



# The Return to Work: Preparing to Re-open

Considerations for Re-Opening  
Your Business During the  
COVID-19 Pandemic

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In the uncertain times of COVID-19, there are two things businesses can be sure of. First, most businesses will eventually reopen, bring back employees, and resume more normal business operations. And second, this will bring a new set of challenges.

The COVID-19 pandemic has dramatically changed how work gets done and how people interact. As businesses start to re-open, they may still need to take precautions such as social distancing and increased cleaning. New policies and procedures may need to be put in place. Employers may need to step up their management and communication skills to support employees. Even those essential businesses that remained open will need to evaluate how they are operating in light of the changing laws and regulations in the post-COVID-19 landscape.

**It's important to remember that there is no "one size fits all" return-to-work practice. Every business is different, and every state has different COVID-19 related laws and ordinances that may impact how and when your business reopens.**

This eBook will help you identify what to expect, and how to get back up and running in the post-coronavirus era. **We'll cover:**

### 1. Staffing Considerations

- Evaluate Your Staffing Needs
- Determine Who Should Work Remotely
- Update Policies & Procedures
- Communicate

### 2. Workplace Safety & Privacy Considerations

- Maintaining Social Distance
- Sanitizing
- Safety Equipment
- Wellness Checks
- Medical Privacy

### 3. Supporting Employees as They Return to the Workplace

- Managing Remote Teams
- Addressing Employee Fears
- Handling Refusals to Return

### 4. Helpful Resources

# 1. Staffing Considerations

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## Evaluate Your Staffing Needs

Even if there is a decline in the spread of COVID-19, businesses will likely need to follow state and local stay-at-home orders, as well as guidance from governmental agencies about re-opening in the coming months. They may decide or be required to have employees work remotely. Or they may re-open only with essential staff and not bring all employees back to work (or to the workplace) at once. In some cases, layoffs may be permanent. This can get complex in terms of employee termination and rehiring.

First, decide what positions you need and who should return. Be sure your decisions are made using fact-based criteria that are consistent with your legitimate business needs (as opposed to personal preference), and then document your reasoning. This will help protect you from wrongful termination or discrimination lawsuits in the future.

If you have terminated employees and want to rehire them, be sure to check the language of their separation agreement to see if it requires an amendment. If you have unionized employees, there may be additional obligations under an applicable collective bargaining agreement.



Since many businesses took a financial hit from the impact of COVID-19, employers who are considering returning employees to work may also need to implement scheduling changes or a temporary reduction in pay or hours. They may also be required to implement safety or wellness checks. Employers will need to review applicable wage and hour laws to ensure that employees are properly classified and compensated, and are receiving appropriate meals and rest periods.

### **Things to consider:**

Hiring or firing decisions cannot violate federal, state, or local antidiscrimination laws. For example, they cannot be based on:

- Whether the employee has made legally protected complaints about discrimination or harassment
- Whether the employee has taken leave that is protected under state or federal law, such as the Emergency Family and Medical Expansion Leave Act
- Or, if the employer thinks an employee will request leave when called back to work.

**If you have questions about these laws, or if your selection process appears to violate them, consult with your legal counsel.**



# Determine Who Should Work Remotely

If you have employees who have been working from home during the COVID-19 pandemic, you may want to extend their remote status for social distancing reasons, or until your business is completely back on its feet. You should also be thinking about how workload and workflows will likely change.

Keep in mind that this may not be entirely your choice. Employers may be subject to a state or local law that requires employees to be allowed to work remotely within certain parameters. Currently, governmental guidance recommends employees be permitted to work from home as businesses reopen.

However, this may not be practical for many businesses, so employers will want to carefully review the governmental mandates and guidance to determine when and how they can bring employees back to the workplace.



## Things to consider:

- Think about what positions can be effectively handled at home versus in the workplace. You may even consider offering employees the opportunity to work from home on a permanent or more regular basis if it better suits their lifestyle and your flexible work practices.
- Consider that having fewer employees at your place of business assists with social distancing and reconfiguration.
- Check to see if there are any individual employment contracts or collective bargaining agreements in place that will affect whether you can alter the duties or working conditions of employees who are subject to those agreements.

