Articles + Publications | July 31, 2020

Locke Lord QuickStudy: Return to Work Considerations

Locke Lord LLP

WRITTEN BY

Evan C. Blankenau | Jeffrey M. McPhaul | Sara C. Longtain

RELATED OFFICES

Houston

As government officials debate the timeline and criteria for reopening the country, employers are beginning to consider a return to some version of normalcy. After weeks of sheltering in place and teleworking, the prospect of re-opening the workplace or, for essential businesses, ramping up operations and returning employees to work safely and efficiently, may appear daunting to employers. The following "return to work" roadmap addresses the high-level considerations and questions employers may face as they attempt to navigate the ever-changing road to re-opening.

- **Identify a "return to work" coordinator or team** that can collect relevant information, evaluate alternative approaches for re-opening or scaling up operations, and prepare a "return to work" plan tailored to the unique circumstances of the employer's organization and workforce. Consider including individuals with intimate knowledge of the physical layout of worksite(s), the operational requirements of each business line(s), any IT infrastructure needs, human resources/personnel policies and practices, and any applicable legal considerations (e.g., existing legal standards and requirements, newly issued legislation, and local or state laws/ordinances/executive/administrative orders).
- **Evaluate applicable "re-opening" orders and industry-specific guidance** and ensure any "return to work" plan accounts for variations among them. The scope and timing of any re-opening requirements are likely to vary by jurisdiction and, in certain instances, by industry (e.g. healthcare workers vs. retail workers vs. office personnel). Approach this evaluation on a worksite-by-worksite basis and, in the face of conflicting rules, apply the most restrictive ones to the worksite. Revisit the evaluation as new laws/ordinances/orders/guidance go live.
- **Conduct a COVID-19 risk assessment at each worksite and create a mitigation plan (or refine an existing one) identifying exposure risks.** Any mitigation plan should include, among other things, social distancing measures (e.g. physical modifications to the worksite, revised work practices, employee training on appropriate interactions), worksite cleaning and disinfection procedures, protective coverings and personal hygiene requirements or recommendations, health screening protocols for employees and visitors, and protocols for addressing COVID-19 cases.
- **Determine when to re-open (or ramp up) and how to structure the "return to work"** in light of the ongoing risk of exposure to COVID-19 and the employer's operational needs. Both available guidance and practical considerations seem to support a gradual or phased re-opening. To examine the best choice for any organization, employers might ask themselves the following questions:
  - Is it feasible to continue some or all of the employer's operations via teleworking arrangements?
  - Does it make sense to bring employees back to the worksite on a rotational basis, alternating between telework and physically reporting to a worksite?
  - Does the employer anticipate an immediate increase in business upon re-opening, or would a more scaled approach better meet the likely operational needs and capacities?
  - Does returning all employees to the worksite at once create logistical issues that warrant consideration of a

©2026 Troutman Pepper Locke

phased re-entry?
- Can the employer realistically comply with social distancing requirements/recommendations if all employees return to the worksite at the same time?
- Are there other considerations that may necessitate employees continuing to telework, such as school or summer camp closures?

Re-Opening—Health and Safety Considerations

1. Upon re-opening or scaling up operations, what social distancing measures should employers consider implementing at their worksites?

The exact measures appropriate and effective for any worksite and workforce will depend heavily on the outcome of the worksite risk assessment, and any updates to it. Any decision should be guided by recommendations from the CDC and applicable state and local health authorities. Key principles for consideration include:

