



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



Returning to the New Normal -- What New England Employers Need to Know

Ariel Cudkowicz
Kristin McGurn

Patrick Bannon
Adam Young

May 5, 2020

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



Agenda

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

Speakers



Ariel Cudkowicz
Labor & Employment
BOSTON



Kristin McGurn
Labor & Employment
BOSTON

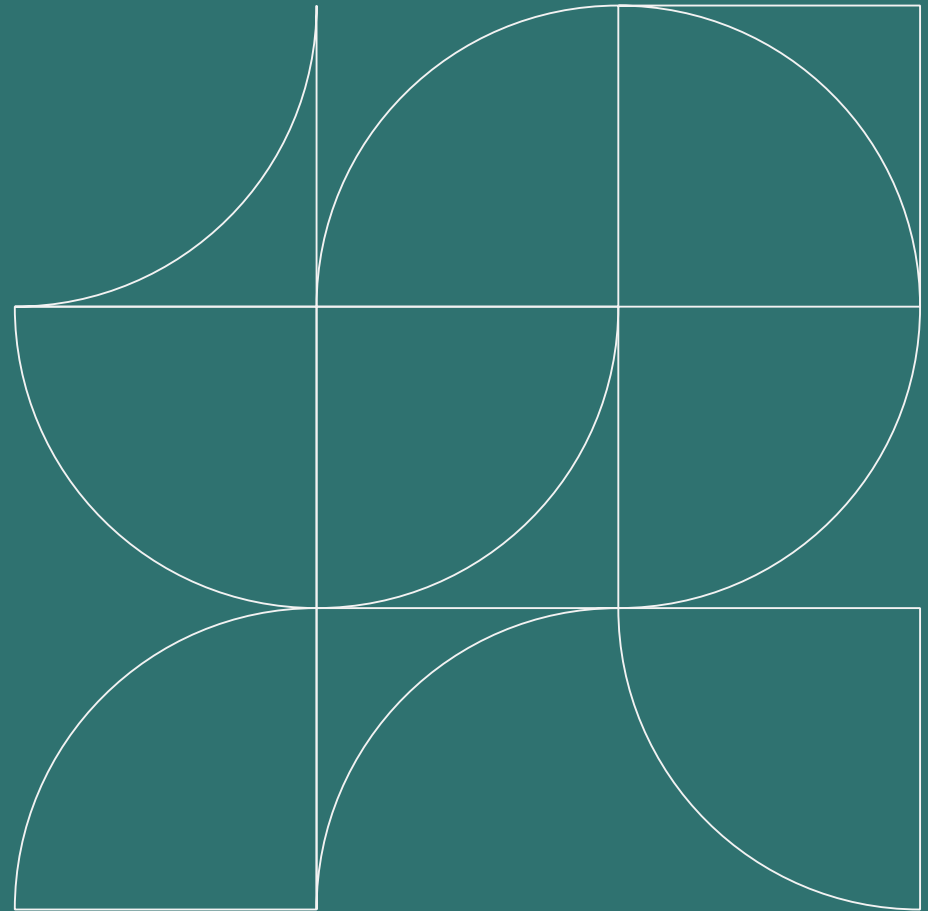


Patrick Bannon
Labor & Employment
BOSTON



Adam Young
Labor & Employment
CHICAGO

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

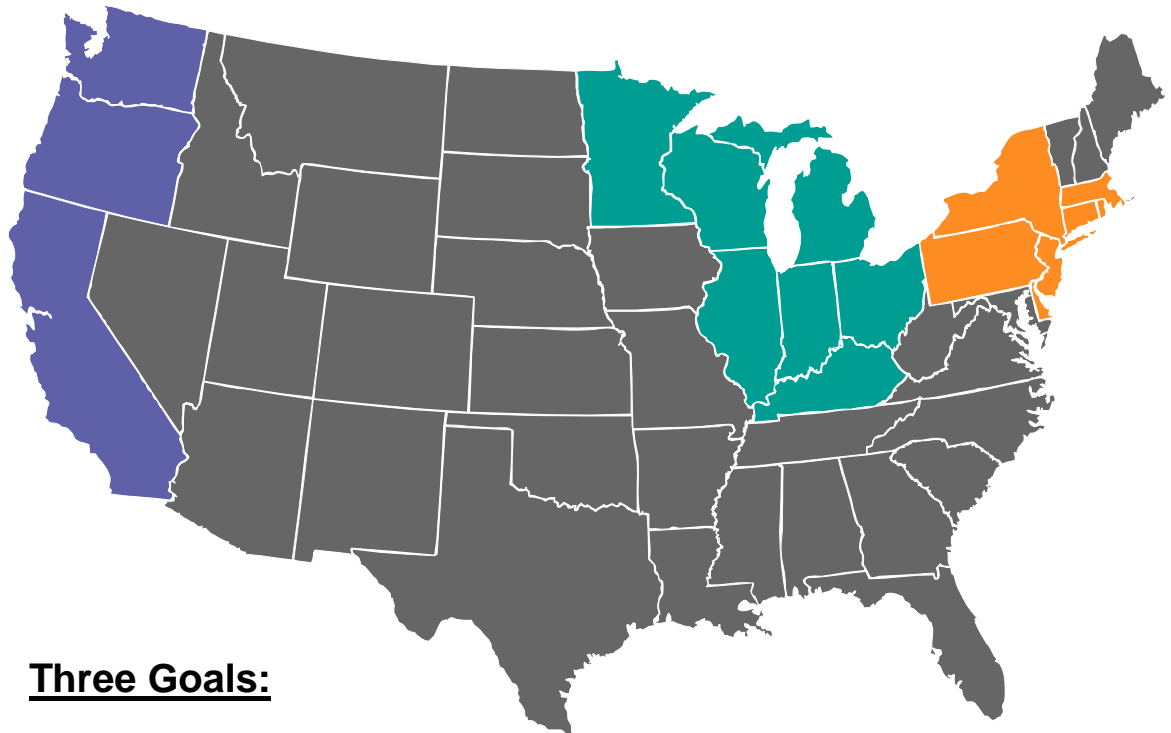


[https://www.whitehouse.gov/
openingamerica/](https://www.whitehouse.gov/openingamerica/)

- 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

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

Three Regional Alliances



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 Four Weeks

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

VERMONT

Vermont's reopening is taking place in a phased approach.

On **April 20**, service operations with a single worker permitted to resume subject to certain limitations.

On **April 27**, construction, manufacturing, distribution, libraries, and outdoor retail operations permitted to resume subject to certain limitations.

On **May 1**, farmer's markets permitted to resume with limitations.

Employers must complete and document mandated Vermont OSHA health and safety training by **May 4**.

MASSACHUSETTS

April 28: Stay-at-home order extended until **May 18**

Governor Baker established a Reopening Advisory Board to provide recommendations by **May 18** for a phased reopening.

