

BURR ALERT

Return-To-Work Checklist Considerations For Covid-19

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As state and local governments around the country begin relaxing social distancing restrictions, employers are faced with a new set of unprecedented challenges. In addition to navigating a labyrinth of inconsistent requirements imposed by local and state authorities, employers must be prepared to implement additional measures to keep employees and customers safe while staying legally compliant. While there is no one-size-fits-all approach, this article outlines some considerations that all businesses should take into account when planning to return-to-work.

- **Government Orders and Guidance.** Employers should anticipate that local and state governments may impose requirements on businesses as a condition of re-opening. Employers should carefully review any applicable orders and ensure compliance with the same. Employers should also follow any applicable federal or regulatory requirements, as well as relevant guidance issued by the Centers for Disease Control and Prevention (“CDC”). In addition, each employer should refer to their industry-specific guidance and consider how to incorporate those recommendations and resources into workplace-specific plans.
- **Employee health screening procedures.** Many state and local orders are either recommending or requiring that employers adopt procedures to screen employees for COVID-19 symptoms prior to allowing them to report for work. Even if such screening is not required by government authorities, employers should strongly consider adopting some type of screening protocol to ensure employee safety.
 - **Decide what screening methods to use.** Screening methods will vary by industry, location, work environment, and the requirements of any applicable orders. Options range from daily temperature screening to requiring employees to answer questions about symptoms prior to entering the workplace. Symptom-based screening should be based on CDC guidance and updated regularly if that guidance changes.
 - **Decide who will be subject to what type of screening and how often.** Employees who work in close proximity may require more screening than those who do not. Employers who implement daily temperature screening may not need to administer questionnaires each day. Decide if screening measures will apply to all individuals at the worksite (e.g. visitors, vendors, etc.), or whether different screening will apply to different sub-categories of employees, and how often screening will be performed (e.g. once daily or upon re-entry). If different screening methods will be used for different sub-groups of employees, these differences should be based on risk of exposure and not discriminatory criteria.
 - **Decide who will administer the screening and how it will be administered.** Employees may be asked to self-report symptoms by filling out a questionnaire form, or required to respond verbally to questions asked by a screener. Employers who ask employees to self-

report symptoms should appoint a facilitator to review responses prior to entry. For temperature screening, options range from the employee taking their own temperature and showing the thermometer's results to a screener, to having one or more designated employees assigned this task, to using a third party healthcare vendor. If an employer designates its own employees to perform screenings, these employees should be carefully selected (e.g., ideally personnel with a medical background such as a nurse) and trained regarding confidentiality (e.g., how to handle the temperature information); safety (e.g., wearing proper personal protective equipment ("PPE")); the use of the thermometer, and decision-making (e.g., whether and when employees may be sent home).

- **Consider what type of thermometer to use.** If an employer chooses to do on-site temperature screening, the best practice is to use a touchless thermometer (forehead or temporal artery thermometers). For some employers, it may be acceptable to require employees to check their temperatures at home and not report to work if they have a fever.
- **Consider safety requirements.** When implementing a screening process, employers must comply with applicable federal, state, and local health and safety laws to protect employees from potential workplace hazards. While the CDC and OSHA have yet to issue definitive guidance on temperature screening, employers should comply with existing OSHA requirements regarding PPE for employees administering screening, including the use of respirators (e.g., N95 masks).
- **Determine where you will conduct screenings and maintain privacy.** Ideally, the screening will occur before entry to a workplace or a worksite, or very close to the entrance. Employers should require that the employees practice physical distancing while waiting to be screened. Consider staggering start times to minimize line formation. Regardless of where the screening takes place, employers must ensure that all communications and interactions between the employee and the screener are private and cannot be seen or heard by any other individual.
- **Develop a screening process.** The process should be specific and easy to follow. If there is no specific government order establishing the threshold for a "fever," then employers will need to define what will be considered a "fever" for purposes of sending the employee home (the CDC defines a fever as a temperature of 100.4° F or higher). Employers may want to use a different standard (e.g. 100 degrees) for simplicity and to allow for a margin of error.
- **Determine what documentation will be kept.** Determine what information will be documented, how it will be documented, and where such documentation will be (confidentially) stored. Rather than recording all symptoms/ temperatures for all employees, consider recording only those who did not pass the screening and the reasons. For employees sent home, employers should document: (1) the person's name, (2) the date and time of screening, and (3) the elevated temperature recorded and/or symptoms reported. Maintaining this documentation may help avoid discrimination claims down the

road. All documentation related to screening must be stored in a separate medical file rather than in an employee's personnel file.

