



HELIOS HR<sup>SM</sup>

# REOPENING THE WORKPLACE

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## An Employer's Planning Guide

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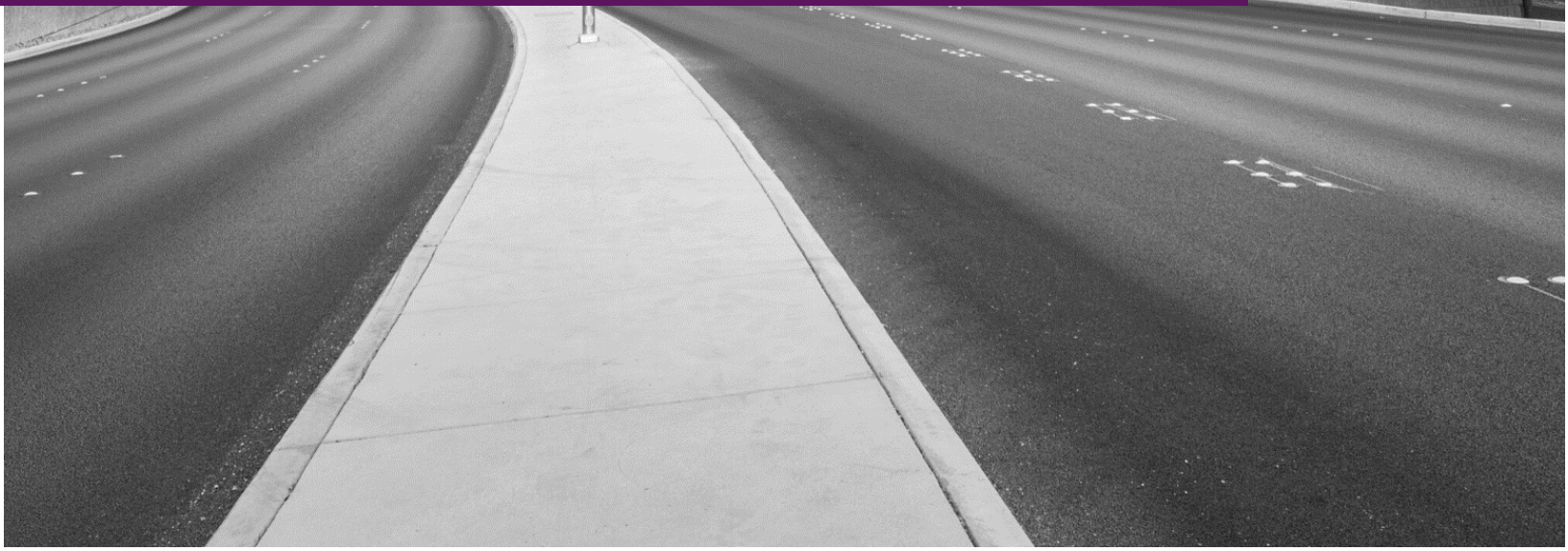
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# INTRODUCTION

*Dear Readers,*

*Much has happened over the last year when it comes to our new normal of living and working during a pandemic. A lot of firsts for some of us including operating in an entirely virtual environment, becoming even more technically savvy, and understanding the importance/ease of operations in an automated environment versus a manual one.*

*And as more of the general population become eligible to get the vaccine in the coming months, we certainly have hope ahead for a renewed sense of normalcy. With several vaccines in circulation, naturally employers are starting to think about not only how, but when to open their traditional workplaces if they have been operating in a fully remote capacity.*

*Here at Helios HR, we developed this Guide in the beginning of the pandemic to address the response to COVID-19 and provide our colleagues and friends a reference tool to navigate a path forward. Our team has been working diligently to stay abreast of new regulations and guidance as it has been released over the last year, providing our interpretations and recommendations in the Guide along the way.*

*Today in this Guide, you will find updates related to the Families First Coronavirus Response Act (FFCRA), the permanent enactment of the Virginia Temporary Emergency Standard for Virginia employers, a Vaccine Protocol FAQ, the second round of the Paycheck Protection Act that includes a call-out for Human Resources expenses as an eligible expense, ADA Title VII guidance regarding employees receiving or not receiving the vaccine, as well as updated CDC guidance.*

*We continue to be reminded on the news that we are not quite in the clear yet, and there are still a lot of unknowns in the months ahead. My hope is that we all are in a better position today than when this started. However, navigating all of this is not easy. If you are struggling with what to do for this next phase and want an additional thinking partner, please don't hesitate to reach out to us. We are all in this together and together is so much more powerful than the power of one.*

*Sincerely,*

*Connie Maniscalco, SPHR, SHRM-SCP*

*Practice Leader*

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# Key Considerations When Planning the Next Steps for Your Workplace

