

A decorative graphic consisting of multiple overlapping, wavy lines of varying thickness and opacity in shades of blue, creating a sense of motion and depth across the middle of the slide.

**Baker
McKenzie.**

The Reopening Playbook

Welcome! The webinar will begin shortly.
Due to heavy traffic, it will take a minute for everyone to join.



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Housekeeping



Questions

- Please ask questions in the Q&A feature of Zoom
- We will reserve time at the end for Q&A



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- Approved for CLE credit
- Certificates will be sent to all participants

Agenda

1 Government Orders

2 Creating a Timeline

3 Workplace Safety &
Prevention Strategies

4 Testing & Health Screening

5 Labor Agreements

6 Workforce Communication

7 Managing Employee Concerns

8 Litigation Mitigation

1

Government Orders

Government Orders: Drivers of Reopening



Monitor the lifting of government shelter-in-place orders to determine the appropriate time frame for returning to work



What can we learn from other countries?

- Italy, Spain, Germany, and other European countries are in the process of transitioning to reopen businesses in phases
- Spain is allowing workers who cannot work from home – like construction workers – to return to their jobs
- Austria has allowed small shops to reopen, subject to social-distancing rules
- Germany has allowed small shops to reopen. Mask-wearing is recommended, but not required
- In major cities in China, middle and high schools reopened; high schools in Wuhan will reopen on May 6
- South Korea lifted closure advisories on churches, bars and sporting facilities
- Reports of spikes after reopenings: Hong Kong, Japan, Singapore

Government Orders



"Opening Up America Again" Guidelines

- 3 phases to reopen state economies, with each phase lasting, at minimum, 14 days
- States and regions should have a 14-day downward trajectory of COVID-19 and influenza-like symptoms, of documented cases or positive tests, and hospitals must be treating patients without crisis care and have a robust testing program in place for at-risk healthcare workers before beginning Phase 1
- Guidelines do not have the force of law, and do not supersede applicable state and county health orders



Government Orders



Many states are reopening in phases (renaming SIPs to "Safer at Home" orders) or letting shelter-in-place orders expire without extensions. Others are under continuing shelter-in-place orders. Reopening will depend on what the plan says about how and when specific types of businesses can reopen. Others are forming "pacts" to coordinate reopening efforts.



Reopenings already in process

- Alaska, Colorado, Georgia, Oklahoma, Minnesota, Mississippi, Montana, South Carolina, Tennessee, Texas, Vermont



States with orders lifting **today**, April 30

- Alabama, Tennessee



States/districts still under continuing shelter-in-place orders

- California (indefinite), Illinois (May 30), North Carolina (May 8), Ohio (May 1), Pennsylvania (May 8), South Carolina (May 12), Michigan (May 15), Washington DC (May 16)

Which Rules Rule and How to Keep Up?



We have a solution . . .



Important to understand each layer

- White House offers Guidelines
- States set the floor for shelter in place orders (H&S Codes)
- County and city can add, but cannot take away restrictions



Tip: Assign local manager to monitor and report changes to HR, and . . . keep up with us!

State (Hyperlinked to Official State COVID-19 Resource Page)	County	Municipality	Link to Specific Order(s)	When is the Order in Effect?	Does the Order Require Shelter- in-Place? (Y/N)	Does the Order Require Shelter-in-Place for Social Venues Only (Restaurants, Bars, Clubs, Theaters, etc.)? (Y/N)
Alabama			Alabama Stay at Home Order	April 4, 2020 - April 30, 2020	Yes	No
Alaska			Alaska Health Mandates (Health Mandate 011: Social Distancing and 012: Intrastate Travel; 015: Reintroduction of Non-Emergency Medical Procedures; 016: Phase 1 Reopening Plan)	March 28, 2020 - May 20 2020	No	No
Arizona			Arizona Shelter in Place	March 31, 2020 - April 30, 2020	Yes	Yes
Arkansas						
California			California shelter-in-place order	March 19, 2020	Yes	No
	Alameda		Alameda County Shelter at Home Order	March 17, 2020	Yes	No
	Amador		Amador County Stay At Home Order	March 20, 2020	Yes	No
	Colusa		Colusa County Shelter In Place Order	March 20, 2020	Yes	No

■ State-Wide + Local Orders
 ■ State-Wide Orders Only
 ■ Local Orders Only
 ■ No Orders

**Not in full list*

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Creating a Timeline

Creating a Timeline for Reopening



What makes sense for your workforce and business?