- **Reconfiguration of Workspaces.** Review floor plans and ?layouts now to decide how the workplace may be reconfigured to provide more space between employees, and to guide employees on how they can position themselves appropriately as they move throughout the workplace. By way of example, employers might consider the following:
  - Marking quadrants on the floor to designate only one ?employee per section at a time.
  - Installing protective barriers such as Plexiglas dividers ?to help separate employees, including receptionists and members of the public or other employees with whom they may interact in the course of their job duties.
  - Separating employees who work in close quarter areas like adjacent cubicles.
  - Removing every other chair in break areas and lunchrooms.
  - Adding partitions to tables where employees congregate during breaks.
  - Re-purposing unused rooms or office space to function as an additional break room or ?meeting room.
  - Requiring employees to walk in designated one-way lanes in hallways and corridors to avoid “head-on” pedestrian traffic.
  - Arranging for food trucks or other food delivery services to serve employees outside the worksite to separate employees during lunch breaks.
  - Providing hand sanitizer stations outside each restroom and each door that is commonly used.
  - Upgrading teleconference equipment.
  - Arranging for pick-up and drop-off delivery of packages outside of the workspace.

As employers contemplate these and other modifications to their worksite(s), employers should also consider whether any such modifications would conflict with applicable federal, state, or local accessibility laws.

- **Policies and Practices/Training and Education**. Beyond physical modifications to the worksite, the CDC recommends that employers implement policies and practices to reinforce social distancing and employee compliance with respiratory etiquette and hygiene. Employee education and training on these matters is critical to achieving the overall goal of a healthy work environment. By way of example, employers might consider the following:

  - Requiring employees to maintain at least six feet of separation throughout the office, facility, or work area, unless closer contact is required for a particular job duty, and inform employees of the physical barriers to contact installed for their protection.
  - Encouraging employees to follow the CDC guidelines for frequent hand washing and the use of hand sanitizer and tissues.
  - Discouraging employees from shaking hands, and, where possible, prohibit employees from sharing items such as headsets, tools, office supplies, or other equipment.

- Restricting the number of employees who can access communal areas, such as break rooms and kitchens, at the same time.
- Encouraging employees to conduct meetings by videoconference when possible and limit in-person meetings to a certain maximum number of individuals, all of whom should be instructed to adhere to social distancing. The maximum number of individuals for in-person meetings may be dictated by CDC guidelines or state and local laws. When in-person meetings do occur, recommend that such meetings are held in open, well-ventilated spaces.
- Limiting visitors in the workplace, and assessing whether to ask visitors to complete a questionnaire prior to entering the workspace.
- Eliminating or postponing non-essential business travel. Where business travel is necessary, limit the number of employees required to travel, if possible, and educate employees on safe practices for minimizing contact during travel. Direct employees to the CDC's most recent travel recommendations, which change periodically.

- **Modify Work Schedules.** Subject to operational requirements, employers can further promote social distancing by ?staggering shifts and adjusting work schedules—*e.g.* divide employees into teams and rotate schedules on weekly or daily basis, or stagger shift start times ?within the same workday. Employers also might consider keeping employee team assignments static to contain ?potential exposure among team members, and building ?time between shifts to clean ?and disinfect frequently used equipment. ?

- **Telework.** To the extent possible, employers should consider implementing or continuing full-time or part-time work-from-home ?arrangements. As with modifying work schedules, relying on telework arrangements will ease compliance with social distancing requirements by reducing headcount at a worksite.

2. Before employers bring employees back to the worksite, what other steps should they consider taking to promote a healthy work environment?

