

## Return to Work COVID-19 Resource Guide

As Greenville, South Carolina area businesses begin to reopen in the midst of the COVID-19 pandemic, there are a number of considerations to keep in mind. The goal of this tool is to assist businesses in thinking through the issues they may wish to consider when designing a return to work plan in light of the current COVID-19 pandemic and current regulatory guidance. **IT DOES NOT ADDRESS ALL ISSUES THAT MAY ARISE OR ALL TYPES OF BUSINESSES, AND THE LIST OF RESOURCES IS NOT INTENDED TO BE ALL-INCLUSIVE. THIS GUIDE SHOULD NOT BE CONSTRUED AS, NOR IS IT INTENDED TO, PROVIDE LEGAL ADVICE.**

### 1. Stay Informed

*There is a wealth of guidance from federal, state, and local agencies about responding to COVID-19; however, that guidance is rapidly changing and it is vitally important to check frequently for updates.*

Businesses should consult and continue to monitor guidelines and recommendations issued by federal and State agencies, beginning with the guidance published by the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the South Carolina Department of Health and Environmental Control (DHEC).

The CDC's General Business Frequently Asked Questions page is a good starting point (<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>). Here is an outline of topics covered (please note this a general FAQ not intended for healthcare operations and may not be suitable for all types of businesses):

#### Suspected or Confirmed Cases of COVID-19 in the Workplace

What should I do if an employee comes to work with COVID-19 symptoms (fever, cough, or shortness of breath)?

What should I do if an employee is suspected or confirmed to have COVID-19?

If employees have been exposed but are not showing symptoms, should I allow them to work?

What should I do if I find out several days later, after an employee worked, that they were diagnosed with COVID-19?

When should an employee suspected or confirmed to have COVID-19 return to work?

What should I do if an employee has a respiratory illness?

What does "acute" respiratory illness mean?

Are allergy symptoms considered an acute respiratory illness?

#### Reducing the Spread of COVID-19 in Workplaces

How do I keep employees who interact with customers safe?

How can I help protect employees who may be at higher risk for severe illness?

Do my employees need to wear cloth face coverings or personal protective equipment (PPE) (such as N95 respirators, gloves) to protect themselves while working?  
How often should my employees wash their hands while at work?  
What can I tell my employees about reducing the spread of COVID-19 at work?  
Should we be screening employees for COVID-19 symptoms (such as temperature checks)?  
What is the best way to do that?  
How do I handle personal protective equipment (PPE) waste?

#### Healthy Business Operations

What is social distancing and how can my workplace do that?  
I don't provide paid sick leave to my employees. What should I do?  
Should I require employees to provide a doctor's note or positive COVID-19 test result?  
Should I cancel my meetings and conferences?

#### Cleaning and Disinfection in the Workplace

How do I clean and disinfect machinery or equipment?  
How can I safely use cleaning chemicals?  
In addition to cleaning and disinfecting, what can I do to decrease the spread of disease in my workplace?  
Should I adjust my ventilation system?  
If I shut down my facility as a result of a COVID-19 case or outbreak, what is the recommended way to clean and disinfect, and what is the appropriate timeframe to resume operations?

#### Critical Infrastructure

How do I know if my business is considered critical?  
Should I allow critical infrastructure employees to work if they have been exposed but are not showing symptoms of COVID-19?  
Is other specific CDC guidance available for critical infrastructure workplaces?

The CDC FAQs also have a number of links to helpful resources:

- [Interim Guidance for Businesses and Employers](#)
- [Cleaning and Disinfecting Your Facility](#)
- [Resources for First Responders and Law Enforcement](#)
- EPA: [Disinfectants for Use Against SARS-CoV-2external icon](#)
- FDA: [Food Safety and the Coronavirus Disease 2019 \(COVID-19\)external icon](#)
- HHS/DOL: [Guidance on Preparing Workplaces for COVID-19pdf iconexternal icon](#)
- DHS: [Guidance on the Essential Critical Infrastructure Workforceexternal icon](#)

In addition, the CDC has a number of reopening checklists that can be found here, along with other additional information/links: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

DHEC's COVID-19 Re-Opening Guide for Businesses is another good resource for South Carolina businesses.

