

Transitioning Back to The Workplace FAQ

Utilize the information below for frequently asked questions related to returning your worksite employees back to the workplace. This includes questions that were discussed during April's "Transitioning Back to the Workplace" client webinar. Please reach out to your TriNet Customer Experience contact if you have additional questions and review the [COVID-19 Returning to the Workplace Checklist](#).

Worksite Employees Returning to the Workplace

Q1. What measures can I take if a worksite employee expresses concern about returning to the workplace?

A1. First, talk to the worksite employee to identify their specific concerns so you can directly address them in a productive manner. Allow the worksite employee to feel heard, demonstrating you understand and care about their concerns.

Consult your federal, state, local and industry health and safety requirements and recommendations and look into potential policy changes that can help ease worksite employee concerns and foster a safer work environment. Some ideas include: staggering work hours to limit exposure to other worksite employees, regularly cleaning and disinfecting common areas and areas frequently touched, space worksite employees' workstations at a greater distance, require your worksite employees to wear masks, provide personal protective equipment when appropriate and limit the number of clients/customers/visitors who can be at the worksite at any given time. Consult with your building or property manager, if applicable, to ensure common areas such as parking lots, stairways, elevators and lobbies are going to be maintained in accordance with applicable guidelines and requirements. Note: Keep in mind that many of these items will likely be mandated by local or state governments as a condition of re-opening a workplace, at least temporarily.

Employers should inform worksite employees of all new policies and measures taken to limit the risks of virus spread well in advance of recalling worksite employees to work (employers can use the [Welcome Back to the Workplace letter template](#) to assist with this piece). Give them time to adjust to the realities of the workplace. Similarly, if local or state governments or health departments mandate certain new safety practices or protocols as a condition of reopening a workplace, communicate the requirements in advance to your worksite employees to manage their expectations and avoid surprises and potential conflict. This will help ease worksite employee fears of returning to the workplace, so they are more likely to follow the new practices, policies and procedures.

Q2. How do I respond if a worksite employee is unable to return to the workplace due to loss of daycare?

A2. Under the Families First Coronavirus Response Act (FFCRA), covered employers must provide up to twelve weeks of total Emergency Family and Medical Leave Expansion Act (EFMLEA) leave, divided into two weeks of unpaid leave and ten weeks of paid leave, and up

to 80 hours of emergency paid sick leave (EPSL) for eligible employees who are unable to work or telework because they must provide care to a child or children whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19. Several states and municipalities have also passed laws that go beyond the FFCRA leave entitlements. Please review state and local laws that may provide additional time off for worksite employees.

If the worksite employee has already used all their FFCRA leave entitlements (or otherwise exhausted their FMLA leave), the employer may look for alternative ways to accommodate the worksite employee, such as providing them with additional paid or unpaid leave. If no accommodation can be made, the employer may require the employee to report to the workplace. Keep in mind that many schools and child care providers end their terms in late May or by mid-June for summer break, and the Department of Labor's (DOL) guidance states that EPSL and EFMLEA leaves are not available if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the worksite employee may be able to take leave if their child's usual care provider during the summer—a camp or other program in which the worksite employee's child is enrolled—is closed or unavailable for a COVID-19 related reason.

Having and maintaining an open dialogue with worksite employees will be key to discovering and adapting to those temporary challenges. Keep in mind that the DOL has emphasized in its FFCRA guidance that it encourages employers and employees to collaborate to achieve flexibility and meet mutual needs.

Q3. How do I respond to a worksite employee who wants to continue working remotely even though the rest of the company has returned to the office?

A3. The coronavirus pandemic has caused many employers to completely reconsider what positions, roles and functions must be present at the workplace on a daily or regular basis. Many companies have experienced seamless transitions to remote work arrangements with little to no impact on productivity. However, if you determine that a worksite employee must return to the office, first determine if you can allow the worksite employee to continue to work remotely. This can be a temporary arrangement to provide a transition time. If remote work is not an option, ask the worksite employee the reasons they wish to continue working remotely, as you may be able to meet their needs through other adjustments such as changing their work schedule or taking precautions to reduce their fears of getting sick.