- **Review and, if needed, update worksite cleaning and disinfection procedures.** As a best practice, employers should follow, or ensure their janitorial services follow, the most up-to-date CDC guidelines for cleaning and disinfecting their worksites. To prepare outdoor spaces and/or indoor spaces that have been unoccupied for 7 days, employers need only perform normal cleaning practices. With respect to frequently touched surfaces or objects (*e.g.* workstations, keyboards, telephones, handrails, door knobs), the CDC generally recommends cleaning with soap and water (or, for electronic items, per the manufacturer's instructions), and then disinfecting with an EPA-registered household disinfectant. For electronic ?items, such as keyboards, tablets, touch screens, and remote controls that multiple employees regularly contact, employers also might consider adding a wipe-?able cover for heightened sanitation. It is also a good time to review existing cleaning practices to determine whether additional cleaning/disinfecting efforts should be implemented once employees (or more employees) return to the work area (*e.g.*, between shift changes, before and after each use of shared equipment, cleaning in the morning, afternoon, and evening, and training additional employees how to properly clean and disinfect).
- **For employers in multi-tenant buildings, proactively work with landlords and building management teams** to ensure there are adequate cleaning and social distancing measures taken in all common areas outside of the employer's immediate work area, such as elevators, escalators, and lobbies. To the extent practical, employers might explore the possibility of staggering work hours among tenants in the building and/or the ability to increase ventilation rates/percentage of outdoor air circulation via the HVAC system.
- **Ensure that worksite(s) have sufficient supplies** of soap, hand sanitizer, tissues, paper towels, and other items employees need to practice good hygiene, as well as products that employees can use to clean their own work areas.
- **If employees must travel to a third-party worksite, employers should consider taking steps to ensure the third-party has implemented appropriate COVID-19 health and safety protocols**. Similarly, employers should ensure their own COVID-19 health and safety protocols extend to third-parties visiting their worksites. Prior to sending employees offsite, consider (1) requesting confirmation from the third-party, in writing, that it is in compliance with applicable CDC and OSHA guidelines, and (2) reminding employees to practice social distancing while off-site and instructing them to refrain from sharing equipment, tools, or ?other items, to the

extent possible. Further, where applicable, employees should be directed to the CDC's travel ?recommendations. ?For additional guidance regarding COVID-19, please see OSHA's COVID-19 Standards website, and OSHA's posters stating how employers can reduce the risk of exposure to coronavirus, available at Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus (English Version) and (Spanish Version). The World Health Organization has also issued Getting Your Workplace Ready for COVID-19 guidance.

3. To minimize the risk of COVID-19 exposure in the workplace, can employers ?check employees' temperatures or test employees for COVID-19?

- **Temperature Checks**: Yes, it is generally permissible for employers to check employees' temperatures ?during the COVID-19 pandemic. Following any ?potential ?exposure, employers can and should measure an ?employee's temperature and assess ?symptoms before the employee ?enters the workplace. Even absent the presence of potential COVID-19 ?exposure, the EEOC has authorized ?employers to measure employees' body temperatures because of ?the community spread acknowledged by the CDC and ?state/local health authorities. That said, employers should ?bear in mind that some individuals with COVID-19 do not display ?symptoms of the illness, including fever. ? Employers also should keep in mind that the EEOC considers temperature checks to be medical examinations, which are typically only permissible in narrow circumstances under the Americans with Disabilities Act, but it is permitting employers to conduct them more broadly now because of the COVID-19 pandemic. Employers should therefore monitor and adjust their practices consistent with the most recent guidance from the EEOC. For more information regarding employee temperature checks, see our Key Questions for Employers Facing COVID-19 (FAQ), Question 5.
- **Other Medical Examinations (*e.g.* COVID-19 testing, antibody testing, vaccines)**: The EEOC currently permits employers "to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus." However, ?employers should consider the practical difficulties of such requirements (*e.g.* costs associated with daily testing, limited utility of negative test result that may change day to day, limited availability of COVID-19 testing kits of any ?type on a mass scale).If an employer chooses to test employees, the EEOC advises that employers use "accurate and reliable" tests, taking into account the Food and Drug Administration's guidance regarding the accuracy and reliability of certain tests. The EEOC does not permit employers to require antibody tests before returning to the workplace. With regard to COVID-19 vaccinations (which are not yet available), the EEOC directs that employers covered by the Americans with Disabilities Act (ADA) or Title VII of the Civil Rights Act of 1964 may not, even in a pandemic, compel employees to be vaccinated without accounting for reasonable accommodations for medical conditions or religious beliefs. The EEOC recommends that employers simply encourage, as opposed to require, employees to obtain a vaccine, if available, during a pandemic.

