

Revise Policies to Facilitate Return to Work

By Allen Smith, J.D.

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Before employees start returning to work onsite, employers need to define the new normal by creating or revising policies to address a range of critical workplace issues, including employee relations and benefits.

Social distancing may now be a company mandate, for example, rather than a suggestion, while meeting rooms may have capacity limits, and the checking of employees' temperatures when they arrive each day may be required.

"Employers who communicate with their workforce and act in ways that demonstrate genuine concern for employee health and safety will probably see reduced risk of worker illness or further outbreak and increased productivity as the workplace phases back to required output," said Mark Terman, an attorney with Faegre Drinker in Los Angeles.

To be sure, it may make sense for certain employees to continue to work from home or in flexible shifts, employment attorneys advise. HR should review its flexible workplace policies and determine whether it makes sense to update them by making them more robust, said Christine Keller, an attorney with Groom Law Group in Washington, D.C. Adds Amy Traub, an attorney with BakerHostetler in New York City, employers should consider encouraging all employees who are able to perform their work remotely from their homes to continue to do so.

In that case, it's important to be prepared to explain in advance which jobs will be permitted to continue to telework, which won't and why, said Christine Walters, SHRM-SCP, a consultant with FiveL Company in Westminster, Md. "Avoid the element of surprise."

Some workers may opt not to come back. Because employers have permitted teleworking during the pandemic, many employees with children at home have not yet used the emergency family and medical leave provided by the Families First Coronavirus Response Act, observed Joyce Chastain, SHRM-SCP, a consultant with The Krizner Group in Tallahassee, Fla. "Rather than returning to the workplace, they may now opt to take advantage of that," she said.

SHRM RESOURCE SPOTLIGHT

Coronavirus and COVID-19 (www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx)

Employee Relations: Keep Up Communications

"HR should build communication strategies that are welcoming to returning employees," said Mark Codd, SHRM-SCP, director of the labor relations group at Publix Super Markets in Lakeland, Fla. "In essence, the organization is re-establishing a new covenant with returning employees."

Codd and other HR professionals suggest adding policies that address:

- If and how the organization will conduct temperature checks (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/eoc-coronavirus-temperature.aspx), whether it's done directly, through a third party or by self-reporting.
- Cross-training the workforce to accommodate more employee absences.
- Social distancing in the workplace.

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Feedback

Employers might appoint a chief COVID officer who is responsible for ensuring that all public safety and health guidelines are implemented and that employees follow them, said Jennifer Rubin, an attorney with Mintz in San Diego.

Businesses also should consider requiring employees to sign and acknowledge the organizations' policies on preventing the spread of the coronavirus (e.g., abiding by any required safety measures and not reporting to work if feeling ill), she added.

Some municipalities, such as Los Angeles and Miami-Dade County, Fla., have ordered all employers to provide employees with, or reimburse workers for, nonmedical-grade face coverings if employees can't remain a safe distance from each other or the public, noted Michelle Strowhiro, an attorney with McDermott Will & Emery in Los Angeles and Orange County, Calif. These coverings could be cloth masks, handkerchiefs or scarves.

Businesses that temporarily laid off or furloughed employees should continue to communicate with these workers. Furloughs "may be extended or shortened, depending on what occurs with COVID," said Marie LaMarche, SHRM-SCP, division director of labor relations at CHI Franciscan Health in Tacoma, Wash. "[For example], our policy allows for a 36-hour notice if we are calling an employee back to work sooner than the original furlough indicated. So, keeping lines of communication open during a furlough is pivotal."

DeDe Church, an HR consultant in Austin, Texas, said, "Most employers don't have all the answers. But if they will be open and honest with their teams, they will be much more likely to transition smoothly and to avoid the employee concerns and complaints that are likely to arise as we all figure out this new normal."

Benefits: Look Out for These Changes

Keller said that employees who have been working from home may have made changes to certain benefits, such as reducing contributions to dependent care assistance flexible spending accounts (FSAs) or commuter and parking expenses. Employers should remind employees who return to work to elect these benefits again for the remainder of the year, subject to annual limits for each, she said.

The Coronavirus Aid, Response, and Economic Security Act allows health FSAs—along with health savings accounts and health reimbursement arrangements—to reimburse over-the-counter medicine and drugs and menstrual care products, effective Jan. 1. Employers should update their plan documents and summary plan descriptions to describe these new rules and communicate them to employees, Keller said.

If employees lost their benefits eligibility (e.g., because they no longer qualified as "full-time" based on reduced hours), employers will need to determine if and when those employees can re-enter the benefits plans, said Ann Caresani, an attorney with BakerHostetler in Cleveland. "That will require the employer to review benefits plan provisions with respect to eligibility and elections, including cafeteria plan provisions applicable to health and welfare benefits," she said.

Steven Friedman, an attorney with Littler in New York City, said that if an employee returns from a furlough after less than a 13-week absence during which he or she was not participating in the employer's health care plan, the employer must immediately reinstate him or her on the plan in accordance with the Affordable Care Act. For other benefits, an employer will likely need to give a returning worker new election forms so that the employee can again elect benefits.

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