Agenda

- **When?**
- **Who?**
- **How?**
- **Customer-Facing Considerations**
- **Insurance Issues**

THE COUNCIL | Steptoe

States Making the Decision to Reopen

States Reopening

Status
- Partial reopening
- Order lifting or reopening soon
- Shut down or restricted

Source: New York Times

THE COUNCIL | Steptoe

Making The Decision for Your Business: When and How To Reopen?

- ✓ States lift SAH/SIP
- ✓ Consumer demand
- ✓ All at once/Staged?
- ✓ Marshall expertise
- ✓ Manager Training
- ✓ Gov't guidance
- ✓ Stockpile PPE

- ✓ Comms plan
- ✓ Financing
- ✓ Insurance
- ✓ Supply chain
- ✓ GR contacts
- ✓ Next wave prep
- ✓ Transportation

COVID-19
CORONAVIRUS DISEASE 2019

THE COUNCIL | Steptoe

How To Bring Employees Back To Work?
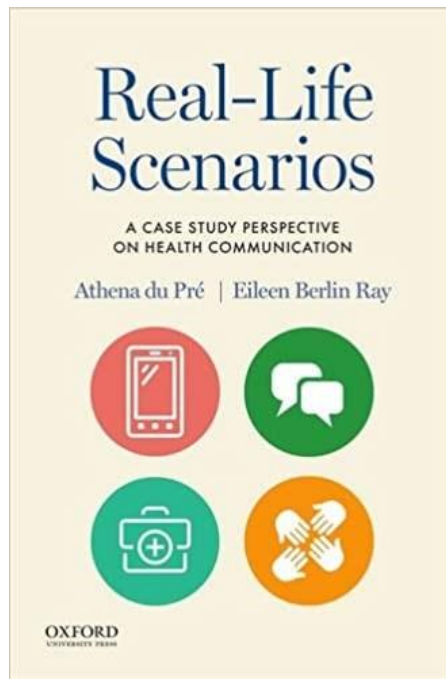
THE COUNCIL | Steptoe

How To Bring Employees Back To Work?

THE COUNCIL | Steptoe

How To Bring Employees Back To Work?

- ✓ I'm in a high-risk group, but "By God, I am coming back to work, Pronto!"
- ✓ I am young/healthy, but I am worried about getting sick (or getting Grandma sick), so I don't want to come back to work
- ✓ I am just a regular parent and ready to come back to work, but my school or daycare is not open yet

Real-Life Scenarios

A CASE STUDY PERSPECTIVE ON HEALTH COMMUNICATION

Athena du Pré | Eileen Berlin Ray

OXFORD
UNIVERSITY PRESS

- ✓ I am doing fine and want to come back to work, but only if you do A, B, C, D, E, F, G, H, I . . . to protect me
- ✓ I tested positive for COVID-19, what should I do?
- ✓ I don't feel well; should I come back? When should I come back?
- ✓ I am at risk, do I have to come back now?

THE COUNCIL | Steptoe

How To Bring Employees Back To Work?

Title VII

ADEA

ADA

Employer Policies
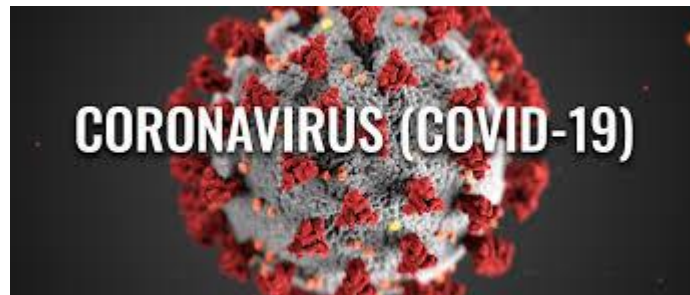
OSHA

State/local Leave

FMLA

CARES

FFCRA

THE COUNCIL | Steptoe

How Do We Ensure Our Workplace Is Safe for Our Employees and Customers?

✓ Medical testing and inquiries

✓ Accommodations for high risk employees

✓ Other federal and state law mandated safety requirements for the workplace

✓ Communications with employees

THE COUNCIL | Steptoe

Medical Testing

- Temperature screens – Yes
  - During the COVID-19 pandemic, employers may measure an employee's body temperature to determine whether they have a fever.*
  - CDC defines a fever as 100.4.
- COVID-19 tests – Yes
  - During the pandemic, employers may use accurate and reliable COVID-19 testing to test employees before they enter the workplace to determine if they have the virus.*
- Antibody tests – Unclear
  - No guidance available.

