



## Day Pitney Return-to-Work Checklist

**Note:** *Employers face many competing considerations in determining how to return to work and operate as normally as possible in the face of the current environment of the pandemic. The following checklist is not intended to be exhaustive but outlines issues and best practices for employers to consider as they reopen. This is not a “one size fits all” set of parameters. Employers should consider what measures best suit their needs and protect the health and safety of their employees. It is important for employers to develop a **written** return-to-work plan to document the efforts they are making to safeguard their employees and customers and to communicate those efforts to their workforces. Employers should seek the advice of counsel to ensure compliance with the myriad of laws, regulations and other guidance that must be followed as the economy reopens.*

### Preparing and Safeguarding the Workplace for Employees to Return

- Review applicable state and local rules and guidelines with which employers are expected to comply when reopening workplaces, and prepare a strategy for compliance.
- Implement social distancing requirements (ensuring compliance with applicable federal, state, and local orders and guidelines) for the workplace, and limit large gatherings.
- Consider appropriate engineering controls, including, for example:
  - Rearranging office space, desks and workstations to ensure social distancing can be maintained.
  - Installing physical barriers between workstations.
  - Eliminating, repurposing or restricting the use of employee lounges and conference rooms.

- Consulting with a heating, ventilation and air conditioning engineer to ensure adequate ventilation in work areas and to reconfigure fans to minimize air blowing from one worker directly to another.
  
- Provide visual cues, such as floor markings and signs, to remind workers to maintain social distancing in high-density areas (such as time clocks or cash registers in cafeterias).
- Consider making hallways and/or stairways one-way.
- Consider protocols for elevator use to avoid overcrowding.
- Consider appropriate personal protective equipment to provide to employees per federal, state and local guidance (in most work environments, this likely will mean masks or other face coverings, at a minimum, and disposable gloves). Also consider what training may be required so employees understand how to properly don and doff protective equipment. Finally, consider whether the time to don and doff protective equipment is compensable.
- Educate employees about proper hygiene such as sneezing and coughing into a tissue (and properly discarding the tissue) and frequent hand-washing with soap and water.
- Provide employees with hand sanitizer and other disinfectant products at their workstations for individual use, and place hand sanitizers and other disinfectant products near commonly touched surfaces (e.g., copy machines, time clocks and vending machines). Ensure hand sanitizers (containing at least 60 percent alcohol) and disinfectant products are readily available and restocked regularly in all communal and high-touch areas. Consider installing touch-free trash receptacles and hand sanitizer dispensers.
- Evaluate adjustments to on-site catering and meal service. Avoid communal food trays, salad bars and the like, and consider switching to individual sealed containers for each employee (or suspending company-sponsored catering and meals entirely). Avoid distribution of utensils, dishes, etc. where multiple people can touch them.
- Consider appropriate administrative controls, including, for example:
  - Monitoring and responding to absenteeism in the workplace and establishing a system of reporting to facilitate communication between workers and supervisors if workers are experiencing symptoms of COVID-19 or have had close contact with a suspected or confirmed COVID-19 case.
  - Reviewing sick leave and attendance policies to ensure that workers are not penalized for taking sick leave (discussed in more detail below).

## Modifying/Implementing Workplace Policies and Procedures

- Designate a person or team as the central point of contact for all COVID-19-related questions or concerns.
- Ensure that all required postings are in appropriate spots in the workplace, including newly required postings under the Families First Coronavirus Response Act (FFCRA).
- Establish a written plan that communicates to employees the best practices to reduce the spread of COVID-19, which should include, among other things, precautions the company is taking in the workplace to prevent the spread of COVID-19; the plan should educate employees on how to reduce the transmission of COVID-19 in the workplace and at home and encourage them to follow those practices.
- Train managers and supervisors before the workplace reopens on how to respond to employee complaints and concerns about health and safety in the workplace and other requests for accommodations associated with the pandemic (child care issues, caring for family members, etc.). Managers and supervisors need to understand how issues that arise may implicate the Americans with Disabilities Act, Family and Medical Leave Act or FFCRA, and they should be ready to handle newer-types of complaints about employees failing to maintain health and safety guidelines specific to COVID-19. Respond to complaints and questions in a consistent way, and communicate that retaliation is prohibited.
- Consider reducing the number of employees in the workplace by staggering shifts, designating employees to be in the workplace on different days or working flexible hours to reduce the number of employees in the workplace at one time. Encourage employees to reduce utilization of public transportation during peak hours or arrange alternative transportation.
- Consider revising meal and rest break policies to maintain social distancing guidelines, including modifying or suspending in-house catering, cafeteria service or other meal services.
- Consider implementing other workplace policies to promote personal hygiene, such as building additional short sanitation breaks into worker schedules.
- Evaluate (and update as needed) existing leave policies, including sick, family/medical, vacation/paid time off and attendance policies, to ensure compliance with FFCRA and other state and local laws, executive orders, or other guidance and to provide maximum flexibility for the company and employee to ensure a balance between the operational needs of the company and the employee's requests.