4. Are there any other steps an employer can permissibly take to monitor the worksite for the presence of COVID-19?

- **Health Questionnaire**: Due to the constraints associated with COVID-19-related medical examinations (*see* Question 3 above), a health ?questionnaire (written questions presented to and answers provided by employees) may serve as a useful monitoring tool. Specific questions employers may permissibly ask employees before entering the worksite, include:
  - Are you experiencing symptoms associated with COVID-19, ?including fever (over 100.4°F), chills, cough, shortness of ?breath, sore throat, loss of smell or taste, or gastrointestinal ?problems, such as nausea, diarrhea, or vomiting?
  - Have you tested positive for, or been diagnosed with, COVID-??19?
  - Have you been in close contact (i.e., within six feet or another distance recommended by the CDC) with any ?person who has tested positive for, or been diagnosed with, ?COVID-19 within the past 14 days?
  - Has your doctor, other medical professional, or health official ?asked you to self-quarantine within the past 14 days?
  - Have you recently traveled to or been in any location for which ?the CDC has issued a Level 3 travel health notice?

- Do you require an accommodation due to an existing condition ?that may put you at “high risk” for COVID-19, as per the ?CDC’s guidance?

- **Monitoring Non-Employees**: The U.S. Department of ?Justice has not yet opined on whether the ?COVID-19 pandemic ?permits private entities to conduct temperature testing on non-?employees, such as contractors, customers or other visitors, but it is generally permissible to require non-employees to respond to health questionnaires like the one described above. However, employers should consider potential issues that may arise from denying a contractor access to their workplaces. The ADA provides ?certain nondiscrimination protections to individuals with ?contagious diseases ?but balances this protection with requirements ?designed to protect the health of others (such as when ?an ?individual poses a “direct threat” to others). However, because ?the DOJ has not addressed this issue in light ?of COVID-??19, employers should exercise caution before relying on the “direct ?threat” or other similar ADA defenses as ?a basis for temperature or ?other screenings procedures of non-employees.

5. What else must employers be mindful of if considering COVID-19 testing, screening or monitoring procedures at its worksite?

Any testing, screening or monitoring procedures should be conducted indiscriminately and without regard to any protected class and, depending on the nature of the procedure, administered by qualified health care or HR professionals. All COVID-19 related medical information ??(*e.g.*, temperature or other test results) should be stored separately from other employee personnel records and treated as confidential. Finally, employers should consider wage and hour issues, including whether testing time should be compensated (if not already).

6. Can and should employers require employees to wear face coverings or masks while at the worksite, and if so, what should employers keep in mind?

- **Federal Guidance**: In its Recommendation Regarding the Use of Cloth Face Coverings, ?Especially in Areas of Significant Community-Based Transmission, the ??“CDC recommends wearing cloth face coverings in public settings where ?other social distancing measures are difficult to maintain (e.g., grocery ?stores and pharmacies) especially in areas of significant community-based ?transmission. “However, the CDC’s guidance is not mandatory, and no ?other federal agency, including OSHA, has issued a directive requiring the ?use of face coverings by employees or the public. ?
- **State/Local Requirements**:
  - Despite the lack of a federal requirement, many states and cities have required face coverings in public, and some require face coverings at work or inside certain businesses, with some state and local laws placing the burden on employers to provide face masks to employees. Employers should therefore determine whether the states or

municipalities in which they operate impose face covering obligations and take steps to comply. Some examples of the state and local requirements are as follows:

- Per an order issued by Governor Greg Abbott of Texas, all individuals are required to “wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain six feet of social distancing from another person not in the same household,” with certain exceptions. Local law enforcement and other local officials are tasked with enforcing the order by issuing a verbal or written warning for the first violation and fining up to $250 for each subsequent violation. Several counties and cities in Texas also have issued face covering requirements. For instance, Judge Clay Jenkins of Dallas County issued an order not only requiring individuals to wear face coverings, but also mandating businesses serving the public to develop and implement a health and safety policy which, at a minimum, requires all employees and visitors to wear face coverings when six feet of social distancing cannot be maintained. Businesses face a fine of up to $500 for a failure to comply with this order.