*https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

THE COUNCIL | Steptoe

Medical Inquiries

- Employers may:
  - require temperature or COVID-19 testing prior to entering the workplace;
  - ask employees if they are experiencing COVID-19 symptoms (consistent with CDC guidance); and
  - send home employees with a fever, COVID-19 symptoms, or a positive COVID-19 test.

Body temperature check is required

THE COUNCIL | Steptoe

Medical Testing and Inquiries: Do's and Don'ts

- Do <u>not</u> discuss a specific employee's results in the presence of other employees.

  - Test results **may be recorded** but **must be maintained confidentially**.

- Do advise employees of potential exposure when learning of a positive test (without identifying the employee infected).

- Do consider data privacy requirements.

  - Tests performed by a medical provider require employee disclosure for PHI under HIPAA .

  - California Consumer Privacy Act (CCPA)

UNCIL | Steptoe

ADA Revisited: Requests for Accommodations Once Back to Work

- *Who* is entitled to an accommodation during the COVID-19 pandemic?
  - Older adults and people of any age who have serious underlying medical conditions.*
- *Who* likely <u>would not</u> be entitled to an accommodation?
  - An employee who does not want to wear PPE, i.e., a mask
  - An employee, without a serious underlying medical condition, who is fearful of exposure to the virus
- *What* types of accommodations may be considered "reasonable" during the COVID-19 pandemic?
  - PPE; reduced contact (i.e., one-way aisles; plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers); telecommuting; and/or unpaid leave.**

*https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html#asthma; https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

**Note: Employees who are not covered by the ADA may be entitled to paid or unpaid leave under the FMLA, FFCRA, and state paid sick leave laws.

THE COUNCIL | Steptoe

Safety Requirements For The Workplace

➢ OSHA (and state agencies)

➢ CDC

➢ State shelter in place/stay at home orders

THE COUNCIL | Steptoe

Safety Requirements For The Workplace: OSHA

- Physical Distancing measures, such as telecommuting options, staggered shifts
- Implement basic infection prevention measures (promoting handwashing, providing hand sanitizer, encouraging sick employees to stay home, encourage respiratory etiquette, provide trash cans and tissues, maintain housekeeping practices such as routine cleaning and disinfecting surfaces)
- Develop policies and procedures for prompt identification and isolation of sick people
- Implement workplace controls (high-efficiency air filters, physical barriers such as sneeze guards)
- Administrative controls such as minimizing employee contact, staggering shifts, discontinuing non-essential travel, developing emergency communications plans
- Personal Protective Equipment (gloves, goggles, face shields, face masks, etc.)

Prohibition against retaliation for reporting unsafe and unhealthy working conditions during the COVID-19 pandemic.

Safety Requirements For The Workplace: CDC

- Properly clean the workplace surfaces to prevent spread of the virus

- Practice social distancing

- Wear facial coverings

- Follow proper prevention hygiene, such as washing your hands frequently and using alcohol-based (at least 60% alcohol) hand sanitizer when soap and water are not available*

*https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html

THE COUNCIL | Steptoe

Safety Requirements For The Workplace: State Orders

- Varies state to state (Important to check your state's requirements)

- Guidance or requirements

- Social distancing, i.e., staggering shifts, altering workspace to provide for 6 feet between employees

- PPE, incl. masks (CT, HI, MD, NJ, NY, RI)

- Limiting exposure through customer contact, i.e., contactless payment systems

- Cleaning the workplace, i.e., make supplies readily available for employees to disinfect their work stations and frequently touched surfaces (keyboards, door handles, telephones, etc.)

- Posting of "Social Distancing Protocol"

Employee Communications

- Inform employees of safety protocols implemented (verbally and in writing, i.e., intranet or postings)

- Advise employees of instances of potential exposure

- Timely respond to employee questions or concerns

THE COUNCIL | Steptoe

Retail Customer-Facing Considerations

- Enforcing customer compliance with state safety requirements (e.g., masks, social distancing)

- Data security and consumer privacy (collecting PII of online shoppers, tracking shopping behavior, targeted advertising, etc.) – CCPA enforcement is on!

- Sales/promotions and price advertising lawsuits;

- Sponsored influencer endorsements and the FTC's Endorsement Guides

- "Made in the U.S.A." and proper qualified claims

- Timely shipping fulfillment rules

- Subscription programs and auto-renewal laws' notice and consent requirements

- Retail installment contracts (consider arbitration clauses; indemnification by service providers)

- Gift card laws (expiration dates, cash back requirements, etc.)

Insurance Issues

✓ Workers' compensation

✓ Employment practices liability insurance (EPLI)

✓ D&O liability

✓ General commercial liability

THE COUNCIL | Steptoe

Questions?

VISIT THE COUNCIL'S COVID-19 RESOURCE CENTER
CIAB.COM/COVID19

THE COUNCIL | Steptoe