- Update/revise teleworking policies, include procedures for requesting to telework, and set forth the expectations for employees working from home (e.g., proper teleworking setups, network safety issues). Consider the types of positions that allow employees to work from home effectively, and encourage those employees to telework as long as they can do so effectively. Ensure that any policy revisions note that telework is temporary due to the COVID-19 pandemic and that coming to the office remains an essential job function. Continue monitoring and documenting employee productivity and performance while employees are working remotely.
- Establish or update travel policies for essential business travel in accordance with any new governmental orders and other practices.
- Develop/update business continuity plans in the event of increased absenteeism, outbreaks of COVID-19 or additional/renewed stay-at-home orders.
- Distribute all new or updated policies, and file returned acknowledgment forms.

### **Returning Your Workforce**

- Formulate a plan to return to work (with health and safety in mind, as set forth above) and communicate to the workforce when they will return to work. Provide reasonable advance notice (under the circumstances or tailored to the specific industry) to give employees time to prepare and for the company to address any questions or concerns. Communicate appreciation for the workforce, and welcome them back.
- Document the recall notice, and provide employees a reasonable amount of time to inform the company whether they are returning to work.
- Determine in advance how to handle employees who express concerns about returning to the workplace, including because they fear returning (which may involve an assessment of whether that fear is reasonable and/or whether the employee has an underlying medical condition that may require accommodation) or because family obligations hinder their ability to return to work.
- Notify state unemployment agencies of any employee's rejection of a recall notice. Some states have specific requirements about how to inform the unemployment agency.
- Determine whether employees will be returned to full-time, part-time or some other reduced-work basis, and understand how employees may be entitled to partial unemployment for working reduced hours.
- Determine whether employees' hours and/or schedule will change and whether there are any state requirements to provide advance notice of such changes.

- Determine how the company will address any salary reductions previously made or whether reductions will be made in the future, as well as how the company will address any missed annual increases or bonuses. Understand how salary reductions may affect the status of exempt employees.
- Review and evaluate employee benefit programs, including eligibility requirements, required notices to employees and any allowable changes.
- Provide all proper onboarding documentation to returning workers. Depending on the status of the employee during the period of shutdown (e.g., laid off, furloughed, hours reduced), employers may need to complete new-hire paperwork and provide required notices as if employees were being onboarded as new hires. This includes but is not limited to wage notices, sick leave, whistleblower protections, and gender equity notices.
- Submit new-hire and rehire reports to applicable state agencies (requisite reports and time frames for submission of such reports may vary by state).
- Develop an employee communication plan, which may include a platform for employees to obtain timely and relevant information, resources to assist employees, and a designated point of contact for all questions/concerns and distribution of relevant materials. Employers should also notify employees of employee assistance programs (EAPs) or consider implementing an EAP.
- Be sensitive to employees who may require reasonable accommodations under relevant state and federal laws, and engage in the interactive process with such employees to determine whether reasonable accommodations exist.
- Reinforce that anti-discrimination, anti-harassment and standards of conduct apply and that any discrimination on the basis of any protected category, including but not limited to disability or perceived disability, will not be tolerated. Consider redistributing relevant policies. Be prepared to quickly investigate and remediate any discriminatory conduct in the workplace.
- Employers with a unionized workforce should determine whether any proposed changes will trigger a duty to bargain with the union. Review existing collective bargaining agreements to identify any areas of need or of particular concern during a pandemic (e.g., adding force majeure clause, review no-strike clauses).