- **Communicate the screening process to employees.** Employers should clearly inform employees of the screening process in advance and provide notice of any implications of being sent home. Any written notice should also be posted on entrances to the workplace and on any internal website or other location where policies are maintained.
- **Pay employees for their waiting and screening time.** Whether employees are entitled to be paid for time spent waiting to be screened is a highly fact-specific inquiry. The conservative approach is to ensure that employees are paid for both screening time and any time they spend waiting to be screened. Employers who elect not to pay employees for this time run the risk of having to defend claims under the FLSA and/or similar state and local laws.
- **Send employees home if they have a fever or if they refuse to be tested.** Anyone refusing required testing should be denied entry into the workplace; employees who refuse testing may be subject to disciplinary action. If a person has a fever upon being screened, consider checking the person one or two more times. If at least two checks show a fever, the person will have to be sent home with instructions. Employees are not permitted to refuse to go home, and similar to an employee refusing a test, an employee generally may be disciplined for insubordination or unprofessional conduct during or as a result of the screening process. After sending the individual home, all areas in the facility the employee may have touched or been present in before being screened should be thoroughly cleaned.
- **Provide instructions to an employee who is sent home due to fever.** As soon as feasible, employers should inform the employee in writing: (1) when the employee will be permitted to return to work and what procedures will apply for such return and (2) whether the employee will be allowed to work remotely or, if that is not possible, whether the employee will be placed on some type of paid or unpaid leave while not allowed to work (this will depend on company leave policies, applicable state/local law, and possibly the recently passed Families First Coronavirus Response Act ("FFCRA"), which creates (partially) paid leave entitlements for eligible employees who are unable to work due to certain qualifying conditions relating to COVID-19).
- **Establish return to work procedures.** Employees sent home with a fever should not return to work until the following criteria are met:
 - The employee certifies in writing that they have had NO fever for at least three (3) days without taking medication to reduce fever during that time; AND
 - The employee is completely symptom free (no cough, no chills, no other symptoms consistent with COVID-19); AND
 - At least seven (7) days have passed since the later of the onset of symptoms that led to the employee being sent home or a positive COVID-19 test.

OR

- The employee provides documentation from a medical provider releasing the employee to return to work, because the employee either (i) had a negative test for COVID-19 (if testing is available), or (ii) any symptoms the employee was experiencing, if applicable, are not the result of a contagious illness.
- **Workplace safety.** Appropriate safety measures will vary depending on the workplace environment but may include:
 - **Providing personal protective equipment (PPE):**
 - OSHA has divided job tasks into 4 exposure levels: very high, high, medium, and low. Most workers will likely fall in the low or medium exposure risk categories.
 - Identify positions, if any, with the potential for occupational exposure to the coronavirus and provide appropriate PPE. For example, masks, gloves, face shields, respirators, etc.
 - All PPE must be (i) selected based on the hazard to worker; (ii) properly fitted and periodically refitted; (iii) consistently and properly worn when required; (iv) regularly inspected, maintained and replaced, when necessary, and (v) properly removed, cleaned, stored or disposed of, as applicable, to avoid contamination.
 - Review OSHA regulation 29 CFR § 1904 to determine work-relatedness of illnesses.
 - **Enhanced cleaning procedures.**
 - Follow CDC guidance for cleaning and disinfecting and ensure that EPA-approved disinfectants are used.
 - Ensure employees who are responsible for cleaning have appropriate PPE and up-to-date training on workplace hazards.
 - If cleaning services are contracted through third party, review current cleaning procedures with service provider, modify as necessary, and audit on a regular basis to ensure compliance (i.e. specify protocols high-touch areas, require and review logs, etc.).
 - Consider incorporating new methods for certain work environments (i.e. electrostatic disinfection technologies).
 - **Social distancing measures within the workplace:**
 - Evaluate physical workspace layout and move workstations to increase physical distance between employees (goal is to keep workers 9-12 feet apart). If available space does not allow this much separation, evaluate options for staggering schedules as an alternative or adding physical barriers between stations. Some employers may be able to rotate weeks in the office and working remotely or alternate days/shifts to reduce total number of people in office.
 - Use plexiglass shields, tables or other barriers to block airborne particles and ensure minimum distances in the workplace.
 - Consider whether furniture or work equipment can be reconfigured to facilitate social distancing. For example, removing tables and chairs in meeting, lunch or

