



## COVID-19 Webinars

# Returning to Work in the COVID-19 Era

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# Welcome

The presentation will begin at 1:05 p.m.

CLE and CE credits are pending. Email [alex.hernandez@wilsonelser.com](mailto:alex.hernandez@wilsonelser.com) if you wish to be contacted regarding CLE or CE credits for this webinar.




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## Transitioning Employees Back to Work: A Toolkit for Employers




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### What do you need to know before you bring your workers back?

- Federal Guidelines
- Assessing the workplace
- Preparing for public access
- The Screening process
- Devising a Return to Work Plan
- Communication Strategy
- FAQs

COVID-19  
Returning to Work Safely


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**Before you bring your employees back**



3 days ago

**GUIDELINES**  
**OPENING UP AMERICA AGAIN**

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**Is your community ready?**

- Federal "gating" criteria for reopening your business

**Proposed State or Regional Gating Criteria**

Satisfy Before Proceeding to Phased Comeback

SYMPTOMS	CASES	HOSPITALS
Downward trajectory of influenza-like illnesses (ILI) reported within a 14-day period	Downward trajectory of documented cases within a 14-day period	Treat all patients without crisis care
<b>AND</b>	<b>OR</b>	<b>AND</b>
Downward trajectory of covid-like syndromic cases reported within a 14-day period	Downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests)	Robust testing program in place for at-risk health-care workers, including emerging antibody testing

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**Federal Guidelines – 3 phases**



- Phase 1 – gating criteria are met
  - Guidelines for individuals, employers, and specific types of employers
  - Continue to telework
  - Return to work in phases
  - Close common areas
  - Minimize non-essential travel
  - Consider special accommodation for employees in the vulnerable population
  - Must limit to 10 individual when social distancing not readily appropriate
- Phase 2 – for States and Regions with no evidence of a rebound and that satisfy the gating criteria a second time
  - Additional guidelines for individuals, employers, and specific types of employers
  - Continue to telework
  - Close common area or enforce moderate social distancing
  - Limit to 50 people if social distancing is not practicable
- Phase 3 – for States and Regions with no evidence of a rebound and that satisfy the gating criteria a third time
  - Additional guidelines for individuals, employers, and specific types of employers
  - Unrestricted staffing



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## Federal Reopening Guidelines

- Who is a "vulnerable individual"?
  - Elderly individuals
  - Individuals with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy



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## Making sure your workplace is ready

- Prepare pandemic disease response policy
  - Provide notice of the steps you will take if an employee shows symptoms or had exposure
- Check local authorities about recall rights
- Set up complaint process for workplace safety issues
- Ensure delivery of adequate PPE supplies
- Post notices of good hygiene practices
- Check compliance with CDC guidance on workplace preventive
  - Use of masks
  - Cleaning protocols



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## Checking to make sure your workplace is ready for public access

- Review engineering and/or administrative controls
  - What changes need to be made to comply with social distancing standards?
  - What are industry best practices re OSHA compliance?
  - Is there a maximum number of individuals who can congregate in your space?
- Review your workplace set up and floor plans
  - Do you need to install barriers?
  - Do you have enough PPE on hand?
  - Do you need to set up shifts to reduce the number of employees in the workplace to comply with social distancing guidelines?
  - Do you have cleaning staff available to clean and disinfect?
  - What notices must you post?



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## Screening Employees

- Are employers required to check employees' temperature and health symptoms?
- If you are going to do this, you have to plan accordingly.
  - Is it practically possible?
  - Who's going to do it?
  - Where are you going to do it?
  - Are you going to pay employees for waiting to be screened?
  - What protections in place for privacy and confidentiality?
  - What documents do you need to maintain, if any?
  - What criteria are you going to use?
- Are you going to require your employees to test for COVID-19?



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## Develop a Return to Work Plan

- If you have a collective bargaining agreement, make sure you follow up to avoid an ULP.
- Identify the functions to recall in order of priority
- Identify the positions to recall in order of priority
- Identify the persons in the positions and functions to be recalled and determine and apply objective basis to rank their priority in the recall (such as seniority in the job, prior performance evaluations, etc.)
- Create the recall list with priority and plan the gradual return to work with maximum capacity in mind
- Perform adverse impact analysis with your employment counsel.



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## Develop a Return to Work Plan

- Review all hourly rates to ensure minimum wage
- Review employee FLSA exemption classifications
- If you intend to change pay rates, plan on providing proper notice
- If you intend to eliminate any positions, plan on providing proper notice
- Any changes should be incorporated into the communications plan with employees
- Review your leave policies
  - Update to include leaves available under FFCRA if applicable
- Review scheduling needs



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### Returning to Work in the "New Norm"

- Ensure that all employees go through the screening process
- Provide training to employees as to new infectious disease protocols
- If work spaces have been re-assigned, provide orientation
- Ensure sufficient PPE is available
- Ensure all notices are properly posted



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### Develop a Communications Plan

- Create template letters of recall so all employees are provided with the same information
- Create public notices to post on company website, social media, etc. to announce re-opening of business
- Create template response letters to send to employee who accept or decline recall to work



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FAQs



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## FAQs

- Can I fire employee for job abandonment if he/she does not respond to recall notice?
- Do I have to put him/her at the back of the recall list?
- What if I don't want to recall the employee because of prior performance issues?
- What if the employee is afraid to return despite all of the precautions I have taken?
- What if the employee is afraid to return to work because of concerns about exposing other family members?
- What if I later learn that an employee has not been truthful about his or her exposure to the infectious disease?



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## FAQs

- What if an employee tells me that he/she plans to travel to China on vacation?  
Can I tell him/her not to go?
- Can I prohibit business travel to China but not other locations?
- Can I prohibit travel to specific pandemic "hot-spots" in the US, such as NYC?
- Can I require employees to self-quarantine after they have travelled?
- Do I have to pay them while they are in self-quarantine?
- Do I have to provide notices and policies in Spanish?
- Can I decide not to recall employees who are Chinese because of concerns about exposure?
- How do I handle complaints from other employees who are concerned about working alongside an employee who is Chinese?



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## FAQs

- Can I transfer employees from one location to another to avoid more restrictive stay-at-home or business closure orders?
- If an employee refuses to transfer to another location, can I terminate that employee for insubordination?
- What if the business does not come back up to sustain the employees I have recalled?  
Can I furlough them again?
- Can I still take disciplinary action against employees who are recalled to work?
- Can I tell employees who have other illnesses to stay home, such as a seasonal flu or cold or bronchitis or allergies?



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## FAQs

- If an employee is showing symptoms of COVID-19 but cannot get tested, can I treat him as if he has tested positive?
- If I limit or exclude vulnerable individuals from the workplace, am I treating that person "regarded as" having a disability?
- What if an employee asks for more protective measures that I cannot afford to provide? Am I supposed to treat these requests as a reasonable accommodation? Can I deny such requests?



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