



# COVID-19 Employer/HR Related Q&A

## Part 3

**Q: What factors must I consider for bringing employees back to work as we're able to re-open?**

A: There are many factors to consider when bringing employees back to work, but first and foremost is safety. You should implement various precautionary measures to prevent illness and spread of illness amongst employees and customers. There are recommendations that people over age 60 and those that are medically vulnerable continue to shelter in place through Phase 1 and 2 of Badger Bounce Back plan, so that may be something to consider when making decisions. Implement sanitation practices and track adherence to those practices; implement telework and other social distancing practices; require employees to stay home when sick; promote handwashing; provide PPE and supplies for cleaning and disinfecting; review ventilation systems; and in workplaces where it's impossible to eliminate face-to-face contact, consider additional precautions. Consider screening methods and identify/isolate newly ill employees per CDC and public health recommendations and take additional measures for sanitation and safety when there are cases of COVID-19 confirmed in your workplace.

The other key to re-opening is communication. Develop signage/postings/communication plans for employees and customers; develop and implement training; and put policies in place and document/address employees, vendors or customers that don't adhere to policies. Review and consider more flexible leave and return-to-work policies, where appropriate. Review and communicate travel and meeting practices/policies. And, most importantly, check in with employees to find out if they feel safe and good about the measures put in place. Listen and implement their suggestions, where it's feasible. It's critical to ensure two-way communication and understand where there are gaps and concerns.

Here's a link to Wisconsin's re-open guidelines, including specific guidelines by industry: <https://wedc.org/reopen-guidelines/>

Here are some new resources from CDC on decisions to make before re-opening: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/workplace-decision-tree.pdf>

There's also a restaurant/bar decision tree and another guidance piece related to disinfecting and cleaning on this website:

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

**Q: When I call my employees back to work, they would prefer to stay off work and earn more money on unemployment, what do I do?**

A: When work is available and refused without good cause, unemployment benefits typically stop. The additional federal unemployment offered through the CARES Act will end on July 31. Some are earning unemployment, even when they are partially unemployed. If there isn't enough work to bring employees back full-time, there may be opportunities to reduce hours versus laying off employees under Wisconsin's Work-Share program, where employees could still qualify for UC benefits. Here's more info about Work-Share: <https://dwd.wisconsin.gov/uitax/workshare.htm>  
More info about Unemployment/COVID-19: <https://dwd.wisconsin.gov/covid19/public/ui.htm>

As an employer, if you have to make difficult layoff decisions, remember to utilize the local county resources available to you and your employees. There are many funded programs and agencies that will assist employees during any sort of dislocation. Contact Gail Graham from Southwest WI Workforce Development Board if you have questions: [g.graham@swwdb.org](mailto:g.graham@swwdb.org) or (608) 314-3300 x304.



**Q: What is my legal exposure if one of my employees gets sick from being exposed at my business?**

A: In short, if you are conducting a risk analysis and managing the risk and exposure for your employees in a highly proactive manner and you document and show that you've done so, you will minimize your legal liability. Unfortunately, since this is new and there hasn't been any specific case law in this area, it's tough to detail exactly what every business should do to minimize the risk to illness exposure. There are some bills in the works from lawmakers that address the issue of immunity from lawsuits due to COVID-19, but there is a differing of opinion from both sides on how that should look, so it is important to put yourself in a position of protecting employees and your business, regardless. See the above re-open guidelines by industry as one source of guidance. Talk to your legal and risk management partners to further determine what to implement. To minimize OSHA claim exposure, review their guidelines:

<https://www.osha.gov/SLTC/covid-19/controlprevention.html>

There are specific pages associated with different industries that will offer some interim guidance. Just remember that OSHA tends to review documentation of employee training and policies/practices, so be sure to retain employee training materials and consider a method of documenting training (employee sign-offs, checklists, etc). When requiring or offering the use of PPE (personal protective equipment), this includes training on how to properly use and care for the PPE.

Be sure to consider requests for accommodations for disabilities, where appropriate. If someone is at higher risk due to their disability, they may have protection under ADA or Wisconsin Fair Employment Act. It isn't appropriate to ask about medical conditions, but when they are brought to your attention, you should be involved in an interactive process to determine if an accommodation is necessary to perform the essential duties and/or to comply with safety guidelines.

Consider screening methods to determine if employees have been exposed or have symptoms of COVID-19. Just be sure you do so in a manner that is keeping health care information confidential and compliant with ADA/EEOC/Wisconsin Fair Employment Act. Here is some guidance from EEOC:

<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

Finally, be sure to address positive cases or exposures to COVID-19 in your workplace very proactively. You will want to be prepared with a specific response plan to a report of a positive COVID-19 exposure in the workplace beyond your other precautionary measures. Response should include sanitation/disinfection plans, informing employees who may have had contact with the exposure (while keeping identifying medical information confidential) and determining if further action needs to be taken. See CDC guidance for more information:

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

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This document was written on May 18, 2020. Guidance, rules and legislation are changing day-to-day. If you need assistance with communications or organization-specific action plans, work with your local chamber, attorney, tax advisors, benefits representatives and/or HR consulting partners.

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