Getting The Workforce Back to Work

A McGriff COVID-19 Reopening Best Practice Advisory

McGriff

Content

Back to the Workplace

Recovering from the COVID-19 pandemic will be one of the most significant challenges most companies will ever face. And even as businesses fight to survive the current pandemic, the possibility of a resurgence looms, forcing businesses back into another partial or total shutdown. Because of this uncertainty, businesses must reopen thoughtfully and strategically.

McGriff is committed to providing the guidance our clients and partners need. The following is a summary of best practices companies should consider when reopening.

Managing
Employee Risk

In mid-April President Trump unveiled Guidelines for Opening Up America Again; a three-phased plan to reopen the economy and help people return to their jobs while continuing to protect American lives. While some essential businesses have remained open during the pandemic, many others have partially or totally shutdown, awaiting the appropriate time or governmental authorization to reopen. The shutdowns have led to significant business disruptions and a variety of risks for businesses to manage as they strive to protect their employees and resume operations. Though return to work plans will vary depending on work setting and location, all businesses have much to consider.

When implementing the phased-in approach employers should adhere to the Occupational Safety & Health Administration's General Duty Clause (29 USC 654) requiring (1) *Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees;* (2) *shall comply with occupational safety and health standards promulgated under this Act.*

Phasing in the Workforce

With employee safety as the primary concern, organizations should consider a phased reopening, which will help ensure the readiness of staff, equipment and systems. Constant communication is essential and each step in the reopening process should be documented to ensure no critical actions are missed. Employers should closely follow and continuously evaluate their internal guidelines for resuming operations. For more information on return to work plans be sure to review the U.S. Chamber of Commerce guidance in Return to Work.

A phased reopening plan could include:

Phase 1: Planning and Coordination

• Evaluating contracts and insurance policies to make sure all necessary areas of the business are covered. Consider filing insurance claims in the event of a loss due to the shutdown.

• Developing a timeline and scope for reopening.

• Clearly communicating to employees and stakeholders ahead of time regarding plans to reopen. Include bargaining unit representatives where applicable.

• Evaluating schedules and staffing needs, including contingency plans in case of additional illness. Consider a staggered return to work starting with most critical positions.

• Developing plans for screening of employees and visitors and evaluate Personal Protective Equipment (PPE) needs and requirements.

• Evaluating employee illness/leave plans and return to work procedures. Follow all laws and regulations set forth by the Department of Labor (DOL), Equal Employment Opportunity Commission (EEOC), and other federal, state and local agencies.

• Determining if additional resources are needed for production, maintenance, cleanup and repair.

• Evaluating vendor and supply chain contracts to make sure they're adequate for the restarting and sustaining operations. Have contingency plans in place to prevent supply chain interruption.

• Developing a plan for responding to suspected or confirmed employee infections. It should include steps for isolating and disinfecting appropriate area(s), separating and screening other employees, and staffing contingency plans if other employees are exposed.

Phase 2: Preparation and Testing

- Preparing the building and facilities for operation:
  - Cleaning and disinfecting according to Centers for Disease Control and Prevention (CDC) guidelines.
  - Checking for damage and leaks that may have occurred during closure.
  - Testing and inspecting all systems and utilities to ensure they are operating properly. Items might include phones, HVAC systems, fire and security alarms, and security cameras.
  - Assessing all life safety systems to ensure inspections are up to date and all equipment is functioning properly. Include fire detection and suppression systems, fire extinguishers, eyewash stations, security systems, and any other essential life safety equipment.
  - Flushing water lines upon return to prevent bacteria and clean all fountains and water coolers.
  - Ensuring all pools of water are cleaned and treated with the proper chemical mixture to prevent bacteria growth, including pools, spas, fountains, etc.
  - Evaluating and testing information technology (IT) systems to ensure they're fully functional, updated and adequately protected. IT should prepare to respond to expired credentials and forgotten passwords.
- Posting signs requiring employees and visitors to report symptoms of illness and remain home if they feel sick.
- Evaluating workstations for social distancing and consider repositioning or installing barriers to prevent employee exposure to COVID-19 according to OSHA guidelines.
- If PPE is required or used, make sure employees are adequately trained.
- Conducting operational assessments to verify employee training and competency.
- Ensuring employees are fully aware of all hazards and safety procedures.
- Verifying that all safety equipment environmental monitoring systems are functioning properly.
- Verifying that all regulatory requirements are met.
- Conducting a final hazard analysis and facility surveys to ensure all hazards are addressed.
- Evaluating the need for additional handwashing/sanitizing stations.

Phase 3: Return to Operation

- Have patience with employees who are transitioning to the office from telework.

- Frequently cleaning and disinfecting public access spaces.

- Requiring employees and visitors to follow social distancing guidelines.

- Continuing to remind and encourage proper hand washing and hygiene practices.

- Discouraging the practice sharing of tools and equipment.

- Conducting pre-shift meetings to discuss all operational and safety procedures, including a thorough hazard analysis review.

- Closely monitoring equipment status and product quality where applicable.

- Constantly evaluating employee safety and health and associated policies and procedures.

- Closely monitoring employees and visitors for signs and symptoms of illness.

- Continuing to monitor the latest updates for COVID-19.

