

WEBINAR SERIES



Back to the Future: Legal and Logistical Considerations Associated with Returning to the Workplace

Presented by ACLI

July 23, 2020 | 1:00 PM EDT

Preparing a Reopening Plan

- Three key steps:
 1. Understand the state specific orders that will define the parameters for what is and what will be permissible in each state, county or region in which a company operates.
 2. Outline the specific new workplace policies, practices, and procedures that each workplace should adopt for promoting the health and safety of employees.
 3. Anticipate and plan for inevitable employee relations challenges.

Potential Employee Claims

- Government/Regulatory Enforcement Actions
- Negligence/Wrongful Death Lawsuits
- Workers' Compensation Claims
- Traditional Discrimination, Including Failure to Provide Accommodations
- Failure to Provide Statutory Leave
- Retaliation



Liability Shields

State Law:

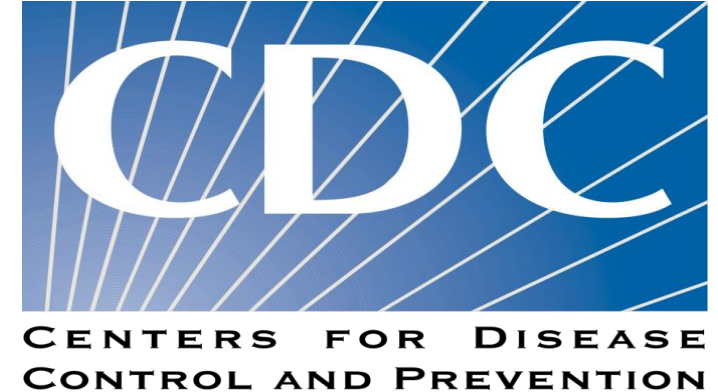
- Five states have passed laws that broadly grant businesses immunity from civil liability for claims relating to COVID-19: Louisiana, North Carolina, Oklahoma, Utah, and Wyoming. Similar bills are also pending in Kansas and Arizona.
- The governor of Arkansas has also passed an executive order that creates a broader liability shield for employers.
- The governors of Alabama, Arizona, Connecticut, Delaware, Georgia, Hawaii, Illinois, Iowa, Kansas, Maryland, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Tennessee, Vermont and Virginia have signed executive orders granting various degrees of limited immunity to health care providers and facilities.
- Legislation to provide immunity to health care providers and facilities has been passed in Alaska, Colorado, District of Columbia, Georgia, Iowa, Kansas, Kentucky, Massachusetts, New Jersey, New York, and Wisconsin.

Federal Law

- Currently, the Public Readiness and Emergency Preparedness (PREP) Act, which provides liability immunity in the healthcare space, applies to countermeasures taken in response to COVID-19, as long as they are part of the authorized emergency response at the federal, regional, state, or local levels.
- The federal government is yet to pass a more generalized liability shield for businesses, but Sen. Mitch McConnell has signaled that this will be a top legislative priority. The proposals currently do not have bipartisan support.

Best Practices to Mitigate Risk

- Monitor and Follow Guidance
- Six Core Considerations:
 1. Timing
 2. Limiting Density
 3. Changes to Workspaces
 4. Protective Equipment
 5. Monitoring
 6. Dialogue with Employees



Employee Relations Challenges

- Employees who refuse to follow new rules.
- Requests for reasonable accommodations.
- Discrimination issues based on COVID-19 status, race, ethnicity, age, etc.
- Workplace privacy rules, including temperature checks, COVID-19 tests, tracking employees and gathering information about symptoms and diagnoses.



James L. Banks, Jr., J.D. General Counsel



Agenda

- Lessons Learned and Business Practices
- Workplace Health and Safety
- Employer Plans for Childcare
- Return-to-Work Considerations
- What to Expect
- How to Engage

Lessons Learned From The First Round Of Business Reopening

OVER HALF

OF ORGANIZATIONS PLAN TO RETURN TO WORK BY THE END OF JULY (53%)

NEARLY 1 IN 5

HAVE ALREADY REOPENED OR NEVER CLOSED PHYSICAL WORKSITES (17%)

