2020 LEGAL UPDATES & RETURNING TO WORK:
COVID-19 Considerations and Trainings

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Return-to-Work Checklist

for Employers Reopening Their Businesses

In anticipation of federal and state restrictions lifting as COVID-19 cases and deaths decrease, employers should start planning their employees' return to work now. Employers must continue to follow the CDC, WHO, and state guidance to maintain a safe workplace while also complying with multiple employment laws.

The following are general considerations for employers who are strategizing their return to work. Note that each employer and industry is different and will need a specifically tailored plan. Please contact your Dinsmore attorney for more information and for help enacting that plan.

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Executive Order
2020-91

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Michigan Requirements

→ On May 18, 2020, Governor Gretchen Whitmer signed Executive Order 2020-91 ("Order") into effect, which details the requirements on employers reopening for business in Michigan.

→ The Order reaffirms and builds upon previous directives for employers permitted to reopen business. In addition to more stringent requirements for industries such as manufacturing, construction, laboratories, retail, and food and beverage (found here), the Order requires that all businesses permitted to reopen (and thereby "require their employees to leave their homes or residences for work") must, at a minimum:
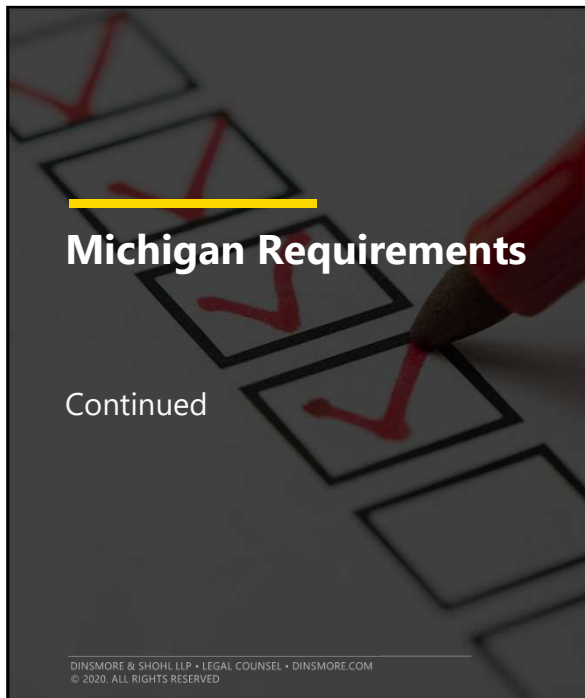
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Michigan Requirements

Continued

→ 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, by June 1, 2020, or within two weeks of resuming in-person activities, whichever is later. The plan must be made available to employees, labor unions, and customers, whether via website, internal network, or by hard copy.

→ Designate one or more worksite supervisors to implement, monitor, and report on the COVID-19 control strategies required under the Order. The supervisor must remain on site at all times when employees are present. An on-site employee may be designated to perform the supervisory role.

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Michigan Requirements

Continued

→ Provide COVID-19 training to employees that covers, at a minimum:
  → Workplace infection-control practices.
  → The proper use of personal protective equipment.
  → Steps the employee must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.
  → How to report unsafe working conditions.
→ Conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19.
→ Maintain at least six feet social distancing to the maximum extent possible, including through the use of ground markings, signs, and physical barriers, as appropriate to the worksite.
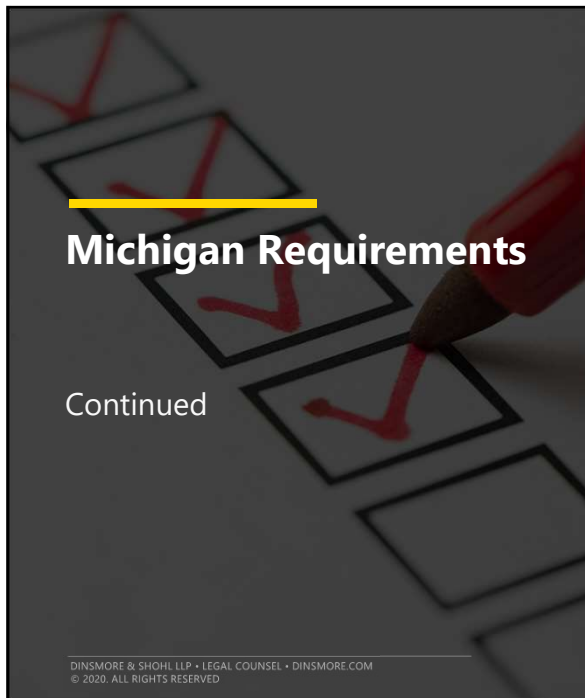
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Michigan Requirements