Engineering Controls

Engineering controls are an important consideration in ensuring a safe return to work as they help to isolate people from the hazard. Engineering controls could include:

• Office/workspace layout modifications

• Closing off areas that encourage congregating

• High-efficiency air filters

• Increasing ventilation rates

• Reducing or stopping work-related travel

• Minimizing contact among workers, clients and visitors

• Physical barriers

• Drive thru window for customer service

• No-touch technology

 The American Society of Heating, Refrigeration and Air-Conditioning Engineers recommend a focus on:

• Introducing clean air to indoors

• Moving contaminated air outdoors

• Diluting indoor air with clean and filtered outdoor air

Additional engineering controls include:

• Place patients with suspected or confirmed COVID-19 in an Airborne Infection Isolation Room (AIIR) for aerosol generating procedures

In addition to air handing controls, employers may use physical barriers such as plexiglas, glass or plastic windows at reception areas, drive-through windows, cashier stations and curtains between patients to help block the transmission of the virus.

Workplace Hygiene

Employers should educate employees on hygiene etiquette, including:

- Requiring employees to wear face coverings or face masks when social distancing is difficult.
- Advising employees to cover their mouth and nose with a tissue when coughing or using the inside of the elbow when sneezing. Tissues should be thrown in the trash.
- Instructing employees to wash their hands with soap and water for at least 20 seconds especially after they blow their nose, cough, sneeze or touch frequently used surfaces such as door handles.
- If soap and water are not readily available, provide employees with hand sanitizers that contain at least 60% alcohol.

Employers should make sure they have essential supplies on hand to support good hygiene, such as sanitizers, sanitizing wipes, paper towels, hand washing soaps, tissues, and no-touch trash cans. They should plan ahead by reviewing worksite layouts and purchasing additional resources such as carts for hand sanitizers and cleaning supplies. Employers should place posters encouraging hand hygiene at the entrance to the workplace and other highly visibility areas. Employees should use non-contact greetings rather than handshaking.

Environmental Cleaning, Disinfecting and Sanitation

Businesses should clean and disinfect frequently touched surfaces daily, including tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets and sinks. Dirty surfaces should be cleaned prior to disinfection with detergent or soap and water. After cleaning, a household disinfectant should be used. Most common Environmental Protection Agency (EPA) registered household disinfectants will work. Visit the CDC website for detailed guidance on cleaning items such as hard surfaces, soft (porous) surfaces, electronics, and fabrics.

Social Distancing

Employers should implement administrative workplace controls to promote social distancing. These company supported policies will help to change the way people work or act, limit their exposure.

Administrative Controls

- Providing flexible and alternate scheduling
- Minimizing contact among workers, clients and customers. Workers should stay at least 6 feet (about 2 arms' length) from each other
- Discouraging employees from sharing phones, desks, offices, or other work tools and equipment
- Requiring sick employees to stay home
- Promoting telework when feasible

Other Considerations

Businesses should consider situations where social distancing may be difficult or impossible, and implement strategies to reduce close contact of employees such as:

- Implementing one person at a time policies for shared spaces in the workplace, such as copier rooms, break rooms, locker rooms, and bathrooms
- Coordinating social distancing efforts with property management companies if the business is in a shared office building. This would include understanding how shared spaces, such as elevators, lobbies, entrances and exits, are managed
- Understanding how employees are traveling to and from work, (e.g., are they riding the bus or subway?) consider incentivizing employees to drive to work by offering paid or discounted parking.
- Encouraging employees to bring lunch and snacks from home rather than leaving the worksite. Close break rooms to encourage employees to eat in their car or desk depending on their work setting. Discontinue group gatherings or shared meals

Personal Protective Equipment (PPE)

Personal protective equipment (PPE) is an important defense against communicable diseases such as COVID-19. OSHA has offered guidance for PPE use as it pertains to preventing the spread of COVID-19. In general:

- PPE should be selected based on an employer's hazard assessment and workers specific job duties.

- When disposable gloves are necessary, use a single pair of nitrile exam gloves. Change gloves if they become torn or visibly contaminated with blood or bodily fluids.

- When eye protection is needed, use goggles or face shields. Personal eyeglasses are *not* considered adequate eye protection.

- If workers need respirators, they must be used in the context of a comprehensive respiratory protection program that meets the requirements of OSHA's Respiratory Protection standard (29 CFR 1910.134) and includes medical exams, fit testing and training. Surgical masks are not respirators and do not provide the same level of protection as properly-fitted respirators.

- If there are shortages of PPE, such as respirators or gowns, they should be prioritized for high-hazard activities.

  - Workers need respiratory protection when performing or while present for aerosol-generating procedures, including cardiopulmonary resuscitation (CPR) and intubation.

  - Workers must be protected against exposure to human blood, bodily fluids, other potentially infectious materials, hazardous chemicals, and contaminated environmental surfaces.

- The CDC provides strategies for optimizing the supply of PPE, including guidance on extended use and limited reuse of N95 filtering facepiece respirators (FFRs) and methods for decontaminating and reusing disposable FFRs during crises.

Please note, the following PPE guidelines are intended for use in healthcare setting but may also be beneficial to employers in other sectors:

- After removing PPE, employees should always wash hands with soap and water for at least 20 seconds, if available. Ensure that hand hygiene facilities (e.g., sinks or alcohol-based hand rubs) are readily available at the point of use (PPE removal area).

