

Return to Work (RTW) Considerations

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This document is not to be taken as legal advice. The author of this document made every effort to remove confidential/company identifying information before distribution. Consult your own legal counsel in developing return to work plans.

General Principles

Phased approach to return to work plans (“RTW”)

- Most companies are not bringing all employees back at the same time (risk of second wave of virus spread)
- Considering employee wellbeing, fears, concerns, etc.
 - Good suggestion to have “welcome back” packages for employees when they RTW

Tiering employees, and then RTW by Tier:

- Essential v. non-essential (including by geographic location and role)
- Required onsite v. able to work remotely
- Special Accommodation For High Risk Individuals (and those who have, or are caring for, high risk family members, including health care workers)
- Reasonable Accommodation For Others, as required (but keeping in mind employee's well being/state of mind and being flexible within reason)
- No disparate treatment between management and Rank-and-file level employees
 - Rotation of leadership team (business continuity concerns)

When to start RTW process, approaches:

- Complying with orders on a jurisdiction by jurisdiction basis
- Jurisdictional Requirements Used As A Baseline Only
- Relying On Medical Expert Guidance (CDC, WHO, state/local public health)
- Once Orders Lift, based on business needs/customers demand
- Considering All The Above, and striving for “best practices”

- *Questions:*
 - *How to address competing advice?*
 - *Federal, state and local government orders*
 - *WHO v. CDC guidance*
 - *Lack of consensus among medical community*

Longer Term Considerations:

- Culling lessons learned into more robust risk assessment processes going forward
- Re-assessing Business Strategies, mission, core values—does this experience warrant any pivots in the business model (e.g., new products, new markets, new services)?
- Mitigation Efforts Implemented and/or Being Considered (with related questions embedded)

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COVID-19 Taskforce:

- Meets daily, or as needed, to address COVID-19 related issues
- Comprising cross-functional leaders (including Legal, HR and Facilities), including stakeholders from remote offices, as applicable.
- Daily, or as needed, communications on task force activities to all employees and/or sub-groups of employees, as appropriate
 - Special communications regarding actual or potential onsite exposures (as required, working with HR and Legal.
- Tasked with establishing and monitoring compliance with pandemic response plan/business continuity plan
- **RTW Considerations:**
 - Consider forming separate sub-task forces, focused on supporting specific categories of employees (e.g., remote v onsite).
 - Active monitoring to promptly identify and address issues (including rolling back RTW efforts)
 - Consider assessments (and seeking employee feedback) after Day 1, Week 1 and Month 1 post-RTW rollout

Work from Home (“WFH”)

- Generally implemented company-wide basis, except for “business critical/essential” functions (some “essential businesses” haven’t been able to implement WFH at all)
- *Questions:*
 - *How is WFH impacting ongoing business operations?*

- Are already in-place WFH measures effective?
 - How can effectiveness be measured?
 - What employee feedback is being sought/received?
- Is WFH sustainable for all or certain employee functions/groups/locations?
- How is WFH impacting our company culture/brand? Productivity levels?
- How will we address WFH employees who refuse, or do not feel safe, returning to onsite work?
 - Consider if extended WFH arrangement is an accommodation
 - Compromised Immune System Or Other High-risk category
 - Consider if WFH is reasonable for role
 - Is it possible that some functions will remain WFH permanently?
- Should WFH arrangements be retained until schools/childcare comes back online?
 - What happens if/when stay in place orders are lifted, but schools and childcare are not back online?
 - Should companies offer a childcare stipend to enable employees to continue WFH, or return to onsite work?
 - If stipend offered, are company or employee benefits available under FFCRA or local equivalents?
- How to address CDC guidance on letting employees work remotely, even if they have a family member who has been diagnosed with COVID-19?
 - Providing PPE for family members who are working remotely with a sick family member
 - Assuming that employees are quarantining appropriately in their own homes
 - Union considerations – prohibitions against shutting down work (even if company wants to)
 - Requiring temperature checks (so that WFH work can stop if showing symptoms)
 - Following guidelines from directly engaged medical experts (v. reduced CDC guidance)
- What coverage does the company have under insurance policies in the event employee gets sick or dies from COVID-19 after returning to work (including to cover any wrongful death claim)?
 - With free movement, will likely be difficult to trace that illness was contracted at work
 - Documenting “good faith” efforts to comply and keep employees safe may be all you can do
- What lessons can be learned from Asian countries who lifted orders too early or have come back online successfully.