Safety Measures to Take Before Worksite Employees Return to the Workplace

Q4. Are there any sanitation measures our company needs to take as worksite employees return to the workplace?

A4. The [CDC](#) recommends employers perform routine environmental cleaning and disinfecting. Specifically, employers should implement practices that routinely clean and disinfect all frequently touched surfaces in the workplace. Some examples of these types of surfaces are doorknobs, handrails, copy machines, shared office equipment, keyboards and

phones. You may also have state- or local-level and industry-specific requirements to take into consideration based on applicable re-opening guidance.

The CDC recommends that if the surfaces are dirty prior to disinfecting that they be cleaned with detergent or soap before disinfection. They recommend to then disinfect the surface. Most common household disinfectants should be effective. The EPA has created an [approved list](#) for use against the virus that causes COVID-19.

If a worksite employee is suspected or has a confirmed case of COVID-19, the CDC recommends these [guidelines](#) to clean and disinfect.

Companies should also review their ventilation systems and increase ventilation rates when possible as well as increase the percentage of outdoor air that circulates into the ventilation system.

Q5. How do I enforce social distancing if we have a small office?

A5. You can stagger start and end times, implement shifts if feasible, or stagger the days worksite employees work in the office in a way that adheres to social distancing guidelines.

Updated! 5/27: Q6. Can I require COVID-19 antibody tests (specifically the Roche test) and/or regular COVID-19 tests for worksite employees before they return to the workplace?

A6. EEOC guidance states that employers may lawfully administer COVID-19 testing to employees as part of a screening process before allowing employees into the workplace. However, any such tests must be accurate and reliable based on presently available medical and public health guidance.

Currently, guidance from the FDA calls into question the reliability or accuracy of antibody testing either as a diagnostic test of current illness, or a reliable indicator of present or future immunity. Given the FDA's position on the reliability and accuracy of currently available antibody (serology) testing, mandatory antibody (serology) testing by employers is not advised at this time. Clients should monitor developments in testing and guidance from the FDA, CDC, EEOC and state and local governments and agencies regarding future tests.

Before implementing a testing policy, you should consider doing five things:

1. Check the latest CDC, OSHA and EEOC guidance, as well as any state or local regulations to ensure you are compliant.
2. Find out if COVID-19 tests are available in your area, and that the tests have been approved by regulatory authorities, such as the FDA.
3. Ensure all worksite employees are being treated the same, that is, all worksite employees are subject to the same tests and the same inquiries.
4. Formalize, document, communicate and have the testing policy you would like to implement reviewed by legal counsel before anyone returns to work.

5. Review applicable state-specific privacy laws, particularly in light of any proposed testing method's invasiveness. Certain states, including California, may require additional safeguards, such as a statutory disclosure notice before testing.

The Americans with Disabilities Act (ADA) requires that employers keep all medical information confidential, including information related to symptoms of COVID-19 or a diagnosis of COVID-19, such as COVID-19 test results, temperature screening logs and other medical information solicited from employees. Employers should:

- Limit this information to those who need to know the identity of an individual who is diagnosed with or exhibiting symptoms of COVID-19 and should ensure that the worksite employees understand that such information must be kept confidential.
- Be mindful of the requirement that medical information be stored separately from personnel files and the importance of maintaining confidentiality of this information. Employers may disclose certain worksite employee health information related to COVID-19 to the CDC and other health authorities.
- Review state-specific privacy laws, which may require the implementation of additional safeguards.

Q7. Can I require that each worksite employee has a negative COVID-19 test result before they return to the workplace?

A7. Yes. However, at the present time it is unclear the extent to which you can test employees for antibodies for COVID-19, which is a different test than one measuring the presence of the active virus. Keep in mind that if you are requiring testing, at many locations it will be your responsibility to cover the costs of such testing. Wage laws generally require that employers pay for any time workers spend under their control, which may mean paying workers while they wait for temperature checks or clean personal protective equipment. There will be costs associated with maintaining the enhanced health/safety requirements necessary to operate a safe workplace for as long as the COVID-19 pandemic persists.

