

COVID-19: Plan Now for Bringing Back Your Workforce

May 5, 2020

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What Government Leaders are Hearing about Back to Work

Balance Burden on Hospitals & Worker Safety:

- **Segmentation** Sequence segments returning to work according to risk to lower hospitalization rate
- **Effective Therapeutics** While waiting for vaccine, implement effective treatments to curb hospitalization rate & fatality rate
- **Reduce R_0** Implement workplace policies & procedures to reduce rate of spread

Source: Massachusetts High Tech Counsel

Segmentation by Age

- Hospitalization rates by age:
 - < 20 - 1%
 - 20-60 - 5%
 - 60-69 - 12%
 - 70+ - 22%
- Death rates by age:
 - 20-60 - 0.4%
 - 60-69 - 4%
 - 70+ - 18%
- Excluding those aged 60+ from the initial return to work segment may greatly reduce hospital burden without affecting large portion of workforce

Source: Massachusetts High Tech Counsel

Segmentation by Industry

- Ability to WFH depends on industry
- Sectors that cannot do WFH and can't be segmented by age are harder to safeguard
- When states allow non-"essential" businesses to resume operations that cannot function with material number of employees doing WFH, effective Plan all the more critical

Source: Massachusetts High Tech Counsel

Reducing R_0

EMPLOYER-BASED / LESS EXPENSIVE:

- **PPE / Masks** Mandated mask & PPE use
- **Personal Hygiene** Frequent hand washing or sanitizing; avoid touching eyes/nose/mouth. Good respiratory hygiene.
- **Self-Diagnosis** Comprehensive check-list of symptoms each worker considers before leaving home
- **Distancing / No Large Groups** Social distancing at work; staggered shifts & lunch times
- **Workspace Cleaning** Frequent workplace deep cleaning; hygiene zones with mandatory sanitization checkpoints in between
- **Employer Screening** Temperature measurement and symptom screening upon entry
- **Re-designing Workspace** Re-modeling of workspace to ensure greater spacing between employees. Improved air filtration and ventilation. Touch-free handles and interfaces
- **Telework** Encourage telework where possible
- **Travel limitations** Discourage travel unless absolutely necessary. Before traveling, ensure virus levels low at home & destination
- **Smaller Transport Methods** Limit use of mass transit when possible. Encourage carpooling or deploy corporate vans where hygiene easier

COMMUNITY-BASED / MORE EXPENSIVE:

- **Tracing** Team of ~5,000 tracers in MA conducting manual interviews with positive cases and alerting and quarantining those who were in contact with a positive case
- **Testing** 6-10 centralized testing centers in MA performing 100K tests a day

Source: Massachusetts High Tech Counsel

A Return to Pre-Pandemic Operations?

- May marks start of long, incremental resumption of operations
- Variable by state, industry restrictions & guidelines
- Whether short or long term, not like before
- Prepare for new normal of distancing, disinfecting, handwashing
- Also anxiety, apprehension, adaptation

Resuming Operations Safely

Whether restarting or ramping up or moving away from working at home:

- Safe operation in fact through infection control and risk mitigation protocols
- Safe operation in perception through communication, training, enforcement
- Confident employees and customers
- Lower likelihood of claims
- Better able to defend claims

Meet Employees Where They Are to Get Employee Buy-In

- Scared about getting sick
- Scared about losing job
- Emotionally fragile from confinement
- Angry
- Skeptical
- In financial distress

Engage Employees About RTW: Personal Safety

- Communicate how you will protect them *before* they come back
- Find a way to involve employees in development of protocols for safe operation
 - Be clear you want their input, but final decisions rest with employer
- Plans must be able to adapt to changes that will likely come
 - Don't over-commit in your communications!