Health Screening:

Temperature Checks/Health Assessments

- **Self-certification**
 - Risk if dishonesty if no work = no pay
 - Reduced risk of cross exposure
 - Less infrastructure requirements
 - Required in some jurisdictions
- **Onsite screenings (administered by healthcare professional)**
 - Risk of healthcare professional bringing prior exposure onsite and exposing employees (or being exposed to sick employees)
 - Healthcare professional is generally responsible for protocol and cleaning/sanitizing procedures, but with company support
- **Onsite screenings (not administered by healthcare professional)**
 - Risk of non-healthcare professional being exposed to sick employees
 - Need for screener and employee training/protocol, to include conducting appropriate cleaning/sanitizing procedures (see Exhibit B)
 - Need clear protocol for turning away employees who aren't cleared to enter
 - Scale concerns:
 - No touch screening (see Exhibit C)
 - Consider available app-based health care questionnaires (may be some already available?)
 - Privacy considerations
 - Easing rules because of public health issues (seek legal advice; revised guidelines)
 - Employees concerned about privacy are free to self-assess at home and not come in

PCR/Serology Testing

- Not widely available
- Currently many not requiring, but may change as test becomes more readily available/advised
- Lack of “herd” immunity

Note: Adopted screening procedures and questionnaires would be required for all onsite visitors as well.

PPE:

Masks/Gloves

- Providing and mandating, generally where required by law, order or regulation
- Providing on voluntary basis, where not required by law, order or regulation for employee piece of mind
- Requiring employees to bring their own masks (not common)
- RTW consideration:
 - Making masks available to all employees (this has been required in certain Asian countries)

Hand Sanitizer And Hand Sanitizing Stations

- Mandatory and repeated use required
- Increasing availability throughout office space
- Specifically locating hand sanitizing stations in high access/high touch areas (and in other places where required under local orders)

Questions:

- Will PPE be required or voluntary?
- How will the lack of use of PPE impact employee morale, sense of safety, etc.?
- If PPE required or offered to employees, will replenishment PPE supply be readily available?
- Do employees in the field (e.g., remote sales and support) have what they need to reduce risk and stay healthy?
- What special considerations/accommodations should be made for employees who have a spouse/family member in the healthcare industry?
 - Look to CDC guidance for what to do in “low,” “medium” and “high” risk Situations
 - Harder to trace where larger groups of “essential” employees onsite

Social Distancing Measures:

- Mandatory, where possible (where not, PPE generally provided)
- Marking quadrants on the floor in open areas, such as labs, manufacturing facilities, etc. (then only one employee per section at a time, where possible)
- Restricting Group Gatherings (including break areas and lunch rooms)
- Reorganizing cubicles and workstations to align with social distancing requirements (or staggering employees in fixed location cubicles or workstations)
- Staggered shifts or days to reduce employees onsite at a given time
 - Cleaning between shifts increases effectiveness of this measure

- **Questions:**
 - How can the company make sure that onsite protocols and procedures are being followed by all employees (and not on a selective basis)?
 - Will, or should, social distancing measures become permanent?

Travel:

- All travels restricted vs. restricting travel to identified high risk areas
- RTW considerations:
 - “Business critical” only (executive/management approval)
 - Limiting international travel
 - Limiting state-to-state travel (considering local orders; and risk of spread)
 - Limiting type of travel (only by personal vehicle to reduce risk of spread)
 - Considering risks of inter-company travel where “work from home” and “shelter in place” orders remain in place
 - Considering quality of healthcare facilities at destination before sending employees to that destination
 - Considering mitigation efforts in place at destination (including any required health screening or questionnaires)
- Special Commuting Considerations:
 - Prohibition on use of public transportation, where possible (consider and weigh risk of spread where not)
 - Providing commuting stipend for employees required to use personal vehicle v. public transportation

Onsite Visitors/Offsite Meetings:

- Completely Restricted/all virtual (or limited to business critical/essential)
- RTW considerations:
 - “Business critical” only (executive/management approval)
 - See above for Health Screenings
 - Inform visitors of requirements before travel is booked
 - Required onsite completion before allowed on premises
 - Before employees travel to meeting, considering mitigation efforts in place at Destination
 - **Questions:**
 - What do you need to change to ensure that onsite visitors/customers feel safe on your premises?
 - How will any changes impact employees and/or productivity?
 - Do any physical changes need to be implemented?
 - How do you manage behavior of onsite visitors to mitigate risk to employees?

