

Planning Now for Reopening the Workplace – An Outline of Considerations for Employers

Now is the time for employers to consider what needs to happen to reopen their businesses. The new rules and operating procedures businesses will need to follow will be disruptively different than those during pre-pandemic times and they will be complex. These new rules and procedures will look different for different businesses and for similar businesses in different locations. And, as with every phase of this pandemic, just as a prudent set of rules and procedures are set in place, they may need to change based on new information about the virus, new guidance from government authorities or new outbreaks in an employer's area.

There are a number of steps employers can take to prepare for the reopening process. This guide is intended to help businesses open as quickly and as safely as possible.

The Essential Business-Risk Assessment

Currently, most states have rules that require the closure of all businesses, or portions of businesses, that are not considered "essential." In addition, under the Trump Administration's [Guidelines on Opening Up America Again](#), businesses should only reopen in phases that are tied to the trajectory of illness and documented cases in the region and the capacity of regional hospitals. Each state will have its own standards for how it determines when non-essential business operations can resume.

In New York, the Governor has begun to outline a plan for how the state will get back to business, which includes an analysis of how "essential" each business is as well as the risk of infection spreading at the workplace. The more essential and the lower the infection risk, the higher the likelihood that that business will be able to reopen earlier. You can read more about that plan [here](#).

In preparing for reopening, businesses should start with an assessment of risks for employees, customers and others who might enter the workplace. The initial assessment should focus on whether and to what extent there is the possibility of frequent or close contact with other people. This will vary greatly from business to business. For instance, for a business with office space where people work in physically separate workstations, the employer would focus its risk assessment on employee social distancing, common areas and shared equipment. For a business such as a restaurant or day care center where there will be a regular influx and outflux of people and where social distancing is more challenging, the employer will need to assess higher risks of transmission and therefore have more involved mitigation plans.

The risk analysis and its related mitigation strategies should also include a cost-benefit analysis. It is possible that prudent risk mitigation strategies make the costs of reopening the business at a point in time greater than the benefits.

The Reopening "Toolkit"

Each employer will need to develop a "toolkit" tailored to its business and flexible to changing circumstances conducting its risk analysis and detailing its mitigation strategies as the business prepares a return-to-work plan. The toolkit should

address several different planning areas, including a Workplace Safety Plan, a Proactive Infection Plan, an Employee Relations Work Plan and a Safety Communications and Training Plan. Some brief information about each of these plans follows.

As employers develop each of these plans, they should be referring to the guidance provided by the CDC, OSHA, EEOC and the New York Department of Health. These are being updated continually and will need to be checked regularly.

Workplace Safety Plan

A good Workplace Safety Plan will need to address a number of issues, including:

- How and how often to clean and disinfect work areas, especially common areas such as restrooms;
- How to implement social distancing, including as employees enter and leave the workplace and during meal breaks;
- Whether changes need to be made to work schedules or the physical workspace to decrease contact between employees;
- How to monitor employee health, including whether and how to check temperatures;
- Whether and to what extent there is a need for personal protective equipment (PPE) such as gloves or masks;
- Whether continuing business travel restrictions are warranted; and
- If a business is in a leased or shared space, what coordination is needed between the business and its landlord.

Proactive Infection Plan

A Proactive Infection Plan will need to address issues such as:

- How best to ensure that employees stay home if they are feeling ill or if someone in their household is feeling ill;
- What to do if an employee exhibits symptoms of COVID-19 in the workplace;
- What to do if an employee tests positive for COVID-19;
- What to do if an employee was exposed to someone who tests positive to COVID-19; and
- How and when an employee can return to work after testing positive for COVID-19.

Employee Relations Control Plan

An Employee Relations Control Plan will need to anticipate and address labor and employment issues likely to arise as a result of the pandemic to ensure there is engagement in the workplace when employees return to new work conditions. A vital part of ensuring engagement is effectively communicating and training employees on these new conditions. In fact, it is so important that it is a separate tool in our toolkit as described below.