- Employers should ensure workers follow standard operating procedures for cleaning (including laundering) PPE and items such as uniforms or laboratory coats intended to function as PPE. They should also follow procedures for maintaining, storing and disposing of PPE. When PPE is contaminated with human blood, bodily fluids, or other potentially infectious materials, employers must follow applicable requirements of the Bloodborne Pathogens standard (29 CFR 1910.1030) with respect to laundering. OSHA's "Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens" directive provides additional information.

Employers in all sectors may experience shortages of PPE, including gowns, face shields, face masks and respirators. These shortages have a critical impact on the ability of the U.S. healthcare system to care for the most seriously ill COVID-19 patients. However, employers outside of healthcare may also experience the effects of shortages as PPE supplies are diverted to healthcare facilities where they are most needed.

Employers are always responsible for complying with OSHA's PPE standards (29 CFR 1910 Subpart I), including the Respiratory Protection standard (29 CFR 1910.134), whenever they apply. OSHA is providing temporary enforcement flexibility for certain requirements under these and other health standards.

COVID-19 Testing & Contact Tracing

Contact Tracing

Non-critical infrastructure employers with an employee who tests positive for COVID-19 should compile a list of co-workers who've had close contact (less than 6 feet) for a prolonged period of time (more than 10 minutes). Employers should inform affected employees of their possible exposure to COVID-19 in the workplace and instruct them on how to proceed based on the following CDC Public Health Recommendations for Community-Related Exposure:

- Stay home until 14 days after last exposure and maintain social distance (at least 6 feet) from others at all times
- Self-monitor for symptoms
- Check temperature twice a day
- Watch for cough, shortness of breath or at least 2 of the following symptoms:
    - Fever
    - Chills
    - Repeated shaking with chills
    - Muscle pain
    - Headache
    - Sore throat
    - New loss of taste or smell
- Avoid contact with people at higher risk for severe illness (unless they live in the same home and had same exposure)
- Follow CDC guidance if symptoms develop
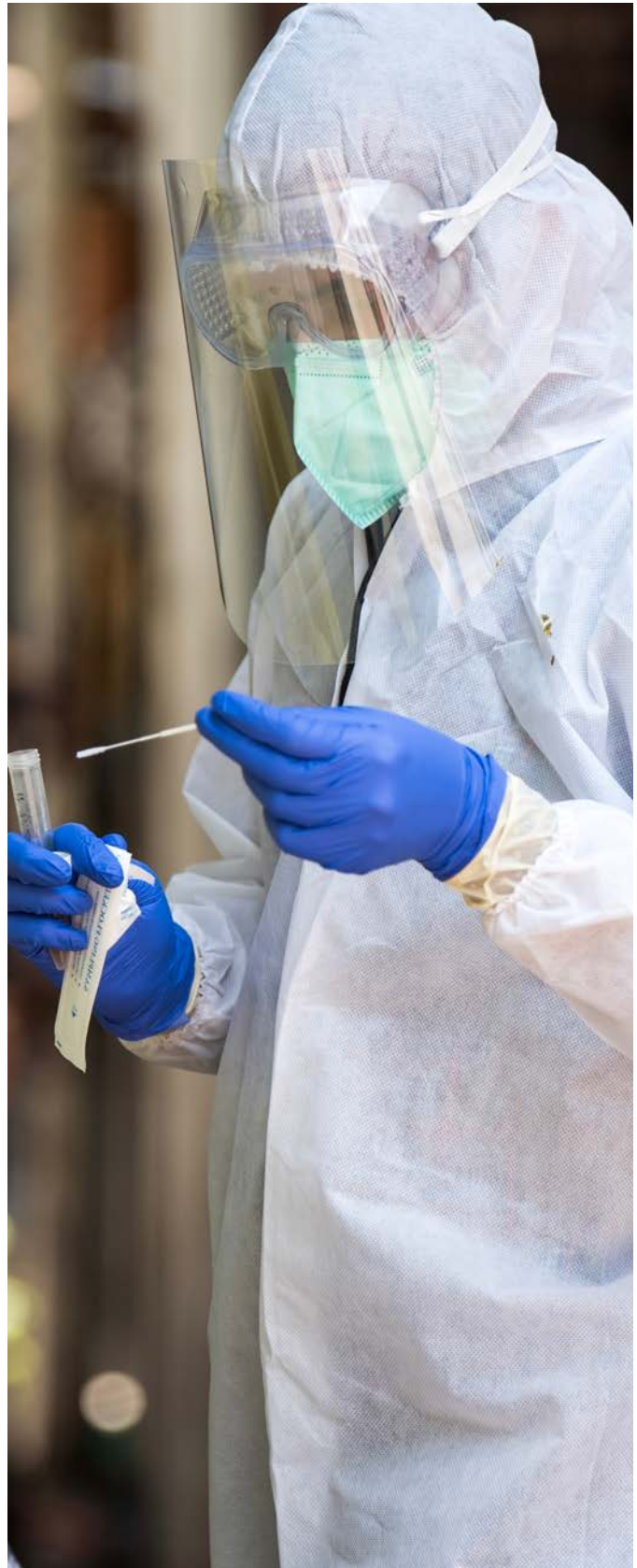
COVID-19 Testing

Many diagnostic tests are available and more are gaining emergency approval. Currently there are two main types of testing:

- **Molecular Tests for an active infection.** Swab tests to the nasal cavity or through saliva testing. Due to limited tests and personal protection equipment, testing in most states has been limited to symptomatic patients, or for people who are considered frontline workers, such as health care providers.

