

## RETURN TO WORK CHECKLIST FOR EMPLOYERS

In anxious anticipation of and preparation for the lifting (or loosening) of the Safer In Place and/or Stay At Home orders, businesses should begin evaluating, assessing and planning for the re-opening of business operations. This assessment should include issues such as what re-hiring or re-staffing will look like, what steps should an employer undertake to ensure a safe workplace in these uncertain times and other personnel concerns. Below is a checklist of things to consider for re-opening and return to work.

### When To Re-Open

- Consider the ability to return to work safely and maintain a safe workplace per the CDC Guidelines
- Consider financial constraints, business needs, volume of anticipated business, etc.
- Monitor and comply with federal, state, and local re-opening guidelines
- Review the PPP loan requirements for reinstating employees and loan forgiveness parameters.

### Consider Who Will Be Re-Hired & In What Order

- Determine if employees are being “recalled” or “rehired”. If “recalled” (e.g. the employee had an expectation to return to work) then no “new hire” documentation needed and seniority would be maintained for benefit purposes; if re-hired, employees need to be provided “new hire” documentation (except I-9)
- Identify essential employees and essential functions when determining staffing needs
- Determine re-call criteria; e.g. seniority, skill set, qualifications, cross-training
- Consider alternating workdays, staggered shifts or continue remote work arrangements to continue to maximize social distancing and safety measures
- Anticipate increased absenteeism or requests for leaves of absences to continue to care for children or other family members per the FFCRA and FMLA/CFRA rights.
- Ensure re-hiring decisions do not violate any non-discrimination policies

### Communicate & Notify Employees of Return to Work Timeline & Criteria

- Establish a timeline for re-hiring and returning employees to work
- Notify employees the criteria being used to re-call employees (e.g. seniority, etc.)
- Notify employees of the safety measures that have been and will continue to be implemented

### Workplace Safety Considerations

- Notify employees of new safety protocols and their obligations to comply, including if you will require employees to submit to temperature testing before the start of their shift - if so, they must be paid for this time

- Be prepared to respond to employee anxiety about returning to work; determine how you will respond if an employee refuses to return to work due to fear or anxiety
  - If an employee is fearful of returning to work due to their belief that the workplace is not safe, the employee can be terminated; HOWEVER, this could lead to a claim of retaliation under OSHA laws. Consider granting a personal leave of absence for a period of time (e.g. two weeks) and re-evaluate the situation with the employee
  - Pregnant Employees: While pregnancy can be a “disability” condition for which a reasonable accommodation must be made, the CDC does not currently identify pregnant employees as “vulnerable workers”
- Review applicable OSHA and CDC standards including testing measures, sending employees home if they show symptoms, etc.
- Implement social distancing requirements, staggered shifts and breaks, spacing between desks and community areas, consider closing the lunch room and conference rooms or limit the number of people allowed in at one time
- Limit in-person meetings in favor of virtual meetings where possible
- Establish protocol for non-employee “visitors” in the workplace
- Increase cleaning, disinfecting and sanitation in accordance with CDC guidelines
- Provide appropriate PPE (where necessary) and appropriate cleaning and disinfecting supplies. If PPE is required, the employer must provide.
- Respond promptly to any safety related concerns
- Determine Company policy on non-essential employee travel; Minimize non-essential travel for work; determine what is “essential” travel

### **Personnel Considerations, Leaves of Absence & Accommodations**

- Review Attendance Policies: Determine how to operate if and when absenteeism spikes from increases in sick employees, those who have to stay home to care for sick loved ones, and those who must stay home to watch their children if dismissed from childcare programs and K-12 schools.
- Update leave of absence policies and leave of absence request forms, and train managers on new FFCRA leave entitlements in conjunction with existing Paid Sick Leave, FMLA/CFRA
- Prepare a response to requests for continued remote work based upon the essential functions of the job and conduct an assessment whether such request is a “reasonable accommodation”
- Establish policies and procedures to minimize the risk of the spread of the virus: Consider flexible hours (staggered shifts) and other measures to increase the physical distance among employees and between employees and others. Consider continuing to allow employees to work remotely.
- Break Time: Provide employees with additional breaks during the day to wash their hands, clean their work areas and undertake other appropriate disinfecting and cleaning measures.
- Review EEOC and DFEH guidelines regarding employee medical information, non-discrimination and non-retaliation. See DFEH guidelines

[https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ\\_ENG.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf)

- Retaliation Claims: Be prepared for the potential claim of retaliation if any adverse action is taken against an employee who (a) refuses to return to work due to safety fears (b) asserts a complaint that the workplace is not "safe" or (c) other potential "concerted activity" or "protected activity".

## **Employee Benefits and Compensation**

- Advise employees if their benefit accrual for vacation and paid sick leave was continued or suspended during the period of furlough or layoff;
- Contact your plan administrators for your insurance and benefit plans to determine whether any changes need to be made;
  - Determine whether employees returning to work will need to re-enroll or update prior plan elections
  - For cafeteria plans which may have offered individual spending accounts for a year, determine whether unused portions during an interim absence will be restored upon rehire
  - Evaluate whether returning employees owe any portion of health care premiums while furloughed and if so, work with the employee on a plan to pay insurance premiums
  - Contact plan administrators on issues relating to retirement / pension plans; determine whether employees returning to work will need to re-enroll or update prior plan pre-tax deferral elections
  - Evaluate the potential need for plan amendments to modify conditions for annual benefit allocations (e.g. minimum hours requirements)
- Review employee compensation and bonus programs to determine if changes need to be made to adjust for "break in service" during furlough or temporary layoff.

## **Develop Protocol for Confirmed or Suspected COVID cases**

- Protocol should include follow CDC guidelines which include:
  - Employees should not come into work if sick
  - Appoint a point person for employees to contact if employee becomes ill or symptomatic or for questions
  - Create process to notify employees impacted by potential exposure
  - Develop protocol for a response to an employee with positive COVID test

## **DISCLAIMER**

Please note, the above is not an exhaustive list of all the issues to address when planning for reopening and re-hiring. As this is a new and evolving issue, the laws continually change, and each situation should be evaluated on a case-by-case basis.

As the guidance issued by the state and federal agencies is regularly changing, as is the medical information known about COVID-19, this memo is provided solely as a reference tool to be used for informational purposes and should not be construed or interpreted as providing legal advice related to any specific case or cases.