- break rooms may facilitate social distancing and compliance with the CDC guidelines of at least 6 feet of distance between seats.
 - Close or limit access to certain common areas, such as lunch rooms, time clock stations and workplace fitness centers so that employees can socially distance. Pay special attention to areas where printers, copiers and other types of shared equipment are located, and consider moving the equipment or designating a single employee to operate that equipment, distribute print-outs, etc.
 - **Customer and/or visitor policies:**
 - Restrict the number of customers in any area at one time, or prohibit visitors in workplace.
 - Require employees to adhere to social distancing measures during all client interactions (i.e. no handshakes, cloth face coverings, at least 6 feet apart).
 - Utilize video or telephone conferencing instead of in-person meetings when possible.
 - Modify business practices to reduce customer contact by offering contactless pickup and delivery.
 - **Response plan for possible workplace exposure:**
 - Require employees to self-monitor for signs/symptoms of COVID-19 and requiring employees to report when they are sick/experiencing symptoms.
 - Report suspected/confirmed cases to local health authorities, if appropriate.
 - Isolation, containment and contact tracing procedures:
 - Affected employee should be asked to identify all individuals (co-workers, contractors, customers, clients, vendors) that worked in close proximity with the employee for the period beginning two days prior to the onset of symptoms to the present.
 - All employees and other individual identified as “close contacts” should be informed of their possible exposure to COVID-19 in the workplace, but the identity of the infected or exposed individual should be kept confidential.
 - Employees with possible exposure should be asked to follow all guidance from CDC including self-quarantine for 14 days from date of exposure.
- **Policy changes.** Employers will likely need to review and revise existing policies. Some examples include:
 - **Paid leave**
 - Some employers closed prior to April 1, 2020, when the FFCRA went into effect. All employers with less than 500 employees should be familiar with their obligations under the Act.
 - FFCRA policies should include information regarding eligibility requirements, the amount of leave employees are entitled to, and any documentation required by the employer to support a request for leave. Employers should also ensure that they have a method for tracking leave usage and for collecting and maintaining supporting documentation for tax credit purposes.

- Regardless of whether employer is subject to FFCRA, employers should review existing PTO policies and determine if changes should be made, including whether to offer PTO to employees who are unable to telework and are sent home due to fever or other symptoms of COVID-19. Providing paid leave encourages employees to stay home.
- Review any applicable state/local paid sick leave laws as leave related to COVID-19 may qualify.
- **Attendance and sick leave policies.**
 - Review attendance and time-off procedures and consider relaxing to encourage sick employees to stay home.
 - Incorporate return-to-work procedures for employees sent home or experiencing symptoms of COVID-19.
 - While employers generally have the right to require medical certification prior to allowing an employee who is sick to return to work, the CDC has asked employers not to require such documentation because health care professionals may be overwhelmed. Instead of requiring return to work clearance from doctor, consider permitting employees to return if they are completely symptom-free and past the incubation period.
 - Consider revising leave policies to accommodate employees' potential need for leave due to quarantines, isolation orders, or school closures related to COVID-19.
 - Develop any necessary forms for administration of updated policies.
- **Safe Work Practice/Hygiene Measures.**
 - Provide resources to promote personal hygiene (i.e. hand sanitizer, disinfectants, and disposable wipes containing at least 60% alcohol).
 - Require employees to wear face coverings in common areas or when they will be in close proximity with customers or other employees.
 - Place posters that encourage hand hygiene, respiratory hygiene, and cough etiquette to help stop the spread at the entrance to your workplace and in other workplace areas where they are likely to be seen.
 - Discourage workers from sharing equipment and supplies, when possible. Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks, other work tools and equipment) can be wiped down by employees before each use.
 - Update discipline policies to ensure enforcement of social distancing/hygiene policies. For instance, employees who repeatedly report to work without issued PPE may be sent home (without pay for a non-exempt employee) or subject to discipline.
- **Wage and Hour Policies:**
 - Require employees to verify accuracy of time cards to include all hours worked (including any time spent for COVID-19 screening if appropriate).

