

REOPENING YOUR BUSINESS: A CHECKLIST FOR EMPLOYERS

By John R. Lowery and Jessica C. Lawrence

With Governors and Mayors announcing their respective phased approaches to reopening their States' economies, employers need to carefully plan for how they will resume operations in a safe and legally compliant manner given the challenges of our new COVID-19 reality. The following checklist provides a framework of issues and tasks that all employers should consider addressing and whether to implement before reopening their doors for their employees and customers. For more information on these issues specifically tailored for your business, including additional steps to take to prepare for reopening your workplace, please contact us directly through our website at www.mflaw.com.

Are you up to date on guidance from relevant authorities prior to reopening?

- **Georgia:** Governor Kemp's "shelter in place" orders have expired for the majority of Georgia businesses. Exceptions include the medically fragile and persons over the age of 65. However, business must continue to operate with strict social distancing and sanitation rules to keep employees and customers safe. Business specific guidelines for Georgia can be found [here](#). (Click or copy and paste into your browser)

South Carolina: Employers with operations in South Carolina should similarly be aware of and follow the specific requirements for their businesses where distinct guidelines have been issued for the hospitality industry [here](#); for the restaurants and food service [here](#); as well as sporting events, pools and several other industries.

Tennessee: Governor Bill Lee established an Economic Recovery Group in April and detailed guidelines for reopening can be found [here](#).

Alabama: Governor Ivey has taken a somewhat different approach generally emphasizing sanitation, social distancing, testing, limiting the size of gatherings and applying those rules to all business. The Order detaining those restrictions can be found [here](#).

- **Federal:** In addition, employers should definitely familiarize themselves with relevant guidance from various federal agencies, including the [CDC](#) by clicking [here](#) and the EEOC by clicking [here](#).
- **State Agencies:** Employers should monitor any additional guidance issued by the Office of the Governor, state health agencies, and any local or other governing authority over its particular business.

- **Local Ordinances:** Finally, many larger cities have also issued guidance and guidelines as they begin softening their restrictions, and employers should not forget to check local authorities in the event they provide additional requirements.

In short, given the abundance and sometimes confusing array of authorities and agencies involved in the response to the pandemic and the reopening of business in spite of it, a consultation with counsel may prove cost-effective and prudent at this uncertain time.

Have you created and are you ready to implement a plan to keep your workplace safe?

- **Policies:** Employers should first develop written policies that comply with the above guidance from the relevant authorities to make the workplace as safe as practically possible. The policies should set out as specifically as possible the company's plan for reopening to employees, how it will work, how it will be enforced, and who employees should contact if they have questions. One word of caution: **IF YOU DEVELOP WRITTEN POLICIES, YOU MUST ABIDE AND ENFORCE THEM!** A general list of topics may include:
 - Social distancing protocols
 - Protective equipment (i.e., use of masks and/or gloves)
 - Sanitation
 - Rules for high-traffic areas (i.e., corridors, break rooms, etc.)
 - Limiting or prohibiting in-person meetings
 - Requirements for employees feeling symptoms of COVID-19
 - Temperature checks (where appropriate)
- **Training:** Designate a person or persons to train employees on the policies. Upon the return to work, make sure to train employees on your safety policies. Assume that it will take time for employees to learn and adjust to the new physical workplace.
- **Remain Vigilant:** Enforce your policies. The failure to enforce your written policies is worse than having no policies at all! Monitor for signs of sick employees and send them home immediately if they show signs of COVID-19 or other illness. Notify other employees of any suspected COVID-19 infection and immediately determine whether other employees need to be sent home, or whether third parties should be notified of contact with a potentially infected person. Maintain employee confidentiality as much as possible and have a plan in place for time-sensitive communications and actions following a potential outbreak or positive diagnosis.
- **Ease into Reopening:** Although the rules in your state may allow employers to resume operations, employers should encourage remote work whenever feasible and business-appropriate and make every effort to eliminate or limit nonessential

face-to-face meetings and travel. If working from home is not an option, consider staggering work hours, alternating shifts, changing hours of operation, or soliciting volunteers for the initial stage of reopening.

