

# Returning to the Workplace After COVID-19

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# AGENDA

- Return to Work Policies & Logistics
- Employees' Refusing to Return to Work
- Enforcement in the Workplace
- FFCRA Paid Sick Leave & EFMLA Leave

## **RE-OPENING OFFICES IN TOWN HALL** **LIMITS ON OFFICE SPACE**

**25% Rule- Huh? 25% of what?!**

- Occupancy level under State Building Code or
- Organization's typical occupancy as of Mar. 1, 2020.

# RE-OPENING OFFICES IN TOWN HALL

## WHAT IF I AM OVER?

**2 “Exceptions” that Municipalities can rely upon if challenged:**

1. If you are COVID 19 Essential, you have until July 1, 2020 to comply
2. If you are delivering a “critical service” (continued Government Operation)

# SOCIAL DISTANCING & SIX FEET



Look at Existing Configurations



Directional Hallways



Avoid Congregation in common areas



Partitions

**Refusing to  
Return to  
Work:**

Medical Reasons

Non-Medical Reasons

Remote Work, PTO &  
Union Considerations

## **Scenario 1:**

**Employee with medical conditions that cause them to be high-risk for COVID-19 does not want to return.**

**If currently working remotely and wants to continue to do so...**

- Treat as **Request for Accommodation** under the ADA
- Engage in the ADA **interactive process**
- Continued remote work **likely “reasonable”**

**Not currently working remotely...**

- Treat as a **Request for Accommodation**
- Engage in the ADA **interactive process**
- Reasonable accommodation may include temporary modifications to:
  - Schedule
  - Marginal job duties
  - Additional safety measures

## Scenario 2:

**Employer knows that the employee has a medical condition that places them in a high-risk.**

**Can they be excluded from returning to work?**

Employer **can** ask the employee if they need a reasonable accommodation (per EEOC)

Employer **cannot** bar an employee from the workplace **solely** because of an underlying medical condition

- *Unless* the employee's disability poses a "direct threat" to employee's own health
- And the threat cannot be eliminated or reduced by a reasonable accommodation.

### Important Considerations:

1. This particular employee's disability (not the disability in general)
2. Most current medical knowledge and/or best available objective evidence.
3. To exclude on this basis will be difficult – look at creative ways to eliminate or reduce the potential harm and keep up worker's comp coverage



## **Scenario 3:**

# **An employee is refusing to return to work because of general COVID-related fear.**

### **First Question: Is the ADA implicated?**

- If preexisting mental illness or disorder exacerbated by pandemic- engage in ADA interactive process to determine if there is a reasonable accommodation

### **If ADA is not implicated**

#### **Option 1: Can allow continued remote work**

- Beware of setting a precedent
- Set a firm time limit and guidelines
- Be consistent
- Union concerns when changing work hours

#### **Option 2: Require use of PTO**

- Can allow expanded use of sick time
- If out of PTO and no legitimate reason to stay out, you have the right to terminate

## **Scenario 4:**

**An employee cannot return to work because of childcare issues.**

### **Child Care Unavailable:**

- Consider remote work and modified schedules (keep in mind union concerns)
- Can utilize FFCRA Paid Sick Time & EFMLA Leave (more on this later)

### **Child Care Available, but Choosing Not to Use It:**

- Can allow expanded use of sick time and other PTO
- If out of PTO and no legitimate reason to stay out, you have the right to terminate

## **Scenario 5:**

# **An employee has travelled out of state. Can I require that they quarantine for 14 days?**

**YES – but the Governor’s Order exempts health care, public health, public safety, transportation and designated essential workers.**

**If remote work is possible:**

- You can allow remote work for the 14-day period

**If remote work is NOT possible for the position:**

- You can require use of PTO or employees may use FFCRA leave

***What about employees who live near the state border?***

- Conducting regular business in a nearby state will likely not be considered “travel” under the Governor’s Order

# IMPORTANT REMINDERS:



- Limited time period- sunset all side agreements as of December 31, 2020
- Document your conversations
- Must be reasonable and not undue hardship to employer
- Essential function of the job

# Concerns in the Workplace

- ▶ **You can require masks and social distancing for employees.**
  - ▶ Use ADA reasonable accommodation process for employees requesting medical exemptions
- ▶ **Instruct employees on procedures for working with the public**
  - ▶ *What if a citizen refuses to wear a mask or comply with social distancing?*
- ▶ **Employees exhibiting symptoms of COVID**
  - ▶ You can send them home, but salary employees must be paid for the entire day.
  - ▶ You can ask an employee if they are experiencing symptoms

## Additional Covid-Related Training:

- ▶ **Required** by the Commonwealth for social distancing and hygiene protocols
- ▶ **Consider** training on de-escalation given the new issues that will inevitably arise with co-workers and the public

## **FFRCA Paid Sick Leave:**

Employees who are unable to work (including remote work) for one of the following reasons are entitled to 2 weeks (to a maximum of 80 hours) of paid leave.\*

### **100% Pay**

**(max. \$511/day and \$5,110 total)**

1. Subject to a quarantine or isolation order
2. Advised by health care provider to quarantine
3. Experiencing COVID-19 symptoms and seeking a medical diagnosis

### **2/3 Pay**

**(max. \$200/day and \$2,000 total)**

4. Caring for an individual subject to (1) or (2)
5. Caring for their child whose school or place of care is closed/unavailable due to COVID
6. Experiencing any other substantially-similar condition specified by U.S. Dept of Health & Human Services.

\*Municipalities had the option to exclude essential health and safety employees

# Emergency Family & Medical Leave Expansion Act (EFMLA)

For employees\* who are unable to work (including remote work) because their child's school or childcare is closed/unavailable due to COVID-19

- Up to 12 weeks (counts against regular FMLA leave)
- First 10 days are unpaid, but employees can use FFCRA leave *or* employer policy can allow use of PTO
- Remaining 10 weeks are at 2/3 pay (max. \$200/day and \$2,000 total)

\*Municipalities had the option to exclude essential health and safety employees



## **Common FFCRA Paid Sick Time & EFMLA Question:**

**Should I allow employees receiving less than 100% pay during leave to supplement their pay with PTO?**

Be consistent with existing practices! If you allow it during worker's comp or other leaves you may want to allow it for consistency.

But be aware - receiving 100% pay (or more) may remove incentive to return to work.

# REMINDERS

Ok to:

- ▶ Take body temperature
- ▶ Additional questions to determine “direct threat”
- ▶ Medical documentation to return
- ▶ May require Covid tests before the employees enter the workplace
- ▶ Disclose the name of Covid positive employee to public health agencies

Always keep medical information  
separate confidential medical file

## REMINDERS (continued)

- ▶ New employees can be screened for symptoms and can be required to pass Covid screen in a post-offer exam.
- ▶ A prospective employee's start date can be delayed due to Covid symptoms.
- ▶ Ok to withdraw an offer if a prospective employee is needed to start immediately, but cannot due to Covid symptoms.
- ▶ Cannot unilaterally postpone or withdraw an offer for persons over 65 or pregnant (and therefore considered higher risk) but can do so with agreement of the employee or consider telecommuting by agreement, if appropriate for the position.
- ▶ The federal and local government guidance is being updated periodically as things evolve – keep an eye out for any changes.

The background of the slide features an abstract design with various shades of blue. On the right side, there are overlapping triangular and polygonal shapes in different tones of blue, ranging from light sky blue to a deep navy blue. These shapes create a dynamic, geometric pattern. The left side of the slide is a solid, very light blue, providing a clean backdrop for the text.

# **Any Questions?**

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