## *A Guide for Reopening Professional Offices*

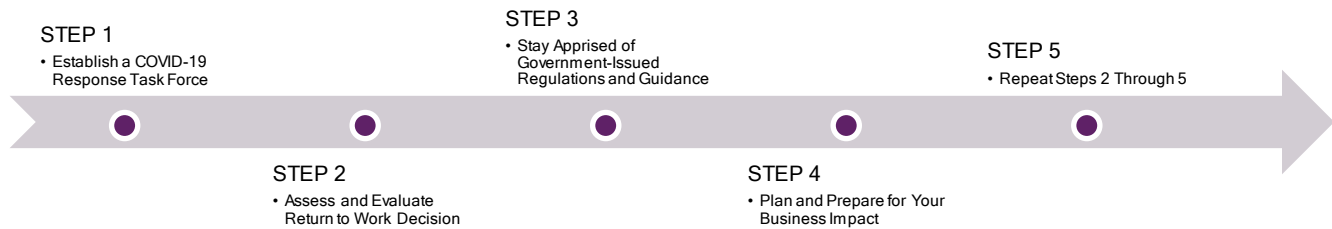
On April 16, 2020, the White House issued [Opening Up America Again](#), federal guidelines to reopen the U.S. economy through a three-phased approach. As other parts of the world start to rebound from COVID-19, there is increasing pressure to reopen regions of the U.S., with many states announcing reopening dates and moving forward with communicated plans. The approach for reopening the workplace will be employer-specific, subject to compliance with all state and local directives, as well as any industry-specific requirements. As of this publication, most states have begun a phased approach to reopening their economies with an emphasis on the safety of both employees and patrons. Regardless of where your state is in its reopening phase, we recommend leaders consider what direct and indirect implications there may be with returning to the traditional workplace right away.

*\*Note: Virginia became the first state to adopt state-wide workplace safety standards in response to COVID-19, quickly followed by California and many other states. Please be sure to review the state-specific information specific to where your business is operating and refer to our addendum for more information in this guide.*

- [Virginia's Emergency Temporary Standard](#)
- [Maryland Strong: Roadmap to Recovery](#)
- [Washington, DC's Coronavirus Updates and Guidance](#)

**THE WORKPLACE-RELATED DECISIONS THAT EMPLOYERS MAKE OVER THE NEXT SEVERAL MONTHS WILL SHAPE THEIR CULTURE AND LEADERSHIP BRAND FOR THE NEXT SEVERAL YEARS.**

With so much discussion on how to safely reopen the workplace, Helios encourages leaders to think holistically about the choices they must make relative to their business. Reopening a state economy and requiring a physical presence in your office are two separate decisions; a state reopening date does not necessitate a return to the physical workspace. Helios HR (Helios) recommends taking the following steps to help determine what is right for your business:



## STEP 1: Establish a COVID-19 Response Task Force

If not already developed within your business, establish a COVID-19 task force. In addition to supporting employees during this historic time, this task force should be formed with the mission to ensure a thorough and intentional action plan is developed that supports the business from an employee safety, employee experience, operational, and business risk perspective. Helios recommends this task force include, at a minimum, members of senior leadership and representatives from the following functional areas: human resources, information technology, and office administration or facilities. Ideally, all things related to your COVID-19 response will be led by, or funneled through, this task force.

## STEP 2: Assess and Evaluate Return to Work Decision

Each employer will have to determine when the “right” time is to return to the physical workplace and that time for your business may be sooner or later than your competitors and peers within your industry, and that is okay. To best evaluate this decision, your COVID-19 task force should gather feedback from the management and staff about how things have been going on a day-to-day basis since the rapid expansion of the virtual workforce. This collection can be done through both formal and informal methods based on your culture and operating style and will help inform the future actions for the task force and the business.

With the above gathered information in mind, Helios recommends the COVID-19 task force discuss the following factors specific to your business:

### ***What are the benefits to your business of having employees return to the workplace?***

In other words, what is not happening in your business that would require you to reopen the workplace? Is it truly essential for your employees to be in the physical workplace to successfully perform their role? For employees who must return to the office, consider phasing employees back into the office based on roles and business strategic priorities. Phasing can include staggering arrival/departure times and alternative workweeks.

## ***How will reopening the workplace impact your employee morale in the short-run and long-run?***

Getting employees back into an office environment and adjusted to a “new normal” will be hard work for any employer. If you do not approach and execute returning to the workplace with your employees top of mind, it can have a devastating impact on employee morale, which in turn can lead to loss of productivity and a decline in your business’ financial health. When your employees look back six or 12 months from now, will they feel proud of how your leaders responded to this pandemic?

If employees are unhappy with how you navigate your response today, they are likely to leave as soon as they feel comfortable the economy has stabilized, which will present additional talent challenges for your business in the future.

## ***Do your leaders know how employees feel about coming back to the workplace?***

If you cannot confidently answer this question, consider assessing how your employees feel. This can be done via manager/employee check-ins, anonymous survey, or other data collection method that best suits your culture and employees. [Click here](#) for a sample Return to Work Survey for your workforce.

