



Critical Return to Work Issues for Employers

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Seyfarth Shaw LLP

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Agenda

- 01** Your Return to Work Framework
- 02** Issues to Consider Before Employees Return
- 03** Logistics and Communication
- 04** Protocols to Consider
- 05** Stay Informed, Be Prepared, Be Flexible

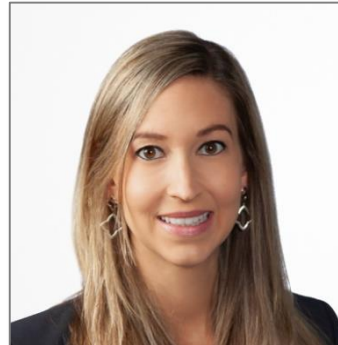
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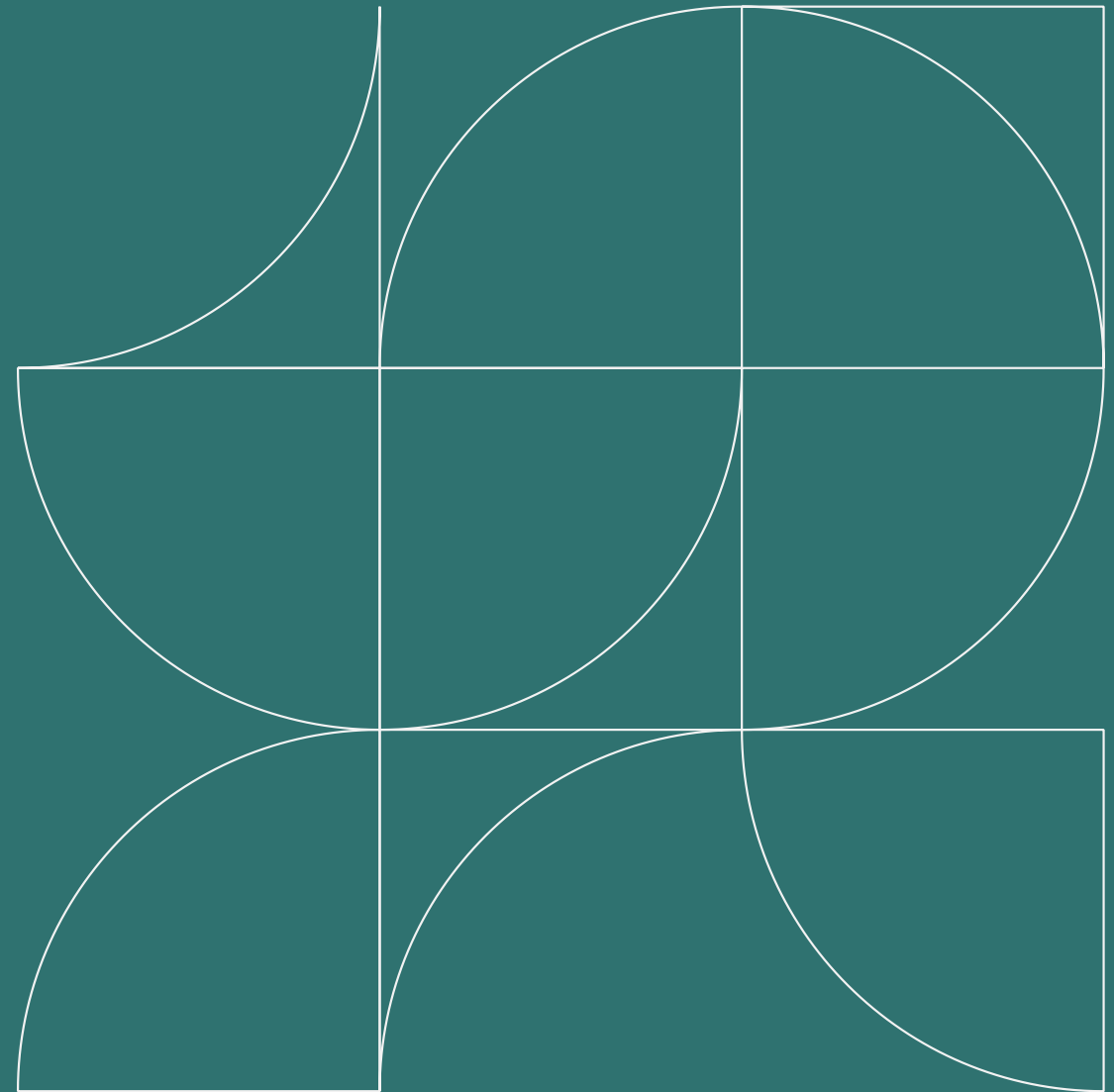


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Your Return To Work Framework



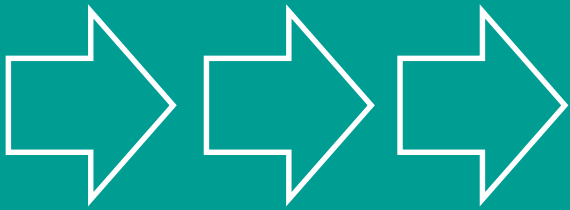
Limited Global Experience to Date



- **CHINA Goes Back to Work:**
 - Regulations vary by province
 - Rigorous testing
 - Travel restrictions
 - Comprehensive smart phone tracking
 - New workplace rules
 - Frequent temperature testing
 - Expanded telework opportunities
- **GERMANY:** Cautiously welcoming “fragile intermediate success” due to social distancing measures, examples include --
 - Shops of up to 800 square metres in size, as well as bookshops, bike stores, and car dealerships opened April 20.
 - Schools reopen May 4, initially for students in their final years of primary or secondary school, in staged approach.
 - Hairdressers reopening May 4.
 - Large cultural events, like concerts and beer festivals, banned until end of August.
- **AUSTRALIA:** Three conditions for easing restrictions --
 - Increased test capacity.
 - Contact tracing.
 - Strengthened “local response capabilities,” or ability to lock-down hot spots where outbreaks occur.