- Review and update policies as necessary to accommodate employees who telecommute (time sheets, off-the-clock work, meal/rest periods, etc.). Audit time sheets for telecommuting employees to ensure compliance.
- Adjust meal and rest break policies to stagger times and processes implemented to encourage physical distancing.
- **Telecommuting Policies:**
 - Review telecommuting policies to reflect the type of work that is able to be done remotely and the procedures for requesting/approving requests to work from home, including long-term arrangements.
 - Consider procedures for supervising remote employees, including flexible scheduling, etc.
 - Continue to allow remote work where possible to keep employees safe.
- **Travel policies:**
 - Consider prohibiting non-essential work-related travel (i.e. conferences, client visits, networking opportunities) or requiring prior approval so that the employer can assess whether the travel is necessary based on current known advisories and/or if business needs support an alternative to the travel, such as attendance in meetings by video or other means.
 - Consider requiring employees who travel to “hot spots” (whether work-related or not) to remain out of the office for 14 days upon return.
- **Recall Considerations.** Develop a plan for how and when employees will return to work. Issues to consider include:
 - **Phase-in employees returning to work:**
 - For some employers, requiring all employees to return on the same day may be inadvisable or create an unsafe environment. If a phase-in approach is warranted, ensure factors for selection are non-discriminatory and based on legitimate business concerns (i.e. departments, groups, or units should return first based on business needs, etc.).
 - If employees are returning on a reduced schedule, consider adopting a work share program or SUB plan.
 - **Special considerations for employees in high-risk categories:**
 - Employees in high-risk categories may fall into one or more protected classes. Employees who are considered high-risk due to pre-existing health conditions may be entitled to reasonable accommodations under ADA. Employers who receive requests for accommodation must evaluate those requests by engaging in the interactive process like they would for any other employee.
 - Consider allowing employees who self-identify as being in a high-risk category to work remotely or remain on leave until they feel comfortable to return.
 - If employees in high-risk categories cannot telecommute or remain on leave, consider increased measures to protect high risk employees when working

onsite, including isolated workstations, alternative work schedules, PPE, fewer days in the office, etc.

- **Determine how to handle employees who are unable or unwilling to return to work.**

- For employees who are fearful of returning to work, employers should inform employees of measures taken to promote safety and consider granting reasonable accommodations when necessary (i.e. employee's fear is tied to underlying health condition).
- Prior to taking any adverse action against an employee who refuses to return, employers should carefully evaluate whether the employee's refusal is based on a protected status (i.e. underlying health condition) or some other protected reason (i.e. lack of childcare for employees entitled to job-protected leave under FFCRA, or applicable state/local law).

- **Non-discriminatory application of response strategies.**

- Employers must be particularly careful to avoid age, national origin, and disability discrimination when implementing business response strategies.
- Avoid singling-out employees and exercise caution when considering special requests for work arrangements by employees to ensure that all decisions are well-documented and do not have a disparate impact on any protected group.

- **Communication of Changes & Training.** Ensure that updated policies and return-to-work procedures are disseminated to employees and that training is provided where appropriate.

- Communicate policy changes to employees, vendors, and customers prior to implementation.
- Provide adequate training to employees on social distancing measures and required PPE. Provide additional training to managers on enforcement of policies.
- Prepare templates and protocols for administration and implementation of new policies (e.g. screening questionnaire for symptoms of COVID-19; temperature screening protocols; FFCRA leave request/approval forms; exposure-response templates for affected employees, vendors, and customers; etc.)