- Create strawman timeline, that can adjust based on interdependencies
- Conduct a "reverse inventory" of the business
 - What functions will be needed when and where
- Prepare for phased reopening, with either a partial return of some functions or staggered, considering:
 - Location
 - Sector
 - Business type and size
 - Health and status of workers



3

Workplace Safety & Prevention Strategies

Workplace Safety & Prevention Strategies

Employers need to be thinking about back to work practices covering these five areas:

1



General Health
Screening

2



COVID-19 Testing

3



Personal
Protective
Equipment (PPE)

4



Sanitation Measures
to Maintain a
Healthy Work
Environment

5



Physical
Distancing

Workplace Safety & Prevention Strategies



General health screening

- Ask employees whether they're experiencing COVID-19 symptoms
 - As of April 26, CDC recognized 9 possible symptoms: fever, cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat, new loss of taste or smell

Testing for COVID-19

- Testing for presence of COVID-19 permitted under EEOC guidance
 - Determine whether, when and how you'll test employees
 - Advance plan to isolate sick employees,
 - "Contact tracing" for positive cases in the workplace

Workplace Safety & Prevention Strategies



Implement the use of Personal Protective Equipment (PPE)

Masks and other face coverings

- CDC recommends wearing face coverings in public settings
- Determine whether applicable health orders require masks or face coverings at work (but not N-95 respirators)
- Mandatory v. voluntary – it makes a difference to OSHA (PPE Standard and Respiratory Protection Standard)
 - Who pays?
 - Training
 - Medical exams

Gloves?

- CDC does not recommend wearing gloves for general daily activities
- But there are exceptions
- And if some employees must wear gloves...

Workplace Safety & Prevention Strategies



Implement and reinforce sanitation measures for the workplace

- Personal Protective Equipment
 - Remember OSHA rules apply
- Hand hygiene and "no touch" rule
- Cover mouth or nose with tissue/inside of elbow with cough or sneeze
- Routine cleaning and disinfection of all frequently touched surfaces such as workstations, keyboards, telephones, handrails, and doorknobs
- Avoid shared use of employee phones, headsets, desks, offices, or other work tools and equipment, when possible; if necessary, clean and disinfect before and after each use
- Post reminders (CDC has downloadable posters)

Implement and reinforce policies and practices for social distancing

- What does social distancing look like for your workforce?
 - Offices—cubicles/desks at least 6 feet apart
 - Warehouses—workspaces at least 6 feet apart
 - Retail—tape on floors and signs to remind customers of social distancing
 - Restaurants—limit number of customers to allow for social distancing
 - Staggered shifts/breaks

Workplace Safety & Prevention Strategies



Stay up-to-date on guidance from applicable government agencies and state and local authorities

- Occupational Safety and Health Administration (OSHA)
 - A word about OSHA enforcement
- Centers for Disease Control and Prevention (CDC)
- Equal Employment Opportunity Commission (EEOC)
- Applicable state and local authorities



Revise policies and practices and train employees in accordance with new guidance

- Besides adhering to agency guidance and creating new policies and practices, it is essential to train employees on any new health and safety procedures implemented to curb the spread of COVID-19



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4

Testing & Health Screening

Testing & Health Screening



The Five Questions To Ask Before Testing or Screening:

1. Can you?
2. Should you?
3. Which tests should you use?
4. How should you conduct tests?
5. What else should you consider?