ALREADY RETURNED TO WORK AS OF MAY 20/REOPENED WORKSITES

17%

RETURNING ON OR BEFORE JUNE 30

29%

RETURNING BETWEEN JULY 1 AND JULY 31

6%

RETURNING AFTER AUGUST 1

3%

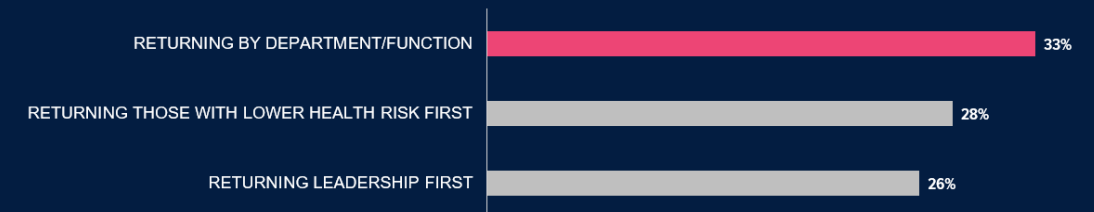
NO RETURN DATE HAS BEEN ANNOUNCED

45%

For Organizations With A Set Return To Worksite Date

- 39%** WILL IMPLEMENT A **PHASED** RETURN STRATEGY (E.G., CRITICAL TEAMS RETURN FIRST)
- 19%** WILL IMPLEMENT AN **ALTERNATING** RETURN STRATEGY
- 11%** WILL RETURN **ALL** EMPLOYEES WORKING FROM HOME TO IN-PERSON, FULL-TIME WORK IMMEDIATELY
- 11%** WILL RETURN **SOME** EMPLOYEES TO THE WORKSITE WHILE OTHERS WILL WORK REMOTE INDEFINITELY
- 10%** WILL ALLOW EMPLOYEES TO **CHOOSE** WHETHER THEY PREFER TO WORK FROM HOME, OR WILL DETERMINE CASE-BY-CASE

AMONG ORGANIZATIONS IMPLEMENTING PHASED RETURN TO WORK STRATEGIES, PHASING BASED ON DEPARTMENT/FUNCTION IS MOST COMMON



Lessons Learned & Best Practices.. So Far

A MAJORITY OF ORGANIZATIONS ARE IMPLEMENTING CHANGES TO MAKE SOCIAL DISTANCING BETWEEN WORKERS MORE FEASIBLE, INCLUDING:

85% ENFORCING SPACED SEATING IN COMMON AREAS

83% REDUCING AVAILABLE SEATING IN COMMON AREAS

83% SETTING LIMITS ON THE NUMBER OF EMPLOYEES IN COMMON AREAS



- SPACING WORKSTATIONS FURTHER APART (79%)
- REMOVING/REDUCING SHARED WORKSPACES (78%)



- ADDING FLOOR MARKERS OR PHYSICAL BARRIERS (71%)
- ADDING PARTITIONS BETWEEN WORKERS AND/OR CUSTOMERS (69%)

Lessons Learned & Best Practices.. So Far

OTHER CHANGES ORGANIZATIONS ARE MAKING:

**OVER
3 IN 4**

ARE ADDING OR CONSIDERING
IMPLEMENTING NEW
'CONTACTLESS' PROCEDURES
(77%)

**OVER
2 IN 3**

ARE ADDING OR CONSIDERING
ADDITIONAL TOUCHLESS
FIXTURES AT THEIR WORKSITE
(68%)

89%



OF ORGANIZATIONS HAVE OR ARE CONSIDERING REQUIRING
EMPLOYEES TO **WASH HANDS OR USE HAND SANITIZER** WHEN
ENTERING WORK LOCATIONS, OR WHEN GOING TO/FROM BREAKS

ORGANIZATIONS ARE ALSO MAKING CHANGES TO
ADDRESS THE NUMBER OF PEOPLE ON-SITE AT ONCE



81%

LIMITING THE
NUMBER OF ON-
SITE *WORKERS*

75%

STAGGERING START,
STOP AND BREAK
TIMES OF WORKERS

78%

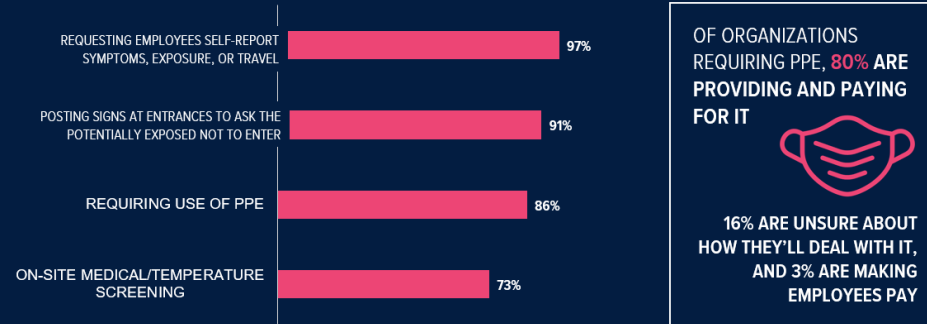
REDUCING THE
NUMBER OF ON-SITE
CUSTOMERS