## ***Consider why you may benefit from continued work from home practices.***

At the start of this pandemic, some employers were experimenting with working remotely, which eventually turned into a forced stay-at-home order. COVID-19 has exposed more employers to virtual work than ever before. For leaders that were hesitant about the idea of telecommuting, they are now seeing a virtual environment *can* work for their business, and at this point, many have grown accustomed to operating remotely.

Aside from the obvious benefits of creating autonomy, no commute, decreased expenses, and for some, fewer distractions, there are other benefits to remote work that will help bolster your business. By adopting remote work policies, you increase your access to a larger pool of talent while helping retain the talent you have now. Employers can look outside of their normal demographic area and expand their search nationwide. Do you have a key person who wants to relocate to a different city? You can keep this employee without having to recruit, hire, and train an entirely new resource.

Who needs office space? At Helios, many of our clients are evaluating office space needs and reviewing their lease to explore potential cost savings for the future. Stanford professor Nicholas Bloom conducted a two-year work-from-home study which found the company saved almost \$2,000 per employee on rent by reducing the amount of HQ office space. You can watch Bloom describe the study and the findings in his [2017 TEDx talk](#).

## ***Compile a list of “pros and cons” for reopening your workplace based on what you know today.***

This exercise will help maintain proper perspective and ensure a holistic approach while developing a well-informed plan. When compiling this list, consider the impact from a business perspective, safety perspective and employee experience perspective. With each cycle through these recommended steps, your pros and cons list will likely evolve as new information is made available.

Once this information is collected and evaluated within the COVID-19 task force, proceed through the following steps in preparation for reopening your workplace with a focus on the safety of your employees and limiting the risk of further spread and infection.

## **STEP 3:**

# **Stay Apprised of Government-Issued Regulations and Guidance**

To move forward, employers need to determine which laws, regulations, and safety requirements they must comply with. There are guidelines provided by the [White House](#), [OSHA](#), and the [CDC](#), in addition to state and local regulations. Employers should consider conducting a risk assessment using the prescribed guidelines and regulations to identify any areas of improvement or corrective action.

Both the CDC and OSHA have published guidelines to assist employers in making decisions regarding reopening the workplace during the COVID-19 pandemic.

### **CDC**

The CDC published [Reopening Businesses with Workers At Risk For Serious Illness](#), which is a tool to help employers decide whether or not they are ready to reopen the workplace.

### **ACCORDING TO THE CDC, EMPLOYERS NEED TO ASK THEMSELVES THESE THREE QUESTIONS WHEN DECIDING TO REOPEN:**

1. Are you in a community no longer requiring significant mitigation?
2. Will you be able to limit non-essential employees to those from the local geographic area?
3. Do you have protective measures for employees at higher risk (e.g., teleworking, tasks that minimize contact)?

If you can answer “yes” to each of the three questions for your business, then you can consider the possibility of reopening your workplace. Recommended safety actions and ongoing monitoring are other key considerations in the CDC tool.

The CDC has also issued guidance on [cleaning and disinfecting workspaces](#). Highlights of their recommended guidance is provided:

### Develop a Plan

- Determine what needs to be cleaned

### Implement the Plan

- Clean and disinfect visibly dirty surfaces

### Maintain and Revise the Plan

- Continue routine cleaning and disinfection

New as of January 29, 2021, the CDC published a [toolkit for employers](#) of essential workers and community-based organizations to help educate employees about COVID-19 vaccines, raise awareness about the benefits of vaccination, and address common questions and concerns. The toolkit contains a variety of information including template letters to employees, FAQs about the vaccine, slide decks, posters, and stickers for employees who have been vaccinated to wear in the workplace. The CDC will continue to update these toolkits with additional materials and encourage employers to check back to their site for frequent updates.

## OSHA

At a minimum, OSHA's [The General Duty Clause, Section 5\(a\)\(1\) of the Occupational Safety and Health \(OSH\) Act of 1970, 29 USC 654\(a\)\(1\)](#), requires employers to furnish to each worker "employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm."

The challenge for employers is trying to define what exactly the OSH Act means during the COVID-19 pandemic and how to navigate maintaining compliance with [OSHA's COVID-19 standards](#) on limited resources.

On April 16, 2020, OSHA released an [Enforcement Memo](#) that states "Compliance Safety and Health Officers (CSHOs) should evaluate whether the employer made good faith efforts to comply with applicable OSHA standards and in situations where compliance was not possible, to ensure that employees were not exposed to hazards from tasks, processes, or equipment for which they were not prepared or trained."

OSHA's definition of good faith compliance means, "the employer thoroughly explored all options to comply with the applicable standard(s) (e.g., the use of virtual training or remote communication strategies, any interim alternative protections implemented or provided to protect employees, and whether the employer took steps to reschedule the required annual activity as soon as possible."