Testing & Health Screening



Can you test or screen?

The legal framework:

- ADA / state law limits on medical examinations and disability-related inquiries
- FDA regulation of tests and testing methods
- CDC / local health agency guidance
- Medical licensure laws
- Privacy laws, such as HIPAA, CCPA, or ADA
- NLRA / CBAs

Testing & Health Screening



Should you test or screen?

- Goals
- Reliability / accuracy
- Limitations of tests
- Consistency - employees / contractors / visitors



Testing & Health Screening



What type of test and screen should you use?

- Body temperature / thermal scan
 - Latency
 - Asymptomatic
 - Fever suppression
- Health questionnaire
 - Travel questions
 - Symptom questions
 - Exposure questions
 - Underlying health conditions / age
- NAAT / RNA test (nasal or mouth swab)
 - Detects virus's genetic material
 - Indicator of active infection
 - FDA approved / reliable
- Serology / antibody test (blood draw)
 - Measures immune response to virus
 - IgM v IgG antibodies
 - Indicator of past infection
 - Not a silver bullet!

Testing & Health Screening



How should you test or screen?

- Logistics
 - who conducts the tests?
 - where are tests conducted?
 - who is tested?
- Frequency
 - daily / weekly / other?
- Handling results
 - enforcing policies
 - reporting infections

Testing & Health Screening



Other considerations

- Pay during testing
- Cost of testing
- Privacy
 - Data collection
 - Data storage
 - Data sharing
- Policies



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Labor Agreements

Labor Agreements



Review any CBAs to ensure seniority / bumping rights are followed when filling labor gaps



Plan for potential negotiations with unions regarding:

- newly adopted or imposed conditions in a re-opened facility
- demands for PPE and hazard pay



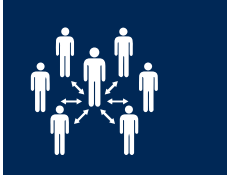
Understand rights and obligations surrounding:

- walkouts / strikes / other work stoppages
- protected concerted activity (union and *non-union*)

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Workforce Communication

Workforce Communication



Frequent communication is key

- Draft employee facing communications to ease the transition back
- Consider the tone: be reassuring; manage anxiety
- Communicate reopening plans proactively
 - Tailor communications to comply with state-specific reopening requirements
- Communicate what employees can expect when returning
 - New health and safety precautions and procedures
 - Pay and sick leave
- Listen and respond to employees' concerns

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Managing Employee Concerns About Returning to the Worksite

Managing Employee Concerns About Returning to the Worksite



Be prepared to address employee concerns regarding safety at work

- Employees who successfully worked from home during the applicable shelter-in-place may ask to continue to work from home for an extended period or permanently. Employees who cannot work from home may seek paid/unpaid leave.
 - Consider any applicable legal entitlements such as the ADA, FMLA, OSHA, Workers' Compensation (and state equivalents), company policies, as well as how these may be impacted by new legislation (such as FFCRA)
 - Make sure any leave or work-from-home requests are provided on a non-discriminatory basis



Be prepared to address potential disability accommodation requests for returning and new employees with medical restrictions

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Litigation Mitigation

Litigation Mitigation



Mitigate potential employee claims

- Current and likely claims include claims alleging violations of Americans with Disabilities Act and Rehabilitation Act, wage and hour laws, new (and older) paid sick and family leave laws (FMLA, EFMLEA, EPSLA, etc.), OSHA and other health and safety laws (including CDC and other agency guidance)
 - Consider how to address any discrimination related claims, particularly regarding individuals who have tested positive for COVID-19 and those of certain ethnic and age groups
- Follow safety standards and shelter-in-place orders
- Review whistle-blower policies and hotlines to ensure mechanisms are in place to encourage reporting, conduct effective investigations and to protect against any related retaliation
- Be prepared to open investigations and adequately discipline employees if necessary to prevent future claims

Moving Forward



Plan ahead



Continuously communicate with employees



Stay informed

- Pay close attention to local government orders and how they will affect the company's decisions to resume operations in various jurisdictions
- Keep abreast of COVID-19 specific government orders or regulations regarding safety and wage and hour issues
- Monitor EEOC, OSHA and CDC websites for updated guidance





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Questions

Additional Resources

Visit **The Employer Report** blog (www.theemployerreport.com) for all US labor and employment COVID-19 developments.