([https://scdhec.gov/sites/default/files/media/document/COVID19\\_DHEC\\_Employer\\_Return\\_to\\_Work%20Guidance-4.24.20.pdf](https://scdhec.gov/sites/default/files/media/document/COVID19_DHEC_Employer_Return_to_Work%20Guidance-4.24.20.pdf))

#### **Additional Resources:**

Occupational Safety and Health Administration: Guidance on Preparing Workplaces for COVID-19:

<https://www.osha.gov/Publications/OSHA3990.pdf>

Centers for Disease Control and Prevention: Resources for Businesses and Employers

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

US Department of Labor: COVID-19 and the American Workplace

<https://www.dol.gov/agencies/whd/pandemic>

US Equal Employment Opportunity Commission: Coronavirus and COVID-19

<https://www.eeoc.gov/coronavirus>

accelerateSC Restaurant Guidance: <https://accelerate.sc.gov/restaurant-guidance>.

## **2. Develop a Return to Work Action Plan**

*Engage in active planning for re-opening.*

Any return to work plan will need to consider a wide range of complicated legal, operational, and practical issues specific to your business operations and industry. The following is a list of questions businesses may wish to consider when developing a return to work plan; this list is by no means all-inclusive:

- What are my industry and business specific safety considerations?
- What staff do I need to re-open? What is the status of those staff now...teleworking, terminated, furloughed etc. What level of notice do I need to provide?
- What employment policies do I need to review/revise? (e.g., FFCRA leave requirements), cleaning and disinfecting policies, employee health screening policies, travel policies, telework, etc.
- What strategy will I use to return employees back to work? This depends on the type of business and their status—closed, skeletal etc. Phased? All at once?

- What workplace modifications do I need to make to ensure the safety of my employees and customers? If leasing or sharing space, who will be responsible for janitorial services and disinfecting the facility?
- Who will be responsible for ongoing disinfection of high touch areas?
- What types of personal protective equipment will I need and how will I ensure it is sufficient to continue operations?
- What type of risk assessment will I need to do to ensure I mitigate the risk of COVID -19 exposure?
- What changes operational protocols do I need to develop and communicate (to customers, employees, vendors, etc.)
- Are there property use restrictions I need to coordinate with a landlord or property management company?
- What are the legal employment considerations I need to consider before re-opening?
- What is my employee screening, exposure and confirmed illness protocol?
- How will I handle an employee who is tested positive?
- How will I handle an employee who refuses to return to work out of fear? Child/elder care issues?

#### **Additional Resources:**

Guidance on Preparing Workplaces for COVID-19  
<https://www.osha.gov/Publications/OSHA3990.pdf>

#### **3. Conduct a Risk Assessment:**

*Assess your workplace and implement needed modifications.*

Employers must remain cognizant of their obligations under the General Duty Clause of the Occupational Safety and Health Act (OSHA) of 1970, 29 U.S.C. § 654(a)(1), which requires employers to provide “employment, and a place of employment, which are free from recognized hazards that are causing or likely to cause death or serious physical harm.” As such, employers should consider conducting a COVID-19 specific risk assessment of their physical work environments under OSHA’s Guidance on Preparing Workplaces for COVID-19.

- The following is a list of questions to businesses may wish to consider when conducting a risk assessment for the individual business; this list is by no means all-inclusive:

- What are the potential COVID-19 transmission hazards specific to my business?
- What is the potential risk/liability the identified hazards may create for my business?
- Which of my employees, given the work that they do, are at very high, high, medium, or low risk of exposure per the CDC guidance?
- How will I manage an employee who may have had exposure to a person with suspected or confirmed COVID-19?
- What steps can I implement to mitigate the potential exposures?
- What steps do I need to take to monitor the effectiveness of my risk mitigation strategies?