- What is the protocol for turning away visitors who are not cleared to enter?

Facilities:

- More Robust Cleaning Protocols
 - CDC recommended “deep cleaning” (on at least a weekly basis)
 - Daily cleaning of entire office
 - High touch surfaces and bathroom cleaned multiple times per day
 - Consider outside high touch areas as well (e.g., bike racks, parking pay stations, etc.)
- Shutting Down Internal Food Service, including snacks and beverages
- Shutting Down Conference Rooms And Other Common Areas (or limiting number of people in the area)
- Shutting Down Onsite Exercise Facilities/classes
- Restricting Onsite Movement (to help with contact tracing, if needed):
 - Approved pathways into/out of office
 - Approved travel routes within office to common areas, bathrooms, etc. § Restricting between floor movement, where possible
- Questions:
 - How will the company communicate steps taken to deep clean its facilities?
 - Will it make cleaning supplies available to employees for intra-day cleaning of individual workspace?
 - Are facilities set up to minimize virus transmission (e.g., touchless faucets, soap dispensers and toilets, hand towels near doors, contact free food delivery, intensified and more frequent cleanings, common area cleanliness)?

Additional HR Considerations:

- Will The Company shift more learning to online v. in person?
- Will the company increase live video group learning sessions?
- Will the company look at competencies for the future and draft a plan for reskilling, as needed?
- Will the company refresh its leadership/functional competencies based on the “new Normal”?
- Will the company leverage HR systems to better track when employees are remote or in the office? Better track employees who are out sick or on leave?
- Will Internal Employee Reporting Metrics Change?
- How is employee well-being being addressed in lifting WFH arrangements?
 - Allowing for voluntary return decisions, within reason and for a reasonable period of time

- Reminding employees of any available emotional support resources under employer health/benefits plans
- How will the company address PTSD symptoms?

Additional IT Considerations:

- Will plans to adopt or update digital, remote access or other similar technologies be accelerated?
- Will the company leverage IT systems to better track the whereabouts of onsite employees?
- Will teams require real-time dashboard reporting vs. in-person/static updates?

Post-Diagnosis/Exposure:

- Quarantine period 14-days symptom free (if no test); earlier if test negative
 - Note: not able to ask the employee what test was administered; different tests have different levels of accuracy
- Helping Healthcare System Overall
 - Most appear to be complying with request to keep doctors' visits to a minimum § Most are not requiring doctors note to return to work
 - Widespread Testing Is Still Not Available
- *Questions:*
 - As employees return, how will any new onsite COVID-19 cases be handled?
 - Do leave policies encourage employees to WFH if they feel ill?
 - Should employer encourage antibody donations?
 - Should employer expand mental health benefits? Bring mental health professionals onsite for group or individual sessions?

Helpful Links Related to RTW:

[AEI, National Coronavirus Response: A Road Map to Reopening A National and State Plan To End the Coronavirus Crisis](#)
[\(Back to\) Work in the Time of Coronavirus: A Guide for Employers in China](#)
[Opening Up America Again Guidelines \(White House\)](#)

Other Helpful Links:

[OSHA Guidance on Preparing Workplaces for COVID-19](#)
[Comprehensive List of Employment-Related FAQs \(published by Fisher Phillips\)](#)
[Coronavirus Covid-19 Center](#) (WilmerHale, including several webinars and client alerts like this one: "Examining State COVID-19 Work-From-Home and Shelter-in-Place Orders: Issues and Trends As We Enter Month Two").

EXHIBIT A

Example: Phased RTW Approach

Phase 0 (Current Status)	Phase 1	Phase 2	Phase 3	Phase 4
[List of Mitigation Measures Currently in Place]	- Minimum Tier 1 employees RTW; all others remain WFH (including higher risk and caretakers) - Limitation on [specific activities] (e.g., lab work, long-lead tests/experiments, etc.) [List social distancing measures] [List PPE requirements] [List lunch/break protocol] [List any benefits to be provided to RTW/WFH employees] [List travel restrictions] [List health screening requirements] [List visitor restrictions]	- Remainder Tier 1 and minimum Tier 2 employees RTW; all others remain WFH (including higher risk and caretakers) - Begin [specific activities] (e.g., commencing lab work and/or long-lead tests/experiments, etc.) [List social distancing measures] [List PPE requirements] [List lunch/break protocol] [List any benefits to be provided to RTW/WFH employees] [List travel restrictions] [List health screening requirements] [List visitor restrictions]	- Remainder Tier 2 and minimum Tier 3 employees RTW; all others remain WFH (including higher risk and caretakers) [List updated social distancing measures] [List updated travel restrictions] [List updated health screening requirements] [List updated visitor restrictions]	- Moving toward business as usual/new normal - WFH when needed