DOL Says FFCRA Paid Leave is Not Available During Worksite Closures and Furloughs



By Michael E. Brewer & Robin Samuel on March 27, 2020
POSTED IN CORONAVIRUS, FAMILY LEAVE, LAYOFFS AND RESTRUCTURINGS, US

As a further update to our post [here](#), on Thursday, the DOL issued an additional 22 FAQs on FFCRA, addressing required certifications for leave, healthcare coverage during leave, intermittent leave, teleworking, and several other topics. In a major and unexpected twist, DOL takes the position that FFCRA leave is **not** available if an employer closes a worksite or furloughs employees due to a lack of work or govt closure directives. DOL also takes the position that FFCRA leave may not be used to supplement lost pay when an employee's hours are reduced due to lack of work.

The link to the new FAQs is here.

The FAQs regarding closures, furloughs and reduced hours are posted below for convenience. Our COVID-19 Rapid Response Team can provide you with a FFCRA compliant policy and leave certification / designation forms. Please reach out to Baker McKenzie employment attorney.

23. If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?

Preserving Independent Contractor Relationships During the COVID-19 Outbreak



By Michael E. Brewer & Stephanie Priel on March 25, 2020
POSTED IN CALIFORNIA, COMPLIANCE, CORONAVIRUS, HANDBOOKS & POLICIES, US

Layoffs, reduced schedules, sick leave, and telecommuting—these are just a few of the issues that employers are navigating as they quickly adapt to the effects of the global pandemic. While moving full speed seems to be the only way to keep up with the rapidly-evolving landscape, companies should take a moment to ensure that they do not unintentionally convert their independent contractor relationships into employment relationships.

As a reminder, a degree of separation between companies and contractors must be maintained to preserve the independent contractor relationship. To determine whether a worker is misclassified as a contractor, the IRS and courts in many states review a multitude of factors, including the level of control exercised by a company; courts in other states (including California, as discussed in this [blog post](#)) require companies to satisfy a stringent, three-part test to prove that the worker is properly classified as a contractor. Under any standard, an accidental misstep during the Coronavirus crisis could have the unintended consequence of converting a contractor into an employee.

For example, to address the myriad employment issues, companies have been distributing company-wide alerts, such as: employee travel letters for the "Critical Infrastructure Workforce" to carry as they travel in the field and commute to/from work; information and notices regarding [Families First Coronavirus Response Act](#) (FFCRA); WARN Act notices; unemployment insurance benefit forms; and the like.

Home » Mitigating Employment Litigation Claims in the Complex Landscape Of COVID-19

Mitigating Employment Litigation Claims in the Complex Landscape of COVID-19



By Michael E. Brewer & Billie Werner on March 26, 2020
POSTED IN CORONAVIRUS, DISCRIMINATION & RETALIATION, US, WAGE & HOUR

Predictions about the spread of COVID-19 through significant parts of the population and its effects on American life are staggering. The Centers for Disease Control and

(CDC) reports more than 54,000 confirmed cases in the United States across the world implement new, extraordinary measures in an attempt to contain coronavirus, which infects clusters of people (including co-workers), and face rapidly evolving compliance issues.

Employers must provide employees a safe place to work under the Occupational Safety and Health Act's "General Duty Clause." This catchall safety provision applies to all employers across the world implement new, extraordinary measures in an attempt to contain coronavirus, which infects clusters of people (including co-workers), and face rapidly evolving compliance issues.