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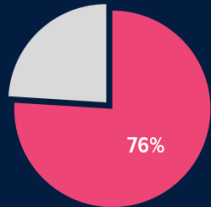
Workplace Health and Safety

HEALTH AND SAFETY MEASURES BEING IMPLEMENTED OR CONSIDERED BY ORGANIZATIONS INCLUDE:

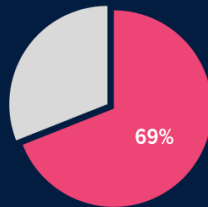


OVER 3 IN 5 ORGANIZATIONS HAVE IMPLEMENTED OR ARE CONSIDERING ADDITIONAL SAFETY MEASURES FOR HIGH-RISK POPULATIONS:

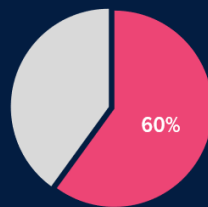
HIGHER-RISK EMPLOYEES (E.G., THOSE WITH CERTAIN HEALTH CONDITIONS)



EMPLOYEES LIVING WITH A HIGHER-RISK INDIVIDUAL (E.G., FAMILY MEMBER OR ROOMMATE)



EMPLOYEES LIVING WITH A FRONTLINE WORKER (E.G., HEALTHCARE WORKERS)



OUR ORGANIZATION IS IMPLEMENTING OR CONSIDERING ADDITIONAL SAFETY MEASURES FOR THIS POPULATION

OUR ORGANIZATION IS NOT CONSIDERING ADDITIONAL SAFETY MEASURES FOR THIS POPULATION

ONLY ABOUT HALF OF ORGANIZATIONS

ARE CONSIDERING OR IMPLEMENTING ADDITIONAL SAFETY MEASURES FOR EMPLOYEES THAT HAVE **RECOVERED FROM COVID-19** (49%) OR LIVE WITH SOMEONE THAT HAS RECOVERED (52%)



ONLY 38% OF ORGANIZATIONS

ARE CONSIDERING OR IMPLEMENTING ADDITIONAL SAFETY MEASURES FOR EMPLOYEES THAT USE **PUBLIC TRANSPORT**

Employer Plans for Childcare

NEARLY 6 IN 10

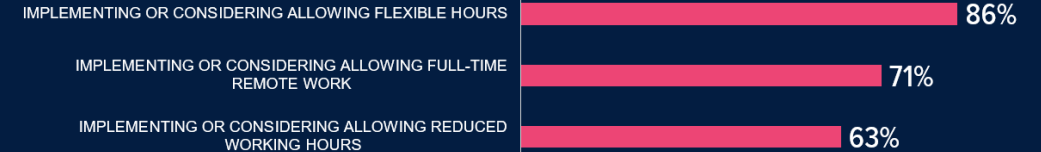
ORGANIZATIONS PLAN TO HANDLE CHILDCARE ACCOMMODATION REQUESTS ON A CASE-BY-CASE BASIS (59%) – 7% WILL NOT GRANT ANY ACCOMMODATIONS



ORGANIZATION SIZE DIFFERENCES

SMALL ORGANIZATIONS (1-99) ARE MORE THAN TWICE AS LIKELY AS LARGE ORGANIZATIONS (500+) TO PLAN TO OFFER CHILDCARE ACCOMMODATIONS TO ALL EMPLOYEES WHO REQUEST THEM— 22% VERSUS 9%

ORGANIZATIONS ARE MAINLY RESPONDING TO CHILDCARE ACCOMMODATION NEEDS WITH FLEXIBILITY-RELATED STRATEGIES



ACCOMMODATIONS WITH DIRECT COSTS ARE MUCH LESS COMMON: **ONLY 9%** OF ORGANIZATIONS ARE CONSIDERING OR PROVIDING SUBSIDIES TO PARENTS TO AFFORD CHILDCARE, **ONLY 7%** ARE CONSIDERING OR PROVIDING ON-SITE CHILDCARE SERVICES