Do you have a plan for recalling laid off or furloughed employees?

- Employees Might Not Want to Return: Some employees may not want to return to work even if you decide to reopen your business. You must be prepared to address each employee's hesitation on a case-by-case basis. Some situations may implicate state, federal, and local leave laws, whereas others might implicate the Americans with Disabilities Act (ADA). A one-size fits all approach can cause significant issues and problems down the road and even litigation; consider contacting your employment counsel for help navigating these difficult and complicated issues.
- Anti-Discrimination/Retaliation Laws Still Apply: Remember, your decision as to which employees are recalled and which are not can result in claims that (re)hiring or return decisions were motivated, in part, by improper factors. In short, decisions based upon protected factors such as race, gender, age, nationality and other protected categories could easily lead to a lawsuit from other affected employees. Make sure that your rehire and recall plan is based upon legitimate business considerations and then abide by your plan.

Are you prepared for the wave of benefits questions?

- Employer-Provided Benefits: As employees return to work, many of them will have questions about their benefits and the impact, if any, on their benefits caused by the closure or temporary furlough. With pay cuts, loss or reduction of hours, or extended periods of shutdown, employees may return to work with questions and confirmation of their remaining benefits or requests for adjustments to their benefits. Develop a template or grid for answers to as many of these questions as you can anticipate and avoid "shooting from the hip".
- Leave Laws: With the passage of the Families First Coronavirus Response Act (FFCRA), there is more to consider than ever before when it comes to employees taking leave. Just remember that when assessing whether an employee qualifies for leave under one legal standard that you are not overlooking an employee's rights to leave under another applicable law.

What if an employee tests positive for COVID-19?

- Do you know what to do and do you have a policy in place for when an employee has tested positive for COVID-19? As you open your workplace, it is entirely possible that you will be confronted with a situation where one of your employees tests positive for COVID-19. Employers should consider the following:

- a. A policy requiring an employee to notify the employer if he/she tests positive for COVID-19. Employers are permitted to implement policies requiring employees to divulge health information when it involves a potential threat to other employees, such as exposure to COVID-19. Employers need to weigh their obligation to notify and protect exposed employees against the obligation to protect the COVID+ employee's privacy as much as possible. We are here to help you navigate your obligations and balance the various interests of your employees.
- b. The impact on other employees. In addition to the COVID+ employee, other employees who were exposed to that employee may be under an obligation to quarantine at home. Employers in certain areas, however, such as critical infrastructure, may be permitted to allow exposed employees to return to work under strict PPE requirements.
- c. Returning to work. The CDC and state departments of health have laid out guidelines for how and when a COVID+ employee can return to work. It is important to understand these guidelines and communicate with your employees so they understand the procedure. Employees who have tested positive and recovered may be eager to return to work. At the same time, their return may make other employees nervous. Communicating your policy and reliance upon CDC and Department of Health guidelines will help reassure your employees and calm nerves.

What about unemployment benefits?

- Take the time to understand your obligations under your state's unemployment benefit scheme. If you are returning your employees to a less than full schedule or salary, they still may be entitled to receive both state and federal unemployment benefits. In fact, many employees may be reluctant to return to work because they are currently receiving more in unemployment benefits than they typically earn at their jobs. It is important to understand whether those benefits will still be available to your employees in addition to any income they earn by returning to work. Based upon your state law, as the employer, you may still have an obligation to file claims on their behalf. For example, in Georgia, employers are required to file underemployment claims on their employees' behalf if the employees schedule is reduced due to COVID-19. The failure to do so can result in the employer being forced to reimburse the Department of Labor for benefits the employee receives.

If you have questions about the issues raised here, please contact any of the attorneys in our [Labor & Employment Practice Group](#).