Engage Employees About RTW: Job Security

- Ask yourself what you can share about company's financial health
- Don't mislead employees about their job security
- Tell them in what ways company has to perform to stay healthy
- Tell them what you need from them

Why You Need an Infectious Disease Preparedness and Response Plan

- Most important step employers can take to create workplace safe from COVID-19
- OSHA's recent [Guidance on Preparing Workforces for COVID-19](#) (Publication 3990-03)
- Other resources:
 - CDC guidelines for COVID-19
 - Industry guidelines, if available, for your business
 - State checklists

Infection is Not Your Only Risk

- Increased non-compliance
- Spread
- Productivity & Morale
- Employee claims
 - Infection – workers comp, negligence
 - Discrimination – age, disability
 - Confidentiality
- Customers, family members, other 3rd parties
 - Negligence
- Waivers

Why OSHA?

- Occupational Safety and Health Act regulates employee safety in most of the private sector.
- General Duty Clause governs the COVID-19 and other pandemic situations
- Compliance with OSHA's recent recent Guidance on COVID-19 is key in managing legal risk
- When employees complain, they often go to OSHA!

Two Other OSHA Standards that Matter

- [PPE Standards](#), which govern the use of gloves, eye, face and respiratory protection
- [Blood-borne pathogen standards](#), which OSHA views as providing framework for controlling risk of exposure to coronavirus from respiratory secretions.

The Role of CDC Guidelines

- Employers should also consult relevant [CDC Guidelines](#).
- In particular, guidelines grouped under [Prevent Getting Sick](#) include well-known steps employers should require regardless of type workplace

Role of State Orders

- Know your state plan for reopening
- State plans differ to some extent
 - Multi-state employers should monitor and comply with all relevant reopening plans
 - Given the differences among states, consider whether to wait for all states to reopen or open as each state permits
 - Be prepared for orders to change quickly if there is a new surge of cases

Developing a Workplace-Specific Preparedness and Response Plan

- Create your plan specifically under the OSHA framework
- Guidance is available at <https://www.osha.gov/shpguidelines/>
- Generally one plan for all employees, but if exposure risk differs by location, plan should address such differences
- If possible, obtain signatures from all employees acknowledging receipt of the Plan

Outline of Plan

- A. Company Policy
- B. Analysis of Exposure Risk
- C. Specific Infection Prevention Measures Applicable Based on Risk Level
- D. General Infection Prevention Measures Applicable to all Positions and Locations
- E. Identification and Isolation of Sick People
- F. Returning to Work After COVID-19 Diagnosis
- G. Travel Restrictions Applicable to Employees
- H. Restrictions on Visitors in the Workplace
- I. Reporting
- J. Enforcement
- K. Signed Acknowledgement

Sample Policy

[COMPANY] is committed to maintaining a workplace that promotes the health and safety of all employees. The World Health Organization has declared a pandemic in connection with the respiratory disease, COVID-19, which is caused by the novel coronavirus (SARS-CoV-2). The virus that causes COVID-19 has been found to be easily transmitted from person to person and, therefore, creates a risk of exposure in the workplace. To address this potential hazard in the workplace, [COMPANY] has developed an Infectious Disease Preparedness and Response Plan (the “Plan”). The Plan addresses all aspects of potential exposure and summarizes the steps [COMPANY] is taking to reduce such potential exposure. All employees are required to review and comply with the Plan. Failure to do so will lead to disciplinary action up to and including termination of employment.

We are confident that by working together to reduce potential exposure to the coronavirus, we will protect our employees and our business from the potentially devastating effects of this pandemic.

Questions about the Plan or the coronavirus should be directed to [NAME].

General Infection Prevention Measures

- Review OSHA's "Ten Steps to Reduce Exposure" (publication 3994)
- Review CDC "Prevent Getting Sick"
- Review state-specific guidelines
- What about HVAC system?!

Analysis of Exposure Risk

- Analyze groups of employees based on potential exposure to coronavirus
- Identify all employees as (very) high, medium, low exposure risk
- Consider
 - Geography (NYC vs office outside of city)
 - Workplace configuration (private offices vs open space with many small cubicles or manufacturing line)
 - Public-facing (customers, receptionist, shared workspace)
 - Exposure to visitors
 - Can visitors be isolated?