**And again, make sure your decisions are compliant with applicable federal, state, and local wage and hour laws. For example, a change in duties may affect the worker classification status of an employee who was exempt from receiving overtime pay.**

# Update Policies & Procedures

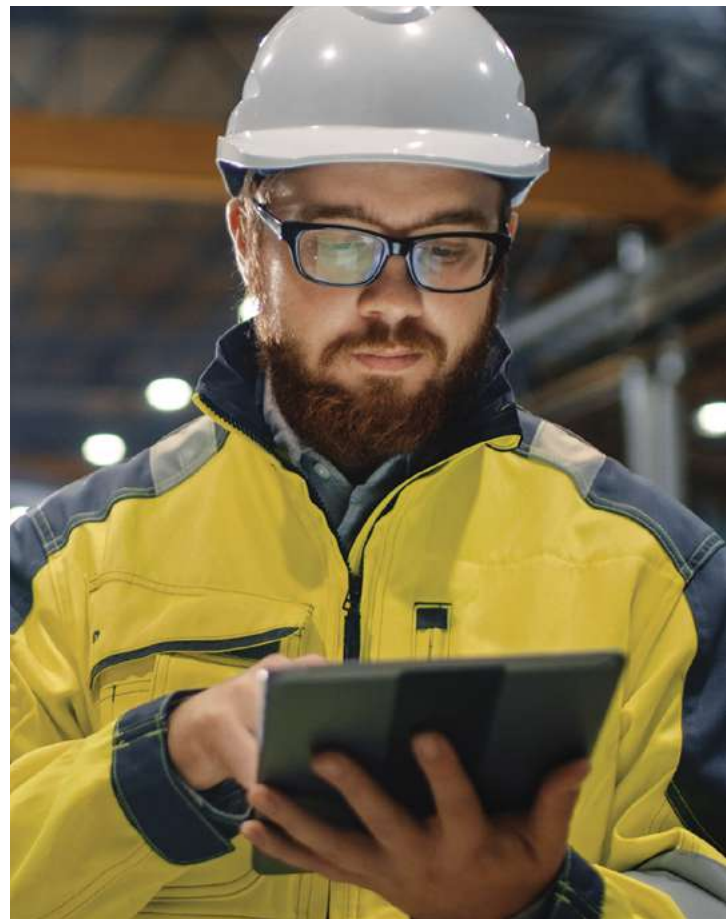
In response to the COVID-19 pandemic, legislative and regulatory changes were adopted at the federal, state, and local levels. These changes create a host of new legal requirements that businesses will be required to comply with. Some of the changes may apply only during a declared pandemic, while others may remain indefinitely.

**The first step is for you to identify what federal, state, and local COVID-19 related legal requirements apply to your business.**

Next, you will need to create and implement any COVID-19 related and other policies/protocols. You may need to update your employee handbooks and/or policies. In addition, mandated posters may be revised or new posting requirements may exist. It is particularly important to review your policies — including sick leave and paid time off — to be sure they're in compliance with changes to federal, state, and local laws and regulations. Your human resources professional or legal counsel can help guide you through this process.

You must also ensure that “new hire” and “re-hire” documents are ready to go (or continue to be effective in the case of rehires). This will include your employee handbook, Form I-9, and W-4.

For instance, all new hires will need to complete the Form I-9. If the employee is being re-hired three years after the original hire date, a completely new Form I-9 must be completed. If the employee is being re-hired within three years of the original date of hire, Section 3 of the Form I-9 must be completed and the employer must also verify that the original documents relied upon remain valid. However, if the employee was furloughed, they don't need to revise their form.



# Communicate

Once you have your staffing needs, roles, and new policies and procedures established, it may be time to bring back your workforce. Consider addressing any changes to positions, responsibilities, pay rates, and hours. This is as true for a re-hire as it is for a new one, since the re-hire's pay rate and duties may have changed.