Once employers can carefully overcome the safety regulation hurdles, it's time to take a deep dive into your policies, practices, the make-up of the workforce, and determine if it's necessary to reopen and if it makes practical sense to reopen the workplace.

## FFCRA

The DOL announced adjustments to the eligibility for FFCRA leave. The recently signed Consolidated Appropriations Act (CAA), extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. The CAA did not extend

employees' entitlement to FFCRA leave beyond Dec. 31, 2020, meaning employers will no longer be legally required to provide such leave.

In the District of Columbia, the D.C. Council voted in mid-December 2020, to grant the Mayor the authority to extend the declaration of a public health emergency through March 31, 2021. Bear in mind the statutory regulations for FFCRA leave in the District stipulate that, an employee who has worked for 30 days for an employer of any size may use up to 16 weeks of "COVID-19" leave for one of the following reasons: Care for Self, Family or Household Member or Childcare Closure. The right to COVID-19 Leave terminates when the public health emergency has ended, even if an employee has not exhausted the 16-week entitlement. More information can be found [here](#) from the DC Office of Human Rights.

## STEP 4:

# Plan and Prepare for Your Business Impact

If a determination is made that reopening the physical workplace is the right decision for your business, the next step for employers is to prepare your workplace for workers to return. This preparation includes:

- ✓ deciding who needs to return to the workplace;
- ✓ planning for how you will navigate employee challenges;
- ✓ limiting business risk and
- ✓ keeping employees' safety top of mind.

**EVEN IF AN EMPLOYER CAN LEGALLY REOPEN ITS WORKPLACE, THE RISK FOR ADDITIONAL LEGAL EXPOSURE STILL EXISTS, AS WELL AS A MYRIAD OF OTHER POTENTIAL ISSUES.**

Prior to letting employees return to the workplace, there are several questions business leaders should consider as part of their decision-making and implementation process.

## Questions to Plan for Prior to Reopening Your Office:

### 1. Do all employees need to return to the physical workplace?

There may be scenarios where some, but not all, of your employees need to be in the physical workplace to perform the duties of their job. A plan to reopen your workplace does not have to be an "all or nobody" decision. Choosing only to require essential roles (for purposes of this decision, an essential role would mean it is essential to be in the physical workplace to perform the job duties successfully) may make adherence to safety guidelines more feasible.

### 2. How will you maintain a clean workplace?



Does your business need to make any changes to your cleaning services contract or add in any additional services? All workspace areas including offices, open workspaces, conference rooms, breakrooms, equipment, tools, and restrooms should be properly sanitized prior to opening and routinely for the foreseeable future.

**3. What exposure risks exist in your workplace beyond your direct employees bringing the virus into the office?**

Many businesses are in shared spaces, so consider not only how your employees come in and out of your workplace, but who else has access to your workplace and what control you have over the potential risk. Have you ever thought about how the HVAC system works? What contractors come into the building to service various utilities? What about social distancing in elevators?

Some news outlets are warning of Legionnaires' disease for buildings whose water lines have been stagnant for two weeks or more. Employers should work with their facilities and or the building management team to explore how to navigate some of these challenges.

**4. Does your workspace configuration align with your plans to reopen?**

Workspaces will need to reflect industry-specific social distancing guidelines. Evaluate your floor plan to see what changes your business may need to make. Have you heard of a sneeze guard? It is basic plexiglass, or another type of barrier, designed to prevent pathogens from spreading by sneezes. These sneeze barriers are growing in popularity, particularly with businesses that have an open office plan. Cubicle walls may serve the same purpose as sneeze guards. Cushman & Wakefield, a global commercial real estate services firm, is experimenting with what they call the "[Six Feet Office](#)". A visual design concept that displays unique foot traffic routing for each office to ensure employees maintain six feet apart for social distancing.

**5. What will you proactively communicate to be your social distancing rules?**

Handshakes might be a thing of the past. Employers will need to be proactive about putting measures in place to limit gatherings and in-person meetings at the office. For planned conferences, "all hands", or other large meetings, utilizing in-office videoconferencing is still recommended. Lunch and/or break schedules should be established to reduce the number of employees in common areas at any one time. Some employers are exploring a uniform signal that employees can use to communicate to their colleagues "you're too close to me, I need some space". If employees do not follow the distancing guidelines, consider removing some chairs or seating from the room.

**6. How will you address concern from employees who cannot return to the workplace?**

Many childcare facilities and summer camps are beginning to reopen with limited slots available and reduced hours; even so, many parents may not feel comfortable sending their children to camps or childcare centers. Employers need to be prepared on how they will respond to employees who have childcare obligations and cannot easily return to the workplace at this time.