Updated! 5/27: Q8. Can I require each worksite employee be vaccinated against COVID-19, if/when one becomes available?

A8. Generally, an employer may not require vaccinations or proof of immunization from employees because of the ADA's general prohibition on medical examinations. However, employers such as health care providers, schools and nursing homes can mandate vaccinations because of the nature of their work, the populations they serve and applicable law that allows mandatory vaccinations in those industries. The EEOC notes that, when a vaccine becomes available for COVID-19, "employers should consider simply encouraging employees to get the" vaccine. If a worksite employee objects to vaccines on religious grounds, employers must only provide an effective, reasonable accommodation that does not cause more than a minimal burden. Potential COVID-19 exposure to co-workers and customers would likely exceed the minimal burden standard. However, employers are encouraged to communicate with worksite employees to understand the underlying reason for the objection.

Review the CDC vaccination law [website](#) to stay up-to-date on the latest developments.

Protective Gear

Q9. Can I require my worksite employees to wear protective gear, such as a mask, while they are at work?

A9. Yes. You may require worksite employees wear protective gear, such as masks and gloves, and observe infection control practices, such as regular hand washing and social distancing protocols. In some cases, state and local legislation and industry regulations require employers to provide protective gear to their employees.

Q10. Do I have to allow a worksite employee to wear protective gear?

A10. In areas that do not have face mask requirements, you should encourage all worksite employees to follow the CDC guidelines concerning masks. Any worksite employee that chooses to wear protective gear should be allowed to do so, provided it does not materially interfere with business operations or the performance of their essential duties.

Q11. Are there any posting requirements regarding the wearing and/or providing of protective gear?

A11. Please review the guidelines specific to your state and municipality or industry regarding any posting requirements regarding the wearing and/or providing of protective gear.

Q12. Who pays for required personal protective equipment (PPE)?

A12. PPE under OSHA guidelines must be paid for by the employer. Currently, PPE is not required under OSHA guidelines unless the business is subject to PPE standards, e.g., hospitals and other places with health care workers.

Employers who choose to require PPE, but not provide it, are required to formulate a plan for training and monitoring or following up on the use of the PPE, as well as ensuring the PPE is sufficient by inspecting it on a regular basis. Another item for consideration is what employers will do if their worksite employees do not comply with the requirement to use PPE. Rules and consequences for not following the rules will need to be communicated to the workforce before the rules are implemented.

COVID-19 Infection/Potential Infection

Q13. What is our liability if someone, such as a worksite employee or customer, claims they were infected at our place of business?

A13. The answer to this question is fact-and location-specific and difficult to determine without additional information. Employers should take all the recommended steps outlined by the CDC, OSHA, state and local governments and agencies and industry guidelines to protect worksite employees and customers.

Q14. If a worksite employee is sick and is exhibiting symptoms of COVID-19, can I tell them to go home?

A14. Yes, worksite employees who become ill with symptoms of COVID-19 should leave the workplace. If a worksite employee becomes sick at work, they should be separated from other worksite employees, customers and visitors and sent home. You may interview the worksite employee to identify the individuals with whom the worksite employee had contact, which will allow you to conduct social tracing to determine whether any other worksite employees may have been exposed to COVID-19 through the ill worksite employee. If you learn that other worksite employees may have been exposed, then you should notify those worksite employees of their potential exposure without disclosing the infected worksite employee's identity. You should follow CDC guidelines for cleaning and disinfecting workplace areas where the sick worksite employee was located or visited. If you are in leased premises where employees of other companies also work (e.g., an office building or complex), notify the property manager for the protection of others who may be or may have been present in any common areas without disclosing the identity of your symptomatic worksite employee.

Q15. Does workers' compensation cover COVID-19?