Continued

→ Provide non-medical-grade face coverings to employees.
→ Require face coverings to be worn when employees cannot consistently maintain six feet of separation from other individuals in the workplace, and consider face shields when employees cannot consistently maintain three feet of separation from other individuals in the workplace.
→ Increase facility cleaning and disinfection to limit exposure to COVID-19, especially on high-touch surfaces (i.e., door handles), paying special attention to parts, products, and shared equipment (i.e., tools, machinery, vehicles).
→ Adopt protocols to clean and disinfect the facility in the event of a positive COVID-19 case in the workplace

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Michigan Requirements

Continued

→ Make cleaning supplies available to employees upon entry and at the worksite, and provide time for employees to wash hands frequently or to use hand sanitizer.

→ When an employee is identified with a confirmed case of COVID-19, within 24 hours notify both:
  → The local public health department and
  → Any coworkers, contractors, or suppliers who may have come into contact with the person with a confirmed case of COVID-19.

→ Follow Executive Order 2020-36 and any executive orders that follow it that prohibit discharging, disciplining, or otherwise retaliating against employees who stay home or who leave work when they are at particular risk of infecting others with COVID-19.

→ Establish a response plan for dealing with a confirmed infection in the workplace, including protocols for sending employees home and for temporary closures of all or part of the worksite to allow for deep cleaning.
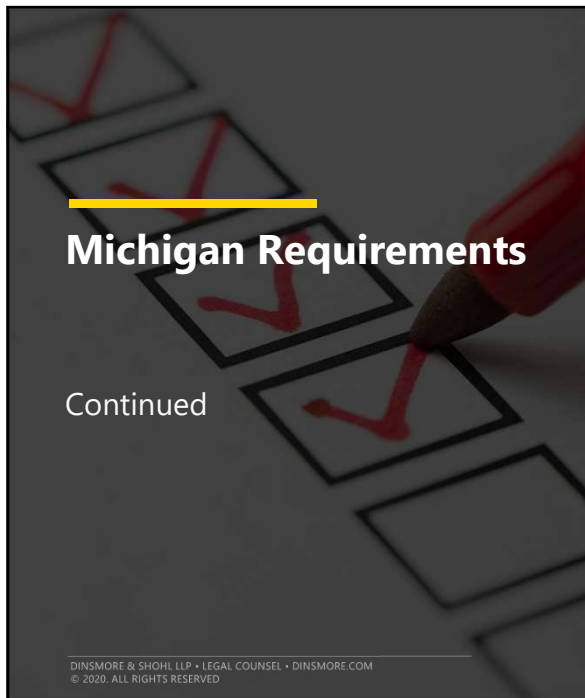
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Michigan Requirements

Continued

→ Restrict business-related travel for employees to essential travel only.

→ Encourage employees to use personal protective equipment and hand sanitizer on public transportation.

→ Promote remote work to the fullest extent possible.

→ Adopt any additional infection-control measures that are reasonable in light of the work performed at the worksite and the rate of infection in the surrounding community.

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Michigan Requirements

Continued

Furthermore, all offices must:

→ Assign dedicated entry point(s) for all employees to reduce congestion at the main entrance.

→ Provide visual indicators of appropriate spacing for employees outside the building in case of congestion.