46%

1 IN 10

ORGANIZATIONS PLAN TO KEEP NEW CHILDCARE POLICIES INDEFINITELY

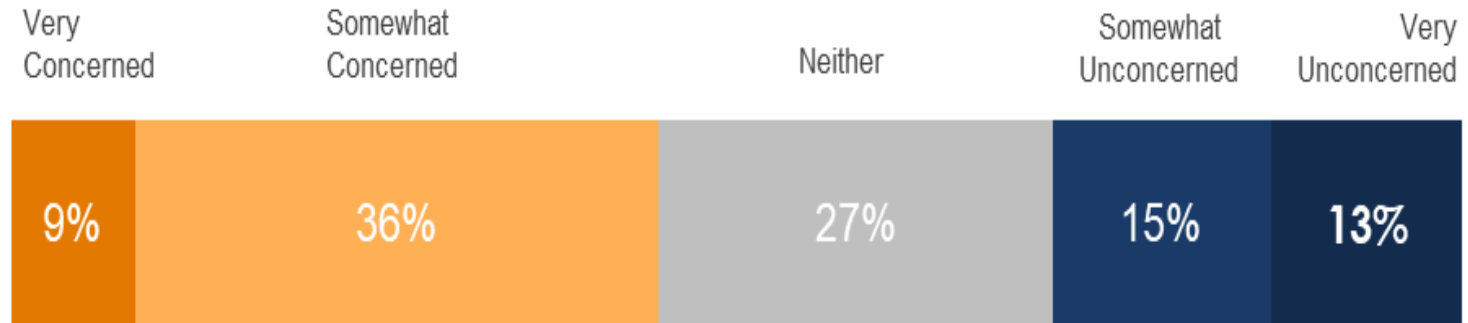
OF ORGANIZATIONS SAY CHILDCARE POLICIES WILL BE ADJUSTED TO ACCOMMODATE EMPLOYEES RETURNING TO THE WORKSITE, BUT WILL EVENTUALLY RETURN TO PRE-COVID-19 POLICIES

COVID-19 Impact & Top Challenges

- Uncertainty in resuming normal business operations and the future needs of the organization (65.3%)
- Maintaining employee morale (64.7%)
- Understanding new regulatory changes and their impact on the organization (55.2%)
- Increased risk of lawsuits/liability (45%)

COVID-19 Impact & Top Challenges

Employer Liability



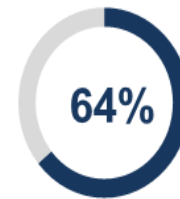
Ways to Reduce Concerns



CDC guidelines for operations



State/local guidance for operations



Federal standard that limits liability for employers who follow CDC guidelines



State law that limits liability for employers who follow CDC guidelines

Key Considerations



Have a plan



Safety



Health &
Wellness



New Realities

What to Expect

Be on the lookout for:

- Need for safety
- Need to clarify expectations
- Turnover intentions
- Low attendance & morale
- Rejection of reassigned duties

Top Employee Concerns

Safety

- Cleaning
- Modifications to Work Site
- Proper Equipment
- Employee Policies & Practices
- Social Distancing



Top Employee Concerns

Schedules

- Telecommuting
- Staggered or rotating work shifts
- Staggered meal and breaks

Expectations

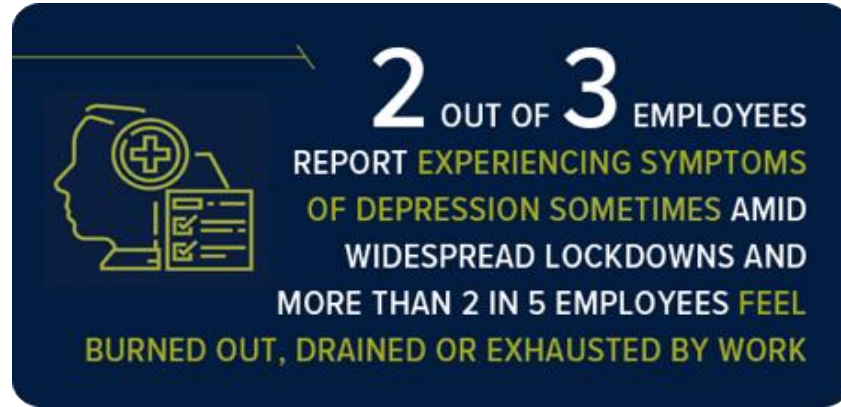
Creating new
expectations

- Refocus the team by clarifying:
- Organizational Structure
- Work Culture
- Performance Goals
- Policies and Procedures
- Team Meetings