### **Practice Social Distancing:**

The development and implementation of a social distancing plan will need to be specifically tailored to the employer and to the industry in which it operates and take into account federal, state, and local guidance and mandates. Features of the social distancing plan may include some or all of the following:

- As feasible, making changes to open workspace office plans to create physical distance between coworkers by installing Plexiglass/ dividers or moving desks and workstations.
- Repurposing of conference rooms as additional workspace to maintain social distancing among employees.
- Limiting the use of communal spaces (e.g., break rooms, kitchen areas, cafeterias etc.) to allow for more distance.
- Limiting in-person meetings by utilizing an office videoconferencing, postponing (or conducting virtually) planned meetings/conferences involving larger groups. Adjusting work schedules and/or shifts to limit the number of employees physically present in a specific office, facility, plan, or other work location at any one time.
- Allowing employees to telework if it is an option where feasible.
- Providing appropriate signage to communicate and promote social distancing. Consider limiting worksite access points, providing external notices of no entry with COVID-19 symptoms, temperature checking stations, floor markings, etc..
- Encourage co-workers not to share keyboards, phones or other equipment to the extent possible, but if sharing or workspace is unavoidable, wipe down after each use (i.e., cash register).

### **Provide Personal Protective Equipment (PPE)**

With regard to PPE, the CDC recommends the following:

“CDC recommends [wearing cloth face coverings](#) in public settings where other social distancing measures are difficult to maintain, especially in areas of significant community transmission. Cloth face coverings may prevent people who don’t know they have the virus from transmitting it to others. These face coverings are not surgical masks or respirators and are not appropriate substitutes for them in workplaces where masks or respirators are recommended or required.

Employees should continue to follow their routine policies and procedures for PPE (if any) that they would ordinarily use for their job tasks. When cleaning and disinfecting, employees should always wear gloves and gowns appropriate for the chemicals being used. Additional personal protective equipment (PPE) may be needed based on setting and product.

CDC does not recommend the use of PPE in workplaces where it is not routinely recommended. Facilities can use the [hierarchy of controls](#), such as administrative, and engineering controls – these strategies are even more effective at preventing exposures than wearing PPE.”

CDC General Business Frequently Asked Questions (<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>).

#### **Additional Resources:**

OSHA COVID-19 specific risk assessments/modifications to work environment/regulations for PPE [guidance issued by the DOL/OSHA](#)

OSHA’s Guidance on Preparing Workplaces for COVID-19.  
<https://www.osha.gov/Publications/OSHA3990.pdf>

Interim Guidance for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19  
<https://www.cdc.gov/coronavirus/2019-ncov/downloads/critical-workers-implementing-safety-practices.pdf>

Discontinuation of Isolation for Persons with COVID-19” not in Healthcare Settings (Interim Guidance)  
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/ending-isolation.html>

SCDHEC Businesses & Employers  
<https://www.scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/businesses-employers-covid-19>

#### 4. Employment Issues

*With the lifting of stay-at-home orders, many employers are considering options for testing and monitoring employee health.*

Under the Americans with Disabilities Act (ADA), disability related inquiries or medical examinations of current employees are limited to fitness for duty inquiries and other inquiries that are “job-related and consistent with business necessity,” including to determine if an employee will pose a “direct threat” of harm due to a medical condition.

#### **What You Should Know About the ADA, the Rehabilitation Act, and the Coronavirus According to the Equal Opportunity Commission (EEOC):**

- The EEOC enforces workplace anti-discrimination laws including the Americans with Disabilities Act (ADA) and the Rehabilitation Act, including the requirement for reasonable accommodation and rules about medical examinations and inquiries.
- The ADA and Rehabilitation Act rules continue to apply, but they do not interfere with or prevent employers from following the [guidelines and suggestions made by the CDC](#) about steps employers should take regarding the Coronavirus.
- The EEOC has provided [guidance](#) and FAQs (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>) consistent with these workplace protections and rules, that can help employers implement strategies to navigate the impact of Coronavirus in the workplace.
- The EEOC guidance identifies relevant established ADA and Rehabilitation Act principles and answers questions frequently asked about the workplace during Coronavirus-like events such as:
  - How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during a Coronavirus-like event?
  - When may an ADA-covered employer take the body temperature of employees during a Coronavirus-like event?
  - Does the ADA allow employers to require employees to stay home if they have symptoms of the Coronavirus?
  - When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

#### **Confidentiality and Employee Privacy**

Testing or monitoring of employees' health implicates state and federal confidentiality and privacy laws. Under the ADA, medical information gathered from employee or applicant screening (including temperature checks) is subject to ADA confidentiality requirements. This means, among other considerations, that the information must be kept in separate medical files and any disclosure must be limited.