A15. It depends. To be covered under workers' compensation, worksite employees generally must prove that their illness or injury occurred at work, but there are exceptions. Keep in mind that CDC and applicable local or state requirements and recommendations offer preventative measures only and do not guarantee that infection will not occur in the workplace. Preventative measures are most successful when communicated clearly and where standards of compliance are clear. Leaders and managers should set the example but should generally avoid statements that could be construed as a guarantee that the workplace is one hundred percent safe. Instead, it is helpful to communicate that you are aware of and have implemented the requirements and recommendations of the applicable public health authorities (for example, CDC and state and local departments of public health).

Q16. Can I tell my older workers or other high-risk workers to stay home?

A16. No, you should not prohibit older workers or others you may believe are in a high-risk category from going into the workplace. Proceed with caution when considering any actions that may be considered discriminatory, such as treating workers of a certain age differently than others. You may communicate to your entire workforce that anyone in need of flexibility or another accommodation should bring their concerns to their manager or to human resources.

You can allow for telework, and you could consider offering certain types of leave, but you cannot prohibit workers in a protected class from coming to work or force them to take leave.

[Paid Leave and Paid Time Off Policies](#)

Q17. If a worksite employee is out on leave because they are caring for their kids, do employers have to bring them back at the same wages and hours?

A17. Yes, if they were on a job-protected leave such as EFMLEA/FMLA leave, which requires that the worksite employee be restored to the same job or to an "equivalent job," meaning a job that is virtually identical to the original job in terms of pay, benefits and other employment terms and conditions (including shift and location). For worksite employees returning from a leave that is not job-protected, employers are encouraged to make any salary or wage changes only after providing advanced notice, clear communication and transparency. Also, salary or wage changes should be done "across the board" or universally so that all worksite employees are treated the same. Also keep in mind that there may be mandated notice requirements, such as Wage Theft Prevention Act notices, that must be provided when wages and hours are changed.

Q18. When the FFCRA program ends December 31, 2020, what happens if a worksite employee is in the middle of EPSL or EFMLEA leave? Are they still eligible for the full amount of time off or does the benefit end on December 31, 2020?

A18. Payments, protections and benefits under FFCRA will end on December 31, 2020. Any worksite employee who is in the middle of a leave will be unable to continue with their EPSL or EFMLEA leave after December 31, 2020. Worksite employees may be eligible to continue their leave under other mandated leave laws, such as FMLA and state and local paid sick leave, after December 31, 2020.

Q19. Can I revise my time off programs until our company regains financial stability?

A19. In most circumstances, you may change your paid time off policy for future accruals provided you notify your worksite employees in advance and ensure that prior accruals are not forfeited.

Additionally, in some locations, but not all, you can place a temporary moratorium on usage of paid time off if you would like. Review your paid time off policies and any state and local paid leave requirements to ensure changes to your paid time off program do not create paid leave compliance concerns.

Job Applicants/Future Worksite Employees

Q20. Can I test job applicants for COVID-19?

A20. Yes, however EEOC guidelines indicate this must be done "after making a conditional job offer" and must be done universally for all prospective worksite employees in the same type of job.

Q21. Can I withdraw a job offer if a prospective worksite employee has COVID-19 or symptoms of COVID-19?

A21. Yes, but only if you can demonstrate that the applicant needs to begin work immediately. You cannot withdraw a job offer if the role does not require an immediate start date. Instead, you can choose to allow telework or postpone the worksite employee's start date. However, you may not postpone the start date or withdraw a job offer because the CDC

has identified the prospective worksite employee as being at greater risk. You may instead choose to allow them to telework or ask if they would like to postpone the start date.

New! 5/27: Travel

Q21. If a COVID-19 test is required for my worksite employees to travel, am I responsible for the cost of the test?

A21. The CDC and other safety guidance continues to discourage non-essential travel with the expectation that this limitation will continue for some time even as stay-at-home orders are lifted. As a result, business travel should be limited to essential travel for critical business purposes that the worksite employee cannot handle virtually. Employers should also honor requests not to travel from worksite employees who are wary of traveling because of health and safety concerns.

If a COVID-19 test is required for essential business travel, the company should reimburse the worksite employee for costs incurred to take the test.

Also, worksite employees should review the CDC [travel information](#) before departure.