→ Take steps to reduce entry congestion (e.g., by staggering start times, adopting a rotational schedule in which only half of employees are in the office at a particular time) and ensure the effectiveness of screening.

→ Require face coverings in shared spaces, including during in-person meetings and in restrooms and hallways.

→ Increase distancing between employees by spreading out workspaces, staggering workspace usage, restricting non-essential common space (i.e., cafeterias), providing visual cues to guide movement and activity (e.g., restricting elevator capacity with markings, locking conference rooms).

→ Turn off water fountains.

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Michigan Requirements

Continued

→ Prohibit social gatherings and meetings that do not allow for social distancing or that create unnecessary movement through the office.

→ Provide disinfecting supplies and require employees wipe down their work stations at least twice daily.

→ Post signs about the importance of personal hygiene.

→ Disinfect high-touch surfaces (i.e., whiteboard markers, restrooms, handles) in offices and minimize shared items (i.e., pens, remotes, whiteboards) when possible.

→ Institute cleaning and communications protocols when employees are sent home with symptoms.

→ Notify employees if the employer learns an individual (including a customer, supplier, or visitor) with a confirmed case of COVID-19 has visited the office.

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Social Distancing

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Social Distancing

→ **Consider staggering the times when employees return.**

- As an example, an employer could start with only first-shift employees returning for the first two weeks and then the second-shift employees returning for the next two weeks.

→ **Maintain teleworking and/or flexibility with employees' schedules.**

→ **Continue to hold meetings virtually.**

→ **Rethink holding any in-person events with mass gatherings and consider hosting events virtually or rescheduling.**

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Social Distancing

→ **Increase physical space between employees and visitors in the workplace.**

- As an example, have a minimum number of individuals who may enter a breakroom, conference area, or lobby.
- Place physical markers in heavily trafficked areas to keep people six feet apart.
- Place physical barriers to the extent necessary.
- Rearrange work spaces to permit greater social distancing.
- Consider whether furniture and work equipment can be reconfigured to facilitate social distancing.
- Develop protocols for elevator use.

→ **Limit the number of visitors by conducting business virtually.**

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Social Distancing

→ **Stagger break and lunch times and plan for longer break times to accommodate the social distancing measures.**

- Permit employees to leave the facility during meals and breaks to increase social distancing.

→ **Discourage social practices that violate social distancing rules, such as handshakes.**

→ **Retailers should consider providing alternative points of sale and no-touch payment options.**

→ **Implement clear shields/barriers for employees whose work prevents them from being physically distant from customers/clients, such as cashiers and bank tellers.**

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Social Distancing

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Cleaning, Protection & Hygiene

→ **Place proper handwashing protocol posters in all common work areas and in restrooms.**

- Be flexible with employees' breaks to allow for frequent handwashing.

→ **Include additional sanitation measures for the facility, especially in common areas and for frequently touched surfaces or shared equipment.**

→ **Require employees to disinfect common surfaces following use as appropriate (for example, in microwaves).**

→ **Provide hand sanitizer, disinfecting wipes, and proper disposal in all common areas and at work stations where employees cannot leave to wash their hands between interactions with the public.**

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Cleaning, Protection & Hygiene

→ **Encourage employees to use masks or approved facial coverings and gloves and provide them if able.**
- If employers permit employees to use their own, provide clear expectations on what is appropriate.
- In some jurisdictions, masks are required for employees returning to work.