- **Serological Tests/Antibody Testing.** Helps identify individuals who have developed an immune response to the virus as part of an active or prior infection. Many policy makers and health officials believe that antibody testing will be a potential important pathway for reopening once more is known about the immune response to COVID-19.

Testing employees for any particular disease in the workplace is a high-level risk for the employer because:

- It may give the employer specific Protected Health Information (PHI) as it relates to HIPAA

- It may lead to health-related decisions that the employer is not qualified or licensed to make

- It may give employees a false sense of security that those allowed to work are not contagious and therefore take general precautions less seriously

- Test kits might be unapproved and unreliable

- No empirical data exists to prove that the presence of COVID-19 antibodies in the blood is long-lasting or even an indication that a person cannot be infected again

- The EEOC will likely consider COVID-19 tests as a medical exam and a violation of the Americans with Disability Act (ADA)

- Testing will likely involve sharing data with local public health authorities, requiring a system for such communications

General Health Screening
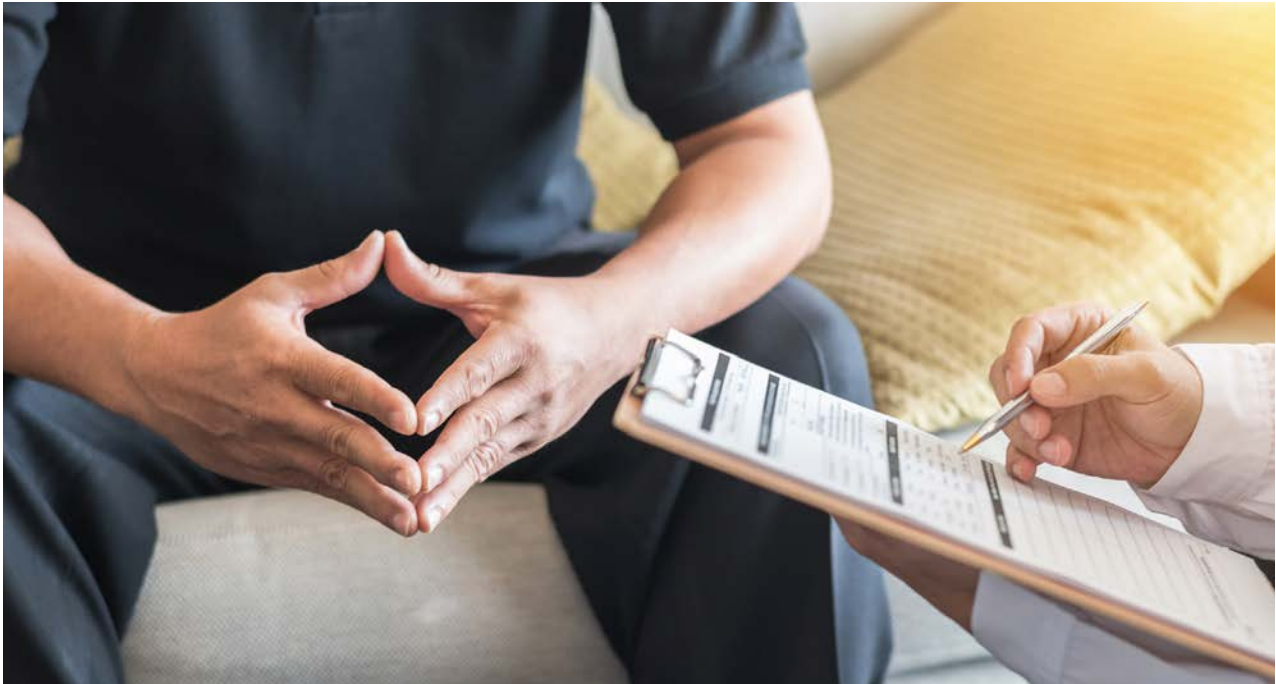
Employee screening has been at the forefront of many employers' minds, especially in those critical infrastructure businesses that have remained open. Prior to the pandemic, the ADA generally prohibited employers from requiring any type of medical examination. Now the EEOC clearly states that because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued precautions, employers may measure their employees' body temperature without violating the ADA. (EEOC-Pandemic Preparedness In The Workplace And The Americans With Disabilities Act March 21, 2020)

The CDC has issued specific guidance outlining strategies workplaces should consider in communities with minimal to moderate COVID-19 spread, including regular health checks with temperature and respiratory symptom screening for employees. Employers should stay up to date on their state and local health department's mitigation strategies and recommendations.

Employers who opt to conduct employee screening should consider how they will protect screeners. The best methods incorporate social distancing or physical barriers to help minimize the screener's exposure. The CDC recommends:

Social Distancing: Ask employees to take their own temperature either before coming to the workplace or upon arrival. Stand at least 6 feet away from the employee and:

- Ask the employee to confirm that their temperature is less than 100.4° F (38.0° C), and confirm that they are not experiencing coughing or shortness of breath
- Visually inspect the employee for signs of illness, which could include flushed cheeks or fatigue
- Screening staff do not need to wear PPE if they can maintain a distance of 6 feet

Barrier/Partition Controls: The screener should stand behind a physical barrier, such as a glass or plastic window or partition, to protect their face and mucous membranes from respiratory droplets that may be produced when the employee sneezes, coughs or talks. The screener should wash hands with soap and water for at least 20 seconds or, if soap and water are not available, use hand sanitizer with at least 60% alcohol. Then:

- Visually inspect the employee for signs of illness, which could include flushed cheeks or fatigue
- Conduct temperature and symptom screening using this protocol:
  - Wear disposable gloves
  - Check the employee's temperature by reaching around the partition or through the window. Make sure the screener's face stays behind the barrier at all times during the screening
  - If performing a temperature check on multiple employees, use a clean pair of gloves for each one and thoroughly clean the thermometer in between each check. If disposable or non-contact thermometers are used and there has been no physical contact with an employee, gloves do not have to be changed before the next check. If non-contact thermometers are used, clean and disinfect them according to manufacturer instructions and facility policies
  - Remove and discard gloves, and wash hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer with at least 60% alcohol

If social distance or barrier controls cannot be implemented during screening, PPE should be used when the screener is within six feet of an employee. However, reliance on PPE alone is a less effective control and more difficult to implement given PPE shortages and training requirements.

Reliance on Personal Protective Equipment (PPE): The screener should wash their hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60% alcohol, put on a facemask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), and a single pair of disposable gloves. A gown may be considered if extensive contact with an employee is anticipated. The screener should also:

- Visually inspect the employee for signs of illness, which could include flushed cheeks or fatigue, and confirm that the employee is not experiencing coughing or shortness of breath.

- Take the employee's temperature.

- If performing a temperature check on multiple employees, use a clean pair of gloves for each one and thoroughly clean the thermometer in between each check. If disposable or non-contact thermometers are used and there has not been physical contact with an employee, gloves do not have to be changed before the next check. If non-contact thermometers are used, clean and disinfect them according to manufacturer instructions and facility policies.

- Remove and discard gloves, and wash hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer with at least 60% alcohol.

Employees Who Feel Sick
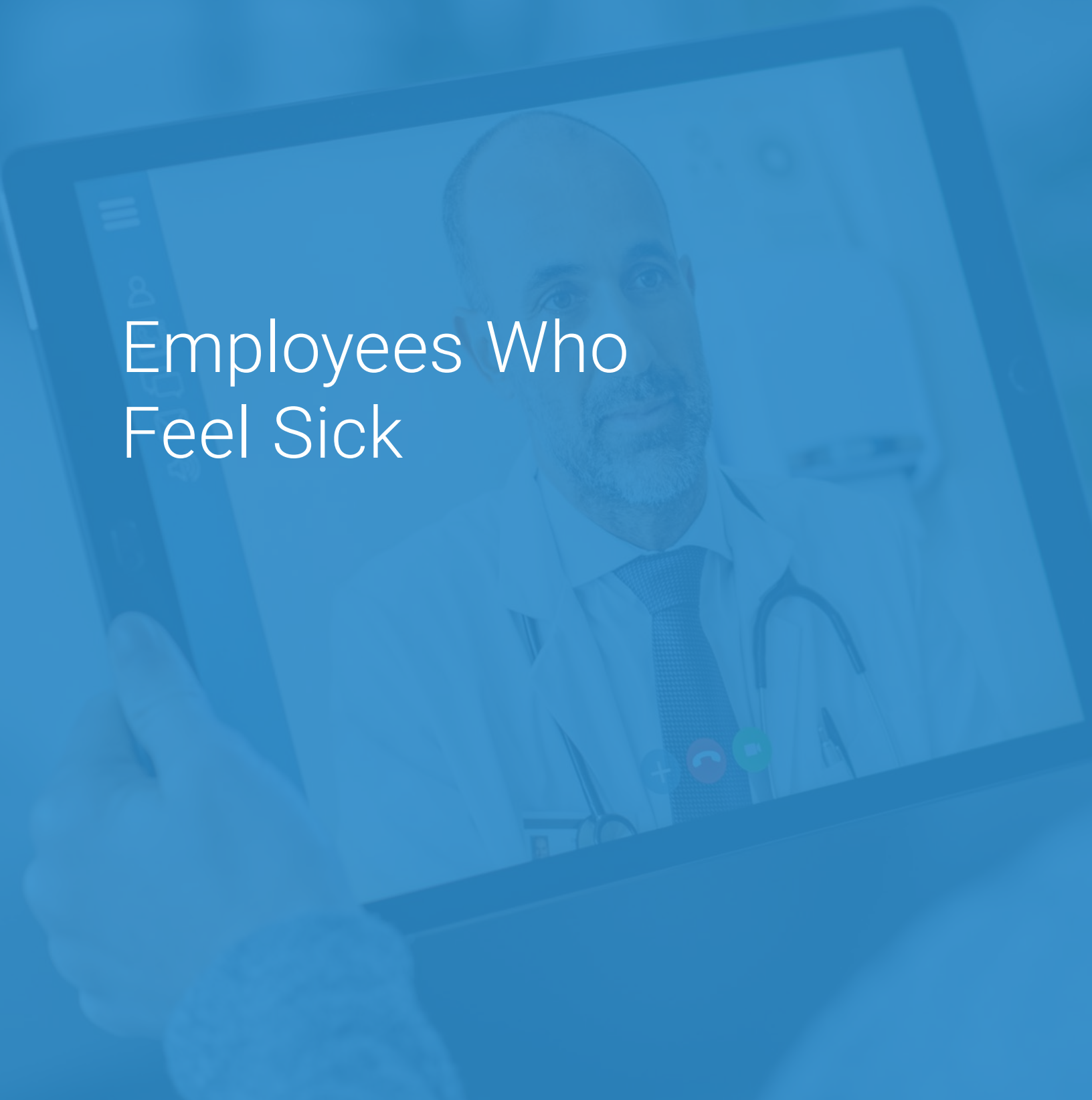
Sick Employees

Educating employees on symptoms so they can self-monitor is very important. Employees who show signs of sickness as the result of a screening or at any time during the work day should return home and be provided with educational resources from the CDC.