- In Connecticut, all employees are “required to wear a mask or ?other cloth material that covers [their] mouth and nose at all times while in ?the workplace. “Connecticut employers must provide such masks or face ?coverings to employees. Employers who cannot obtain sufficient ?masks or face coverings must provide employees with the materials ?necessary to make them (or reimburse employees for the necessary costs) and ?provide the CDC tutorial for making a cloth face covering.
- Mayor Eric Garcetti of the City of Los Angeles, California also issued an order ?requiring the use of face coverings (not N95 respirators or medical grade masks) ?by non-medical essential workers. The order applies to grocery stores workers, ?hardware and building supply store employees, plumbers, electricians, ?custodial/janitorial workers, restaurant employees, and hotel employees, among ?other categories of workers. Workers subject to the order must wear a face ?covering over their noses and mouths while performing work. The order also ?requires employers to provide, at their expense, the required face coverings. The ?order further requires customers and visitors of essential businesses to wear face ?coverings and permits the owners or operators of these businesses to refuse ?admission or service to individuals who choose not to wear the required face ?coverings. ?
- Per an order issued by Governor Andrew Cuomo of New York, all essential ?businesses must require that employees use face coverings when in direct contact ?with customers or members of the public.Essential business must provide employees with such face coverings, at no cost to the employees. By separate order, individuals over the age of two are required to wear a face covering in public places where ?they cannot or do not maintain social distance, subject to an exception for ?individuals who cannot medically tolerate face coverings.
  ?
- In Illinois, Governor JB Pritzker issued an order requiring (1) individuals to wear a face-covering or a mask when in a public place where maintaining six feet of social distancing is not possible, and (2) businesses to ensure employees wear face coverings when social distancing is not always possible. Certain employers also are required to provide face coverings to all employees who cannot maintain at least six feet of social distancing. In addition, the order dictates other employers to take proactive measures to ensure social distancing, including, when possible, providing employees with face coverings. ?

- **Hazard Assessment**: Even in locations where face coverings are not required by state or local ?directives, employers should consider performing hazard assessments to ?determine the risks of exposure to COVID-19. If an employer determines that its ?employees can control exposure to COVID-19 by practicing social ?distancing, observing the CDC’s personal hygiene guidelines and by ?implementing other environmental controls (e.g., prohibiting in-person ?meetings or spreading out workspaces), employers still may want to consider voluntary ?use of face coverings. On the other hand, employers with workplaces that do not allow for ?social distancing or make it impractical, may wish to consider requiring the use of ?face coverings; however, they should consult with legal counsel before implementing such a requirement. ?

7. Can employers require employees to report confirmed positive, diagnosed, or suspected COVID-19 infection?

Yes. Employers can require employees who suspect they have been exposed to or infected with COVID-19 report their symptoms to an HR representative or other designated member of management *before* coming to work.Employers should direct any employee experiencing COVID-19 symptoms, or who has tested positive for or been diagnosed with COVID-19 to remain at home until the employee is released to return to work by a medical provider.*See* Question 11 below for additional considerations for returning these employees to work.Employers should similarly require any employee who begins to experience symptoms of COVID-19 *at work* to follow the same reporting procedure, and consider developing and implementing an isolation protocol promptly to address the situation or circumstances when an employee reports to work and displays symptoms of COVID-19. For more information regarding the reporting of potential COVID-19 exposure or infection, see our Key Questions for Employers Facing COVID-19 (FAQ), Question 11.

For employees who have a confirmed positive, diagnosed or suspected COVID-19 infection, it is important that

employers require them to identify any employee and non-employee with whom they recently (at least the prior 48 hours) may have come into close contact (within six feet or as otherwise recommended by Health Authorities).The employer then can take steps to inform those individuals of potential exposure. Depending on the circumstances, employers may require other employees to isolate until further notice or until they obtain a release to return to work from a medical provider. Throughout this process, employers should take steps to maintain the privacy and confidentiality of all employee health information. For more information regarding the protection of employee health information related to a COVID-19 diagnosis, see our Key Questions for Employers Facing COVID-19 (FAQ), Questions 8 and 10.

