

Business Readiness Plan – Returning to the Workplace: Protecting Your Team and Your Business’s Future

Based on the webinar, our panelists have provided the points below to assist planning for employees to return to the workplace.

ASSESSMENT STAGE

What should leaders and managers consider when making this transition back to the office?

- Consider specifically what changes you’ll need to make for your team, facilities processes for health and safety related to this pandemic?
- Review if you have individuals (you’re aware of) who will require special accommodation or are high risk?
- Designate a point person or a team to monitor the government websites for guidance on business operations on a daily or weekly basis.
 - Consider all jurisdictions where your company does business.
 - Consider all places where your employees are working from home, if different from business operations.
- For companies that have received Paycheck Protection Program loan from the U.S. Small Business Administration, the rules around forgiveness of the loan is based on restoring full-time employees and salaries to pre-COVID levels by June 30.

DEPLOYMENT STAGE

How can managers prepare as they move into the Deployment Stage?

- Expect to see different reaction and emotions depending on their resistance to move forward.
- Emotions will tell you where your team is on the change curve.
- Evaluate how you feel to the idea of returning to the office/workplace? Understand your own resistance before you lead others through change.
- To alleviate concerns and help people along a little faster, create a well-laid plan with lots of touch points and communication.
- Prepare to communicate clearly and regularly to ensure people understand why they are selected to return and what will be different when they do.
- Clarify what the new safety practices will be and what will be expected of them once back.

What do businesses need to *do to ensure that the workplace is safe for employees to return without putting other employees at risk?*

- Consider staggering work schedules (MWF, every other week, or mornings/afternoons) to reduce #'s of people; phased in approaches - Team A, then B and or rotation schedules.
- Physical Distancing: eliminate non-essential meetings or continue to host meetings by teleconference and videoconference even while at work - use effective tools like Webex from Allstream.
 - Support 6-foot distance in the workplace; consider where to limit exposure (breaks, workstations, close conference rooms etc).
 - Elect a designated safety person for the workspace (oversee/enforce physical distancing).
 - Eliminate or limit business travel, with mandatory isolation after return.
- Workplace Safety: critically review your workplace, how can you make it safer for your employees - each workplace may have different requirements.
 - What, if any PPE will be required (ie masks & gloves), or plexi glass barriers.
 - Consider augmenting seating arrangements.
 - Increase access to hand sanitizers and/or hand soap and cleaning supplies.
 - Work with facilities or cleaners to sanitize more regularly, increase disinfecting common areas like restrooms, lunchrooms.

Can employers require medical exams before and after returning employees to the workplace?

- Pre-screening.** Identify a manager to conduct an interview with employees before returning to the workplace.
 - Have sought medical treatment for COVID-related symptoms since January?
 - Are they currently experiencing COVID-related symptoms?
 - Have they have been in contact with anyone who has tested positive for COVID before returning employees to the workplace?
 - Do not ask about any other medical conditions, even if they may be considered underlying health conditions, unless the employee volunteers that information or asks for an accommodation due to other health-related conditions.
- Taking employee temperatures.** Employers can identify a manager to take employee temperatures before returning them to the workplace.

- This should be done in a private location.
- Decide whether you will do this only once when employee's report to work for the first time or whether you plan to take temperature every day an employee reports to the office.
- Consider a timeline for how long this is appropriate.
- COVID-19 Test.** Employers can require COVID-19 testing for employees exhibiting COVID symptoms before returning employees to the workplace.
 - It may not be practical or reasonable to require a COVID-19 test for employees without symptoms.
 - Prior to the shut-down, there were not enough tests, and they may still be true in certain areas.
- Medical releases.** Employers can require a release to return to work for employees who have tested positive for COVID.
 - It may not be practical or reasonable to require a medical release for employees who have not tested positive or have not exhibited symptoms.
- Keep all documentation of medical requests confidential and in a separate medical file.
 - Do not put medical testing or responses in a personnel file.
- Implement all medical requirements equally for all groups of employees within certain job requirements.
 - You may have more stringent requirements for food handlers than office workers.
- For businesses operating in certain states in the U.S., like Oregon, employers are required to pay out-of-pocket costs for medical exams required to return-to-work

What should a manager do if an employee tests positive after returning to work?

- Send the employee home immediately.
- Engage in contact tracing conversations of all individuals in close proximity (within 6 feet) for a prolonged period of time during incubation period.
- Immediately send home all employees who were in contact with positive employee for a two week period.
- Communicate a positive test to employees in the workplace.
- Do not including any individual's name or other health information.

What should managers do to support the team mentally and emotionally during this time of uncertainty?

- Think on a human level and be mindful of **individual** circumstances. Stay connected as much as possible, using tools and technologies available.
- To alleviate anxiety, communicate new protocols around cleanliness and physical distancing before employees return, then reinforce in the workplace through signage and having designates they can turn to, who champion safety.
- Trust will be critical for your team during this next change. Show that you both hear and understand concerns by taking appropriate action.
- Be fair and reasonable, remain supportive and flexible where possible; be aware of people's family circumstance, many will be juggling work and home life.
- Clarify expectations – what work remains necessary, what can be put on hold, set dates and timelines.
- Look after yourself to avoid getting burnt out. Often remote capabilities lead us to work much longer hours.
- If you or someone in your team is struggling take advantage of EAP (Employee Assistance) or government programs, they are there to help especially through these times.
- Remember that anxiety may be considered a disability under discrimination laws and may require that managers engage in the interactive process.
- Refusal to return to work because of fear of contracting COVID may be eligible for unemployment.

What protections exist for employees who are unable to return-to-work for a COVID-related reason?