CONNECTICUT

On **April 27**, Governor Lamont announced that if cases continued to decline over the next seven to ten days, the state may ease restrictions.

On **April 30**, Governor Lamont announced at a press conference that the state planned to begin a phased reopening on **May 20**. Certain categories of business permitted to resume operations include outdoor dining, retail operations, offices, hair and nail salons, certain museums and zoos, and university research programs.

States Reopening Business Over Next Four Weeks

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

MAINE

On **April 29**, Maine's stay-at-home order was extended until **May 31** with modifications to allow activities and business operations deemed safe.

On **May 1**, barber shops, hair salons, dog groomers, drive-in religious services and movie theaters, certain state parks, certain health care services, guided outdoor activities, auto dealerships and car washes are permitted to resume operations subject to restrictions.

On **June 1**, Maine tentatively plans to permit restaurants, fitness and exercise centers, nail technicians, retail stores, lodging and campgrounds, day camps, and coastal state parks to resume operations subject to limitations.

NEW HAMPSHIRE

New Hampshire has not announced plans for reopening, but has formed an Economic Re-Opening Task Force to develop and oversee plans to reopen private sector businesses.

RHODE ISLAND

On **April 27**, Governor Raimondo announced that the state intends to begin a phased reopening on **May 9**, with the stay-at-home order scheduled to expire **May 8**.

