



GUIDANCE FOR EMPLOYERS PLANNING TO REOPEN IN A COVID-19 WORLD, May 7, 2020

With some areas of the country gearing up to reopen, employers are contemplating how to welcome employees and customers back safely. Employers are finding COVID-19 presents new legal considerations and a vast framework of guidance and regulations. Below we have provided a list of helpful resources and summaries identifying the relevant guidance to assist in a safe and successful re-opening of a business. Also provided are tips on developing a COVID-19 return to work plan, and the most effective way an employer can communicate to its employees, customers, vendors, and clients on the policies in place to ensure a safe and healthy business.

1. **Review the Federal and Local Law**

While the COVID-19 pandemic is responsible for a number of new laws, such as the Families First Coronavirus Relief Act (“FFCRA Act”) and the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), employers must also take steps to ensure that they comply with laws in place prior to COVID-19, such as the Americans with Disabilities Act (“ADA”). The coronavirus presents a conundrum for employers when it comes to providing a safe workplace free from recognized hazards that could cause death or serious physical harm because it is highly contagious and its effects on individuals range from none or minimal symptoms to death. Since the United States has not experienced a true pandemic in more than 100 years, many agencies have provided guidance to explain how the pandemic applies to current laws. Due to this uncertainty, employers should make substantial effort to review and follow the Federal guidelines. Below is a compiled and highly recommended list of federal resources:

- [Equal Employment Opportunity Commission - Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)
- [Occupational Safety and Health Administration – Guidance on Preparing Workplaces for COVID-19](#)
- [U.S. Department of Labor – COVID-19 and the American Workplace](#)

Keep in mind, state and local agencies are also playing a critical role during the pandemic. Just like the federal government, state and local municipalities have enacted laws and regulations related to COVID-19. For example, Seattle recently passed [an ordinance](#) that prohibits commercial landlords from raising rents on small businesses, and requires landlords to establish payment plans for small businesses failing to make rent because of COVID-19. For Washington businesses, below are a list of state resources:

- [Washington State’s Official COVID-19 site](#)
- [Governor Inslee SafeStart Plan](#)
- [High Risk Employee Proclamation 20-46](#)
- [Washington Department of Labor & Industries, Novel Coronavirus Outbreak \(COVID-19\) Resources](#)
- [Coronavirus \(COVID-19\) Prevention](#)

2. Developing a Reopening Plan

Every business is different, and even businesses within the same industry may have dramatically different reopening considerations, given variance in physical workplaces, workforce demographics, technology, and culture. Companies should draft reopening plans with three distinct goals: (1) compliance with federal and local laws and regulations; (2) observing best practices in order to reduce the spread of the virus; and (3) limiting liability in the event of a positive case. To achieve these goals, employers should evaluate each position and workstation in its organization in order to ensure there are no unnecessary risks of transmission. Some examples of practices that should be put in place include observing social distancing and hand washing; distributing masks to employees, visitors, and customers with the requirement that everyone wear masks while on company premises; and training managers on how to recognize and respond to an employee who may have been exposed to or is exhibiting potential symptoms of coronavirus. Taking these steps and being transparent will provide employees with the necessary confidence that they are returning to a safe working environment and that their employer had their best interest in mind when considering their specific work activities and surroundings prior to returning to operation. It is clear that efforts to reduce the spread of COVID-19 will pay hefty dividends in the form of a healthy and stable workforce and fewer work stoppages.

3. Communications with Employees, Clients, Visitors, and Customers

Some employees will be excited to return to work, while others may be reluctant. Clear and effective communication will help reduce any anxiety caused by returning to work during a pandemic. When drafting a COVID-19 policy employers should thoughtfully adopt simple guidelines that are understood by all employees and can quickly be implemented. Employers are encouraged not to overwhelm employees with COVID-19 information, but rather focus on the general steps that all employees can take to reduce COVID-19 transmissions and the specific changes to each employee's job to reduce the risk of transmission. Furthermore, employers who have taken the time to consider every position and workstation in its operation will earn the confidence and trust of their employees faster than those who do not.

Businesses must also take into account potential COVID-19 risks with clients, visitors, and customers. First, the exposure of coronavirus and its potential deadly effects may create tortious liability against the business. Second, customers and clients may be uncomfortable with the new "normal," resulting in them limiting public outings, or outright refusing to comply with the businesses' COVID-19 mandates. Third, negligence claims related to virus transmissions against a business have been historically rare, but the plaintiff's bar may take this opportunity to test these claims. Fourth, the economic circumstances may create financial incentive for customers to sue businesses related to COVID-19 transmissions.

To gain back business from customers, visitors, and clients, they must be able to trust that a business genuinely has their safety in mind. This trust will need more than documentation and operational changes. In other words, customers do not just want to be safe, they want to feel safe. Businesses may want to consider undertaking efforts to point out changes to customers, even when they are obvious. For example, a plastic barrier between a cashier and a customer will help reduce the transmission of the virus. However, a self-serving sticker on the barrier explaining that the company is using barriers to "Reduce the Spread" gives the impression that the company has engaged in extensive COVID-19 planning and may reduce the companies risk of becoming a target, and has the added benefit of serving as a helpful exhibit should a matter proceed to litigation.

It is undeniable that during this unprecedented time, it is stressful to be a business owner. However, if you follow the above guidance and review the links to the federal and state materials, you will have the most up-to-date information to provide you with the confidence necessary to reopen your business knowing that you have taken all necessary steps to keep your employees, customers, and visitors safe.

Visit our [COVID-19 Hub](#) for ongoing updates.

GUIDANCE FOR EMPLOYERS PLANNING TO REOPEN IN A COVID-19 WORLD



Authors:

Robert L. Gillette, Senior Counsel – Gordon Rees Scully Mansukhani Gordon
Sarah N. Turner, Partner – Gordon Rees Scully Mansukhani Gordon

Gordon Rees Scully Mansukhani - Your 50 State Partner™

As the only law firm with offices and attorneys in all 50 states, Gordon & Rees delivers maximum value to our clients by combining the resources of a full-service national firm with the local knowledge of a regional firm. Featuring more than 950 lawyers nationwide, we provide comprehensive litigation and business transactions services to public and private companies ranging from start-ups to Fortune 500 corporations. Founded in 1974, Gordon & Rees is recognized among the fastest growing and largest law firms in the country. The firm is currently ranked among the 35 largest law firms in the U.S. and the top 50 firms for diverse and female attorneys in the Amlaw 200.

Source:

<https://www.grsm.com/publications/2020/guidance-for-employers-planning-to-reopen-in-a-covid-19-world>