→ **Ensure employees are trained on proper use of PPE.**

→ **Continue to encourage employees to observe infection-control practices, such as regular handwashing, coughing, and sneezing etiquette.**

→ **Coordinate with facility maintenance to increase air exchanges in facilities.**

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Cleaning, Protection & Hygiene
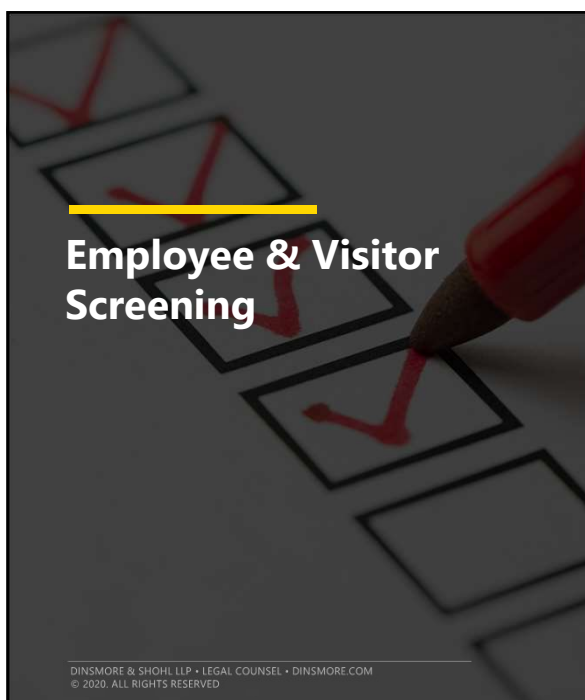
→ **Unique Issues for Banks – PPE**
- How to identify clients with face coverings and masks.
- Masks as a trigger for employees who have experienced a robbery or other trauma.
- Ability to recognize security threats.

→ **Unique Issues for Banks – Sanitation**
- Processes for handling cash and cards.
- Sanitation between customers.
- Screening clients/drive through options.
- Notification of exposure.
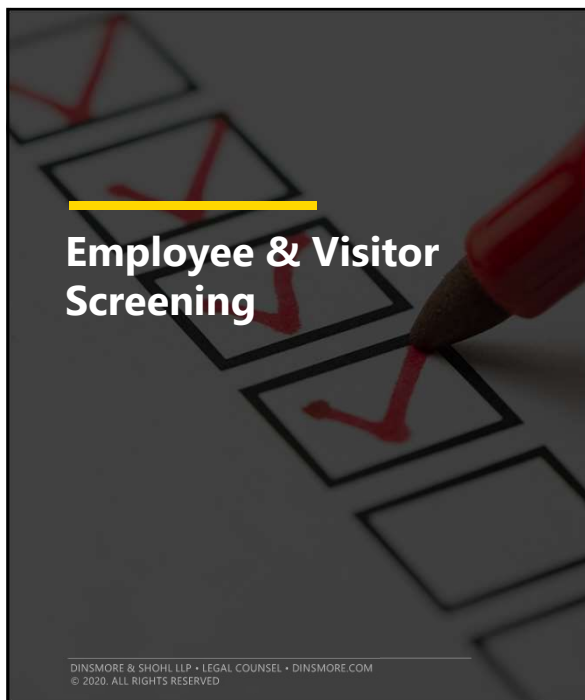
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Employee & Visitor Screening

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Employee & Visitor Screening

→ **Institute safe screening practices for both employees and visitors prior to entrance into the facilities.**

- Place conspicuous messaging preventing entrance if sick and provide alternatives for the visually impaired.
- Ensure there is an option in Spanish and/or other languages.
- Create practices to ensure that hourly, non-exempt employees are compensated for health screening time if required under federal, state, or local law.

→ **Mandate that employees with symptoms stay home from work and follow employer call-in procedures.**

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Employee & Visitor Screening

→ **Implement temperature checks upon entrance in a safe and confidential manner.**

→ **For certain industries, such as health care, where specific guidelines are recommended, follow federal, state, and industry guidance for monitoring, including testing employees for COVID-19.**