On **May 9**, Rhode Island tentatively plans to begin Phase 1 of its reopening and permit certain businesses to resume operations, including some parks, child care options, retail locations for in-store pickup. Phase 1 also plans to permit pilot openings of seated dining in restaurants, hair salons, and barber shops.

States Reopening Business Over Next Four 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 including Health Care



Industrial, Manufacturing, and Construction Companies including Pharmaceuticals and Life Science

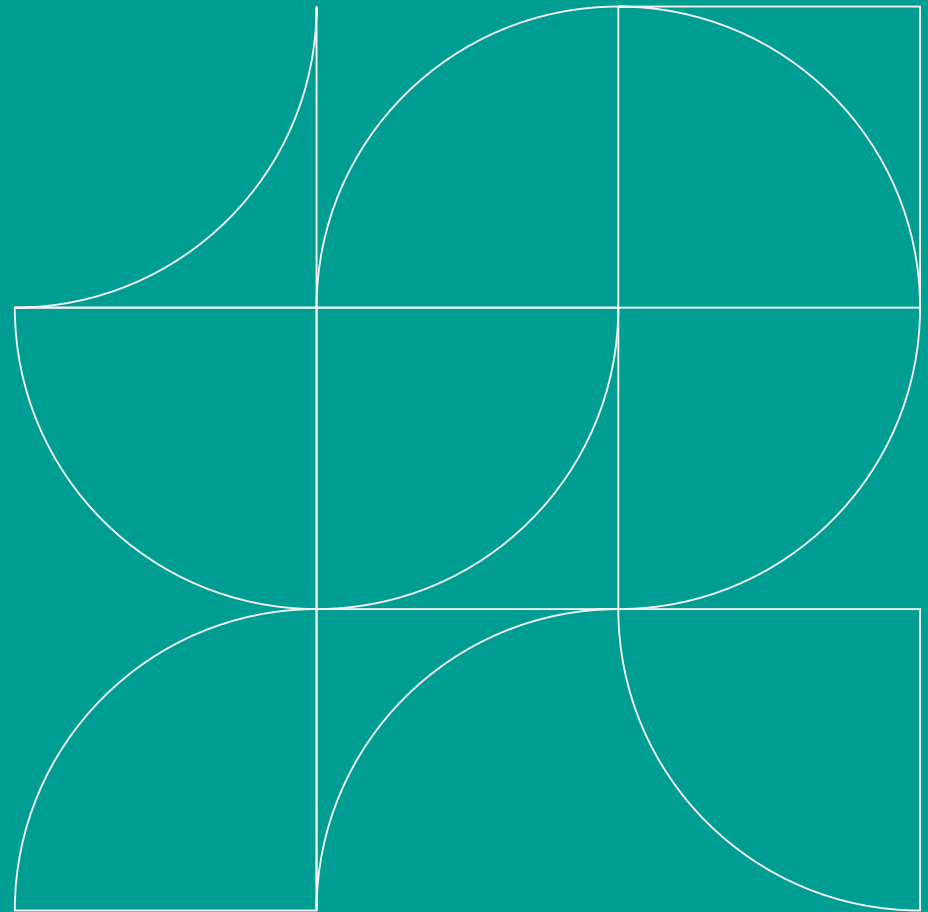


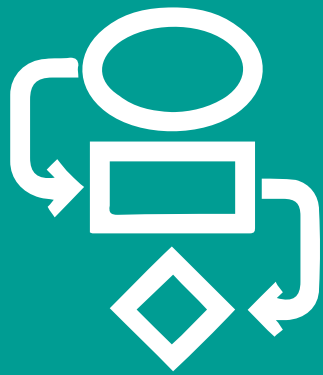
Office-Based Companies



High Consumer Density Companies including Universities

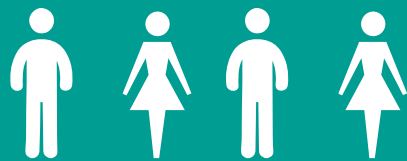
The Plan: Before Employees Return





Which Local, State and Federal Directives Apply

- State and local shelter-in-place, hygiene, gathering and industry-based orders are changing rapidly
 - OSHA, DPH, health and safety guidelines (vary by location)
- Paid sick, paid leave, unpaid leave, and other relevant laws (by location)
- Determine whether to bargain with union(s) regarding workplace health/safety protocols and other changes to policies and practices
 - incentives (sunsets), seniority/bumping during phased return from furlough, temp checks (effects of mandate), fear
- Consider any industry-specific requirements or business considerations (e.g., healthcare, retail)



