

## Pandemic Transition

# How to Reopen, Bring Staff Back to Work Safely



**I**F YOUR business is preparing to reopen after a relaxation of shelter-in-place orders, you should proceed with caution and make sure you have safeguards in place to protect your workers, as well as customers if they are entering your premises.

How can you take that first step back to a semblance of normalcy?

Here are some recommendations from the Los Angeles Department of Public Health and other sources that can apply to any municipality anywhere in the country.

The advice mainly applies to establishments that will have customers, but most of the recommendations are relevant across a wide swath of sectors.

### Measures to protect employees

- If someone can continue working from home, let them do so.
- Tell employees not to come to work if sick.
- If any employee tests positive for, or has symptoms that are consistent with COVID-19, you should:
  - Ask that they isolate at home, and
  - Ask all employees who may

have come in contact with that colleague to immediately self-quarantine at home.

- Check employees for symptoms or a fever before they enter. This must include a check-in concerning cough, shortness of breath or fever and any other symptoms the employee may be experiencing.
- These checks can be done remotely or in person upon the employee's arrival. A temperature check should be done at the worksite, if feasible.
- Offer at no cost to your employees cloth face coverings if they are going to have contact with the public during their shift. If they are disposable, masks should be thrown away at the end of every shift. If they are reusable, they should be washed after every shift in hot water.
- Instruct employees not to touch the exterior of their masks.
- Disinfect break rooms, restrooms and other common areas frequently.
- Place hand sanitizer in strategic

locations.

- Allow employees to take frequent breaks to wash their hands.

### Signage

Place signs at each public entrance of your facility to inform all employees and customers that they should:

- Avoid entering if they have a cough or fever.
- Maintain a minimum 6-foot distance from one another.
- Wear a mask for their own protection, as well as for the safety of others.

### Controlling crowds, lines

Limit the number of customers on the premises at any one time, to allow customers and employees to easily maintain at least 6-foot distance from one another at all practicable times.

Post an employee at the door to ensure the maximum number of customers in the facility is not exceeded. If people are queuing up, mark the ground outside to ensure proper social distancing.

See 'Reconfigure' on page 2



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# Pandemic Could Depress Health Care Costs



**A** NEW STUDY predicts that employer health care costs will be stable or could fall this year because medical care for people not infected with COVID-19 has actually declined precipitously during the pandemic, all of which would bode well for insurance rates.

Part of the reason for this is that people who have had mild heart attacks or strokes or other ailments have not gone to hospital for treatment out of fear of contracting COVID-19. Also, the number of elective surgeries has plummeted. In other words, deferred medical care is pushing down overall medical expenses.

## Several factors at play

There are other factors at play besides deferred medical care. Because people are also social distancing to protect against contracting COVID-19, they are not contracting other communicable diseases like the cold and flu.

Also, because of shelter-at-home orders, people are not being injured as often in vehicle crashes and while playing sports. Violent crime has also plummeted, meaning fewer people are coming to the emergency room with serious or life-threatening injuries.

The study by Willis Towers Watson notes that infection levels vary greatly from city to city and region to region. Less densely populated areas are faring better than large cities. It estimates overall health care costs this year based on various infection rates and deferred care:

## EFFECT ON INSURANCE RATES

**Areas with a 1% infection level (rural areas)** – Employer costs could decline between 1% and 4%.

**Areas with a 15% infection level (large cities and surrounding areas)** – Employer costs could rise or fall by roughly 1%.

**Areas with a 20% infection level (large metropolises)** – Employer costs could rise between 1% and 3%.

Source: Willis Towers Watson

WTW noted that ultimately the financial impact on group health care plans will depend on how much the virus spreads and how severe the illness is in those people who are hospitalized.

Another survey by *ehealth.com* of health insurance CEOs found that COVID-19 will have little effect on 2021 coverage or premiums.

In fact, 83% of insurers polled said they did not anticipate raising rates in 2021 as a result of the crisis. The rest predicted a slight rate increase, but none predicted rate increases of more than 5%. ❖

## OTHER POSITIVES

- 32 insurers said they are waiving deductibles and other out-of-pocket costs for testing.
- 19 insurers are waiving out-of-pocket costs for COVID-19 treatment.
- 32 insurers' enrollees are using telemedicine services more.

Source: *Ehealth.com*

Continued from page 1

# Reconfigure Furniture in Offices, Public Seating Areas

## Spacing between employees

- Require employees to work at least 6 feet apart. You may need to reorganize your office or workstations to ensure proper spacing.
- In jobs where workers are on their feet, mark spots on the floor where they should stand to ensure social distancing between your staff.
- Space out tables, chairs and microwaves in break rooms.
- Another option is to use partitions made of plexiglass so workers can communicate and make eye contact.
- In addition, you may want to abandon the popular open workspace concept and revert to using cubicles, which gained popularity in the 1980s and 1990s as a way to increase productivity by putting barriers between office workers. Having that divider will make your staff feel safer and can offer some protection.
- Reconfigure furniture placement in offices, public seating areas and other work areas to support physical distancing.

## Cleaning and circulation

A recent study that analyzed superspreading events showed that closed environments with minimal ventilation strongly contributed to a characteristically high number of secondary infections.

Take steps to minimize air from fans blowing from one worker directly at another. Also consider opening windows for circulation.