Federal Guidelines for Reopening America

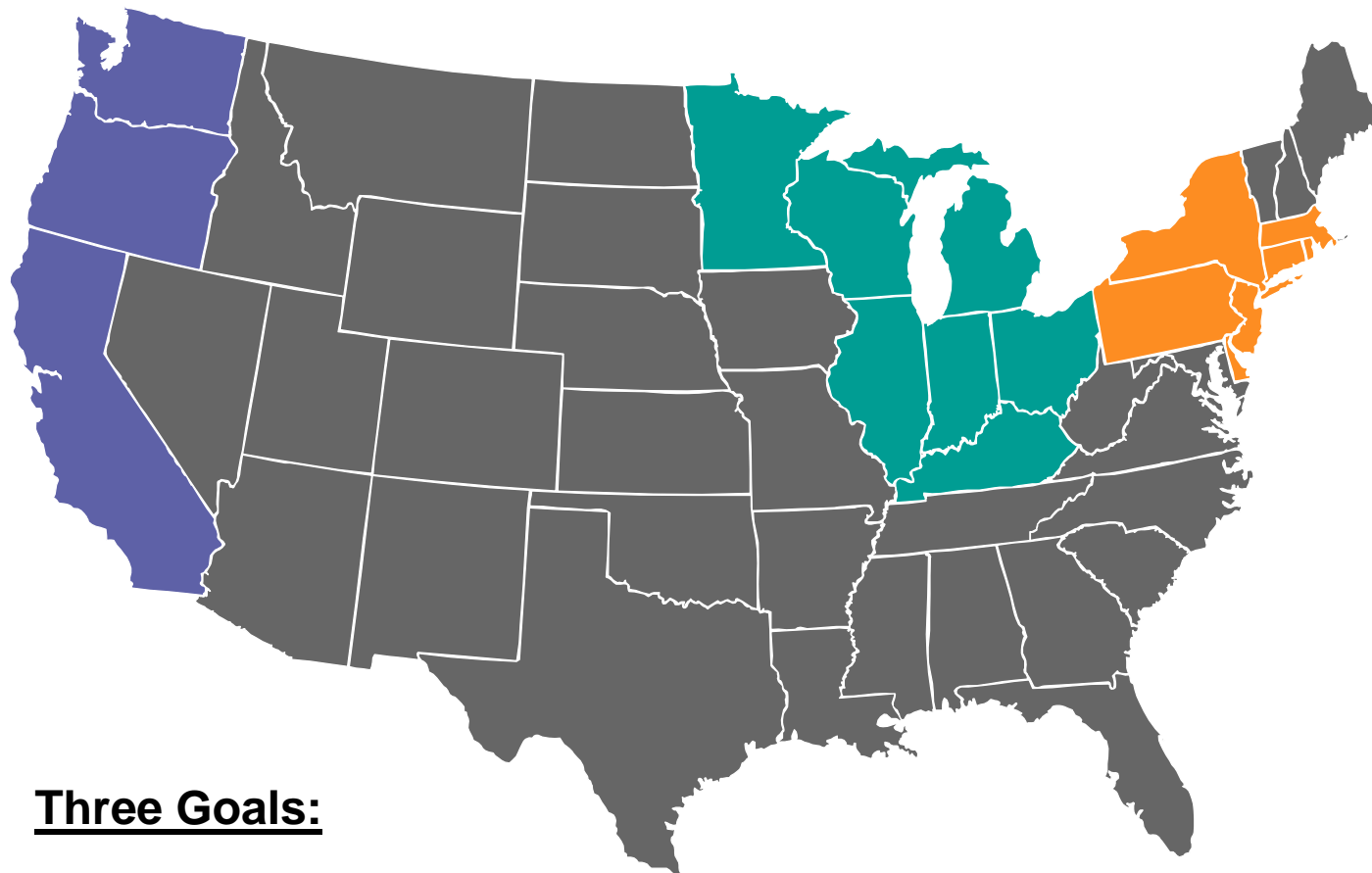
April 16, 2020



[https://www.whitehouse.gov/
openingamerica/](https://www.whitehouse.gov/openingamerica/)

- Three Phased Approach
 - Based on Up-to-Date Data and Readiness
 - Mitigates Risk of Resurgence
 - Protects the Most Vulnerable
 - Implementable on Statewide or County-by-County Basis at Governors' Discretion
- April 15 US Senate Letter to Leaders McConnell and Schumer requesting that OSHA issue an Emergency Temporary Standard (ETS) requiring employers to develop and implement a comprehensive plan to protect their workers.
 - Signed by 35 Senators
- April 21 COVID-19 Every Worker Protection Act of 2020
- COVID-19 Does Not Override Existing Employment Laws

Three Regional Alliances



State Alliances to
Coordinate an Eventual
Easing of COVID-19
Shutdowns

Three Goals:

1. Safety
2. Strengthening Health Care Systems
3. Developing Systems for Testing, Tracking, and Isolating COVID-19 Carriers

States Reopening Business Over Next Two Weeks

- Social Distancing Continues
- Not Business as Usual
- Not All Businesses Reopen

COLORADO

Three Phase Process:

1. Urgent Phase
(Current Status)
2. Stabilization Phase
3. Recovery Phase

April 26: Statewide stay-at-home order expires

GEORGIA

April 24: Opening Gyms, fitness centers, bowling alleys, body art studios, barbershops, hair salons and beauty parlors

April 27: Opening dine-in restaurants, theaters, and private social clubs.