Optimal Organizational Approach

- Develop a clear, timely communication plan
- Designate a core team to make company-wide policy decisions looking forward to the new normal
 - HR
 - IT
 - Building Facilities
 - Health & Safety
 - Office Managers
 - Senior Management
- Determine the right approach for the business and the workforce



Which Employees Will Work On Site (How, Where & When)

- when to bring employees back
- which employees are legally permitted at the worksite
- which employees at the worksite immediately (and timing)
- prohibiting entry to worksite due to COVID-19 positive, symptoms, potential exposure, isolation or quarantine by a health care provide or public health officer
- navigating legally-protected leaves (plan for business impact of expanded future requests)
- high-risk employees
- employees with logistical/other barriers (e.g., child care, transportation)



Expanded Requests to Work Remotely

Has the remote work philosophy changed? Was productivity established?

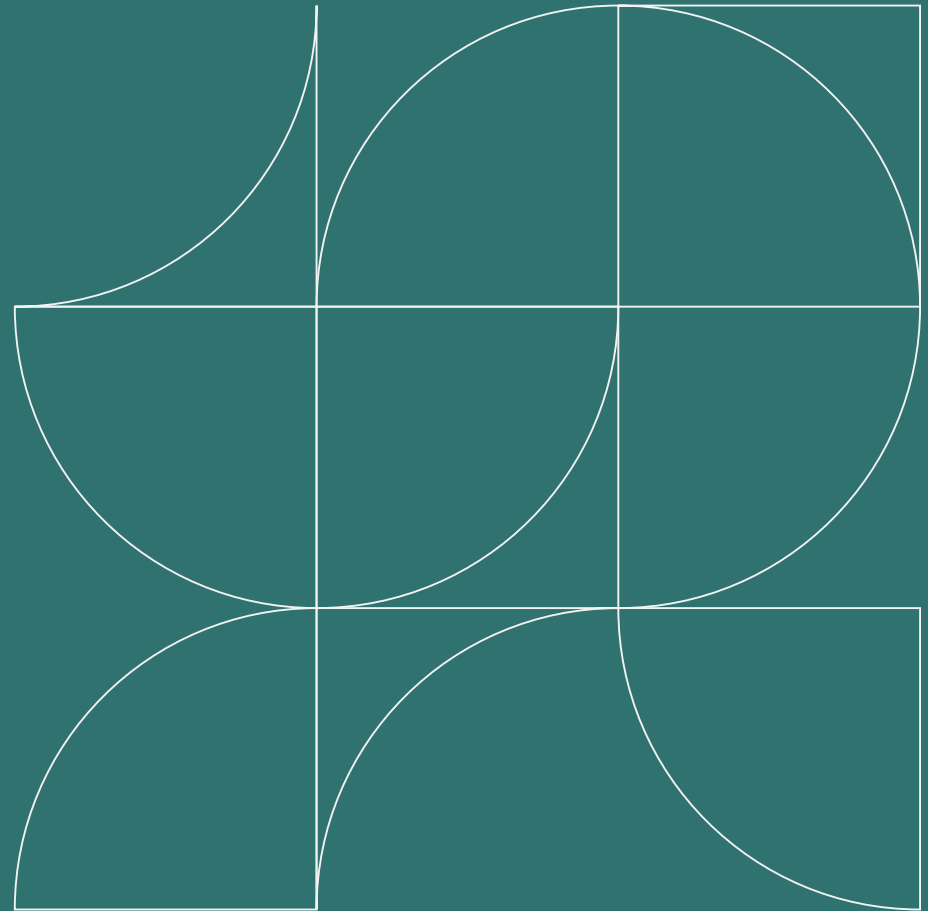
- reasonable disability accommodations (including revisiting pre-COVID-19 accommodation request denials)
- fear of COVID-19 (note: potential ADA and whistleblower issues)
- membership in a vulnerable population
- allegation(s) of violations of health and safety orders and/or laws or need to quarantine due to potential exposure
- child/senior care challenges
- transportation challenges
- household family members being in a vulnerable population (pre-vaccine) (e.g. underlying medical conditions/immuno-compromised or senior citizens)
- personal reasons



Who is Safe to Enter?