NOTES:

- Project prioritization needed, what projects can be flexed up or down a phase?
- Review employee Tiers to align with product prioritization – considering where WFH can be sustained effectively
- Need ability to step back a phase, if needed
- Offer updated health screening requirements as new tests and technologies become readily available
- Consider changes to recruiting activities given potential for space/time limitations as a result of social distancing
- Consider staggered schedules and shifts
- Consider what policies, FAQs and communications are needed to implement RTW plan

EXHIBIT B

SAMPLE: Temperature Self-Screening Guidance

Scope: This guidance applies to all personnel employed or contracted by (“COMPANY”) as well as any vendor, customer and/or visitors accessing any premises, including [OMITTED].

Purpose: The purpose of this document is to communicate the COMPANY’s guidance for the Temperature Self-Screening of employees, contractors and visitors (“EVALUEE”) in response to the COVID-19 pandemic and in accordance with the US Centers for Disease Control and Prevention (“CDC”) Mitigation Strategies for Communities with Local COVID-19 Transmission.

Background: According to the World Health Organization (“WHO”) and the CDC, the global pandemic, COVID-19, has the potential to spread from person to person contact as well as by contact with surfaces that people who have the COVID-19 infection have touched. This guidance is consistent with the current recommendations from the CDC to ensure that we are taking the appropriate actions to protect our employees, families and customers as well as working to limit the spread of the virus in our workplaces and, thus, our communities.

Applicability: This guidance is applicable to all employees, contractors, and visitors accessing COMPANY work locations including all offices, shipyards, and vessels. Anyone refusing screening will not be allowed access to COMPANY work locations. Until the applicable government authority issues guidance to the contrary, government officials, including the US Coast Guard (“USCG”), are exempt from screening if they decline.

Responsibility: It is the responsibility of the COMPANY’s [OMITTED] to ensure compliance with this guidance.

Instructions: Employees performing temperature self-screenings should be properly instructed on the following:

- How to properly clean the temperature scanning device
- Proper use of the temperature scanning device to achieve an accurate reading (i.e. operating manual of device)
- Management of social distancing during screening
- Protocol if a fever is detected
- Protocol if an employee/contractor/visitor refuses to be tested
- Protection of EVALUEE’s private health information (e.g. temperature reading)

Screening Locations: Screening locations should be outside facility entrances/gates/ [OMITTED] if possible. Proper social distancing should also be considered when selecting a site. Further, sites should be selected that allow for EVALUEE privacy (i.e. EVALUEE is able to answer the 5 Health Declaration questions below privately as well as show his/her temperature reading to only the SCREENER.

PPE & Cleaning Products Required:

- Disinfectant for the temperature scanning device
 - Alcohol wipes(>70% isopropyl alcohol)
 - Bleach wipes (i.e. Clorox Disinfecting Wipes, other wipes listed on [EPA's approved list](#))
 - 600 ppm bleach solution in a spray bottle (or other disinfecting spray solution on the EPA's approved list above) – 2 tbsp of 8.25% bleach per gallon of water or 1/4 cup of 5.25% bleach per gallon
- Hand sanitizer for EVALUEES
- Paper towels for holding temperature screening device

Health Declaration Protocol: EVALUEES directed to a private location for screening (while maintaining social distancing). EVALUEES asked the following questions (or ask EVALUEES to fill out a form):

1. Have you experienced any difficulty breathing, shortness of breath, loss of smell or taste, or symptoms of acute respiratory illness in the last **72 hours**?
2. Have you experienced a fever (100.4° F or greater) within the last **72 hours** (without the use of fever-reducing medications)?
3. Have you experienced signs of a fever such as chills, aches & pains, etc. within the last **72 hours** (without the use of fever-reducing medications)?
4. Have you traveled within the past **14 days** to an affected area as identified by the CDC? (As of [DATE] the list of affected countries includes [LIST COMPANIES IDENTIFIED BY CDC AS OF REFERENCE DATE]). A current list of countries is maintained [here](#).
5. Have you had contact within **14 days** with a lab confirmed COVID-19 patient (contact defined as being within 6 feet of a COVID-19 case for a prolonged period (>10 minutes) or having direct contact with infectious secretions (e.g., being coughed or sneezed on) of a COVID-19 case)?
6. If an EVALUEE answers YES to any of the 5 questions above kindly direct them to return home. Request that they use social distancing and other mitigation strategies until off COMPANY property. If an EVALUEE answers NO to all 5 questions then move on to then move on to the Temperature Screening.