SOUTH CAROLINA

April 27: Opening public beaches, furniture stores, florists, flea markets, department stores.

TENNESSEE

Not extending the stay-at-home order; expires **April 30.**

Some businesses allowed to open **April 27.**

Other businesses permitted to resume **May 1.**

TEXAS

Some retail businesses will open **April 24.**

Schools remain closed for rest of academic year.

Industry Considerations



Consumer Facing Companies



Industrial, Manufacturing, and Construction Companies

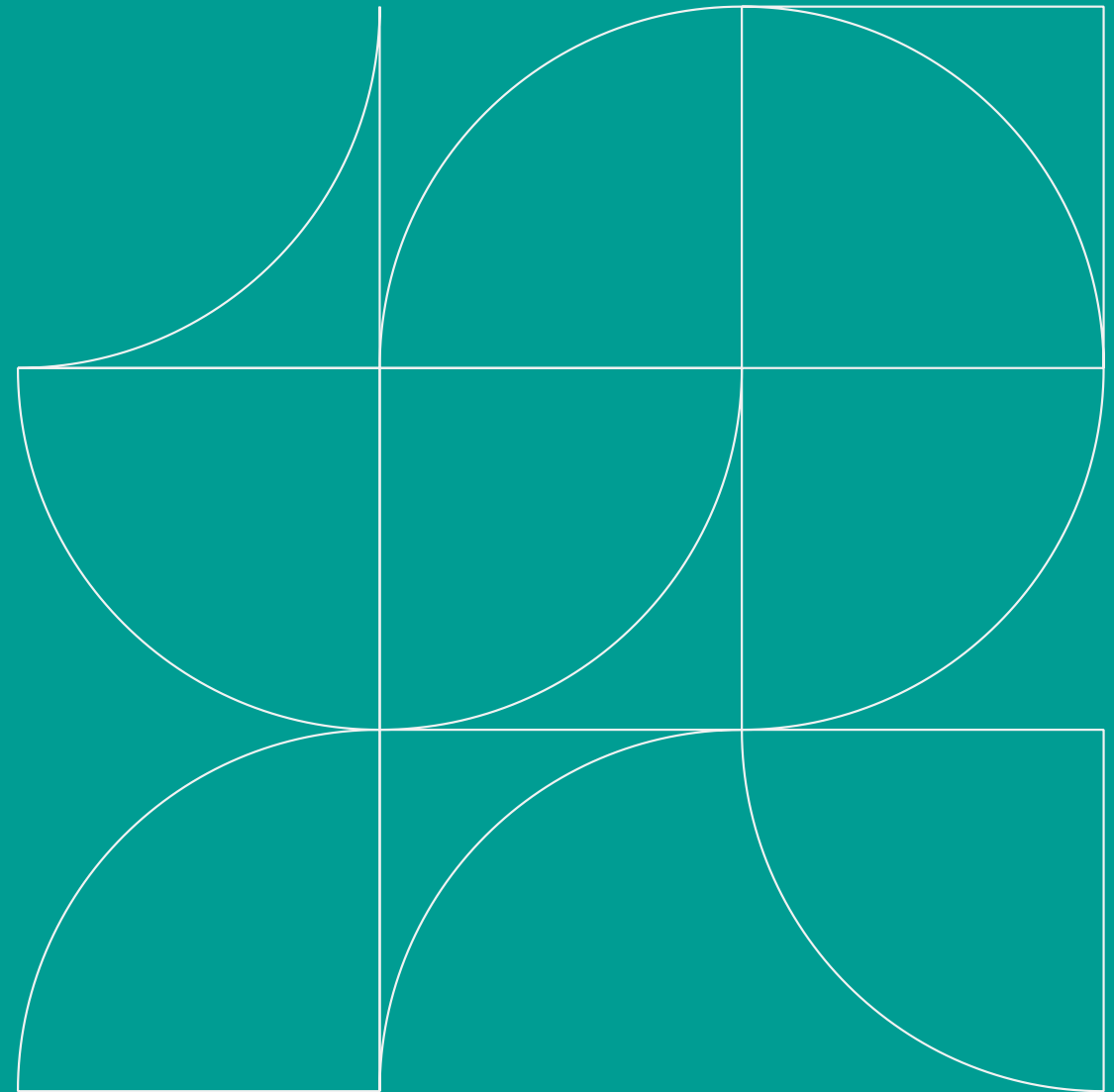


Office-Based Companies



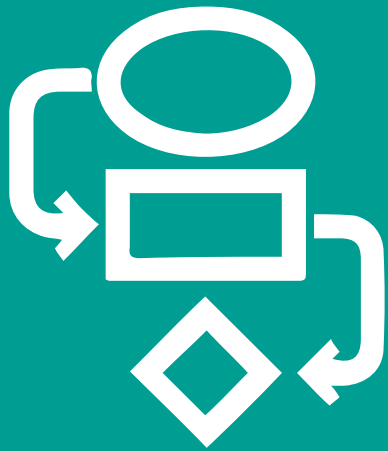
High Consumer Density Companies

Issues To Consider Before Employees Return



Determine Which Federal, State and Local Laws and Orders Apply

- State and local shelter-in-place orders
- OSHA and other health and safety laws and orders (may vary by location)
- Paid sick, paid leave, unpaid leave, and other relevant laws (will likely vary by location)
- Determine whether there is a need to bargain with any union(s) regarding additional workplace health/safety protocols and other changes to policies and practices, and whether local rules or orders will impact bargaining
- Consider any industry-specific requirements or business considerations (e.g., healthcare)