If your organizational structure has changed, you may want to establish new roles and responsibilities after evaluating fact-based criteria and your legitimate business needs. Determine if the skills of the employee are appropriate for the position you're offering. To prevent any misunderstanding and protect your business from liability, consider placing the job offer and relevant return to work information in writing. In addition, you may have obligations under state or local law(s) to notify workers of changes to wages, work schedules, and other terms and conditions of employment.



**It is important to note that in order to receive loan forgiveness under the Payroll Protection Program (PPP) in the CARES Act, you may be under obligation to maintain compensation and benefits at their previous levels.**

Reinstatement offers (and any rejections) should be documented, especially if you are seeking loan forgiveness of an SBA loan under the Paycheck Protection Program. Current SBA and Treasury guidance suggests that if a business makes a good-faith, written offer of rehire, and the employee's rejection of that offer is documented by the borrower, the employee can be excluded from the CARES Act's loan forgiveness reduction calculation. Employees and employers should be aware that employees who reject offers of re-employment may also forfeit eligibility for continued unemployment insurance compensation.





## 2. Workplace Health and Safety Considerations

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Although federal, state, and local orders may be at least partially lifted to enable employees to return to work, your business may be mandated to follow new and expanding health and safety guidelines. Likewise, businesses should develop and document a health and safety protocol appropriate for their own workplace before making job offers and reinstating employees. Even where these recommendations aren't mandatory, they can help protect your business from liability and help returning employees feel safe and comfortable. Following are some elements that should be addressed.

### Maintaining Social Distance

Consider creating policies and practices for social distancing, including requiring employees to stay at least six feet apart from each other whenever possible. This may include having to rethink the work environment. For example, you may need to stagger employees' on-site hours or allow them to work remotely if possible.

You may also need to reconfigure workspaces to allow employees to be further apart. This is especially critical in high traffic areas where people congregate in tight proximity, such as entranceways, meeting rooms, and break areas. It's also important that you respect personal preference and boundaries around how individual employees choose to greet others at work, and make sure their peers understand and respect these boundaries. You may even consider prohibiting employees from interacting with one another in ways that were formerly taken for granted, such as shaking hands.

**Employers will also need to review any requirements or guidance from federal, state, and local health departments in this area.**



## Sanitizing

In addition, you may want to implement extra cleaning and disinfecting measures as your employees return to work. Consider supplying hand sanitizer, cleaning wipes, and hand soap for employees' use throughout the on-site location. Remind employees to wash their hands frequently, disinfect their workspace, and practice coughing and sneezing etiquette. And prohibit employees from sharing office equipment or work tools unless they're sanitized in between uses.

## Safety Equipment

Depending on your specific business operation and location, it may not be possible to keep employees completely separated at all times. During the declared pandemic — and even beyond — employees may be asked or required to wear safety equipment, such as face/eye protection, gowns, gloves or other personal protective equipment (PPE) suggested by OSHA. You can review the guidance published on OSHA's website for required or recommended practices.

It's important to note that, where it's mandated, employers are responsible for paying for and providing this type of equipment. Also note that additional requirements may also apply if you are providing any PPE or if your business is subject to OSHA's Bloodborne Pathogens standard or any other state or federal industry-specific requirements.

## Wellness Checks

Several health and wellness precautions can be put in place to help mitigate the spread of COVID-19 within your workplace. These include temperature checks, COVID-19 testing, and isolating employees who have symptoms of the virus. Some states have also started regulating these activities — even mandating them under certain circumstances. Because such steps are considered medical inquiries under certain federal and state laws, be sure to understand and comply with the evolving legal framework governing medical privacy rights before instituting any of these measures.

### Remember:

Always check CDC, OSHA, and state and local health departments for the latest guidelines and regulations.



Generally, measuring an employee's body temperature is considered a medical examination. But because the Centers for Disease Control (CDC) and state and local health authorities have acknowledged community spread of COVID-19, employers are permitted to measure employees' body temperature. Temperature is not definitive, however, since some people with COVID-19 do not have a fever.

COVID-19 testing is a more reliable indicator than temperature checks, and can be administered before employees enter the workplace. However, appropriate testing and medical privacy protocols must be established before moving forward with this measure.