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Home » Employee Pay During COVID-19 Leaves, Furloughs, And Closures

Employee Pay During COVID-19 Leaves, Furloughs, And Closures



By Joseph Deng, Susan F. Eandi & Robin Samuel on March 16, 2020
POSTED IN CORONAVIRUS, HANDBOOKS & POLICIES, LAYOFFS AND RESTRUCTURINGS, US, WORKPLACE SAFETY

Current and Anticipated Requirements

The stark reality of government quarantines, mass-gathering bans, school closures, public health emergencies, and travel restrictions is impacting the American workplace and workforce in truly unprecedented ways. Every day, US employers institute facility closures, remote-working, furloughs and, in some cases, layoffs in response to the economic and health impacts of the COVID-19 pandemic. Employers are no longer asking whether they can check the temperatures of their employees, but instead are hyper-focused on continuing critical business operations while helping employees mitigate the financial burdens of the current crisis.

Click [here](#) to review our latest FAQ which addresses these challenging employment and humanitarian concerns.

Tags: Coronavirus, COVID-19, FMLA, FURLOUGH, Layoffs, Leave, pandemic, PTO, Wage and Hour

New Guidance and Required Posters Issued by the DOL for Paid Sick and FMLA Leave under the Families First Coronavirus Response Act (FFCRA)



By William F. Dugan & Robin Samuel on March 26, 2020
POSTED IN CORONAVIRUS, FAMILY LEAVE, HANDBOOKS & POLICIES

The Department of Labor just published its first round of guidance on the FFCRA.

The Department of Labor just published its first round of guidance on the FFCRA. It includes two fact sheets and a FAQ explaining key provisions of the paid sick leave and care requirements:

[Sheet for Employees](#)

[Sheet for Employers](#)

[Questions and Answers](#)

The DOL also published sample FFCRA posters that federal and private employers are required to post in the workplace, as well as a FAQ on how and where to post them. Mailing the posters to remote workers satisfies the posting requirements.

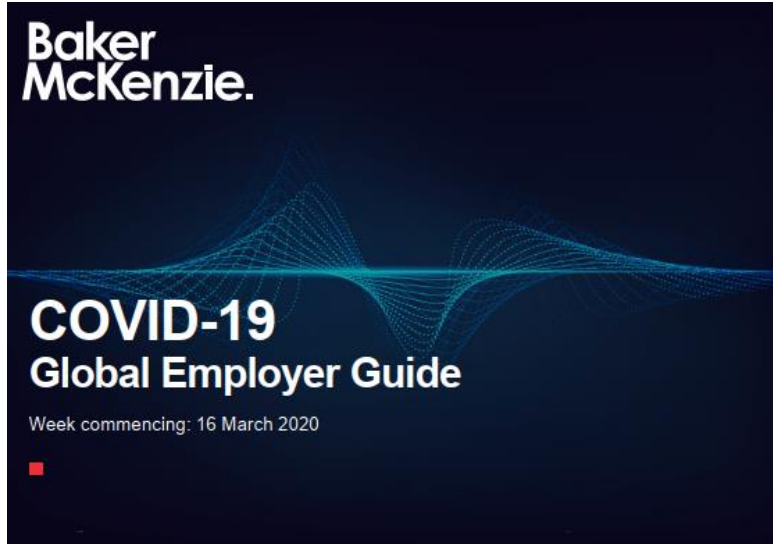
[More Questions](#)

[Federal Poster](#)

[State Poster](#)

Additional Resources

Visit Baker McKenzie's **BEYOND COVID-19 RESOURCE CENTER** for resources on **Resilience, Recovery and Renewal**.



To help you manage your global workforce in these challenging times, Baker McKenzie has created the **COVID-19 Global Employer Guide**, an overview of the most-pressing issues facing multinational employers amid the COVID-19 pandemic, across 41 jurisdictions.

Download the Guide to read the latest guidance on employment issues such as legal requirements, practical and operational considerations, and emerging government regulation related to the outbreak.

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