OSHA's Hierarchy of Risk

OSHA classifies all work into four categories of risk:

- **VERY HIGH:** high potential for exposure to known or suspected sources of COVID-19 during certain procedures (e.g., medical, lab, or postmortem tasks involving direct exposure to bodily fluids or tissue).
- **HIGH:** high potential for exposure to known or suspected sources of COVID-19 (e.g., health care, medical transport).
- **MEDIUM:** frequent or close contact with people who may be infected, but who are not known or suspected COVID-19 patients (e.g., travel, schools, high-volume retail).
- **LOW:** no required contact with people known to be, or suspected of being, infected with COVID-19, nor frequent close contact with the general public (e.g., office jobs with minimal public contact and safe coworker distancing).

Identify Specific Prevention Measures Depending on Risk Level

Examples:

- How to reduce exposure for employees who work in large open spaces with many other employees in close proximity?
 - Move work stations farther apart
 - Face masks
 - Reduce number of employees working at same time
- How to reduce exposure for employees exposed to customers/the public
 - Screening customers/the public
 - Physical barriers

OSHA's Controls for Health and Safety

OSHA also specifies types of controls in all risk categories (COVID-19-related examples):

- **Engineering:** process design, facility design, workspace design, HVAC
- **Administrative:** most typically policies, procedures, training
- **Personal Protective Equipment (PPE):** N95 masks, gloves, readily available hand sanitizer, and the like
- **Safe work practices:**
 - ordinarily applies only HIGH and VERY HIGH risk occupations; *e.g.* health care infection control practices
 - could also mean disinfecting, hand-washing and social distancing in all workplaces, regardless of the risk level.

Example of Specific Prevention Measures

Sales Employee:

- Medium risk based on exposure to customers and required attendance at sales meetings
- Specific infection prevention measures
 - Virtual meetings whenever possible
 - Large conferences prohibited
 - Small group meetings with customers permitted but customers must be screened and attendees must remain 6 feet apart
 - Use of face mask required whenever outside of office
 - Work from home whenever not meeting with customers

Example of Specific Prevention Measures

IT Manager:

- Low risk because no exposure to customers or public, but regular exposure to numerous co-workers
- Specific infection prevention measures
 - Sanitize all hardware before working on it
 - Meeting with co-workers only remotely
 - If IT employees work closely together in one central office, ensure adequate distancing between work stations

What About Testing?

Options:

- Screening questionnaire
- Temperature taking
- COVID-19 testing

Who?

- Employees
- Customers/vendors/public entering your workplace

When?

- Daily
- Confirm negative test after being diagnosed?
- Only when visitors/customers enter workplace?

EEOC Guidance: Temperature Testing

A.3 When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

Screening

- Employees/visitors given screening questions upon arrival
- Beginning of every day, every shift/every visit
- Questions relate to COVID-19 symptoms or exposure

EITHER:

- Cough
or
- Shortness of breath/difficulty breathing

OR:

Two of the following:

- Fever
- Chills/shaking
- Muscle pain
- Headache
- Sore throat
- Loss of taste and/or smell

Source: CDC : <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

Should You Rely on Self-Screening?

Daily symptom checklist

<u>SYMPTOM</u>	<u>% Cases w/Symptom</u>
Fever	64%
Sinus Pain	50%
Cough	46%
Altered sense of smell	44%
Expectoration	32%
Stuffy nose	25%
Chills	18%
Fatigue	18%
Sore throat	13%
Headache	13%
Difficulty breathing	11%
Joint or muscle pain	10%
Diarrhea	6%
Vomiting	3%