Work Exposures

If a business has been deemed a Critical Infrastructure Business, with essential workers, the CDC recommends daily screening (including a temp check) of employees before entering the workplace if they have been exposed to a person who is suspected to or is known to have COVID-19. This would include employees who have had an exposure at work, home, or any known contact with a person who tested positive with COVID-19.

As it stands now, businesses that are considered non-essential will need to follow the guidelines issued by the CDC which means sending employees home to self-isolate for fourteen (14) days if they have been exposed to a person with confirmed COVID-19. This could potentially mean re-shutting the doors of some businesses, if they have an employee who has been diagnosed with COVID-19 and have been in contact with the rest of the workforce. **As the pandemic situation is constantly evolving, these guidelines are subject to change. It is imperative for employers to stay abreast of current CDC and state and local guidelines.**

Returning to Work

After documenting when symptoms began, employers should keep in touch with sick employees in preparation for a return to work once they recover. The CDC recommends a return to work after:

- At least 3 days (72 hours) have passed since recovery, which is defined as resolution of fever without the use of fever-reducing medications
- Improvement in respiratory symptoms (e.g., cough, shortness of breath)
- At least 7 days have passed since symptoms first appeared or two consecutive negative tests

Remote Employee Considerations

Many employees have been able to work remotely throughout this pandemic. As businesses begin to return to the workplace, they must consider how they will manage the process for teleworkers. Until the employer's state and region has satisfied the proposed gating criteria (number of cases, hospital and testing capacity, etc.) per the federal "Guidelines for Opening Up America Again" plan, they are encouraged to use telework when possible. Employers should consider a phased approach when allowing employees to return on site.

- If able to continue using telework options, now is a good time for employers to conduct cybersecurity and workplace safety assessments to identify gaps and minimize the potential for future loss.

- As associates return to the workplace it is important to orient them to new company policies and procedures introduced during their absence. At a minimum, as we've said, employees should be educated about screening for symptoms, hygiene etiquette, social distancing, personal protective equipment, sick policies, and reporting on potential COVID-19 related issues.

- As employees return to the workplace, some may express concerns related to contracting the disease. Caution should be used in disciplining or terminating an employee who refuses to work in the office. Companies should continue to offer telework as an option until the pandemic situation is more stable.

Vulnerable Individuals, Shelter in Place & Special Accommodations

[According to the CDC](#), people living in a nursing home or long-term care facility, adults 65 years and older, and people of any age who have serious underlying medical conditions might be at a higher risk for severe illness from COVID-19.

- Per the White House's "Guidelines for Opening Up America Again" plan, until the employer's state and region shows "no evidence of a rebound" and satisfies the specified three rounds of gating criteria, employers should strongly consider making special accommodations for employees who are members of a vulnerable population.

- Offering telework may be the ideal form of accommodation since it greatly reduces the likelihood of transmission.

- In situations where the employee provides an essential service, employers may consider moving vulnerable individuals to locations within the facility where interaction with others is limited. Additional steps should be taken to protect these employees, such as sanitizing work areas, and ensuring access to personal protective equipment.

- Some employers who cannot offer telework or isolated work areas may grant requests for leave of absence under the ADA as a reasonable accommodation.

Managing
Customer Risks

Risk to Others on Premises

Employers must manage employee interaction and adhere to social distance protocols and other best practices to minimize the chance for virus-spread between employees, customers, guests and contractors. Some best practices employers may follow include:

- Posting signage at points of entry stating that no one with a fever or symptoms of COVID-19 will be permitted on the premises

- Establishing entrance and access controls to ensure customers, contractors and visitors are acknowledged, and that they are in compliance and agreement with risk mitigation protocols

- Requiring that face masks be worn on company property

- Insuring all contractors have implemented an exposure control plan that meets or exceeds the policies in place for the workforce

- Postponing unnecessary projects to eliminate interaction between contractors and employees

- Making sure vendors, contractors and delivery personnel know that all visits must be scheduled. Drop-in visits should not be allowed

- Establishing a drop-off point for deliveries as well as electronic notification to minimize interaction between employees and delivery personnel or contractors

- Whenever possible, meetings should be held virtually. When in-person meetings or interaction is unavoidable, employees must remain six feet apart

- Making hand-washing stations or hand sanitizer readily available. Touchless hand sanitizer dispensers are ideal

- Regularly checking and cleaning bathrooms. Employers should ensure that soap dispensers are full and functioning

- Frequently cleaning and sanitizing high-touch objects, handles, surfaces or objects reused by patrons

- Using signage, particularly in areas where people may be inclined to gather, to remind them of social distancing protocol

- Pre-arranging meeting rooms and common area seating to facilitate social distancing. Chairs should be offset so that individuals are not facing directly across from one another. Extra seats should be stored away until restrictions are revised

Human Resource Policies & Communications

Health Privacy

Employers should become familiar with federal and state laws designed to maximize the health privacy of individuals. These laws may be in conflict with employer requirements to verify an employee's COVID-19 status and/or their vulnerability due to underlying health conditions. Employer efforts to protect other employees and conduct contact tracing in the workplace after an individual has tested positive could be slowed by obligations to protect the infected individual's right to health privacy. Confidentiality requirements also could prevent businesses from narrowly focusing their contact tracing in order to balance workforce safety with minimal business interruption.