Pursuant to guidance from the U.S. Equal Employment Opportunity Commission (EEOC), employers may take employee temperatures and/or administer a COVID-19 test before permitting employees to enter the workplace. However, employers must establish processes and procedures to help ensure compliance with the relevant federal and state legal guidance that exists at the time. Likewise, employers must ensure any medical inquiries yield accurate and reliable results.

Even with these measures, medical and public health authorities recommend that employers still require employees to observe infection control practices to the greatest extent possible. Policies should be established around social distancing, regular handwashing, and other measures to prevent transmission of COVID-19.



### Asking about COVID-19 symptoms

During a pandemic, if an employee calls in sick, ADA-covered employers may ask the employee if they are experiencing symptoms of COVID-19. Symptoms that may appear 2-14 days after exposure to the virus include:

- Fever
- Cough
- Shortness of breath or difficulty breathing
- Chills
- Shaking with chills
- Muscle pain
- Headache
- Sore throat
- Loss of taste or smell

Anyone who is suspected of having the virus should be sent home immediately and go into self-quarantine for 14 days. The employer has the right to ask them to identify all individuals who worked in close proximity while they had symptoms, and during the two days prior to their symptoms. If the employee is asymptomatic, they can be asked to work remotely from home. Employers can also consider providing paid leave or let them use available sick leave or paid time off. The Equal Employment Opportunity Commission (EEOC) also advises that sending workers home is permissible and not considered disability-related if the symptoms present are akin to the COVID-19 coronavirus or the flu.

**Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease.**

We recommend consulting your Paychex HR professional prior to asking employees any medical-related questions, including temperature screening or COVID-19 testing. We can help guide you in determining whether an employee poses a direct threat to the workplace.

## Medical Privacy

Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA and state anti-discrimination laws. If an employee tests positive for or is diagnosed with COVID-19, the employer has the legal obligation not to disclose the employee's identity. When giving notice to other employees, provide only a general notice without disclosing the identity of the employee. In addition, you should consider shuttering and cleaning the location, following CDC and local public health department guidelines, and sending home all employees who worked closely with that employee for 14 days. Note that employees often voluntarily self-disclose their illness to their co-workers, which is lawful.





## 3. Supporting Employees as They Return to the Workplace

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### Managing Remote Teams

Having a remote workforce requires different leadership skills than are needed for in-office management. It's important that leaders model best practices, provide consistency by creating regular times for recurring team meetings, and are clear about attendance expectations.

At-home productivity is achieved by having the right tools, protocols, expectations, and culture in place to enable employees to thrive. Be sure to formalize your policies, and implement these best practices to make this new way of working more effective for your business:

- **Set clear guidelines** about priorities and deadlines, work hours expected, and overall performance goals to be achieved.
- **Communicate regularly and consistently** and use video conferencing instead of emails or the phone. The personal connection provided by seeing another person's face cannot be overestimated.
- **Make project activities and calendars on shared platforms visible to everyone** to enable easier access when needed.
- **Help employees protect their time.** The mixing of personal and professional spaces can make it difficult for employees to "step away," which can lead to burnout and frustration. Schedule time to take a break from the laptop, and make sure everyone respects the boundaries of working hours.



# Addressing Employee Fears

Some employees may be reluctant to come back into work and risk potential exposure to the virus. This is understandable, and their concerns should be taken seriously.

Before bringing employees back to work, send out communications or host a videoconference informing employees about the safety protocols you have implemented and the precautions you have taken. Employees should also be encouraged to work interactively with you in the event they need a reasonable accommodation to enable them to return to work. This not only assuages fears and addresses various legal obligations and liabilities, it shows that the company is sensitive to employee concerns, and cares about their health and safety.



## **In addition, to help employees feel comfortable and safe, consider taking these steps:**

- Explain the procedures you've implemented.
- Identify contacts within your organization who can respond to COVID-19 questions.
- Share copies of your written safety protocols.
- Consider whether specific COVID-19 specific safety training is appropriate.
- Maintain an open-door policy to hear employee concerns, and work collaboratively with your employees to address these issues.