Determine an Organizational Approach

- Designate a point person or core Return To Work team who can make company-wide policy decisions
 - HR
 - IT
 - Building Facilities
 - Health & Safety
 - Office Managers
 - Senior Management
- Determine an approach that is right for the business and the workforce



Determine Which Employees Will Return to Work (and How & When)

- Decide when to bring employees back
- Determine which employees are legally permitted to return to the worksite
- Decide which employees to return to the worksite immediately (and timing for others)
- Consider that certain employees may be prohibited from returning to the worksite due to actual COVID-19, symptoms, potential exposure, isolation or quarantine by a health care provider or public health officer, etc.
- Determine which employees are on legally-protected leaves (plan for business impact of anticipated future requests)
- Decide how to handle high-risk employees
- Decide how to handle employees with logistical/other barriers to returning to the worksite (e.g., child care, transportation)



Requests to Work Remotely After Worksite Opens

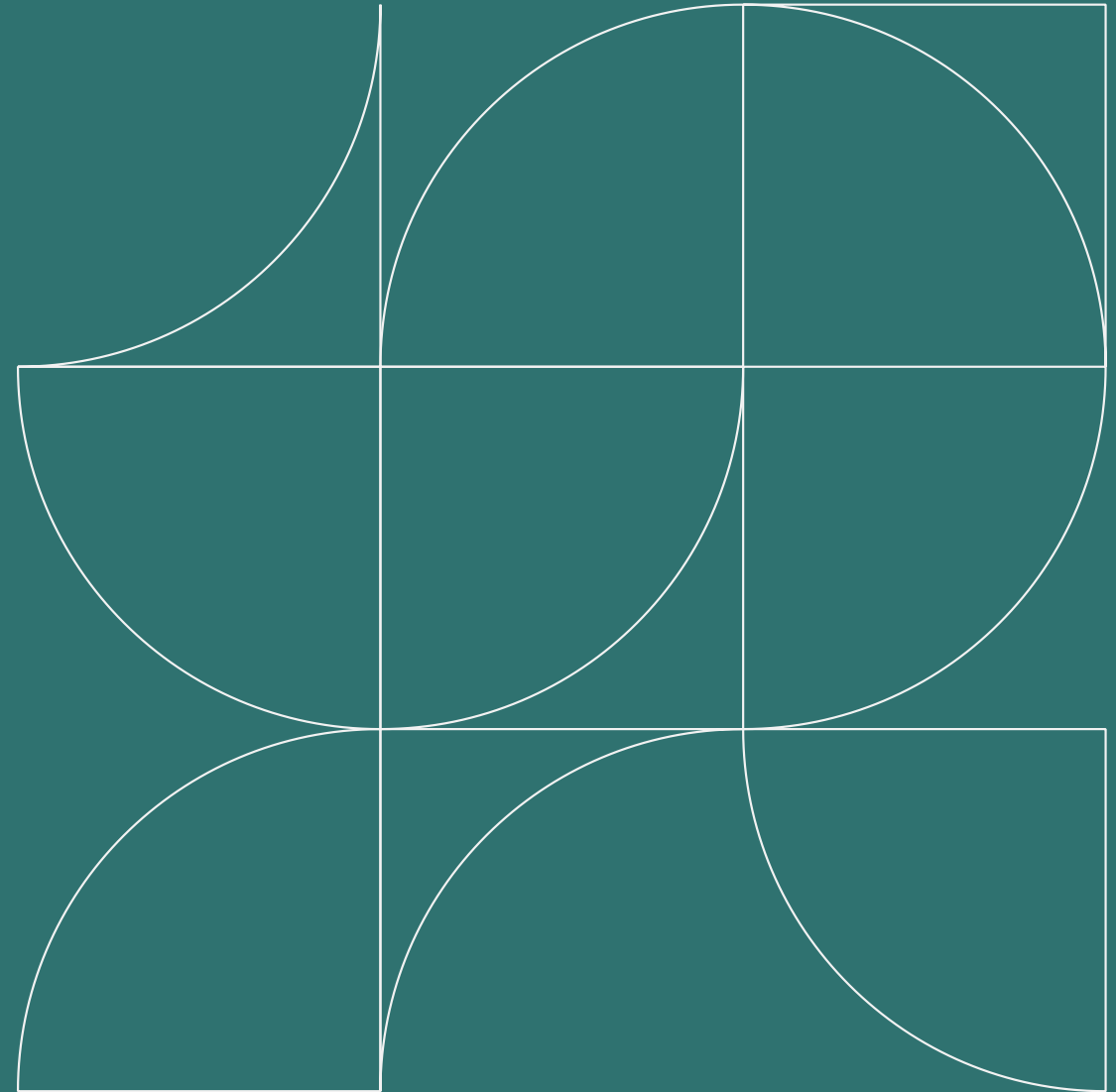
- Has overall philosophy toward remote work changed since COVID-19?
 - Requests for reasonable accommodations for a disability (including potential need to revisit pre-COVID-19 accommodation request denials)
 - Requests due to fear of COVID-19 (note: potential ADA and whistleblower issues)
 - Requests due to membership in a vulnerable population
 - Requests due to allegation(s) of violations of health and safety orders and/or laws or need to quarantine due to potential exposure
 - Requests due to child/senior care challenges
 - Requests due to transportation challenges
 - Requests due to household family members being in a vulnerable population (pre-vaccine) (e.g. household family members with underlying medical conditions/immuno-compromised or who are senior citizens)
 - Requests due to other personal reasons