SHRM COVID-19 Research

Mental Health of U.S. Workforce Under Severe Strain

Workforce Under Stress



Few Receiving Care



OVER 1 IN 5

EMPLOYEES REPORT COVID-19 HAS
THREATENED SOME PARTS OF THEIR
JOBS TO A *GREAT* OR *VERY GREAT*
EXTENT, INCLUDING:



31% PERSONAL
OPPORTUNITIES



28% PAY AND
BENEFITS



24% JOB SECURITY



22% SAFE WORKING
CONDITIONS

Survivors' Guilt

Some tips to help the team include:

- Communicate
- Acknowledge and listen
- Recall process
- Mental health resources

Key Takeaways



COMMUNICATION IS THE
#1 THING!



PLANNING AND
FORETHOUGHT WILL
ENSURE SUCCESS



USE CHECKLISTS &
RESOURCES PROVIDED

SHRM Coronavirus Resources

Interactive Online Research and Resources on Coronavirus and COVID-19:

<https://shrm.org/hr-today/news/hr-news/Pages/coronavirus-resources.aspx>


<https://www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx>



Remote Work

Many careers no longer require punching a time clock, leading to a significant rise in employees working from home. But the benefits of telework also bring new challenges for employers and human resources professionals.

This resource center can help employers facilitate flexible work arrangements while navigating a sophisticated array of technologies and remote work policies to meet their needs for secure, productive ways to get work done.



Coronavirus and COVID-19

Communicable diseases like coronavirus and the respiratory illness it causes, COVID-19, can bring a busy workforce to a standstill. Look below for the latest news and updates, as well as critical member-only resources. In addition, here is key information to help you to work your way through the pandemic:

- Review our coverage most read by SHRM members, plus a complete list of all content we've published on COVID-19.
- Visit our resource page on [Remote Work](#) guidance and best practices.
- Compare policies regarding layoffs, furloughs and pay cuts on the [Employee Termination and Layoffs](#) resource page.
- Explore our [COVID-19 Express Requests](#) to learn about the CARES Act and much more.



Family and Medical Leave Act

Providing protected leave to employees under the Family and Medical Leave Act (FMLA) helps balance the demands of work and home. It can also create compliance conundrums for HR to unravel. We've put together tools, guidance and the latest news to help navigate these challenges.

SHRM COVID 19 RESEARCH: SMALL BUSINESSES CHANGES

CLEANLINESS CHANGES SMALL BUSINESSES ARE IMPLEMENTING OR CONSIDERING:

94% ADDING CLEANING STATIONS TO THEIR WORKSITES

95% REQUIRING EMPLOYEES TO WASH HANDS OR USE HAND SANITIZER



SHRM COVID 19 RESEARCH: REOPENING SMALL BUSINESSES

81%

OF SMALL BUSINESSES THAT ARE BEING ALLOWED TO REOPEN BY STATE, LOCAL, OR COUNTY AUTHORITIES HAVE **ALREADY BEGUN OR ARE IN THE PROCESS OF** REOPENING THEIR BUSINESS

OF THE REMAINING BUSINESSES:

- 10% HAVE REMAINED FULLY OPEN DURING COVID-19
- 4% HAVE CHOSEN NOT TO REOPEN
- 3% ARE UNABLE TO REOPEN



Mental Health

Depression, bipolar disorder, anxiety disorders and other mental health impairments can rise to the level of disabilities under the Americans with Disabilities Act that require employers to make accommodations for workers with such conditions.

This resource center can help employers understand their obligations and address the mental health of their workers.



Employee Termination and Layoffs

No one looks forward to letting employees go, but most HR professionals must deal with these sensitive matters on occasion, while also ensuring that the business complies with a host of employment laws. Our resource center is designed to help HR navigate both the human and legal aspects of employee terminations and layoffs.

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Thank You



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