- Screening process to determine if individual employees are safe to return
- 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

Return to Work Nuts and Bolts





Bring Work from Home to Orderly Close

- Company equipment
- Confidential information
- Compensation
 - time worked
 - meal and rest periods
 - expense reimbursement
- Leaves
 - PTO
 - Leaves required by federal and state law



Re-Orientation for Return to Workplace

- Develop a plan for RTW nuts and bolts
- Communicate with employees about changes
- Solicit questions and suggestions
- Provide orientation/training about changes
- Update postings
- Unionized employers consider duty to bargain



Changes That Could Trigger Legal Obligations

- Pay changes
 - hazard pay
 - changes to commissions/incentive comp
 - reduced salaries
- Different duties
- Schedule changes
- Lunch break changes
- New pre- or post-work routines
- Distribute any required notices regarding pay or schedule changes



Update Employment Policies and Other Practices

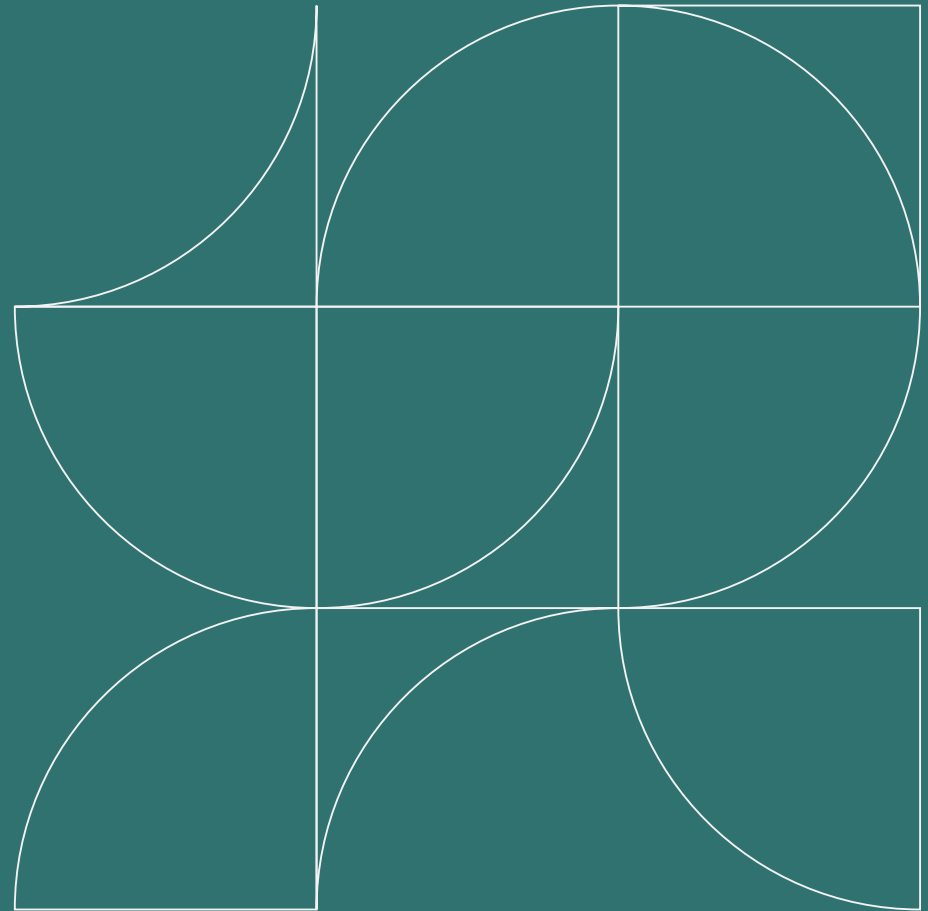
- Determine new COVID-19 legal requirements (and applicable sunset provisions)
- Update employee handbook or other policies as necessary
- Create and implement COVID-19 related and other policies/protocols
- Anticipate more requests for time off, reasonable accommodations, remote work, etc.