## 7. How will you address concern from employees who do not want to return to the workplace?

There are various reasons why an employee may not want to return to the workplace such as the examples below:

- **Vulnerable or high-risk individuals** – elderly employees and employees with certain health conditions are considered “vulnerable individuals” under the [Opening Up America Again](#) guidelines, and employers are strongly encouraged to provide “special accommodations” through phase two of the re-entry program. It is important not to presumptively prescribe the need for an accommodation (or even to determine for them that they should not return to work) for individuals you believe or perceive to be at higher risk. To mitigate your risk around potential discrimination lawsuits, communicate your reopening plans and let the individual come to you with a request for accommodation. Be prepared to apply uniform decision-making processes for all requests and give forethought to the types of accommodations you are prepared to offer.
- **ADA considerations** – Employers need to recognize that it is not only physical impairments that can impact an employee’s work, mental health has a significant impact as well. Many individuals with preexisting mental illness have been elevated by the COVID-19 pandemic. On June 17, 2020, the EEOC updated its [guidance](#) on the potential application of the Americans with Disabilities Act (ADA) upon return to work.
- **Fear** – Understandably, some employees are scared to return to the workplace. Under the [OSH Act](#), employees may only refuse to work if they believe they are in “imminent danger.” Transparently communicating the measures, you are taking to provide a safe workplace is critical to easing the fear your employees may be experiencing. Think about how you will respond to individuals who, essentially, refuse to “return to work”.
- **Commute** – Employees who utilize public transportation to commute face increased exposure risks. Consider extending or modifying your remote work policies or extending commuting benefits to encourage employees to drive into the office rather than using public transportation. Allowing these employees to return to the workplace via public transportation could increase risk exposure within your office space.
- **Unemployment** – What if an employee tells you they do not want to return to the office because they are making more money collecting unemployment? This could happen if you ask a previously furloughed employee to come back part-time. Be thoughtful about the impact of your reopening plans on your employees.

## 8. Will you ask employees to self-certify they meet certain criteria to return to the workplace?

If you are asking employees to return to the workplace, consider having employees complete a COVID-19 questionnaire. Because employees have been working remotely, employers have no way of ensuring their employees were abiding by social distancing rules, travel bans, or have been using safe hygiene methods. Any questionnaire that is implemented needs to be administered and handled with care, keeping in mind an employee’s privacy, ADA laws, and avoiding unintentional discrimination practices. Ensure the process to implement this practice does not create more risk to your employees (for example, by having a line of individuals at a check-in desk using the same pens to complete the form).

**9. Will you conduct temperature checks or other types of testing?**

The ADA requires that any medical tests employers administer are “job related and consistent with business necessity.” In light of the COVID-19 pandemic, the [EEOC](#), employers are permitted to ask about COVID-19 related symptoms, conduct temperature checks for employees, and test for COVID-19. Employers may not, however, require antibody testing before permitting employees to re-enter the workplace. If you choose to implement temperature checks or other permitted questioning or testing, you will need to allocate additional resources and manpower to conduct those checks. Additionally, policies and procedures will need to be put into place as well as training for individuals on how to perform the test and how to react when someone’s test result indicates a possible presence of COVID-19.

**10. Will you require the use of any personal protective equipment (PPE)?**

With state issued guidelines for individuals to wear masks in public, and many choosing to wear gloves, consider how you will apply the local guidance about PPE to your workforce while in the office. In what situations and what locations in the office will employees be required to wear masks? Will you provide the acceptable PPE to employees? What risks exists if employees are re-using masks and gloves without following proper cleaning procedures? For example, Virginia has said it will hold businesses accountable for requiring employees and patrons to wear masks; how will you follow through on holding individuals accountable when representing your company?

**11. What if an employee contracts COVID-19?**

Be prepared to respond quickly to the news that an employee has tested positive for COVID-19. A quick response means taking swift action to sanitize the workplace and any other area the employee had access to while at work. You will need to notify the local health department who will advise you on how to trace and notify employees who have had contact or have been in the same work area as the infected employee. Will a positive test by an employee who has been in the office since potential exposure lead to a 14-day closure of your physical space? Do you have a re-exit strategy if multiple COVID-19 cases are confirmed in your workplace?

**12. Do you need to create new policies or revise existing policies?**

Most employers have now recognized their future workplace practices will look different from their previous workplace. Employers should consider implementing policies to include temporary social distancing rules, hygiene and sanitation requirements, and new expectations in the workplace. Employers are reviewing and modifying existing policies such as leave, benefits, safety, compensation, furlough, and layoffs. Business continuity plans should also be evaluated considering recent federal, state, and local legislation.

**13. Do you understand the associated implications of reopening on your Workers’ Compensation Policy?**

Employers should review their workers’ compensation and business insurance policies. The question of whether COVID-19 is compensable under workers’ compensation is not a “yes” or “no”, it is a “maybe”. Several states have enacted or have pending legislation to expand

the coverage for certain workers. The National Council on Compensation Insurance (NCCI) is [tracking legislative activity](#).