→ **Be mindful of privacy concerns and any necessary accommodations.**

→ **Consider suspending or reconfiguring security practices that require touching frequently touched surfaces, such as PIN-entry devices, thumbprint scanners, time clock stations, and in sign-in books.**
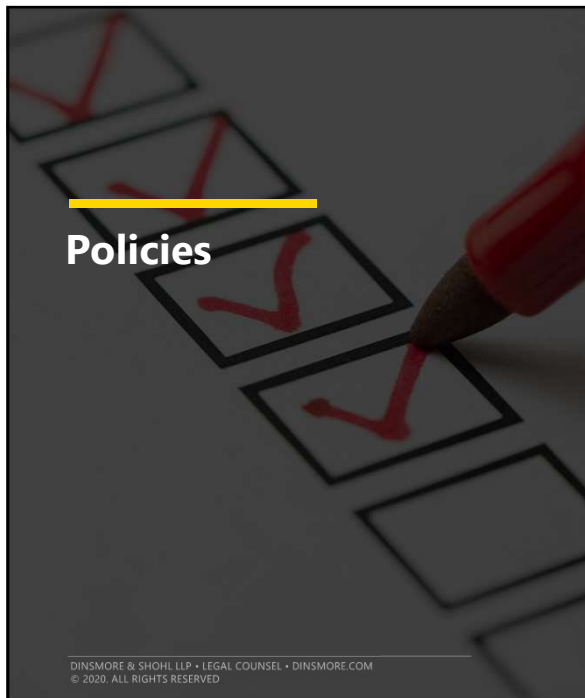
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Policies

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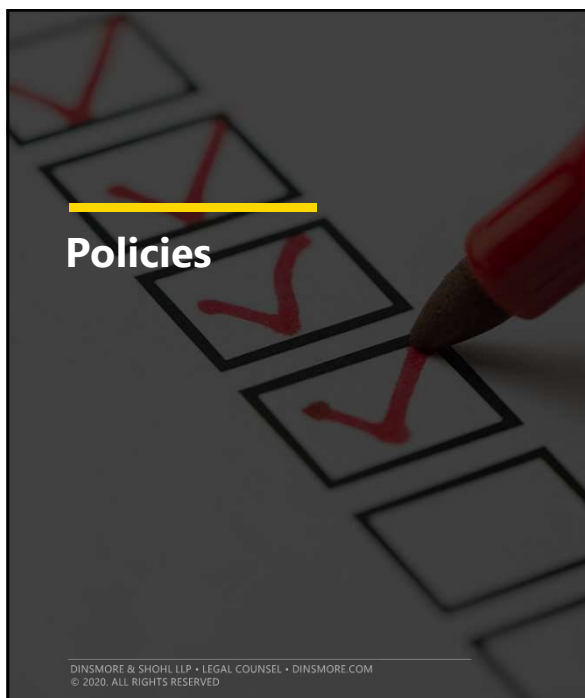
Policies

→ **Review and update attendance, leave-of-absence, Family Medical Leave Act, and PTO policies to prepare for COVID-19 absences.**

→ **Ensure that a policy and procedure is in place for processing Families First Coronavirus Response Act leave requests and recouping available tax credits.**

→ **Create a policy or procedure for when employees diagnosed with COVID-19 or suspected of having COVID-19 can return to work.**

→ **Review and update any teleworking and accommodation policies or procedures.**

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Policies

→ **Develop and implement procedures to track any positive cases to provide proper notification for those exposed and to prevent further spread.**

→ **Update procedures for reporting any safety issues.**

→ **Review time-keeping procedures to ensure they allow for social distancing and adequately recording working time.**

→ **Ensure employees understand these updated policies.**

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Policies

→ **Review and update safety policies and clearly communicate new rules and procedures to employees in writing.**

→ **Require training on updated safety procedures for employees.**

→ **Train supervisors on how to monitor compliance with and enforce new rules and procedures.**