- Determine why the employee is unable to return-to-work (ie.high-risk factors, age, health condition, living with someone in high-risk category, pregnancy childcare.)

Canada

- Under Canada Labour Code there is an amendment to Labour Code allowing 16 weeks of unpaid, protected leave for COVID-related reason.
- Canada Emergency Relief Benefit (CERB), \$500 per week for employees laid-off for COVID-related reason.

United States

- Families First Coronavirus Response Act (FFCRA) provides 80 hours of Emergency Paid Sick Leave and Emergency Family and Medical Leave for COVID-related illness or stay at home requirement, including caring for children who cannot be in school, day care, or summer camps.

- Applies to employers with less than 500 employees.
- Effective through December 31, 2020.

- Family and Medical Leave Act (FMLA) and other leave.

- Reasonable Accommodations - Engage in interactive process.
 - Tell the employee about the safety precautions you are taking and other measures to ensure physical distancing.
 - Are there any job modifications that might allow them to report to work with the temporary elimination of certain functions?
 - Can you continue to allow the employee to work-from-home for a limited period of time?
 - If not, the undue hardship exception still applies if the company cannot support the employees request, but that will be harder to demonstrate now that we have all been forced to make changes to accommodate working from home.

- Recognize that we are in a different environment that may require more flexibility within job descriptions and attendance policies and that managers are going to need to work with employees to figure out solutions that might otherwise have been unworkable.

What protections exist for employees who don't want to return-to-work?

- If an employee has a genuine concern that returning to work is likely to cause death or serious physical harm, they may have protections.
 - An employee has tested positive in the workplace and the business is not sending employees home.
 - The business has not implemented a physical distancing plan.
 - In certain industries, if the business has not provided PPE to its employees.

- Canada and U.S. offer unemployment benefits for employees who cite the fear of contracting COVID as a reason for not working.

BUSINESS PRACTICES STAGE

What policies or practices should you implement or revise to support the new working environments?

- Ensure employees understand compliance in their respective jurisdiction (ie it may differ - businesses permitted to open, face coverings, health and sanitation guidelines)
- Management will select employees to return to the workplace in a fair and objective manner
- Current policies or practices may need to be updated (ie. Telework policy, Leaves, vacation/PTO, lunch, timekeeping, breaks, attendance, restrictions about use of technology, performance management etc)
- People need to know how they will be monitored and evaluated
- The most productive employees know what is expected of them, it is less about seeing the whites of their eyes and more about measuring output, so consider how you can implement that flexibility especially for those needing to remain remote.
- Above all communicate clearly what new expectations there are and where employees can go for more information, staying in touch wherever possible
- Protected Leave
 - Canada Labor Code
 - FFCRA (see above)
 - FMLA and other state leave policies
- Wage and Hour
 - Monitoring meals and break periods
 - Ensuring accurate timekeeping
 - Overtime pay
- Discrimination
 - Disparate treatment/impact claims
 - Age
 - Physical or mental impairment
 - Race and national origin considerations
 - Asian immigrants or Asian nationality, specifically China
 - Disproportionate impact on African-American and Hispanic populations in U.S.
- Harassment
 - Conduct a prompt and thorough investigation of any allegations of discrimination or harassment
- Retaliation
 - Protections for employees raising health and safety concerns
 - Protections for employees engaging in concerted activity

BUSINESS CONTINUITY STAGE

How can we build flexibility into our programs to support our team from home, the office and on the frontlines?

- Identify who/or what roles are essential, who really must be in the office? Can some remain remote or be given that as an option?
- Identify additional required for management re. Remote working, performance management, collaboration, managing change or improve communication
- How will you support those who need to remain remote? Especially those who have been high-risk employees or those who have personal obligations.
- Balance consistency in applying workplace rules v. allowing flexibility under uncertain, challenging environment

If there is another wave, what do leaders and managers need to be thinking about

- Reflect on lessons learned NOW – what worked, what didn't – what can you do different.
- For instance, what tools and tech did you use, did it meet your needs? Were there issues with connection for teams, video conferencing, or sharing documents and collaboration?
- Look at budgets, what were the fixed costs, what are the variable costs, what was a surprise?
- Identify investment required to support further flexibility and build it into your longer-term plans
- Don't wait, build a longer-term business continuity plan, with risk assessment tailored to your business, map your potential risk exposure.
- Create future budgets, develop workforce scenarios; will you need to upskill, do you have the right roles/hierarchy structure, what about those communication plans?
- Then prepare a reclosure plan to 'quick close' if reopening failures occur or virus reoccurrence forces closure
- Identify where further business opportunities exist for your business? What skills, technology or innovation does your business have that can be better leveraged?
- Companies have changed their business model to accommodate the changing circumstances, is there new emerging opportunities as a result of the changes, where might you pivot?

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RESOURCES

Paycheck Protection Program Loans

- U.S. Treasury Department (updated May 8): <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
- U.S. Small Business Administration (updated May 6): <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

Workplace Safety

- General guidance for all workplaces: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>
- Cleaning before reopening for business: “Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes”: <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>
- Factsheets for certain workplaces, including airports, grocery, food retail, and transportation: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

Employee Health

- Reducing the risk of worker exposure to COVID-19 in the workplace <https://www.osha.gov/Publications/OSHA3990.pdf>
- Exposure to or diagnosis of COVID-19: “Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19.” <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>

Medical Testing and Disability Accommodations

- EEOC Guidance on COVID-19 and ADA and Rehabilitation Act: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Families First Coronavirus Response Act (FFCRA)

- Department of Labor Guidance: Employer Paid Leave Requirements for COVID-19-related circumstances: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employerpaid-leave>
- Handling complaints, referrals, and severe illness reports relating to COVID-19 <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>