**14. What costs are associated with the response measures you are putting into place?**

What direct and indirect costs exist with your decision to reopen the workplace? Some expenses to consider include providing PPE, reconfiguring your office space, additional office cleaning, training to employees on new policies and procedures, etc. Will there be a loss of productivity, or impact on your client experience, as your employees return to a workplace, they may not feel comfortable with? For some, the added expenses alone may sway you to maintain your entirely virtual workforce for some time longer.

## **STEP 5:**

### **Repeat Steps 2 through 5**

Employers should assume the impact of COVID-19 on our nation will continue to evolve, along with guidance issued by our federal and state governments. Many states are experiencing spikes in confirmed cases and some health officials are anticipating another wave of significant impact in the fall of 2020. Your COVID-19 task force should regularly revisit the steps outlined above and adjust your response accordingly, even if that means reversing a decision that was previously made for the overall good of your business and your teams.

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# Reopening Plan of Action Checklist

Helios has created a Reopening Plan of Action Checklist, which includes many of the items discussed in this article, to help prepare your workplace for employees to return.

Navigating the decision to reopen the workplace and the specific measures necessary to do so safely is not an effort to be taken lightly. Helios encourages all business to leverage a COVID-19 task force to consider the government guidance, the business implications (cost, strategy impact, risk) and the employee implications (safety, morale, trust in leadership) to make the decision that is right for your unique business and culture. The future culture of your business will be heavily shaped by the way you lead your employees through this historic time in our country.

## Plan of Action Checklist

### Business Considerations

- Establish a COVID-19 Task Force
- Assess how your employees are feeling about returning to the workplace
- Decide who MUST return to the workplace
- Decide who should NOT return to the workplace
- Understand federal and local legislation/guidance
- Conduct risk assessment
- Review budget considerations for issuing PPE, re-configuring office space, training, etc.
- Be prepared to address employee concerns

### Safety Regulations

- Follow all state, local directives, and industry-specific requirements
- Follow the CDC tools and guidance, and prepare a plan to reopen the workplace
- Document any efforts to comply with both CDC's guidelines and OSHA's COVID-19 standards
- Clean with [CDC-approved](#) products and methods

### Supplies

- Provide personal protective equipment (PPE)
- Supply disinfectants near or on each desk or work area, particularly those that are shared

### Training Areas

- Proper use of PPE
- Temperature checks
- Maintaining enhanced cleaning and disinfecting practices
- Hygiene practices
- Social distancing expectations

### Communication

- Health and safety precautions
- Prepare for employee complaints and concerns

### Physical Office Changes

- Prepare and post reminders of social distancing and cleaning protocols

- Reconfigure your workplace to incorporate social distancing rules
- Restrict use of common areas such as the kitchen
- Remove high-touch shared tools such as whiteboard markers, remote controls, etc.
- Disable shared touchscreens
- Consider no-touch switches
- Clean desk policy
- Create a storage space or area for personal items
- Limiting gatherings/meetings in the office
- Implement a “Visitors” protocol/policy for the workplace
- Implement schedule adjustments or staggered shifts
- Maintain a log of everyone who was in the building/workspace

### **Business Policies**

- Review workers compensation policy
- Review BI/EPLI insurance

### **Implement and/or review Employer Policies and Practices**

- COVID-19 specific laws and regulations
- Equipment Use
- Leave entitlement and the use of vacation when the workplace is reopened
- Remote work policies
- Bringing employees back from furlough, including notifications, phased rehiring's, and re-enrolling in benefits
- Onboarding
- Review of existing incentive or bonus plans
- Reporting time
- Split work shifts
- Workforce and succession planning

### **Proactive Monitoring**

- Continuous review of COVID-19 impact
- Document and apply lessons learned

# Vaccine Protocol

Since the release of the vaccines, many questions have been asked about how to create a policy regarding employees receiving the vaccination. The following FAQs are provided:

**1. Can I require my employees to take the vaccine?**

An employer cannot require an employee to be vaccinated. However, it is currently expected that in the long-term, employers will not permit employees to come to the workplace without evidence of vaccination. Additionally, employers will need to consider medical status and religious views in the decision to require vaccinations, likely making exceptions for those with religious tenets against vaccinations and for those with medical conditions that prohibit the vaccination. If an employer wishes to require proof of vaccination, the If a group of employees refuses to take the vaccine, this could be considered protected activity under the National Labor Relations Act (NLRA). Helios recommends consulting with legal counsel prior to establishing any policy regarding the mandatory vaccinations.

**2. How do I encourage employees to take the vaccination?**

The CDC offers guidance on their website. The link below is for the [“Essential Worker Toolkit”](#) and has posters, communication templates, FAQs, fact sheets, and more. Even if your workforce is not considered essential workers, there is a great deal of information that can be customized for your benefit.

**3. Should I give my employees time off to get the vaccine?**

Currently there is no requirement for this, however it is a good idea to make vaccination administration as easy as possible for your employees.