Communicate 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
- Communications to potential applicants

Protocols to Consider

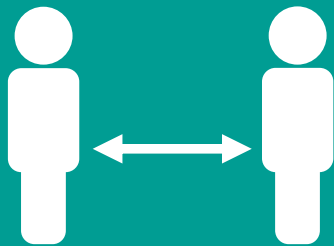




Social Distancing Protocols

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., Plexiglas, 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

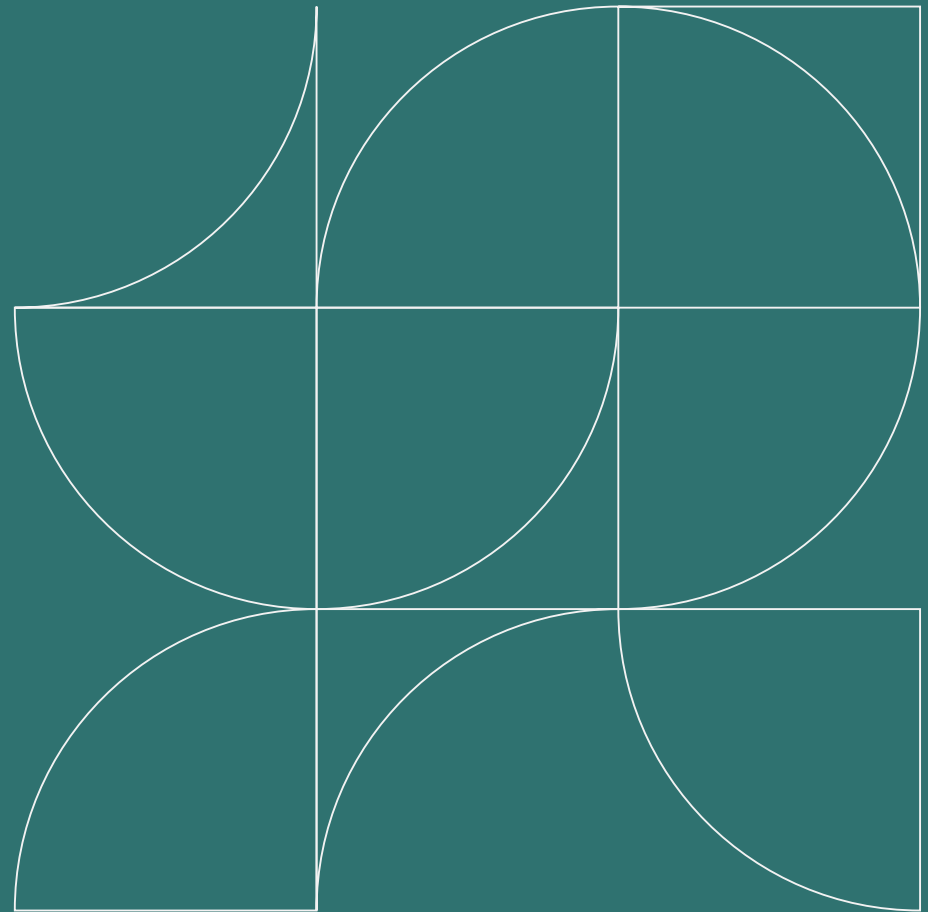
- Cleaning Considerations Continued
 - Develop a protocol for locker areas; ask employees to leave items at home or in cars to the extent possible. Consider whether uniforms and PPEs can put on/off at home or in the car (note: potential wage hour issues)
 - Stock the workplace with hand sanitizer, facial 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 your 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
- Identity 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
 - 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, basic blocking and tackling
 - 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
 - Safety 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

The image features a solid teal background. On the left side, there is a white geometric design consisting of a vertical line, a horizontal line, and two curved lines that meet at the intersection of the vertical and horizontal lines, forming a shape reminiscent of a stylized 'S' or a pair of mirrored curves. The text 'Thank You' is positioned on the right side of the image, centered vertically relative to the horizontal line of the design.

Thank You