Determining if Individual Employees are Safe to Return

- Screening process to determine if individual employees are safe to return
- Determine protocol for employees who:
 - have tested positive for COVID-19
 - have been diagnosed as presumptively positive for COVID-19
 - have experienced COVID-19 symptoms
 - have potential exposure, but no symptoms
- Questionnaires, temperature checks, self-certifications and testing

Logistics and Communication





Reintegration Logistics and Other Considerations

- Develop a transition plan and process to handle re-integration logistics
- Develop a process for identifying and communicating with employees who may need additional accommodations when they return to work, and/or requests to continue working from home
- Confirm accuracy of sick, vacation, and PTO banks
- Determine if there is a need to bargain with any union(s) regarding return to work policies, protocols, and/or practices



Potential Changes in Pay, Hours, Schedules Duties/Wage Hour

- Considerations for potential reductions in pay or hours, changes to work schedule, changes to duties
- Evaluate need to reclassify exempt employees to nonexempt (salary basis test, salary thresholds, changes in duties) and, if yes, development of protocol/notice
- Distribution of any legally required notices regarding changes in pay
- Identify and address potential off-the-clock issues (e.g., symptoms checks at home, temperature check lines at work, putting on PPE at home, cleaning tools at home)
- Identify and address potential additional meal and rest break claims (e.g., if employees are asked to eat lunch at their work stations, if COVID-19 procedures cut into meal breaks)



Update Employment Policies and Other Practices

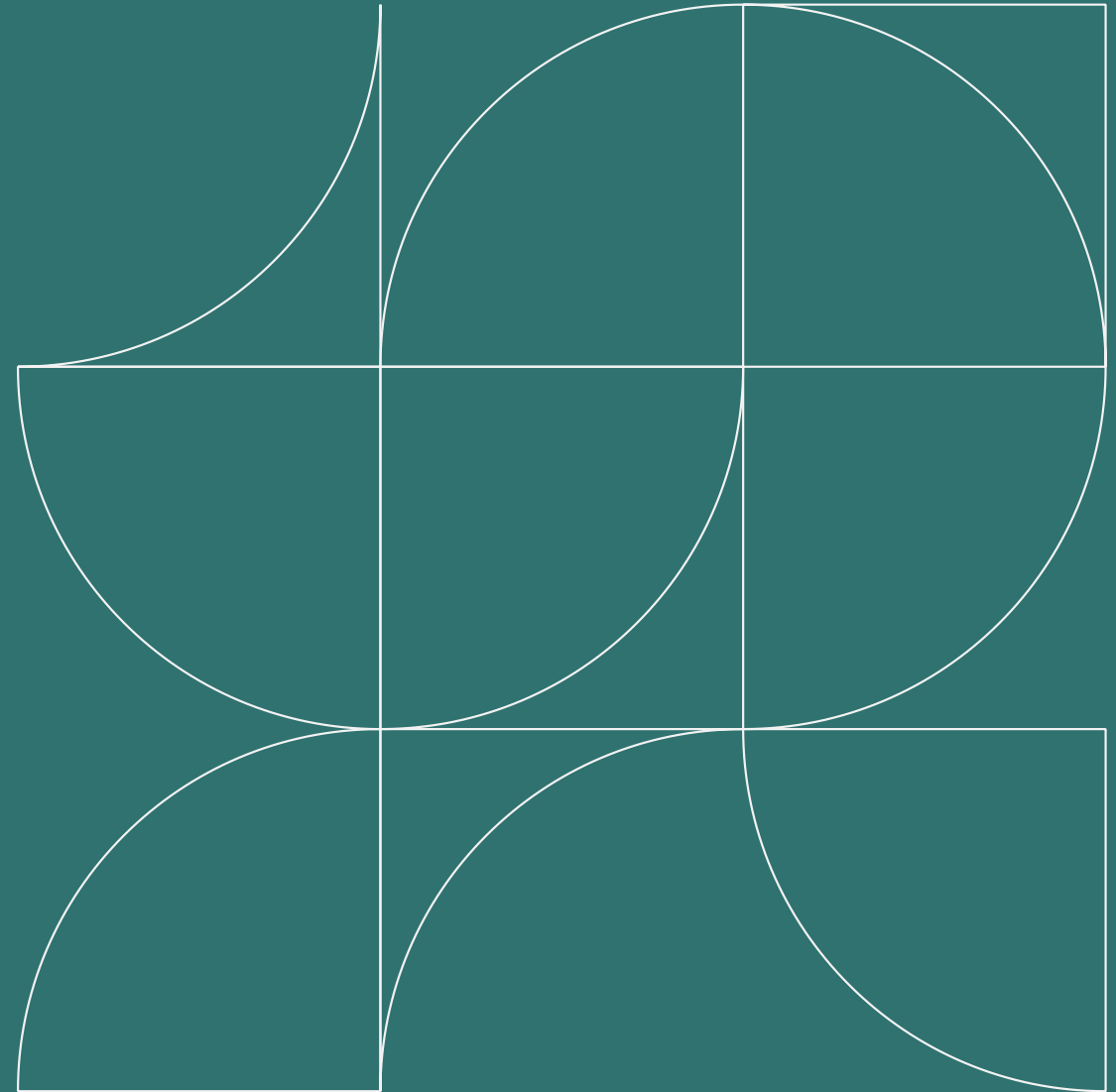
- Determine new COVID-19 legal requirements (and applicable sunset provisions)
- Update employee handbook or other policies as necessary
- Create and implement COVID-19 related and other policies/protocols
- Anticipate more requests for time off, reasonable accommodations, remote work, etc.