**4. Should I offer time off to an employee who has a reaction to the vaccine if I require it?**

It is recommended that you use your existing policy for employees who need time off if they voluntarily take the vaccination. If your organization is requiring the vaccine and the employee must lose work due to a reaction, please consult your worker’s compensation vendor for more information.

**5. Is there any concern about requiring the vaccine being considered a medical test under the American’s with Disabilities Act (ADA)?**

No, the EEOC has confirmed vaccines approved by the Food and Drug Administration are not considered medical examinations under the ADA. However, if an employer inquires about the vaccine, it must be able to show the inquiry is job-related and consistent with business necessity.

**6. Can I administer a voluntary COVID vaccine program to our employees?**

Yes, an employer can offer a voluntary vaccine program for its employees. The ADA requires that the decision to answer pre-screening questions, disability-related questions also must be voluntary. If an employee chooses not to answer these questions, the employer may decline to administer the vaccine, but may not retaliate against, intimidate, or threaten the employee for refusing to answer any questions.

On December 16, 2020, the [EEOC updated its Q&A document](#) to address the vaccine and provide information to employers who elect to implement mandatory vaccination policies with an eye toward the Americans with Disabilities Act.

# Paycheck Protection Program

The Small Business Administration (SBA) is open for a new round of funding. These loans were established to help small businesses affected by the pandemic continue to operate and pay their employees. Affected businesses may use these funds for predefined expenses.

Employers must spend at least 60% of the funds received on payroll costs. Eligible expenses were adjusted in the new guidance, and could include:

- Rent
- Mortgage interest
- Utilities
- Worker protection and facility modification expenses to comply with COVID-19 health and safety guidelines
- Property damage costs related to damage, vandalism, or looting due to public disturbances and not otherwise covered by other compensation or insurance claims
- Supplier expenses that are essential to the business's operations at the time of purchase
- Covered operating expenditures
- Business software
- Cloud computing service that facilitates business operations
- Product or service delivery
- Expenses for processing, payment or tracking of payroll expenses
- Human resources expenses
- Sales and billing functions
- Accounting or tracking of supplies, inventory, records, and expenses

Business owners may apply for loan forgiveness. The U.S. Treasury Department has a four-step process, which can be found [here](#).

Other loan programs that could be available to your organization include:

- Economic Injury Disaster Loan through the SBA, for businesses to “meet financial obligations and operating expenses that could have been met had the disaster not occurred.”
- Venture capital and angel investors

For more information on these and other options, please visit the [Small Business Administration's website](#).



# Virginia's Emergency Temporary Standard (ETS) Is Now Permanent

On January 13, 2021, the Virginia Safety and Health Codes Board approved a Final Permanent Standard (Final Standard) for preventing COVID-19. The Final Standard contains a few differences from the ETS. For instance, under the ETS employers have been required to notify the Virginia Department of Health each time an employee was confirmed to be positive for the COVID-19 virus; under the Final Standard, employers need only make such notification to the Department of Health if it uncovers two cases within 14 days. It also clarifies that face shields or face masks with exhalation vents are not sufficient to meet the standards for required face coverings. And it provides guidance for employers to understand when infected employees may return to work, depending on whether the employee was symptomatic or not, based on the passage of certain amounts of time; the Final Standard no longer allows employers to rely on negative COVID-19 tests as the basis for employees to return to work.

Virginia was the first state in the nation to adopt mandatory workplace standards in response to the COVID-19 pandemic. Part of the Virginia Occupational Safety and Health Program (VOSH), the [Emergency Temporary Standard](#) (ETS) mandates requirements for all employers in the Commonwealth of Virginia that must be complied with or face the possibility of paying a fine for non-compliance.

Historically, the federal OSHA regulations in 29 CFR Part 1910 requires all employers to provide their employees a workplace that is free from hazard. This Emergency Standard expands the OSHA requirement and current VOSH standards in effect and specifically addresses the spread of the SARS-CoV-2 Virus that causes COVID-19.

## Overview

The Standard went into effect on July 27, 2020 and was made permanent on January 13, 2021 by the Virginia Safety and Health Codes Board. The Standard is divided into the following subsections:

- 16VAC25-220-10 Purpose, Scope, and Applicability
- 16VAC25-220-20 Effective and Expiration Dates
- 16VAC25-220-30 Definitions
- 16VAC25-220-40 Mandatory Requirements for All Employers
- 16VAC25-220-50 Requirements for Hazards Classified as Very High or High Exposure Risk
- 16VAC25-220-60 Requirements for Hazards Classified as Medium Exposure Risk
- 16VAC25-220-70 Infectious Disease Preparedness and Response Plan
- 16VAC25-220-80 Training
- 16VAC25-220-90 Discrimination Against an Employee for Exercising Rights under this Standard is Prohibited