## **Response to Confirmed and/or Suspected COVID-19 Infection and Exposure**

Per DHEC (excerpts from DHEC's COVID-19 Re-Opening Guide for Businesses):

People who have symptoms should stay at home until symptoms resolve. Be sure your leave policies reinforce this and encourage self-isolation when symptoms are present.

- a. Employees should be considered sick if they have symptoms of acute respiratory illness like shortness of breath, coughing, and/or fever of 100.0 °F or greater.
- b. Negative COVID-19 testing is not recommended or required for people to return to work. Even workers who were confirmed to have COVID-19 do not have to have negative testing to return to work.
- c. Instead, DHEC recommends that employees not come to work until 7 days have passed since their symptoms began AND they are free of fever (100.0° F [37.8° C] or greater using an oral thermometer) for 3 days without the use of fever-reducing medicines AND their other symptoms have improved.

**If an employee is confirmed to have COVID-19**, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).

Employees exposed to a co-worker with confirmed COVID-19 should monitor themselves for symptoms and may be recommended for a 14-day quarantine based on the DHEC Epidemiology team's risk assessment. Please reach out to DHEC if you have any questions about the plan for coworkers. If possible, the area where the infected individual worked should be isolated for 24 hours and then cleaned and disinfected. If it is not possible to delay access to the area, the workers who perform cleaning/disinfecting should wear appropriate PPE for protection against the cleaning materials and the virus. Refer to the CDC Cleaning and Disinfecting Guidelines for additional information.

## **Employee Leave, Wage and Hour Issues, Benefits, Layoffs/Furloughs**

Congress recently enacted the Families First Coronavirus Response Act (FFCRA) which, among other things, provides for emergency sick leave and expanded Family and Medical Leave Act (FMLA) for employees of covered employers (generally, government employers and employers with less than 500 employees). Businesses and employers should acquaint themselves with the FFCRA. Here is a summary from the Department of Labor (DOL): <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

In addition, the federal wage and hour laws should be reviewed to determine if there any compensation issues associated with employee health screening and other measures. Any furloughs or layoffs should be reviewed to ensure they are in compliance with the federal and State anti-discrimination laws as well as the Worker Adjustment and Retraining Notification (WARN) Act. Please consult your legal counsel. Last, your benefit plans might be impacted by COVID-19; please consult your benefits provider or consultant.

#### **Additional Resources:**

CDC: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

CDC: <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html> (Public Health Recommendations for Community Related Exposure)

Department of Labor: <https://www.DOL.gov/coronavirus>

EEOC: [https://www.eeoc.gov/eeoc/newsroom/wysk-ada\\_rehabilitation-act-cornoavirus.html](https://www.eeoc.gov/eeoc/newsroom/wysk-ada_rehabilitation-act-cornoavirus.html)

FDA: [Coronavirus Disease \(COVID-19\) Emergency Use Authorization \(EUA\) Information](#)

[Coronavirus Disease \(COVID-2019\) updates from FDA](#)

<https://www.fda.gov/media/137338/download>

What to Do If You Have COVID-19 Confirmed Positive or Exposed Workers in Your Food Production, Storage, or Distribution Operations Regulated by FDA

OSHA: [https://www.osha.gov/Publications/OSHA\\_3990.pdf](https://www.osha.gov/Publications/OSHA_3990.pdf)

DHEC:

[https://scdhec.gov/sites/default/files/media/document/COVID19\\_DHEC\\_Employer\\_Return\\_to\\_Work%20Guidance-4.24.20.pdf](https://scdhec.gov/sites/default/files/media/document/COVID19_DHEC_Employer_Return_to_Work%20Guidance-4.24.20.pdf)

<https://www.scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19>

<https://www.scdhec.gov/sites/default/files/media/document/Business-COVID-guidance%20FINAL-3272020.pdf>

## 5. Prepare a Communications Plan

*Clearly communicating with employees, customers, and other stakeholders during the phases of this pandemic is paramount to protecting their health and safety.*

In this time of uncertainty, it is imperative that businesses communicate frequently, clearly, and honestly with their employees, customers, and stakeholders. The underlying communication need of all these groups is assurance that your business has taken appropriate steps to mitigate exposure in your place of business.. Your organization’s communications strategy and messaging should instill confidence that safety is a priority. Actions employers should consider when communicating with the public include:

### Communicating with the Public

- Consider the concerns and information needs of your customers when developing your communications strategy. What would you want to know before re-engaging with your business?
- Communicate the safety measures implemented by your business, providing necessary updates in a timely manner.
- Communicate the “new normal”: What are your current rules for engagement ( e.g., any access restrictions to your business, social distancing protocols, temperature screening, wearing of face masks, calling ahead, waiting area protocol, etc.).
- Consider what type of signage you may need to reinforce your policies and social distancing.
- Ensure employees interfacing with your customers/general public can clearly articulate your organization’s messaging to ensure consistency and promote trust and confidence.
- Stay engaged with your customers via social media regarding your re-opening plans.
- Leverage various communication mediums (e.g., websites, social media, email, texts etc.) to stay engaged with your customers and provide timely communications regarding your re-opening.
- Proactively determine how you will communicate to the public about specific potential exposure to COVID-19.

### Communicating with Employees

Employees will have a wide range of complicated questions and concerns upon their return to work:

- How do I know it is safe to come back to work?
- Can I just continue telecommuting?
- I have childcare/elder care issues, how can you work with me to address this concern?
- What if I do not want to/ am not ready to return to work yet?
- What if I don’t want my temperature taken?
- Is a facemask required or voluntary?

- How will I be notified if a co-worker is sick or tests positive for COVID-19?
- How does FFCRA impact me?
- Is the business compliant with OSHA?

Employers should anticipate the types of questions their employees will have and ensure they provide clear and timely policy direction. Employers should also practice those behaviors they want to those within their organization to follow.

Action items to consider include:

- Inform employees of their legal rights and obligations under applicable laws, including the ADA, OSHA, FFCRA, and the like. Ensure all mandatory employment posters are placed in all physical worksite locations.
- Update your personnel policies to reflect regulatory requirements, especially your COVID -19 related policies (e.g., health and safety expectations, including body temperature monitoring, symptom checks, handwashing, mask and glove use and other hygienic measures; paid sick leave policy, travel, confidentiality, pay, etc.).
- Install signage throughout the workplace, including temperature screening areas, personal hygiene and respiratory requirements, social distancing reminders, , disinfection instructions in break areas and kitchens.
- Communicate protocol for managing employees who are suspected of having COVID-19, have been confirmed as having it, or report that they have been exposed to someone who has tested positive. Provide ongoing communication to reinforce health and safety messaging, including availability of Employee Assistance Program (EAP) services.
- Providing employees with a clear avenue for communicating concerns and having them addressed in a timely manner.

#### Resources:

OSHA's "[Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus.](#)"

**As stated above, this document is intended to be a resource for businesses to refer to as they decide how to responsibly re-open their workplaces to employees and the public. IT IS NOT LEGAL ADVICE. EACH BUSINESS IS STRONGLY ENCOURAGED TO CONTACT AN ATTORNEY WITH ANY BUSINESS-SPECIFIC LEGAL QUESTIONS ABOUT REGULATORY COMPLIANCE WITH GUIDANCE ISSUED BY HEALTHCARE AGENCIES, EMPLOYMENT PRACTICES, AND/OR ISSUES REGARDING ACTUAL OR POTENTIAL LIABILITY.**