to determine whether any other employees may have been exposed to COVID-19 through the employee. If you learn that other employees may have been exposed, then you should notify those employees of their potential exposure without disclosing the infected employee's identity. You should follow CDC guidelines for cleaning and disinfecting workplace areas where the sick employee was located or visited. If you are in leased premises where employees of other companies also work (e.g., an office building or complex), notify the property manager for the protection of others who may be or may have been present in any common areas without disclosing the identity of your symptomatic employee.

### **Q15. Does workers' compensation cover COVID-19?**

A15. It depends. To be covered under workers' compensation, employees generally must prove that their illness or injury occurred at work, but there are exceptions. Keep in mind that CDC and applicable local or state requirements and recommendations offer preventative measures only – they are not guarantees that nobody will become infected or exposed in the workplace. Preventative measures are most successful when communicated clearly and where standards of compliance are clear. Leaders and managers should set the example but should generally avoid statements that could be construed as a guarantee that the workplace is one hundred percent safe. Instead, it is helpful to communicate that you are aware of and have implemented the requirements and recommendations of the applicable public health authorities (for example, CDC and local departments of public health).

**Q16. Can I tell my older workers or other high-risk workers to stay home?**

A16. No, you should not prohibit older workers or others you may believe are in a high-risk category from going into the workplace. Proceed with caution when considering any actions that may be considered discriminatory, such as treating workers of a certain age differently than others. You may communicate to your entire workforce that anyone in need of flexibility or another accommodation should bring their concerns to their manager or to human resources.

You can allow for telework, and you could consider offering certain types of leave, but you cannot prohibit workers in a protected class from coming to work or force them to take leave.

## [Paid Leave and Paid Time Off Policies](#)

**Q17. If an employee is out on leave because they are caring for their kids, do employers have to bring them back at the same wages and hours?**

A17. Yes, if they were on protected leave. Any salary or wage changes should be done with advanced notice, clear communication, transparency, and, if they affect individuals who were on a protected leave (EFMLEA or FMLA for example), should be done “across the board” or universally so that all worksite employees are treated the same.

**Q18. When the FFCRA program ends December 31, 2020, what happens if an employee is in the middle of EPSL or EFMLA? Are they still eligible for the full amount of time off or does the benefit end on December 31, 2020?**

A18. Payments, protections and benefits under FFCRA will end on December 31, 2020. Any employee who is in the middle of a leave will be unable to continue with their EPSL or EFMLA leave after December 31, 2020. Other leave, such as FMLA, may be available to employees following December 31, 2020.

**Q19. Can I revise my time off programs until our company regains financial stability?**

A19. In most circumstances, you may change your paid time off program for future accruals provided you notify your employees in advance and ensure that prior accruals are not forfeited.

Additionally, in some locations, but not all, you can place a temporary moratorium on usage of paid time off if you would like. Review your paid time off policies and any state and local paid sick leave requirements to ensure changes to your paid time off program do not create paid sick leave compliance concerns.

## [Job Applicants/Future Worksite Employees](#)

**Q20. Can I test job applicants for COVID-19?**

A20. Yes, however EEOC guidelines indicate this must be done “after making a conditional job offer” and must be done universally for all prospective employees in the same type of job.

**Q21. Can I withdraw a job offer if a prospective employee has COVID-19 or symptoms of COVID-19?**

A21. Yes, but only if you can demonstrate that the applicant needs to begin work immediately. You cannot withdraw a job offer if the role does not require an immediate start date. Instead, you can choose to allow telework or postpone the employee's start date.

Copyright ©2020 TriNet. All rights reserved. All trademarks, tradenames, service marks and logos referenced herein belong to their respective companies.

C-20MAY-44