Employers should also develop procedures to address situations in the workplace when one employee raises concerns that another employee either (1) has symptoms of COVID-19, or (2) has been in close contact with someone known to have, or experiencing symptoms of, COVID-19.In developing these procedures, employers should balance the need to maintain safe workplaces and the need to avoid unnecessary disruptions based on subjective observations.

Re-Opening—When and How Considerations

8. In establishing a return to work or ramp up plan, how do employers decide *who* should return to work?

Due to health and safety concerns, logistical issues, reduced operational needs, and/or state and local requirements as they are promulgated, it is likely that employers will not seek to return all employees to the worksite at once and, in some instances, some employees will not be asked to return at all. Any selection decisions should be based on legitimate, non-discriminatory reasons (*e.g.* skills, performance, seniority, criticality of position to the current operational needs, ability of employees to telework). For these decisions, an employer can rely on the same factors used to determine who it furloughed or laid off upon issuance of a shutdown order. Employers should take care to avoid relying upon factors related to COVID-19 (*e.g.* use of protected leave, caregiver obligations, apparent inclusion in at-risk categories or association with others in those categories), as employers then may run afoul of various federal, state and local laws.

9. Are employers at risk of claims related to requiring employees to return to work?

As employers return employees to work during a global pandemic, they are navigating previously unseen practical and legal waters. Though existing legal precedent and recently issued guidance offer some insight into areas of potential exposure, the legal landscape, in large part, remains unmapped. Amidst all the unknown, one factor remains true: the best defense is a good offense. A thoughtful approach to, and documentation of, a return to work plan with a compliance-driven focus will place employers in the best position to address potential employee claims.

Employers may, at least in the early days of any return to work plan, consider returning employees to work on a voluntary basis. Similar to the approach some essential businesses took to determine who would continue to report to work during shut down periods, employers may want to inform their employees of the mitigation plan they intend to utilize and consider polling employees in positions deemed critical to re-opening to determine who *wants* to return to the worksite. When possible, it may make sense to extend teleworking arrangements that were effective during shutdown periods—which, as added benefits, will contribute to an employer's social distancing

efforts and might ease the burden of any COVID-19 resurgence in the local community.

While a flexible approach to the return to work initially may provide employees added comfort and employers added protections, it may not be possible or practical for every employer or every position. Where an employer's business, in large part, cannot operate without employees reporting to the worksite, employers should consider how to address employee refusal or reluctance to return to work. Employers should be mindful of an employee's request for a reasonable accommodation related to COVID-19 concerns, and where appropriate, engage in the interactive process as required by the ADA and applicable state law. For additional information on how to address employee concerns and requests, see Question 11 below, as well as Questions 2 and 3 from our Key Questions for Employers Facing COVID-19 (FAQ).

10. What other considerations may be relevant in determining *how* employers should implement a "return to work" plan?

- **Develop an employee communication strategy** to keep employees informed of "return to work" plans, promptly address employees' related questions and concerns, and requests for reasonable accommodations (*see* Questions 8 and 9 above), and provide effective employee education regarding COVID-19 mitigation strategies.
- **Be prepared to pivot.** Before an employer brings employees back to the worksite, the employer should be prepared for a "second wave" of the virus (*e.g.,* a need to quickly return to teleworking or take measures to offset further economic impacts, like furloughs and reductions ?in force). Specifically, employers should consider ??(or revisit) pandemic preparedness / business continuity plans, incorporating takeaways from their recent shut down experiences to allow for a nimble reaction to changes in community mitigation requirements.?

Re-Opening—Addressing Employee Concerns and Requests

11. As employers plan for re-opening their worksites or scaling up operations, how should employers ?handle employee concerns and requests:?