Policies and Procedures for Workforce: Contact Tracing Following Employee COVID+ test

Employers should consider implementing policies and procedures to assist in contact tracing in the event an employee tests positive for COVID-19. Some key considerations:

- Using a sign-in and sign-out log or other measures for employees, customers and vendors to assist in narrowing down potentially exposed people who may have come in contact with the employee who tested positive.

- Ensuring policies are in place to maintain confidentiality as required by the ADA.

- Obtaining state and local health department contact information for notification and guidance on next steps. Based on the amount of community spread, these officials may assist or take over contact tracing once informed.

- Larger organizations should consider preparing written notification statements for various stakeholders, especially if contact tracing is difficult due to a large number of employees.

- Providing individuals identified through contact tracing with information and support to understand their risk, as well as how to separate themselves from others and monitor themselves for illness. Remind contacts that they could be infected/contagious even though they do not currently observe any symptoms.

Education & Training

As employers begin to restart their business employee communication and education is crucial. Considerations include:

- Updates to Human Resources policies and procedures

- How to protect themselves at work, in public and at home

- Any workplace control changes and policy updates

- How to properly put on, wear, and take off any PPE

- How to manage customer and vendor interactions

- What steps will be taken if someone tests positive for COVID-19

Socializing at Work

Consider:

- Avoid gatherings of 10 or more people
- Keep at least 6 feet of distance from other people
- Host virtual meetings when possible
- Discourage people from shaking hands or greeting co-workers with a hug
- Discourage after-work social gatherings

Business Travel

The federal "Guidelines for Opening Up America Again" plan says that, until "*there* is *no evidence of a rebound that satisfies the state and regions gating criteria a second time*," employers should minimize non-essential travel. If associates must travel, employers should adhere to the [CDC guidelines regarding isolation following travel.](#)

Employers should review and update existing travel policies to reflect CDC guidelines as well as provide guidance on what constitutes essential and non-essential travel. They should require that employees inform their employer of business travel destinations research risks associated with the destination and take appropriate action to minimize the spread of COVID-19 when employees return.

Onsite Gyms, Child Care, Transportation and Other Workforce Support Programs

Employers should consider phasing in the reopening of supporting programs and services based on business needs. Childcare for essential associates, for example, may be a priority, whereas, cafeteria and onsite gym services may not.

When resuming services, employers should carry over the sanitation and mitigation techniques outlined in the section entitled "Managing Employee Risk," into these operations. For example, if providing shuttle services, limit the number of passengers per trip, regularly disinfect vehicles, etc.

Claim Reporting & Employer Recordkeeping

Claim Reporting

COVID-19 is a serious situation that continues to evolve into not only a substantial health crisis, but a financial crisis as well. If it is believed that the business has suffered a financial loss (such as business interruption, extra expense, preservation of property, interruption by civil authority, tenant prohibited access, etc.), or any other loss due to COVID-19 file a claim with your insurance carrier. McGriff encourages swift reporting, even without full details of the loss to insurers in order to reserve rights under the policy, and to protect any potential coverage that may apply. While most polices have exclusions specific to virus that could preclude coverage for the presence of or threat of this type of pandemic, it is important to act now in order to protect interest under the policy.

Please note each insurance policy has various terms, conditions, exclusions, warranties and restrictions associated with them and must respond based on the specifics of the particular claim presented.

Best Practices for Documenting Claims

Businesses should take steps to collect information that will help substantiate a loss. Consider the following guidance on preparing potential claims:

- Carefully review policy notification requirements to understand and fulfill claim reporting obligations. Laws vary across the different jurisdictions, but many courts have determined that failing to notify the insurance company promptly can result in the outright denial of coverage for the claim.

- Contact the insurance company as soon as possible when it is believed a claim has first occurred.

- Collect and maintain records related to the loss. In order to complete its claim investigation, the insurance company will need general background information related to the event to understand what it consists of, how it occurred and when it happened. Examples include copies of correspondence, time records, vendor invoices, tax returns for prior years, financial information, etc.

- Keep documents in a secure, yet accessible location.

- To optimize claim outcomes, consult with your insurance broker or a forensic accountant to ensure complete and accurate information is presented to the carrier.

Recording under OSHA Recordkeeping Standard

According to the OSHA Recordkeeping Standard, employers are responsible for recording cases of COVID-19 as a recordable illness if all of the following are true:

- It is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);

- The case is work-related as defined by federal regulations (as defined by 29 CFR 1904.5); and

- The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7:
    – Death
    – Days away from work
    – Restricted work or transfer to another job
    – Medical treatment beyond first aid
    – Loss of consciousness

- A significant injury or illness diagnosed by a physician or other licensed healthcare professional (e.g., medical treatment beyond first aid, days away from work).