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ADDITIONAL RESOURCES

GENERAL RESOURCES BY AGENCY

Department of Labor

Occupational Safety and Health Administration

OSHA's primary resource is the [OSHA COVID-19 Official Webpage](#). This page is being updated routinely and we encourage you to review it frequently. Recent guidance released and housed on this page includes:

- [Guidance on Preparing Workplaces for COVID-19 \(Spanish\)](#)
- [Alert: Prevent Worker Exposure to Coronavirus \(Spanish\)](#)
- [Poster: Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus \(Spanish\)](#)
- [Worker Exposure Risk to COVID-19 \(Spanish\)](#)
- [COVID-19 Hazard Recognition](#)
- [COVID-19 Control and Prevention](#)

Enforcement Memorandums: Seven (7) memorandums related to COVID-19 are in effect and intended to be time-limited to the current public health crisis:

- [04/16/2020 - Discretion in Enforcement when Considering an Employer's Good Faith Efforts During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)
- [04/13/2020 - Interim Enforcement Response Plan for Coronavirus Disease 2019 \(COVID-19\) for handling COVID-19-related complaints, referrals, and severe illness reports](#)
- [04/10/2020 - Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 \(COVID-19\)](#)
- [04/08/2020 - Expanded Temporary Enforcement Guidance on Respiratory Protection Fit-Testing for N95 Filtering Facepieces in All Industries During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)
- [04/03/2020 - Enforcement Guidance for Use of Respiratory Protection Equipment Certified under Standards of Other Countries or Jurisdictions During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)
- [04/03/2020 - Enforcement Guidance for Respiratory Protection and the N95 Shortage Due to the Coronavirus Disease 2019 \(COVID-19\) Pandemic - \[1910.134 App B-1\]](#)
- [03/14/2020 - Temporary Enforcement Guidance - Healthcare Respiratory Protection Annual Fit-Testing for N95 Filtering Facepieces During the COVID-19 Outbreak](#)

Wage and Hour Division (WHD)

WHD's Primary Resource is its [WHD COVID-19 Official Webpage](#), which provides information on the implementation of the [Families First Coronavirus Response Act \(FFCRA\)](#).

Centers for Disease Control and Prevention (CDC)

CDC's primary resource is the [CDC COVID-19 Official Webpage](#). This page is being updated routinely and we encourage you to review it frequently. Recent guidance released and housed on this page includes:

- [CDC COVID-19 Guidance Documents](#)
- [Resources for Businesses and Employers](#)
 - [Interim Guidance for Businesses and Employers](#)
 - [Cleaning and Disinfecting Your Facility](#)
- [Cases of COVID-19 in the U.S.](#)

Additional Resources by Industry Sector

Healthcare Industry Resources:

OSHA:

- [Healthcare Workers and Employers](#)
- [Emergency Response Workers and Employers](#)

NIOSH/CDC:

- [Emergency Medical Services](#)
- [Healthcare Professionals](#)
- [Infection Prevention and Control](#)
- [Ambulatory Care](#)
- [Pharmacies](#)

Transportation Industry Resources:

OSHA:

- [Package Delivery \(Spanish\)](#)
- [Airline Operations](#)
- [Border Protection and Transportation Security](#)
- [Solid Waste and Wastewater Management](#)

NIOSH/CDC:

- [Transit Station](#)
- [Transit Maintenance](#)
- [Rail Transit Operators](#)
- [Bus Transit Operators](#)

- [Airline Catering Truck Drivers and Helpers](#)
- [Aircraft Maintenance](#)
- [Airline Customer Service Representatives and Gate Agents](#)
- [Airport Custodial Staff](#)
- [Rideshare, Taxi, Limo, and Other Passenger Drivers-for-Hire](#)

Retail, Service, and Manufacturing Industry Resources:

OSHA:

- [Retail Workers \(Spanish\)](#)
- [Retail Workers and Employers in Critical and High Customer-Volume Environments](#)
- [Manufacturing Industry Workforce \(Spanish\)](#)
- [In-Home Repair Services](#)

Construction Industry Resources:

OSHA:

- [COVID-19 Guidance for the Construction Workforce \(Spanish\)](#)

CPWR- The Center for Construction Research and Training

- [Guidance on COVID-19 \(Spanish\)](#)
- [Toolbox Talk on COVID-19 \(Spanish\)](#)

The General Building Contractors Association

- [COVID-19 Recommended Job Site Protocols](#)
- [PowerPoint Presentation: COVID-19 Recommended Job Site Protocols](#)

Other Industry Resources:

OSHA:

- [Postmortem Care](#)
- [Correctional Facility operations](#)
- [Environmental Services \(i.e., janitorial, cleaning services\)](#)

NIOSH/CDC:

- [Prepare Your Small Business and Employees for the Effects of COVID-19](#)
- [COVIDView: A Weekly Surveillance Summary of U.S. COVID-19 Activity](#)