Potential Policy Considerations

- **Mandate employee screening** New Hampshire approach
- **Mandate employee certification**
- **Incentivize Adherence** – *e.g.* through leave policies
- **Self-certification** could detect significant # of cases
- Recent studies suggest true number of asymptomatic cases quite rare (2-6%), suggesting meticulous and accurate daily symptom surveying and self-reporting can be highly effective in lowering R_0

Source: Massachusetts High Tech Counsel

Employer Screening

Examples:

- **Wuhan, China**—all arriving employees must submit to at least **four temperature checks daily**
- **Amazon**—using **thermal cameras** at its operations facilities to screen workers for fevers
- **Some grocery stores** are using **non-contact forehead infrared thermometers** to temperature test associates as they arrive for work
- **Colorado** governor announced **temperature checks at workplaces** will be part of reopening plan

Potential Considerations:

- **Not effective on its own:**
 - 64% of cases present with fever
 - Carriers are contagious before fever manifests.
- **Implementation challenging:**
 - Additional PPE and thermometers could be difficult to acquire
- **Medical information confidentiality**
 - All temperatures taken should be treated as confidential medical information and stored as such

Temperature checks and other employer screening are useful tools when used in combination with other policies

Source: Massachusetts High Tech Council

Temperature Checks

Who:

- Don't need medical personnel
- HR is preferable
- Must be trained
 - Protocol
 - Hygiene
 - Accuracy
 - Confidentiality
 - Communication
 - If employee has fever
 - If employee has symptoms
 - If employee is uncooperative

How/when:

- Upon arrival
- Every day, every shift
- No-touch thermometers
- Take three readings
- Use average
- 100.4 an accepted cutoff
- Be prepared to answer employee questions
 - Leave
 - Return to work

EEOC Guidance: COVID-19 Tests

A.6 May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace?

“... [E]mployers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.”

COVID-19 Tests

- Not recommended for non-healthcare employers
- Significant burden
- 80% are/should be negative
- Only makes sense if
 - Business is critical infrastructure, AND
 - Workforce has experienced one or more cases

Restrictions on Visitors in the Workplace

- Eliminate non-essential visitors
- Change location of visits (e.g., can FedEx driver leave packages in location that does not require walking into the office)
- Create barrier between visitor and employees
 - Plexiglass barrier
 - Mark the safe distance for standing in front of reception desk
- Reduce the number of chairs in a conference room to enforce distancing
- Screening of all visitors with questionnaire about symptoms and potential exposure
- Consider temperature testing for all visitors
 - Logistics matter – don't create a bottleneck that forces a group to gather
 - Self-administer or have company employee administer
 - Use a log to record temperature results (only positives or all) along with name and contact phone number

Communication

- Maximize Plan effectiveness
- Minimize risk of infection
- Reinforce culture of compliance
- Reduce liability risk
- Demonstrate leadership
- Build trust
 - Employees
 - Customers
 - Public

Communication

- Clearly communicate expectations to everyone
- Management sets the tone
- Simple summaries of protocols
- Tell employees what and why
- Multiple means of access for employees
- Repeated reinforcement
- Communicate changed circumstances swiftly
- Be transparent with customers/public
- Encourage reporting of concerns
- Make someone accountable for responding

Enforcement

- Do not let failure to follow protocols go
- If unintentional, be understanding that this is new; coach but be firm
- If intentional, you have to discipline
- If intentional by managers you have to discipline harshly
- First actions will set critical precedent
- Do not discriminate
- If you don't, increase risk
 - Infection
 - Liability

Documentation

Recording and Reporting Incidents of Illness

Develop procedures for employees to report when they are sick or experiencing symptoms, encourage prompt identification/isolation, and encourage self-monitoring if potential exposure is suspected.

Recording Complaints

When employees report what they claim are unsafe conditions, or non-compliance with the organization's Preparedness and Response Plan, keep a record of the complaint as well as the company's response. A company that willingly records employee concerns is in a much better position to defend against claims that it ignored complaints or retaliated against the reporter.

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THANK YOU!

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