



Return to Work Planning during COVID-19

Townships may be considering how to prepare their workplace and workforce for a return to work during or after the COVID-19 crisis. Below you will find actions that should be considered in planning a return-to-work and workplace operations in light of recent COVID-19 restrictions and continuing precautions that will likely need to be implemented not only in the short-term, but likely for the long-term or in the event of another emergency workplace closure.

As with all COVID-19-related guidance, townships should continue to monitor state developments, including mandates issued, federal directives and public health authorities, in addition to consulting with township legal counsel for specific guidance tailored to the particulars of their workplace and workforce.

Advanced Planning Considerations

Decision about how to return employees to work cannot be made by any one individual—it is a township board decision to determine what measures will be taken. The township board can delegate a team, task force, committee or individual(s) to prepare recommendations for the township board to consider and approve, but the ultimate decision-making authority regarding all aspects of returning to work must be directed by the township board as the employer, owner and operator of township operations.

Townships that choose to use a team approach either as a board or other delegated group/individual(s), should consider involving anyone who has knowledge about their specific areas of operations. This could include union representation, supervisors of employees/departments/operations, human resources, a staff member from each department/operation, building and security staff such as IT staff or consultants, and township legal counsel.

If a team-type committee is formed or if the board is taking on the task, there should be clear direction of expectations. Clear direction will speed up the process and provide clear and consistent communication for all members involved, as well as potentially alleviating any employee anxiety regarding how decisions were made and precautions are being taken to provide them a safe and hazard free workplace.

Establishing Preparation Guidelines

The township should consider guidelines set out by the [Occupational Safety and Health Administration \(“OSHA”\) Standards](#) when considering the return of employees to the workplace. These guidelines are intended to reduce the impact of a COVID-19 outbreak for all businesses, including governmental

activity, workers, and the public. It guides employers in how to identify risks specific to their workplaces so that they can implement appropriate control measures. The guidelines provide information on:

- Identifying of Sources of Exposure to Workers
- Preparing to Implement Basic Infection Prevention Measures
- Developing Policies and Procedures for Prompt Identification and Isolation of Sick People
- Developing, Implementing and Communicating Workplace Flexibilities and Protections
- Implementing Workplace Controls such as Personal Protection Equipment and other Administrative Controls
- Other considerations

Risk Assessment: Townships should consider categorizing COVID-19 exposure risk levels of different and/or individual jobs, by job category or by worksite, and take appropriate steps to protect employees based on their exposure risk level. OSHA guidelines provide descriptions of the various different levels of risk and precautions that should be taken based on those levels of risk.

Workplace Preparation

Once the township has established a set of guidelines set out by OSHA, advanced workplace preparation should be the next step.

The [U.S. Centers for Disease Control and Prevention \(“CDC”\)](#) provide recommendations for maintaining a healthy workplace. Township should practice these guidelines and create policies to implement the following:

- Worker Hygiene and Personal Protective Equipment
- Increased Environmental Cleaning of worksites and public areas
- Shared Workspaces (guidelines to discourage employees from sharing workstations, phones, desks, offices, etc.)
- Social Distancing Guidelines

New COVID 19 temporary paid leave law protections expired December 31, 2020. Employers are not required to provided protective leave since the laws expired, but they can still provide the leave through March 31 if they choose too. If the employer chooses to continue providing paid leave, they must display [posters](#), noticing employees of their leave rights under the [Family Medical Coronavirus Relief Act](#) and the [Emergency Family Medical Leave Act](#).

Who Should Return to Work?

Townships may also want to consider options for phasing employees back to the workplace as stay-at-home restrictions loosen. Such considerations could include:

- Employee Availability
- Staggered Shifts

- High-Risk Employees Protections in Compliance with the Americans with Disabilities Act (ADA). The [U.S. Equal Employment Opportunity Commission \(“EEOC”\)](#) has released a technical assistance bulletin for employers to comply with ADA accommodations and other EEO laws for high-risk employees, such as older, pregnant or disabled employees.
- New Employees—townships who have or will be hiring new employees during COVID-19 restrictions may want to consider withdrawing offers until restrictions are lifted, consider a delayed start date, and/or require screening for symptoms before starting.

Fair Labor Standard Act

Townships who return [salaried exempt employees](#) to work may not reduce their salary below \$684 dollars per week without jeopardizing the employee’s exempt status from the Fair Labor Standards Act (FLSA). If the employee’s salaried weekly rate is reduced below \$684 per week, the township must convert their pay to an hourly wage and the employee will no longer be considered a salaried exempt employee—they will be considered a nonexempt employee subject to minimum wage and overtime.

For salaried non-exempt employees (those who are paid a flat wage, but cannot be classified as a salaried exempt employee), townships must ensure that reduced pay does not go below the minimum wage.

Townships should also be mindful that a reduction in pay and hours may also affect the employees’ eligibility to participate in any employer-provided benefit plan or employment policies (e.g., leave policies, etc.).

Unemployment and Returning to Work

If an employee is returned to work on a part-time basis or allowed to work a reduced schedule from their regular schedule, they may be considered under-insured for unemployment based on their full-time employment over the past five quarters. If the employee reports and is considered under-insured, they will be eligible for unemployment benefits at a reduced rate based upon earnings received when working part-time.