# Handling Refusals to Work

Some employees may refuse to return to work. Can you discipline or even terminate employees who won't come back? Before considering any adverse employment action, you should take time to understand why they are refusing to return, and to potentially provide solutions.

## Reason: Health conditions

Employees with health conditions may be eligible for reasonable accommodation, including a leave of absence, under the Americans with Disabilities Act (ADA), Emergency Paid Sick Leave Act (EPSLA). (if you have fewer than 500 employees) or state laws. For example, an employee concerned about their own health condition may be entitled to a reasonable accommodation, such as telework or a leave of absence, under the ADA or state law.

## Reason: Caring for someone with COVID-19

If you employ fewer than 500 employees, you may be subject to the Families First Coronavirus Response Act (FFCRA). Under the Emergency Paid Sick Leave Act (EPSL) of the FFCRA, paid sick leave may be available to eligible employees caring for family members under certain COVID-19-related circumstances. The employee may also be entitled to leave under the Family Medical Leave Act (FMLA) or other state or local family leave laws.

## Reason: No childcare due to school/ daycare closures

If you employ fewer than 500 employees, you may be subject to the Families First Coronavirus Response Act (FFCRA). Under the FFCRA, EPSL and Emergency Family and Medical Leave Act (EFMLA), leave may be available to eligible employees who cannot work because they must care for their child due to COVID-19 school or childcare closings. Affected employees may also be eligible for leave under various state or local laws.

## Reason: Worried about their safety

Employers who fail to take reasonable steps to create a safe work environment and/or take adverse actions against employees under these circumstances may face federal or state agency occupational safety and health enforcement actions, employee discrimination and retaliation lawsuits, and have difficulty protesting the refusing employee unemployment insurance claims. Also, if your employee is raising reasonable COVID-19 safety concerns, their complaints and refusal to work may also be protected under the National Labor Relations Act (even if your workplace is not unionized).

### Remember:

Before taking any adverse employment action against an employee for a refusal to return to work, consider discussing the situation with your legal counsel or human resource professional.



# Additional Resources

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## Federal resources

### [Centers for Disease Control and Prevention \(CDC\)](#)

- Interim guidance for businesses and employers
- Cleaning and disinfecting recommendations

### [World Health Organization \(WHO\)](#)

- How to protect yourself
- Situation updates

### [Small Business Administration \(SBA\)](#)

- Planning and responding to COVID-19
- Economic Injury Disaster loan program

### [US Dept. of Labor \(DOL\)](#)

- FLSA and wage/hour guidelines
- FFRCA Q&A

### [Equal Employment Opportunity Commission \(EEOC\)](#)

Hiring during the COVID-19 pandemic

### [Occupational Safety and Health Administration \(OSHA\)](#)

Guidance for employers on control and prevention of COVID-19 in the workplace

## Our resources

### [PPP Loan Forgiveness Estimator](#)

### [Paychex.com/support/coronavirus](#)

- Responding to COVID-19 at work
- Families First Coronavirus Response Act and guidance
- CARES Act
- Payroll processing
- Financial assistance tools and resources
- Health insurance and workers' compensation

### [Paychex's State-by-State COVID-19 Resource Page](#)

With information evolving rapidly about COVID-19, almost every state (and Washington, D.C.) has developed a resource page to address the specific FAQs of its residents, as well as unemployment insurance benefits, paid leave laws, closures, and more.

### [Paychex.com/WORX](#)

Provides the latest recommendations and instructions from trusted sources that could help protect your business and employees.

Topics include:

- Business contingency planning
- How to update handbook and workplace policies
- Evolving federal, state, and local leave laws that cover sick leave, paid leave, and more



# About Paychex

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Paychex, Inc. (NASDAQ:PAYX) is a leading provider of integrated human capital management solutions for human resources, payroll, benefits, and insurance services. By combining its innovative software-as-a-service technology and mobility platform with dedicated, personal service, Paychex empowers small- and medium-sized business owners to focus on the growth and management of their business. Backed by more than 45 years of industry expertise, Paychex serves approximately 670,000 payroll clients as of May 31, 2019 across more than 100 locations in the U.S. and Europe, and pays one out of every 12 American private sector employees.

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