As part of the Employee Relations Control Plan, employers should take the following steps:

- Review their existing policies and assess which ones need to be changed due to the pandemic or the new work conditions. These policies might include attendance, vacation or paid time off, workhours and lunchbreaks, leave policies, including sick leave and travel policies;
- Anticipate unique workplace issues such as:
 - Whether and to what extent an employee can refuse to return to work;

- What accommodations should be made for employees whose health conditions or age make them more vulnerable;
- What wage and hour issues may be implicated around some of the new workplace rules such as staggered start times, health monitoring, etc.; and
- What to do if an infection in the workplace or a new spread in the community requires the employer to quickly change its operations.

For employers who shut down their business operations, be sure you are up to speed on the Emergency Paid Sick Leave benefits and the Emergency Family Medical Leave Act benefits employees may be entitled to under The Families First Coronavirus Response Act as well as the New York Emergency Paid Sick Leave Law. If the employee indicates that he or she cannot return to work due to a qualifying COVID-19 related reason under any of these new laws, new benefits may be available to them. For more information on these new laws, see [here](#), [here](#) and [here](#).

Safety Communication and Training Plan

It will be critical for employers to start planning how they'll communicate these plans to their employees. Many employees will be feeling apprehensive about returning to work with others and it is very likely the workplace will look and feel quite different from what they were used to pre-pandemic. It will also be vitally important that employees are made aware of increased hygiene, sanitization and social distancing protocols they're to be expected to follow.

Employers will need to evaluate their existing methods of communication to determine if they'll be adequate for reaching everyone, especially if you have a significant percentage of the workforce teleworking or on furlough. Certain individuals or committees should be designated as responsible contacts for overseeing communication and conducting periodic reviews of its effectiveness. Employers should also evaluate the workforce to determine if separate user groups should be established for certain communications with employees who will be working in different departments, locations or roles; on different shifts or with different terms; and/or who will continue working remotely or will remain on furlough or layoff.

- **Return-to-Work Communication:** Employers should communicate with employees prior to their return to work, explaining the new measures and protocols that have been established to maintain a safe and healthy workplace.
- **Workplace Signage:** Employers should also consider developing workplace signage and posters to remind employees of hand and respiratory hygiene, social distancing, and PPE requirements.
- **Training:** Training, especially for supervisors and managers, will be critical to ensure compliance with and enforcement of Infectious Disease Control and Workplace Safety Plans. Training for supervisors should include information on new policies and procedures put in place, how they will be expected to monitor and report employee non-compliance with safety protocols and how to respond to suspected cases of COVID-19. As with employee training/instruction on new protocols, social distancing and documentation of the training will also be key considerations.
- **Response to Positive COVID-19 Cases:** Employers would be wise to have communications ready to go regarding positive COVID-19 cases among the workforce in compliance with your Proactive Infection Plan.
- **Contractors/Vendors/Visitors/Customers:** Appropriate communications should also be made to any contractors, vendors and on-site visitors regarding accessing the worksite and any changes in hours or availability.
- **Periodic Review and Updates:** Appropriate communications should continue after the employees return as frequently as possible during the first few months to include any updates or changes in policies.

Reopening Documentation

Finally, document, document, document. In these crazy times, it will be easy to forget everything that happened during the early days of reopening your business. It will be important to have documentation of: (i) what steps you put in place to ensure employee safety; (ii) how that was communicated; (iii) whether, when and how those steps might have changed over time; (iv) what problems were encountered and how they were resolved; and (v) other out-of-the ordinary issues that were encountered.

If you have any questions about this Information Memo or would like further information on resuming fuller operations after the PAUSE, please contact any of the [attorneys](#) in our [Labor and Employment Practice Group](#) or the attorney in the firm with whom you are regularly in contact.



Bond has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences. For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. • Attorney Advertising • © 2020 Bond, Schoeneck & King PLLC

[CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC](#)

[FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM](#)