*The Virginia Department of Labor and Industry (DOLI) has published numerous templates and training materials to assist employers in complying with The Standard. These helpful resources can be found [here](#).*

## Key Takeaways for Virginia Employers

While it is important to familiarize yourself with the entire document, here are five takeaways to consider as you develop your Action Plan for Compliance:

- 1. Assess Your Workplace.** Virginia employers are required to assess and rate their workplace and job tasks for hazards that can potentially expose employees to COVID-19. The Virginia DOLI provides a Hazard Assessment template to assist employers with determining the appropriate risk level. The Standard's risk levels are listed below with examples.
  - a. Very High – Intubation, or other aerosol-generating procedures, of a patient known or suspected to be infected with the SARS-CoV-2 virus
  - b. High – Health care delivery such as skilled nursing services and assisted living care
  - c. Medium – Transportation of passengers by air, land, and water
  - d. Low – Office building settings
- 2. Update Policies and Procedures.** All employers regardless of their level of risk are required to develop, implement, and communicate the following policies:
  - a. Systems for employee self-assessment and screening for COVID-19 signs and symptoms
  - b. Reporting procedures for employees experiencing symptoms of COVID-19
  - c. Sick leave policies that are flexible and adhere to the Families First Coronavirus Response Act and other public health requirements
  - d. Return to work policy (see below)
- 3. Employer Notification Requirements.** Employers are required to keep confidential the identity of the infected individual. If an employee, contractor, or temporary employee tests positive for COVID-19 within 14 days of visiting a worksite, employers must notify the following:
  - a. Employees who may have been exposed
  - b. Employers of workers who were present at the work site
  - c. The building/facility owner
  - d. Virginia Department of Health
  - e. Virginia DOLI if two (2) or more employees from the work site test positive within a 14-day period (Modified in the Final Standard)
- 4. Return to Work Strategy.** Employers must implement a time-based return to work strategy employees known or suspected to be infective with SARS-Cov-2.

- a. Test-Based Strategy – Employees cannot return to work until recovery of COVID-19 symptoms and after receiving negative test results from two separate respiratory specimens collected 24 or more hours apart.
5. **Training.** All employers should ensure their employees and any subcontractors or temporary workers are aware these policies. Additionally, businesses with employees or tasks at the following risk levels must provide additional training:
    - a. Medium, High, or Very High - COVID-19 training due by August 26, 2020
    - b. At least 11 Medium-risk exposure employees, or any High or Very High employees – Infectious Disease Preparedness and Response Plan due by September 25, 2020
  6. **Enforcement.** VOSH is responsible for enforcing The Standard and may penalize employers not in compliance. Penalties include fines ranging from a maximum of \$13,494 to \$134,937 per violation, up to the potential shuttering of an employer’s operations if needed to ensure employee safety. While VOSH conducts safety and compliance inspections as usual, they are also investigating employee reports of noncompliance.
  7. **Employer Requirements.** Regardless of the level of risk, all employers are required to implement the following actions to help mitigate the infection and spread of COVID-19.
    - a. Promote physical distancing with signage, visual cues, and verbal announcements
    - b. Close or control access to common areas such as break rooms and lunchrooms
    - c. Clean and disinfect high touch areas
    - d. Provide for cleaning and disinfecting of the common areas at regular intervals throughout the day
    - e. Ensure hand washing facilities and hand sanitizer are available to employees
    - f. If multiple employees are occupying a vehicle for work purposes, ensure compliance with personal protective equipment standards applicable to their industry are enforced.
    - g. Provide PPE if hazards are present or likely to be present within a job task
    - h. Face shields or face masks with exhalation vents are not sufficient to meet the standards required for face masks. (Modified in the Final Standard)

# California's COVID-19 Employer Playbook

Cal/OSHA and the California Department of Public Health (CDPH) published an updated [COVID-19 Employer Playbook](#) on July 28, 2020. The Playbook provides guidance and resources to California employers on reopening businesses and how to reduce the risk and spread of COVID-19 in the workplace. Contents of the Playbook include the following sections:

- How to Open Safely
- What to do if there is a Case of COVID-19 in the Workplace
- Enforcement and Compliance
- Worker Education
- Appendix A: Resources
- Appendix B: Enforcement and Compliance Contacts
- Appendix C: Case Studies

According to the Playbook, all employers must adhere to the requirements below prior to reopening their workplace.

- Complete a detailed risk assessment and create a COVID-19 prevention plan specific to the work site.
- Train workers on COVID-19 prevention measures and self-screening
- Implement individual control measures and screening procedures
- Set up disinfection protocols
- Implement physical distancing guidelines
- Establish face covering requirements in accordance with CDPH guidelines

Helios recommends that employers operating in California read the Employer Playbook and check for additional county and/or industry-specific guidelines that may include stricter requirements. Employers should also be aware of their local health department in case an outbreak in the workplace occurs that requires reporting.