If a worker who has been collecting unemployment returns to work while still drawing unemployment benefits, the unemployed worker may be able to continue drawing partial benefit payments. The formula is that for every \$1 the unemployed worker earns in a week while drawing unemployment benefits, the benefit payment is reduced by 40 cents.

Employee Policy Considerations

Physical Screening: Workplace screening such as in taking an employee’s temperature is considered a medical exam and is protected under the ADA. The ADA prohibits medical examinations unless they are job related and consistent with business necessity.

The CDC, state and local health authorities have acknowledged the risk of spreading COVID-19 throughout the state, and county and local communities have issued related precautions through

executive orders and other federal bulletins. Because of this, townships may measure an employee's body temperature.

Townships may also solicit health information about any employees entering the workplace to determine if they have or may have COVID-19, including whether they have COVID-19 or symptoms of COVID-19, and whether they may have had COVID-19. However, according to the EEOC, you cannot solicit health information about family members. If the township wants to solicit information about others the employee may have come in contact with, EEOC suggest asking: "whether the employee has had contact with anyone who has been diagnosed with COVID-19 or who has symptoms of the virus."

Can employers required employees to be vaccinated?

Yes. While a municipality can condition employees' ability to return to work on receiving a COVID-19 vaccine, every municipality should understand the legal considerations that go hand in hand with such a mandate (see February 2021 ["Township Focus" Hello Column](#) for more information).

Excluding Employees From the Workplace: Townships can determine and lawfully exclude individuals with COVID-19, or those exhibiting its symptoms, from the workplace for health and safety reasons. Additionally, employers may send employees home or ask that they be [tested](#) for COVID-19 if they have been exposed to COVID-19, are suspected of having or are displaying symptoms associated with COVID-19, such as fever, chills, cough, shortness of breath and sore throat, new loss of smell or taste, or gastrointestinal problems. Employers should rely on the CDC and other public health authorities or other reputable medical sources for guidance on symptoms of COVID-19.

Employees who refuse to answer health questions or submit to medical examinations may be barred from the workplace.

Employee Leave: Townships should review or create plans for employee leave, ensuring those policies are in compliance with the temporary federal and state leave policies ([FRCA and FMLA](#) expired 12/31/20) that provide for paid or unpaid leave for certain COVID-19-related reasons. Townships should also determine how their existing leave policies interact with these new obligations, and update their employee policies and/or handbooks or create a new emergency leave policy that addresses, when implemented, eligibility, pay, benefits, duration, and coordination with other leave policy such as FMLA, worker's compensation, etc.

Other Employee Policies: Townships that return to work and/or open for business must develop a COVID-19 preparedness and response plan consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the [Occupational Health and Safety Administration \("OSHA"\)](#).

The plan should also include policies that address attending meetings internally and externally (in person and virtually), travel for meetings and/or events, and visitors in the workplace.

Confidentiality: Regardless if the township creates any guidelines or policies for screening employees upon returning to work or while working, townships must keep all medical information confidential. This may include information related to symptoms of COVID-19 or a diagnosis of COVID-19, such as COVID-19 test results, temperature screening logs and other medical information solicited from employees. For more information on employee privacy rights and privacy protection laws, click [here](#).

Advanced Training Preparations and Implementation of Guidelines

Once the township board has adopted guidelines, policies and procedures, they should provide training to those responsible for supervision/implementation of the guidelines, policies and procedures. An informed and trained supervisory staff is essential in assisting the township board with a response to COVID-19 issues. Those overseeing the return to work for their employees, departments or other operations should be trained in the following areas:

- How to prepare and maintain a healthy workplace as outlined by the CDC referenced earlier.
- Physical screenings
- Responding to an employee's COVID-19 diagnosis.
- Procedures for employees refusing to provide health information.
- Maintaining employee confidentiality

Townships may also want to consider designating an individual as a COVID-19 leader. A COVID-19 leader would be an individual who is fully trained, is the first point of contact for employees with questions and concerns, and who acts as the liaison for COVID-19 related issues when communicating with the township board.

Policy and Procedure Review

Immediately upon return to work, the township should review, train and provide examples for good hygiene and social distancing in accordance with established township and CDC guidelines, policies and procedures tailored specifically for the individual employee's work environment. If the township has updated employee policies and/or handbook, the employee should be provided an update and the township should obtain an "Acknowledgement of Acceptance" from each employee stating they have received and reviewed the updates.

In Summary

Townships with more than 10 employees are required to keep a record of serious work-related injuries and illnesses under OSHA's recordkeeping requirements. COVID-19 is a recordable illness, and employers are responsible for recording cases. OSHA has issued temporary enforcement guidance related to the COVID-19 pandemic for Recording and Reporting Occupational Injuries and Illnesses required under [29 CFR Part 1904](#). For more information see the [Enforcement Memoranda](#) section of OSHA's [COVID-19 Safety and Health Topics page](#).

[Retaliation against workers](#) who report unsafe or unhealthy conditions during COVID-19 restrictions is illegal and workers have protection under the Whistleblower protection laws both at the [federal](#) and [state](#) level.

The information provided in this resource is intended for information purposes only and is not to be construed as a statutory directive to township boards. Any and all guidelines developed and implemented; decisions regarding who to return to work and the methods for returning to work; and potential liability issues should be coordinated with union personnel, if applicable, and township legal counsel.