## Considerations for Returning a Workforce From a Layoff That Affected a Sufficient Number of Employees to Implicate the WARN Act (or State Equivalents)

- Consider whether the Worker Adjustment and Retraining Notification (WARN) Act could have been triggered in the first instance. The basic federal WARN Act triggers are either a plant closing affecting 50 or more employees or a mass layoff affecting 50 or more employees who are one-third of the total employees at a single site of employment. Various state laws have different (and lower) thresholds to meet.
- If the initial layoff may have implicated WARN:
  - Consider how long the employees have been laid off and when they will return to work. Layoffs lasting less than six months will not trigger WARN, and accordingly, if all employees are brought back to work within six months, WARN is not at issue.
  - Consider whether WARN notice was properly given at the outset of the layoff. If not, consider whether it is possible to return a sufficient number of employees to work less than six months after the layoff to avoid a WARN violation.
  - If returning **fewer** than all employees to work, consider whether the number being brought back will bring the number remaining out of work for longer than six months below the 50 and one-third employee thresholds.
  - If returning employees to work for less than 50 percent of their hours, consider whether WARN will be triggered if they are not brought to more than 50 percent of their salary within six months of their original layoff/furlough date.

## Considerations for Keeping the Workplace Safe After Employees Return

- Establish increased routine sanitization procedures for work and common areas. Frequently touched surfaces, such as tools, time clocks, vending machines, microwaves and refrigerators, should be sanitized regularly. In addition, elevator buttons, door handles/bars, handrails and physical barriers (if such barriers are being used) should be cleaned and disinfected frequently. Workers who perform cleaning and disinfection tasks may require additional protective equipment.
- Limit the use of shared equipment that touches the face or respiratory droplets, such as headsets or walkie-talkies, and ensure that all such shared equipment is disinfected properly after each use.
- Appoint a “schedule administrator” who controls employee schedules. The schedule administrator should determine who will be in the workplace, when they will be in the workplace and where they will be in the workplace, consistent with business needs to ensure compliance with state or local guidelines limiting capacity in the workplace. Employees who are not scheduled to be in the workplace but have a business reason to visit the workplace should notify the schedule administrator in advance and receive permission prior to entering the workplace. The schedule administrator also should be charged with maintaining records of attendance for contact-tracing purposes.

- Ask workers screening questions in their primary language to determine whether they have shown symptoms of COVID-19 as indicated in most recent CDC guidance and/or as required by state or local law (e.g., fever, feverish feeling or chills, cough, or difficulty breathing) or have been exposed to someone who has shown such symptoms or tested positive for COVID-19.
- Consider conducting employee body temperature checks. When conducting such checks, observe the following guidelines:
  - Obtain consent, and be transparent with employees (communicate the test being performed and the consequence of certain results, provide a privacy notice, and set a temperature threshold for consistency).
  - Designate a testing location to preserve privacy and maintain social distancing.
  - Treat records of temperature checks as confidential in compliance with applicable state and federal laws.
  - Ensure employees responsible for administering temperature checks are provided with appropriate protective equipment, and consider additional engineering controls (e.g., physical barriers between screeners and other employees, outsourcing temperature checks to an appropriate third party).
  - For any screening/monitoring and temperature check procedures, consider contactless screening, contactless temperature checks or home screening/temperature checks.
  - For any on-site screening/temperature checks, evaluate whether the time spent by employees is compensable under federal, state and/or local wage and hour laws, including whether the time is compensable or whether your jurisdiction has enacted a report-pay statute.
- Reinforce key messages about employees' responsibilities in maintaining a healthy workplace environment, including reinforcing social distancing and other safety guidelines and encouraging employees to stay home if they feel ill or are exhibiting symptoms; detail trainings, if any, employees will need to complete in order to return to work.
- Develop a plan to respond to confirmed and/or suspected cases of COVID-19 in the workplace. The plan should include protocols for employees who are notified by a governmental contact tracer that they may have been exposed to an individual infected with COVID-19. This also may include pre-drafted communications to inform employees about any affected personnel or third parties who have been at the workplace.

- Ensure compliance with OSHA recording and reporting requirements for confirmed COVID-19 cases among your workforce.
  
- Prepare to modify business practices to maintain operations by, among other things, cross-training personnel to perform essential functions in other business areas due to absenteeism, implementing flexible work schedules, identifying alternative suppliers, temporarily suspending parts of the operation as necessary, or identifying sources of temporary employees who can efficiently fill needs as necessary.

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