

COVID-19 Update: Reopening the Workplace

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Six weeks after a National State of Emergency was declared due to the coronavirus (COVID-19) pandemic, it appears that the next stage of this crisis is beginning to unfold – the reopening of the American economy and workplaces. The current situation is fluid – it is not clear when the restrictions will lift in every state, whether those restrictions may be put back into place, and guidance from the state and local governments and federal agencies is constantly evolving. While some states have formed “alliances” and are working together to make reopening decisions, others are moving forward with phased reopening plans or are lifting original closure orders in their entirety. The closure of businesses and non-essential activities brought with it a litany of issues; unemployment, worker safety, and the questions of how to manage an economy when face-to-face interactions have been cut off.

Employers are especially positioned to be on the front line of these issues during the next phase of the crisis: reopening. Employers must balance their legal obligations to their employees, their ability to stay in business, and their relationships with their employees, customers, and the general public. Employers have been scrutinized for how they have treated their employees during this time, both those who have had to make difficult decisions as their non-essential businesses have closed and those essential businesses that have had to struggle with keeping their employees safe against an invisible and insidious virus. Even after the economy reopens, it would be naive to think these struggles will just go away – no one can know how long the virus will force extra precautions, whether we may be faced with periodic shutdowns, or how the crisis will impact employee-employer relations long term.

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Short term, however, employers have to find a way forward, and this can be achieved through careful planning and communication with employees. While ultimately the decisions that employers will have to make in the coming weeks will be fact-specific depending on what makes the most sense for their businesses, there are a number of considerations that employers should keep in mind or use as a starting point for conversations with the various stakeholders in their businesses. Proactivity is key to reducing future liabilities, as is monitoring updates from state and local governments, the federal government, and agencies such as the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.

This pandemic may be unprecedented, but that does not mean that actions taken during the crisis will not set a precedent. The decisions employers make during the transition back to work will impact their relationship with their employees, public perception of their business practices and responsibilities, and have the potential to impact liability well into the future. It is important to take both a wide view of the business' future and a close eye on the situation as it is today, and the decisions that must be made given the current guidance and state orders. Now, more than ever, employers need to consult with government guidance, other business leaders and legal counsel to ensure that they are properly weighing all of the factors and considerations that are critical to negotiating the challenges that will be posed during the months ahead.

Wiley has created the Employer's Guide to Reopening the Workplace to assist employers with the decisions that will have to be made on the long road ahead. This guide is intended to provide employers with a starting point, by providing an overview of legal obligations and best practices to consider before opening the workplace, after the workplace is reopened, and into the future.

Wiley has also compiled a list of COVID-19 Frequently Asked Questions For Employers to provide answers to some of the most pertinent questions employers have had during the crisis. As always, Wiley's team of attorneys is available to provide further answers and guidance during this time, and into the future.