Communication of Updated Policies / Protocols

- Consider remote communication of new policies prior to employees' return to work
- Orientation or training for employees upon return to work, especially for HR and management
- Renewed communication of policies that are already in place
- Posting requirements for employers based on COVID-19 related orders
- Evaluation of hiring practices in light of COVID-19

Protocols to Consider





Social Distancing Protocols

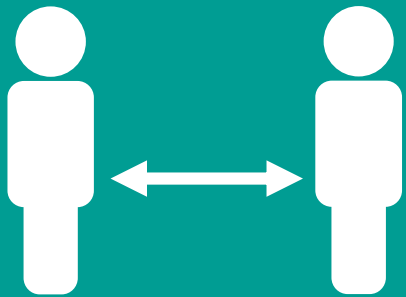
Considerations for Reconfiguring Workspaces

- Ability to maintain at least six foot distance
- Workstation paths (e.g., one-way aisles and floor markers to facilitate social distancing)
- Redesign of production lines (e.g. to increase space between employees)
- Use of physical barriers (e.g., plexiglass, etc.)
- Repurposing conference rooms, lunch rooms, and other communal spaces to allow for more distance
- Limiting in-person meetings
- Posters, training

Social Distancing Protocols

Considerations for Reconfiguring Schedules

- Reconfigure work schedules and/or shifts to limit the number of employees physically present in a specific office, facility, plant, or other work location at any one time
- Staggering of meal periods and rest breaks to the extent consistent with applicable law; consider requiring employees to eat at their work stations
- Implementation of full-time and/or part-time work-from-home arrangements for positions where it is feasible for employees to work from home, either full-time or a number of days each week





Other Health and Safety Protocols

- Best Practices
 - Identify point person to keep track of changes
 - Evaluate need to retain outside safety consultant
 - Determine minimum legal requirements — OSHA, CDC guidance, state and local shelter-in-place orders
 - Perform a hazard assessment as required by OSHA
 - Consider type(s) of health screens/testing to implement
 - Frequency
 - Self-checks vs. employer-administered checks
 - Consider requiring health and safety items (masks, etc.)
 - Develop handwashing protocols
- Consider implication of any applicable off-duty conduct laws



Other Health and Safety Protocols

- Cleaning Considerations
 - Perform deep workplace cleaning prior to reopening
 - Consider implementation of more frequent or robust routine cleaning
 - Develop protocol around cleaning work stations
 - Coordinate with landlords and building management
 - Adequate cleaning of common areas
 - Social distancing protocols in common areas
 - Notification protocols in event of COVID-19 positive test in building
 - Consider temporarily removing shared items (e.g., staplers, three-hole punchers, and other office supplies; coffee mugs; etc.)
 - Develop a protocol for shared tools and other items (e.g., leave it for the other employee to pick up rather than handing it off in person, cleaning tools before each use, etc.)



Other Health and Safety Protocols

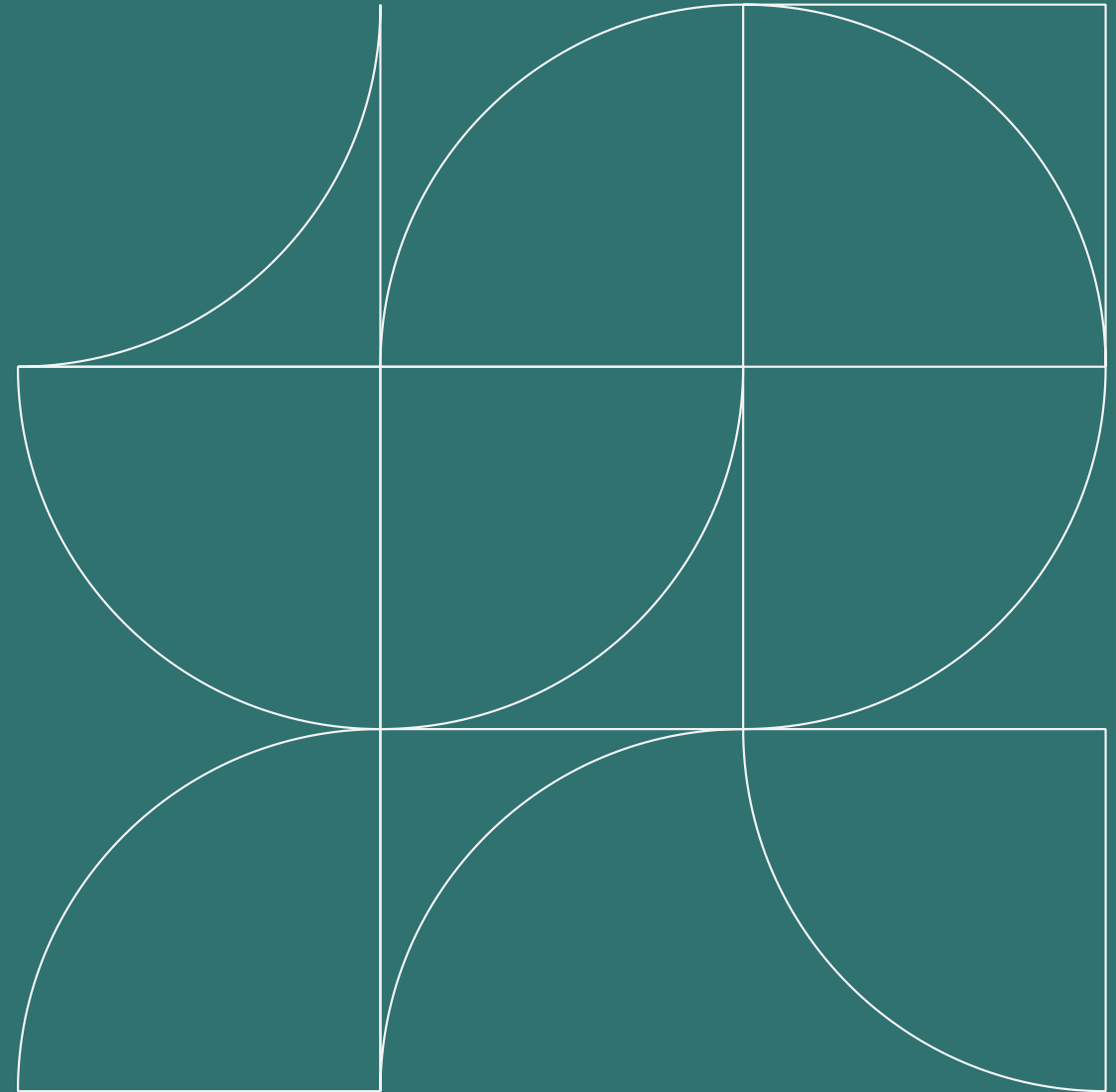
- Cleaning Considerations Continued
 - Develop a protocol for locker areas; ask employees to leave items at home or in cars to the extent possible. Consider whether uniforms and PPEs can put on/off at home or in the car (note: potential wage hour issues)
 - Stock the workplace with hand sanitizer, facial tissue, and sufficient cleaning supplies
 - Reminders about proper hygiene, handwashing, coughing and sneezing etiquette
 - Ensure adequate ventilation
 - Consider increased cleaning of high traffic areas, common areas, office equipment (e.g., copiers, keyboards, printers, etc.) and periodic deep cleaning of office, facility, plant, and/or other work locations by a professional cleaning service