- **Employees diagnosed with COVID-19 that have now recovered.** The CDC provides detailed guidance for determining when a person may end home isolation, using one of two criteria (1) a time-since-illness-onset and time-since-recovery (symptom-based) strategy or (2) a test-based strategy. The CDC only recommends using a test-based strategy for individuals who are severely immunocompromised, in consultation with infectious disease experts, and for others if needed to discontinue isolation or other precautions earlier than would occur under the symptom-based strategy. Under the symptom-based strategy, individuals with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation after:
  - at least one day (24 consecutive hours) has passed since the resolution of the individual's fever without the use of fever-reducing medications;
  - improvement in other symptoms (such as cough or shortness of breath); and
  - at least ten days have gone by since symptoms first appeared. A limited number of individuals with severe illness or who are severely immunocompromised may need to wait until up to twenty days have passed since symptoms first appeared.

  Under the test-based strategy, individuals with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation after:

  - negative results from two COVID-19 tests collected no less than 24 hours apart.

Provided they have had no subsequent illness, the CDC states that individuals with laboratory- confirmed COVID-19, but who have been asymptomatic, may discontinue home isolation when at least ten days have passed since the date of their first positive COVID-19 diagnostic test.

Employers should utilize CDC guidance in framing their discussions with employees and assessing whether a given employee recovering from COVID-19 is capable of safely returning to work. Depending on the nature of the employee's position, including the extent of his or her interactions with others and exposure to "at risk" individuals, it may make sense for employers to insist that certain employees continue to absent themselves from the workplace. Guidance from the EEOC permits employers to require a doctor's note certifying an employee's fitness for duty following an employee's self-quarantine and/or remote work arrangement due to COVID-19. For more information concerning seeking a fitness for duty certification, see our Key Questions for Employers Facing COVID-19 (FAQ), Questions 6 and 18.

- **Employees with family members who tested positive for COVID-19.** An employee that has been directly exposed to someone with COVID-19 should be required to self-quarantine for at least 14 days as provided by CDC guidance.Employers should utilize the strategies described above in dictating how and when to allow infected employees to return to work.
- **Employees, including high risk employees without any current exposure or symptoms, refusing to return to the workplace out of fear of COVID-19 exposure.** Generally, employees are not entitled to leave or to telecommute to avoid illness (although, teleworking, if possible to fulfill an employee's job responsibilities, is a recommended infection-control strategy per the EEOC). To the extent an employee may be a qualifying individual with a disability, who may pose a greater risk from COVID-19 than others, the employer should engage in the interactive process and determine whether there is a reasonable accommodation that could eliminate possible exposure without posing an undue hardship on the employer. To the extent the employee, or the employee's family member for whom the employee is caring, is advised by his or her physician to self-quarantine because such individual is particularly vulnerable to COVID-19, the employee may be entitled to paid leave under state or federal law, including the Families First Coronavirus Response Act (FFCRA). Employers should also consider whether it makes sense to allow such employees to use accrued, unused vacation time, PTO or other types of leave in these circumstances.? For information concerning how to handle such a request, and the legal risks to consider, see our Key Questions for Employers Facing COVID-19 (FAQ), Questions 2-3, and our QuickStudy on the ?FFCRA.
- **Employees with caregiving responsibilities that cannot return to the workplace**. Though employers are generally not obligated to provide an accommodation due solely to an employee's caregiving responsibilities, employers should consider whether the employee can telework or continue to telework. If feasible and in line with the employer's business objectives, this approach could provide a solution that would allow the employee to continue working.For information concerning how to handle such a request if an employee cannot telework, and the legal risks to consider, see our Key Questions for Employers Facing COVID-19 (FAQ), Questions 16 and 17, and our QuickStudy on the ?FFCRA.

With new guidance issued daily on a local, state, and federal level, employers must remain agile and vigilant in attempting to get back to "business as usual." For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors or any of the Locke Lord labor and employment attorneys.

NOTE: Because of the ever-changing COVID-19 legal environment, employers should consult with counsel for the latest developments and updated guidance on these topics.

RELATED INDUSTRIES + PRACTICES

- Labor + Employment

©2026 Troutman Pepper Locke