

## FAQs for Employers

### 1. What should we do before announcing a return to in-person date?

Review our [best practice guide](#) for a checklist of steps to consider. Key elements include:

- Survey employees about whether they want to return
- Consider what schedule/timeline makes sense for your workplace
- Set up or review process for managing accommodation requests generally
- Set up or review your process for managing remote work

### 2. How much notice do we have to give to employees before requiring they return to in-person work?

Employers typically do not have a set timeline to work with (unless state/local laws say otherwise) but giving as much notice as possible allows employees time to request accommodations and ensure adequate child/family care. Providing weeks of advance notice allows for your HR staff to be able to process accommodation requests successfully. Not providing advance notice increases attrition, as well as potential liability for failure to accommodate eligible employees.

### 3. One of our employees says they can't come back to work in-person. What do we do?

Ideally, you would have an accommodation or remote work plan already in place. Tread carefully here as your legal responsibilities will vary based on the reason the employee isn't able to return. People may be legally entitled to accommodations for disability (under the Americans With Disabilities Act or similar state laws), religion (under Title VII or similar state laws), and pregnancy-related conditions (under Title VII and state pregnancy accommodation laws).

Others may have safety concerns and or needs that aren't protected under the law. Bear in mind that addressing their concerns and [providing accommodations](#) will boost your employee retention and morale. For best practices on supporting employees during the pandemic, [see here](#).

### 4. Do we have to provide accommodations for people *without* disabilities?

In addition to providing disability accommodations, most employers are legally required to provide accommodations for employees with pregnancy-related conditions under state laws and/or the Pregnancy Discrimination Act (Title VII). At minimum, be sure to treat pregnant employees the same as others similar in their ability or inability to work. For example, pregnant employees who have been advised to avoid COVID-19 exposure in the workplace are entitled to accommodations just like those with disabilities under the same advisement.

Additionally, employees may be entitled to receive accommodations due to religious beliefs, practices, or observances. For example, employees may seek accommodations around vaccine mandates, health screening requirements, or safety gear. Accommodation requests based on

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religious beliefs that do not impose an undue hardship on the employer's business should be provided. While typically not a legal requirement, employers may also provide accommodations for others. For example, many employers provide accommodations to reduce exposure for employees who do not have disabilities but are nevertheless at high risk for COVID-19, such as employees over 65.

## **5. Do we have to provide accommodations for people with caretaking obligations?**

Many employees will request accommodations because of family caregiving responsibilities. While affirmative legal obligations to provide accommodations for these employees aren't common, employers should be mindful to avoid discriminating against employees with caregiving responsibilities, who may be protected by the ADA, Title VII, and a [multitude of state and local laws](#). Employers should provide equal access to telecommuting and flexible schedules and abstain from over-scrutinizing or singling out employees with known caregiving responsibilities.

During the pandemic, bear in mind that school, childcare, and other caregiving facilities or programs may be closed or have limited capacity. When standard care is unavailable, employees often manage through a variety of care arrangements. Providing advance notice of schedule changes will help you retain workers with caregiving duties and help control for legal risk.

## **6. Can an employer require employees to be vaccinated? Can we ask about vaccination status? Can we require employees to wear masks?**

Yes, employers may require employees to be vaccinated in order to physically return to employer worksites and can ask about vaccination status to control site access. Despite some state laws prohibiting public employer mask mandates, private employers typically can also require employees to wear masks. However, these employer policies are subject to the reasonable accommodation provisions of Title VII, the ADA, and state laws. Employees who have disabilities, who are pregnant (or have related conditions), or have a sincerely held religious belief or practice may be entitled to an accommodation to exempt them from the vaccination or mask requirement. Any vaccination or mask policy should provide an opportunity for employees who may be eligible for exemptions to apply for accommodations. Should an employee be granted an exemption to the vaccination/mask requirement, they may nevertheless be required to take other safety steps to protect themselves and others, where appropriate, such as moving to a private work station or working remotely.

## **7. What COVID-19 prevention protocol do we need to follow on-site?**

Requirements will vary based on state occupational safety laws and regulations. Beyond the minimum legal requirements, consider tailoring your safety plan to match findings from your employee survey. Also consider providing paid leave for employees who are getting vaccinated, have COVID-19, are caring for family members with COVID-19, or who have other absences related to the pandemic—until at least September 1, 2021, such paid time off is reimbursable via [federal tax credits](#).

## **8. How do we respond if an employee gets sick or has been exposed to COVID-19?**

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Have in place a plan for responding to COVID-19 cases and exposures, and clearly communicate the plan to employees before they return to in-person work. The law firm Fisher Phillips has a [7-step guide](#) to get you started. Revisit your protocol regularly as federal, state, and local requirements change with the science.

- Employees may be eligible for time off for ongoing symptoms under state sick time laws, the FMLA and/or the ADA. Consult [this IRS fact sheet](#) for information about employer tax credits for providing COVID-19 paid leave for employees in quarantine.
- Advise employees who are on unpaid leave because of a COVID-19 diagnosis or exposure that they may be eligible for pandemic unemployment assistance benefits, although as of July 2021 the program is set to expire in early September.
- The ADA requires employers to keep employee medical information confidential, including COVID-19 symptoms and diagnosis. Consult the [EEOC's guidance](#) on how to notify employees about a potential exposure without revealing the identity and confidential medical information of the ill employee. For sample exposure notice letters to employees or the public, see the sample communication resources provided by [SHRM here](#).

## **9. If people don't come back in-person, can I reclassify them as contractors?**

No. A worker is an employee if their work falls under the definition of employment, as defined by relevant state and federal laws. Performing the same work at a different location does not convert an employee to an independent contractor. The location where a worker performs their duties is one of many factors that determine whether they are an employee under federal and state employment laws. In some cases, it is irrelevant. Always seek the advice of an attorney in determining worker classifications, as misclassifying an employee can result in costly litigation, IRS fines, and other penalties.