

# NAVIGATING RE-OPENING YOUR BUSINESS



EMPLOYEES  
RETURNING TO WORK



EMPLOYEE SAFETY



EMPLOYEES WORKING  
FROM HOME

# **WE ARE REOPENING AFTER BUSINESS CLOSURE DUE TO COVID-19. CAN WE BRING SOME EMPLOYEES BACK, BUT NOT OTHERS?**

Yes.

- If you are recalling some positions, but not others, you should document the business reasons why only those positions were recalled.
- If you are recalling some employees in a certain position, but not everyone in that position, you should document the objective, job-related criteria you used to decide which employees to bring back.
- Seniority or previous job performance, for example, would be acceptable criteria and relatively easy to defend if you are ever challenged.

## WHAT IF I HAVE A FEARFUL EMPLOYEE WHO REFUSES TO COME TO WORK?

Generally, employees do not have a right to refuse to work based only on a generalized fear of becoming ill. ***If their fear is not based on objective evidence of possible exposure, you can enforce your attendance policies.***

You should be prepared for employees who express anxiety about coming to work and evaluate any request on a case-by-case basis. Consider alternative arrangements such as telecommuting if possible. ***Employees who are immunocompromised or have other relevant disabilities may be entitled to a reasonable accommodation, such as working from home or taking a leave if working from home is not possible.***

If the nature of the employee's position does not allow telecommuting, and there is no legitimate threat, reiterate the steps they can take to keep themselves safe from contracting the virus and explain the proactive steps you are taking to keep infection risk low in the workplace.

## CAN WE SCREEN EMPLOYEES RETURNING TO WORK FOR COVID-19?

Yes. Generally, inquiries about an employee's health or a medical exam (like a temperature check) would not be allowed, but the Equal Employment Opportunity Commission (EEOC) has stated that screening employees for symptoms of COVID-19 is allowed since it is a direct threat to others in the workplace. Because of that, you may inquire about symptoms related to the virus, require self-reporting by employees, and take employees' temperatures.

If you decide to do screenings, make sure you screen **all employees**; otherwise you may find yourself in the middle of a discrimination claim. And remember that all information about employees' health—including a lack of symptoms or temperature—must be kept confidential.

# CAN WE REQUIRE OR ALLOW CERTAIN GROUPS OF EMPLOYEES, BUT NOT OTHERS, TO WORK FROM HOME?

Yes.

Employers may offer different benefits or terms of employment to different groups of employees as long as the distinction is based on non-discriminatory criteria.

For instance, a telecommuting option or requirement can be based on the type of work performed, employee classification (exempt v. non-exempt), or location of the office or the employee. Employers should be able to support the business justification for allowing or requiring certain groups to telecommute.



# HOW DO I MAKE A TELECOMMUTING POLICY?

## Recommendations:

- Available by phone and messaging app during their regular in-office hours,
- Meet all deadlines and maintain client contacts per usual, and
- Check in with their manager at the close of each workday to report what they have accomplished.

## Address expenses related to working from home:

- Not a time to remodel the home office with fancy desks/chairs on the company dime
- What is reasonable and necessary (phone/internet allowance)
- Some states mandate reimbursement for these kinds of expenses, but it's a good practice to cover such costs even if it's not required by law

**DO I HAVE TO PAY  
MY EMPLOYEES SICK  
LEAVE UNDER THE  
FFCRA IF I HAVE  
LESS THAN 50  
EMPLOYEES?**

Small business exemptions only apply to leave requested because of a child's school or place of care is closed or childcare provider is unavailable due to COVID-19-related reasons.

Small businesses are NOT exempt from providing leave for any of the other types of permissible requests under the FFCRA. An employer cannot automatically deny leave to all employees.

For each request, the small employer must document the facts, circumstances, and its justification for denying each leave request under the exemption and retain all records.

# WILL AN EMPLOYEE NEED TO PROVIDE DOCUMENTATION TO REQUEST LEAVE UNDER THE FFCRA?

All employers subject to the FFCRA are required to retain all FFCRA documentation for four (4) years, regardless of whether FFCRA leave was granted or denied.

Any employee requesting leave will be required to provide verbal or written communication to their employers.

If providing verbal communication, it is recommended the employer document all conversations in accordance with the IRS credit guidelines. The information to include in the documentation varies based on leave type.

# RETURN TO WORK CHECKLIST

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This and other COVID HR Resources  
are available at

<https://www.mammothhr.com/>

## Return to Work Checklist



### Posting and Policies

- Post the Families First Coronavirus Response Act (FFCRA) poster in a visible place. Where employees will remain working from home, send by email or post to Company intraweb or employee website.
- Review and revise hiring practices and policies:
  - Have staffing needs changed?
  - Do you need to change benefits or pay to become more competitive?
  - Use remote interviewing techniques as much as possible.
  - Update onboarding practices.
  - If you are recalling only some workers that were laid-off or furloughed, ensure your practices for determining who to recall do not discriminate against any group of employees.
- Review and revise leave policies:
  - Know how the FFCRA affects your previous policies and practices.
  - Consider implementing PTO/vacation rollovers, grace periods, and revise guidelines for usage if vacation is forfeited if not used by year end.
  - Consider implementing or revising bereavement leave policies.
  - Ensure that all employees have access to and an understanding of all leave policies that may apply to them.
- Review and revise work from home and child care policies.
- Update work travel policies in light of any new orders in your state and any new practices being implemented in the workplace to keep employees/customers safe.
- Review rehire/reinstate provisions for your benefit policies (eligibility/waiting periods).