Other Health and Safety Protocols

- Other Safety Considerations
 - Provide safety training and communications
 - Consider temporarily switching to disposable items where possible (kitchen ware, desk blotters, etc.)
 - Limit unnecessary mail
 - Consider prohibiting employees from receiving personal mail at the workplace
 - Consider temporarily closing any cafeteria or, instead, selling only pre-packaged foods
 - Consider temporarily stopping any fresh meal delivery (or avoid shared food items, shared utensils)

**Stay Informed, Be
Prepared, Be Flexible**





Rules for Visitors and Other Workers in the Workplace

- Determine how and in what respects the above Return to Work Plan will apply to temporary workers, staffing agency workers, independent contractors, vendors, clients, customers, delivery workers, visitors, and others when they are in the workplace
 - Consider joint employer issues
 - Consider independent contractor classification issues
 - Work with staffing agencies on protocols
- Consider limiting visitors to the workplace
- Require any visitors to complete a questionnaire before entering an office, facility, or other work location



Develop Plan to Quickly Respond to any COVID-19 Diagnosis, Symptom Reports, or Exposure

- Make sure employees know to notify the company of COVID-19 diagnosis, symptoms, exposure (and how)
- Develop a protocol in the event of a report of confirmed or possible COVID-19
 - Send home if symptoms or positive test result
 - CDC guidance currently permits essential workers with potential exposure to remain in the workplace if certain steps are taken
- Identify a point person or task force to oversee the response



Develop Plan to Quickly Respond to any COVID-19 Diagnosis, Symptom Reports, or Exposure

- Contact tracing
 - Compliance with privacy and disability discrimination law requirements
 - Determine which employees to send home
- Protocol for a temporary shutdown and deep cleaning of the workplace.
 - May come with little to no advance notice
 - The entire building or select areas?
 - Outside vendor for cleaning?
 - Additional measures when reopen?



Develop Plan to Quickly Respond to any COVID-19 Diagnosis, Symptom Reports, or Exposure

- Determine if there is any requirement to notify any government or other public authorities and, if so, develop protocol to provide such notice
- Determine whether to notify the workers' compensation insurance carrier
- Determine whether an OSHA log report is required
- Develop protocol for responding to questions and concerns raised by other employees, temporary workers, independent contractors



Protocol in the Event of an Unannounced Inspection by OSHA, A Public Health Officer or the Police

- Anticipate possible government enforcement
 - Surprise OSHA inspections
 - Police/Sheriff (enforcement of shelter in place and other state and local orders and laws)
- Develop an action plan in advance
 - Train managers on what to do if OSHA, police, etc. show up onsite unannounced
 - Designate a point person to take the lead
 - Seek legal advice – whether to have managers represented during interviews, decisions about what to keep privileged, etc.



Protocol in the Event of an Unannounced Inspection by OSHA, A Public Health Officer or the Police

- Prepare ahead by self-auditing for compliance
- Have key documents ready to produce promptly
 - Required posters
 - Health and safety measure/social distancing protocols
 - Required policies
 - OSHA programs and logs are up to date



Stay Informed

- Monitor for new legal requirements
 - CDC guidance on workplace safety, travel
 - EEOC guidance
 - State and local orders and laws – employer responsibility to stay informed
- Watch countries, states, and other businesses that open up first



Be Prepared

- Be prepared for the possible need for future employee layoffs and/or temporary furloughs or alternatives such as wage and hours reductions
- Be prepared in the event a large number of employees take sick time or other leaves.
- Be prepared for another shutdown or a partial shutdown due to future government orders
 - What will that look like the 2nd time around?
 - Second wave next fall?