Insurance Considerations

Workers' Compensation

Many clients have inquired about potential Workers' Compensation claims arising from employees contracting COVID-19 during the course of their employment. As with any communicable disease, the answer is not black and white. Circumstances regarding any alleged workplace exposure would need to be investigated.

As with any ordinary virus, if it is a condition that the general public is equally exposed to, the workers' compensation policy would likely NOT apply. However, if the employee could prove that their job put them at greater risk than the general public of contracting the virus, some jurisdictions may grant coverage. Employers who have conducted their hazard risk assessment will be better prepared and have a better understanding of their true workplace risk of exposure.

Property and Business Income

Typically, in order for a Property policy to provide coverage, there must be "direct physical loss or damage" to covered property from a covered peril. That is, the property must be demonstrably altered in some fashion. A disease, virus, or threat thereof, generally does not constitute direct physical loss. However, in the absence of a specific exclusion related to virus or communicable disease, some jurisdictions may hold that the actual, proven presence of virus can be sufficient to trigger coverage. Individual policies, locations, and situations vary, so it is important to discuss this with your broker and/or claims person.

Likewise, for Business Income coverage to trigger, there typically must be "direct physical loss or damage" to covered property from a covered peril.   So, as with a Property claim, the best chance for finding coverage is with the proven presence of virus in or on a property.

As a result of government imposed shut downs and quarantines, many businesses are facing lost revenues from simply not being able to operate, or are operating at a reduced capacity. There is no virus present at their property or even at a neighboring or supplier property; they are simply not able to operate to due imposed restrictions or simply lack of business. Many policies contain a coverage grant for Civil Authority, but this grant of coverage typically requires the shutdown to be the result of a covered peril. The threat of virus in the community, unfortunately, is not a covered peril, so there is little to no coverage to the typical business offered by these coverage grants. Again, consult your broker and/or claims person for specific advice relative to your individual case.

Commercial General Liability

Standard Commercial General Liability policies do not contain exclusionary language related to virus or communicable disease. Accordingly, these policies should typically respond in a situation where an individual alleges they were infected with the coronavirus while on the insured's property or if they were sold a product that caused infection. The burden of proof would be with the injured party to prove causation and associated damages, but the policy would provide defense cost coverage in the process.

Environmental Liability

Environmental policies vary greatly by insurers and the type of risk being covered. Some may contain specific grants, outright exclusions, or remain silent related to communicable diseases and viruses. Most environmental policies contain some degree of coverage for both third parties (clients, customers, visitors) as well as first party (the insured). These policies can potentially respond to some degree of cleanup, legal expenses, decontamination, bodily injury, property damage, or business interruption. Your broker and/or claims person can help you navigate this coverage and the claims process.

Directors and Officers

Directors and Officers policies may provide coverage for the costs and liabilities arising from shareholder lawsuits alleging that the company failed to act reasonably and plan appropriately in response to the coronavirus. Examples of this may include a failure to create adequate supply chains or failing to reveal financial risks that would result in financial loss to the organization.

Employment Practices

Employment Practices Liability insurance (EPLI) is coverage designed to protect employers from employee lawsuits alleging workplace-related wrongdoing. If the company is forced to terminate an employee due to a shutdown of operations, and that employee were to file litigation for wrongful termination, the EPLI policy may provide coverage in that action, depending on the specific policy language.

Cyber Liability

Cyber policies may provide reimbursement for lost funds, cost of investing computer breaches, costs of repairing computers/networks, costs of credit monitoring for privacy breaches and other damages caused by the cyber criminals. Cyber criminals are exploiting system vulnerabilities, as more employees are relying on remote access which is less protected than controlled office networks and environments.

Resources to Support Business Reopening

Moving Forward

For many business owners, recovering from this pandemic will be a challenge. Navigating the many human, financial, and operational issues have been and will continue to be a heavy burden. McGriff is dedicated to providing the highest level of service and support during these times of uncertainty. We will remain focused on handling insurance, risk management and employee benefit needs as clients navigate the pandemic.

Authorities on the COVID-19 Pandemic

Specific CDC Guidelines for Employers

Since the CDC is at the forefront of the nation's pandemic response, it understands the risk and effective mitigation techniques for controlling the spread of the virus. Businesses should rely on CDC pandemic response resources as well as state and local public health officials, which are better positioned to assess local impact and therefore help with decision making.

Occupational Health and Safety Administration (OSHA) Guidance (Tiers)

OSHA has classified worker risk of occupational exposure to COVID-19 into four levels:

- Very High- Healthcare and morgue workers performing aerosol-generating procedures on or collecting/ handling specimens from potentially infectious patients or bodies of people known to have, or suspected of having, COVID-19 at the time of death
- High- Healthcare delivery, healthcare support, medical transport, and mortuary workers exposed to known or suspected COVID-19 patients or bodies of people known to have, or suspected of having, COVID-19 at the time of death
- Medium- Jobs that require frequent/close contact with people who may be infected, but who are not known or suspected patients
- Lower Risk (Caution) - Jobs that do not require contact with people known to be, or suspected of being, infected

World Health Organization

The World Health Organization (WHO) consists of more than 7,000 people across 150 offices whose mission is to promote health, keep the world safe and serve the vulnerable. The organization makes independent recommendations based on available science and data, and their main areas of work include health systems, non-communicable diseases, preparedness, surveillance and response and corporate services. Employers may access information from WHO to seek guidance on protecting individuals, travel advice, myths, technical guidance, and research.

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