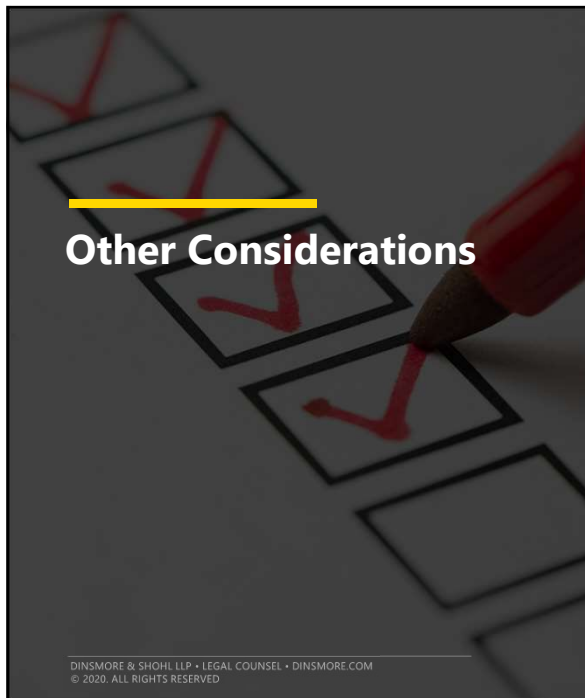→ **Have employees acknowledge receipt of training, rules, and procedures.**
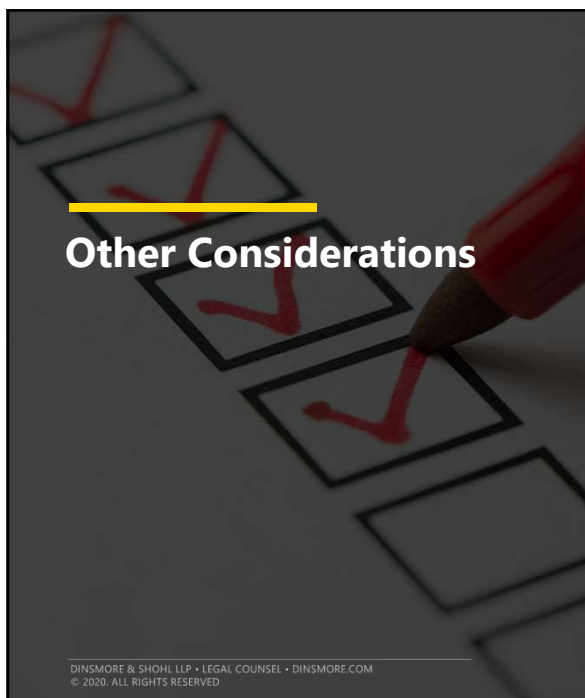
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Other Considerations

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Other Considerations

→ **Stay aware of continuing restrictions from federal, state, and local public health organizations and remain compliant with public health orders.**

→ **Develop a strategy for workers who decline to return to work or need additional time off.**

- There are implications under the National Labor Relations Act, the Americans with Disabilities Act, Occupational Health and Safety Act (and state equivalents), labor laws, and others employment laws.

- Employers should also be mindful of laws against unemployment fraud. In some circumstances, employees may decline to work because they are earning more benefits on unemployment than in their normal position. Employers must inform unemployment if work is available and the employee refuses to return for an unexcused reason.

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Other Considerations

→ **Be mindful of responsibilities under the Payroll Protection Program and other support programs for returning employees to work.**

→ **Prepare to follow the interactive process for accommodation requests under the Americans with Disabilities Act or state equivalent regarding returning to work and/or any of the safety measures.**

→ **Accommodations may include PPE, remote work, alternative scheduling, alternate work locations, alternate work assignments, increased social distancing, and leaves of absence.**

→ **Ensure the extra safety precautions do not violate wage and hour laws.**

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Other Considerations

→ **Create a plan for when employees may resume business travel.**

→ **Be mindful of anti-discrimination and anti-retaliation laws when returning employees and addressing safety issues.**

→ **Prepare a contingency-operation plan to address an increased outbreak or spike in infections as restrictive measures are loosened.**

→ **Be cognizant of rights and obligations under collective bargaining agreements.**

→ **Encourage employees to raise questions or concerns and designate a task force member to engage in dialogue with employees.**

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Questions?

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