Disinfecting & Handling of Temperature Screening Device: Instructions are to be clearly displayed asking the EVALUEE to perform the following:

1. Do not touch the device with your bare hands (or skin) and only handle using a clean paper towel.
2. While holding the device with a clean paper towel wipe off the surfaces of the temperature screening tool with either (as provided):
 - a. Alcohol wipes (>70% isopropyl alcohol)

- b. Bleach wipes (i.e. Clorox Disinfecting Wipes, other wipes listed on EPA's approved list - or spray down the device with a solution of 600ppm bleach solution.
3. After use the EVALUEE is to repeat step 2 above before placing the device back on the table (all while avoiding direct contact with the device and instead holding it with a clean paper towel).

Temperature Screening Tool Instructions: The instructions specific to each temperature screening tool, often in written and pictogram form, are to be clearly displayed for the EVALUEE to read and understand and should include:

- How to turn on and ready the device for performing a temperature reading
- How and where to aim the device, including distance to be maintained, in order to obtain an accurate reading
- Any other operating instructions specific to the device in use

Temperature Screening Protocol: In a private setting (under a tent or awning) and while maintaining social distancing, have the SCREENER ask the EVALUEE to review the disinfecting and handling instructions for the temperature screening device and observe the employee disinfecting the device while not touching the surface of the temperature screening device but rather holding with a paper towel.

- Ask the EVALUEE to review the temperature screening device instructions and then observe the EVALUEE properly taking their temperature.
- The EVALUEE has the option to show their temperature reading to the SCREENER (while maintaining social distancing) and, if the temperature reading is 100.4° F or less, the SCREENER advises the EVALUEE that they may access COMPANY premises for their permissible reason. Ask the EVALUEE to disinfect the temperature screening device after use.
- The EVALUEE also has the option to not show their temperature reading to the SCREENER. If the EVALUEE chooses to not show their temperature reading to the SCREENER the EVALUEE should be kindly directed to return home. Request that they use social distancing and other mitigation strategies until off COMPANY property. Ask the EVALUEE to disinfect the temperature screening device after use.
- If an EVALUEE shows to the SCREENER that their temperature reading is 100.4° F or greater, kindly ask the EVALUEE to return home, using social distancing and other mitigation strategies, until off COMPANY property. Also ask the EVALUEE to disinfect the temperature screening device after use.
- If possible, please consider using multiple temperature screening devices to allow additional time for the disinfectant, both before and after use, to be effective (at no time should the EVALUEE touch the surface of the temperature screening device).
- If an EVALUEE requests a re-test, consider re-testing with a different temperature screening device (if available) and ensure that the EVALUEE re-reads the Temperature Screening device instructions.

- If the second reading indicates an EVALUEE's temperature reading is 100.4° F or greater, kindly ask them to return home, using social distancing and other mitigation strategies until off COMPANY property. If the second reading indicates a temperature of 100.4° F or less perform a 3rd temperature screening.
- If 2 of the 3 screenings indicate temperatures below 100.4° F, the SCREENER advises the EVALUEE that they may access COMPANY premises for their permissible reason. Ask the EVALUEE to disinfect the temperature screening device after use.
- If 2 of the 3 screenings indicate temperatures greater than 100.4° F the SCREENER should kindly ask the EVALUEE to return home, using social distancing and other mitigation strategies until off COMPANY property. Ask the EVALUEE to disinfect the temperature screening device after use.

Return to Work: The CDC recommends that individuals not return to work until they are free of fever (100.4° F [37.8° C] or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 72 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants, Tylenol, Aspirin, Advil).

As such, EVALUEES that were previously turned away (either for answering YES to one or more of the 5 questions above or for which the screening indicated they had a temperature of 100.4° F or greater) are expected to comply with the most current CDC isolation/quarantine recommendations, answer a Health Declaration questionnaire, and pass a temperature screening prior to returning to work.

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