Also important are:

- Disinfecting surfaces in workspaces, as well as doorknobs, buttons and controls. Pay special attention to areas that are frequented and touched more often.
- Providing workers and customers with tissues and trash receptacles.
- Employees who are cleaning and disinfecting should wear disposable gloves.
- Cleaning surfaces using soap and water, then using disinfectant.
- Sanitizing any other personal protective equipment such as hardhats after every shift. ❖

# IRS Allows Mid-Year Changes to Health Plans, FSAs



**T**HE IRS has loosened restrictions on employees who want to make changes to their group health plans and flexible spending accounts (FSAs) in the middle of the policy year.

IRS rules are typically stringent and rigid, barring changes from being made to health plans except during open enrollment. Under the new rules, the employer would still have to approve letting staff make changes to their plans if they have more than one option to choose from.

The IRS issued the new guidance after employer groups lobbied the agency and Congress to loosen the rules because the COVID-19 pandemic has led to profound changes in employees' health care needs, as well as access to childcare.

The rules are temporary and apply only to 2020. All of the following mid-year changes must be approved by the employer:

**Health plan changes:** Employers can let employees make mid-year changes that would be in effect for the remainder of the year. The new guidance allows employees to:

- Drop out of their health insurance if they have another option,
- Sign up for insurance if they have not done so,
- Add family members to their plan, or
- Switch to a different health insurance plan.

Allowing these changes could be beneficial to employees who have had their salaries cut, or were furloughed, but were able to retain their health coverage.

Someone in this position, for example, may decide to switch to a lower-cost health plan if they are unable to afford the premiums on their current plan.

**Flexible spending accounts:** Employees must decide before the plan year starts how much to set aside every paycheck into

their FSA, the funds of which can be used to pay for health care-related expenses. Under the new guidance, they are allowed to make changes to their contribution levels mid-year.

Employees that expect more medical expenses and are able to afford it, can elect to increase their FSA funding. But those who may have been setting aside funds for an elective surgery that they may want to postpone, can choose to decrease the amount they put into their FSA every month.

**Carryover amount:** Regulations governing FSAs require employees to use all of the funds in their FSA in a given year or lose it. There are two exceptions: Employers can give employees a two-and-a-half-month grace period after the end of the plan year to spend remaining funds that are in the account at the end of the year, or they can let workers carry over up to \$500 from one year to the next.

Starting this year, the carryover limit will be set at 20% of the maximum health care FSA contribution limit, which is indexed to inflation.

That means that for 2020, employers can let employees carry over up to \$550 into 2021.

## The takeaway

While allowing your employees to make changes can help them better budget their health care spending, making the change will result in extra administrative expenses for you.

Changing plans mid-year, signing up employees for new plans and adding dependents can involve a significant amount of paperwork and documentation.

That said, allowing employees to make these changes mid-year could also give them some extra peace of mind. ❖

# Testing Workers for COVID-19 Raises Liability Issues

**E**MPLOYERS WHOSE firms continue to operate are obviously concerned about the coronavirus spreading through their worksites, so many have started testing their workers.

Recent Equal Employment Opportunity Commission guidance authorized employers to conduct COVID-19 testing and check temperatures of employees. But doing so could expose a business to a number of employee legal actions from invasion of privacy to discrimination and wage and hour charges, say employment law attorneys.

While the EEOC guidance refers to existing Americans with Disabilities Act regulations requiring that any mandatory medical test of employees be “job related and consistent with business necessity,” it left many questions unanswered. So, if you decide to start testing workers, you will have to navigate a number of issues.

## YOUR FIRST CONSIDERATIONS

- Which tests are appropriate?
- What are the standards for protecting workers’ privacy?
- Should staff be paid for the time they wait in line to be tested?
- Should you get written consent?
- How will you ensure that the policy is applied consistently?

Employment law experts say there is often a surge in employee lawsuits when new rules or guidance are being issued, and more so with such a sensitive issue as one’s health during a pandemic.

## POTENTIAL TYPES OF ACTION

- Invasion of privacy
- Failure to protect employees’ personal health information
- Discrimination
- Retaliation
- Wage and hour actions if waiting for testing takes time.

## What you can do

Most lawyers are interpreting the EEOC guidance as meaning that employers may take steps to determine whether employees entering the workplace have COVID-19, because an individual with the coronavirus will pose a direct threat to the health of others.

Therefore, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

To cover your bases, you should plan your testing in detail, including:

- How you will be conducting tests (providing at-home test swab kits, testing upon arrival, or offsite).
- Designate a person who is authorized to conduct tests.
- Document how you will be administering tests.
- Plan for how to account for false positives or negatives.
- Decide how often you should be testing.
- Budget for the testing.
- What will you do if a worker tests positive or has a fever (if you are just checking temperatures)?
- Don’t have exceptions to the policy or, if you do, keep them to a minimum. The more exceptions there are, the more likely you are to be sued.
- The policy should comply with guidance from the Centers for Disease Control and Prevention, such as using non-contact thermometers and ensuring social distancing during the process.

## Insurance

You should do everything you can to make sure your testing is carried out fairly and consistently while safeguarding your employees’ privacy. But even if you do everything by the book, you can still be sued.

One type of policy that could step in to protect you is employment practices liability insurance. EPLI will cover awards and legal costs in employee-initiated lawsuits. Each policy is different though, so it’s best to consult with us first.

If you are testing or are considering testing your staff, you may want to consider it. ❖