Stay Informed Be Prepared Be Flexible



- Have a good communication notification plan ready
 - Update employee contact information
 - Method for communicating quickly with the workforce
- Develop a media/PR strategy

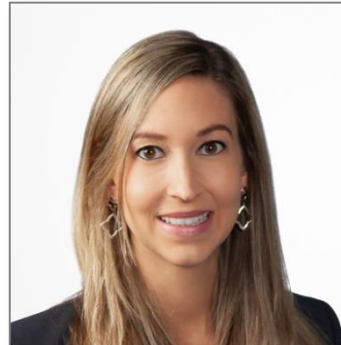
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Coming up



- Webinars Coming Up
 - COVID-19 Potential Impact on Lender Liability
 - Administrative Developments and Guidance for Accessing Small Business Stimulus Dollars
- Seyfarth's COVID-19 Resource Center is updated daily. Be sure to sign up for more webinars, updated legal alerts, and other helpful resources: www.seyfarth.com/covid19

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- Post-Pandemic Return to Work Checklist



Seyfarth **Post-Pandemic Recovery and Renewal**

Planning and Executing a Strategic and Successful Return to Work

We have assembled a cross-disciplinary Recovery and Renewal team who can advise you on the current state of business impact as a result of COVID-19, and what the future holds for business. Our team of 100+ lawyers is already deeply credentialed, having advised thousands of clients on the developments of the rapidly changing pandemic across the globe. We have a deep understanding of how the pandemic is affecting businesses and industries deemed essential and non-essential, and the related legal, business, and workforce issues specific to all. Likewise, we are already helping clients build phased return-to-work plans by modeling various scenarios for how business might resume—from continued social distancing to a full engagement of their workforces in full operations.

We are ready to leverage our knowledge to help you reengage in business—and grow.

We recognize that your business is unique and the legal landscape faces unprecedented complexity. Accordingly, we employ a three-step process to prepare a comprehensive, bespoke return-to-work toolkit for our clients.

1. Review

- Investigation and audit of pre-pandemic business status quo
- Step-by-step checklist addressing business elements and pandemic
- Establish goals and overall business strategy for near, mid, and long term

2. Analysis

- Business review in the new legal and business landscape using Seyfarth's in-depth **Return to Work Treatise**
- Strategic conversations regarding return-to-work timing, business considerations, and growth opportunities
- Identification of legal landmines with strategies for minimizing risk
- **Return to Work Selection Process Guide**

3. Implementation

- Execution of custom plan for return to work: phased/all/none; employee selection; employee screening protocol; workplace safety plan; communications cascade
- Access to Seyfarth's first-in-class **Policy, Communications & Tracker Repository**

• Positive test / confirmed Case	• Face covering	• Work from home
• Temperature screening	• Business travel	• FFCRA request
• Antibody testing	• Expense reimbursement	• Infectious disease
• Social distancing	• Visitor self-Declaration	

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www.seyfarth.com/covid19

Coming up



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NEWS & INSIGHTS

CAREERS

GLOBAL REACH

中文网站

People

Services

Delivery



[← RETURN TO PRACTICES](#)

Post-Pandemic Recovery & Renewal

OVERVIEW

NEWS & INSIGHTS

Coming up

Return to Work

As shelter-in-place orders are lifted, your business will enter uncharted territory. COVID-19 has the potential to permanently alter supply chains, service models, and growth strategies. How will you respond?

Critical Return to Work Issues for Employers

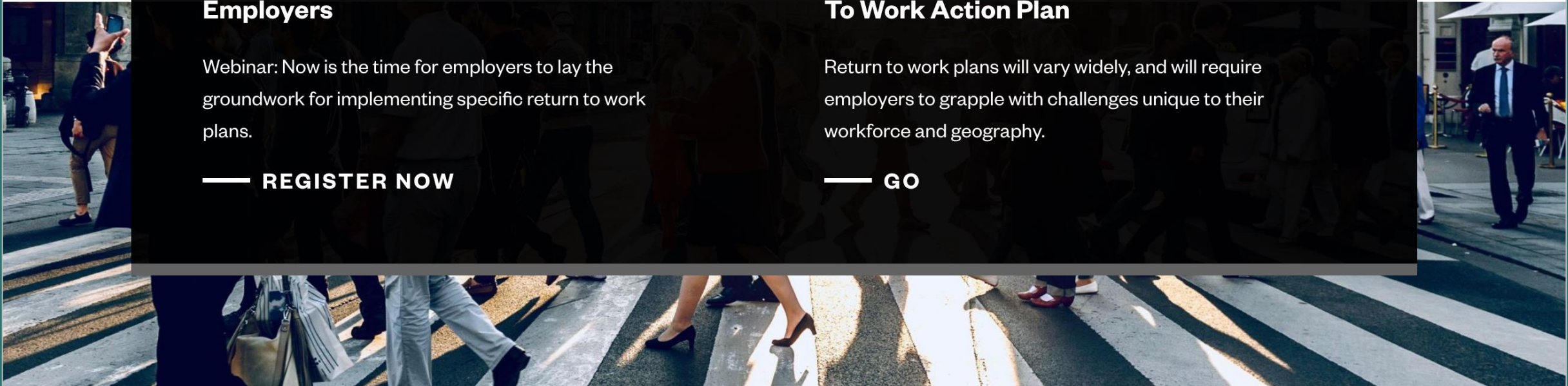
Webinar: Now is the time for employers to lay the groundwork for implementing specific return to work plans.

— REGISTER NOW

Strategies For Developing A Return To Work Action Plan

Return to work plans will vary widely, and will require employers to grapple with challenges unique to their workforce and geography.

— GO





thank you!