



July 13, 2021

Decision Analysis: Office Re-Openings

With many offices re-opening in the Fall, employers will need to consider what policies, plans, employee communications and procedures to put in place. Below is a decision analysis to assist employers in formulating their plans for returning employees to office work.

Policy

- Vaccinations
 - Employers can require vaccinations (with some caveats, see below regarding Accommodations) (EEOC)
 - Employers can request documentation of vaccination status, but must maintain confidentiality/store separately from personnel file (EEOC)
 - Employers can provide incentives (EEOC)
 - *Decision points:*
 - Require all employees coming in to be vaccinated or no vaccination requirement?
 - Require proof of vaccination status vs. honor system?
 - If proof, consider confidentiality, do not ask for any additional medical information
 - Provide incentives for employees to get vaccinated?
- Health screening / contact tracing
 - There is no health screening or contact tracing required as of June 15, 2021 (NYS)
 - *Decision points:*
 - Require evidence of negative COVID test?
 - Administer health screening questionnaires?
 - Administer temperature checks?
 - Different standards for vaccinated vs. unvaccinated?
- Face masks
 - Not required for fully vaccinated individuals as of June 15, 2021 (CDC, NYS)
 - Required for unvaccinated, but conflict over whether burden on employee (NYS) or on the employer (OSHA)
 - *Decision points:*
 - Require masks in office?



- For all or just unvaccinated / status unknown?
- Always or just in certain settings (common spaces)?
- Employer to provide? OSHA recommends.
- Social distancing
 - Not required for fully vaccinated individuals as of June 15, 2021 (CDC, NYS)
 - Required for unvaccinated, but conflict over whether burden on employee (NYS) or on the employer (OSHA)
 - *Decision points:*
 - Are workstations are 6 ft. apart?
 - Require 6 ft in other settings (hallways, conference rooms, other common spaces)?
- Building Requirements
 - What screening, masking or social distancing does your office building require?
- Cleaning and disinfection
 - There are no specific legal requirements beyond maintaining routine cleaning and disinfection (OSHA)
 - *Decision points:*
 - Implement specific, more stringent cleaning protocols for COVID?
 - Make cleaning products / hand sanitizer available to employees?
 - Communicate about cleaning protocols?
- Visitors' policy
 - There are no masking, social distancing or capacity restraints for vaccinated individuals as of June 15, 2021 (CDC, NYS)
 - *Decision points:*
 - Permit visitors/meetings with external parties?
 - Require all visitors to be vaccinated or no vaccination requirement?
 - Require proof of vaccination or honor system?
 - Administer/require testing? Different treatment for vaccinated / unvaccinated / status unknown?
 - Require health screening or temperature check? Different treatment for vaccinated / unvaccinated / status unknown?
 - Face masks – Require? Provide? (OSHA recommends “suggesting” face coverings to guests)? Different treatment for vaccinated / unvaccinated / status unknown?



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- Social distancing – Require? Different treatment for vaccinated / unvaccinated / status unknown?
- Employee with positive COVID diagnoses
 - Require positive employee and others in “close contact” to isolate / quarantine, excluding those in “close contact” who have had COVID in last 3 months or are fully vaccinated (CDC, OSHA)
 - Record and report work-related infections or deaths (OSHA)
 - *Decision points:*
 - Affirmative obligation to report diagnosis?
 - Treatment of other employees in close contact - different policy for vaccinated / unvaccinated / status unknown?
- Employee COVID exposure
 - Require employee with exposure to isolate / quarantine, unless the employee has had COVID in last 3 months or is fully vaccinated (CDC, OSHA)
 - *Decision points:*
 - Affirmative obligation to report exposure?
 - Treatment of other employees in proximity - different for vaccinated / unvaccinated / status unknown?
- Employee exhibiting COVID symptoms:
 - Recommend employees exhibiting symptoms stay home (CDC)
 - *Decision points:*
 - Treatment of that employee?
 - Treatment of other employees in proximity – different for vaccinated / unvaccinated / status unknown?
 - Implement reporting process? (see also “Employee concerns” below)
- Employee concerns
 - Implement protections from retaliation, and set up an anonymous process for workers to voice concerns about COVID-19-related hazards (OSHA)
 - *Decision points:*
 - Set up standalone process for COVID, or roll into existing processes?
 - How to address employees who refuse to work in the office due to COVID concerns?
 - Employee training / awareness around process?



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Continuity Plan

- Establish triggers for any return to remote:
 - Federal, state, local, mandates
 - Certain number of positive cases at office?
 - Other?
- Develop plan for how to quickly transition back to remote if necessary, including communication protocols for transition

Communication

- How much notice to provide employees of return-to-the-office requirements.
- Who should employees contact with questions or concerns about returning (HR?)

Reasonable Accommodations

- Provide employees with information about how to request a reasonable accommodation due to disability or religion
NYCHRL requires employers to engage in cooperative dialogue when they know or have reason to know that the employee may require a reasonable accommodation.
- Each accommodation request should be reviewed in light of the EEOC's COVID guidance.
- To do: Create COVID Disability Accommodation Form?
- To do: Create COVID Religious Accommodation Form?

This alert is for general information purposes and should not be construed as legal advice. If you would like information about this alert, please contact one of the firm's attorneys:

Deborah Buyer, 212-225-8483 x1, deborah@deborahbuyerlaw.com

Lydia Fan Wong, 212-225-8483 x2, lydia@deborahbuyerlaw.com

Jillian Berman, 212-225-8483 x3, jillian@deborahbuyerlaw.com

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