



Employment Law Note

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Best Practices for a Post-Pandemic Workplace

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As of June 30, 2021, Washington State businesses are now able to open at full capacity and have fewer requirements to follow to protect employees from COVID-19.

As businesses prepare to return to “normal” pre-pandemic capacity and operations, however, they should also be prepared for the fact that the workplaces they will be returning to reflect a post-pandemic “new normal.” As employers begin to adjust and adapt to these new circumstances, they will need to be mindful of adhering to existing requirements while determining the most safe and efficient way to return employees to work.

Existing Requirements for Employers

While fewer requirements remain in place following Governor Jay Inslee’s official reopening of the State on June 30, 2021, COVID-19-related requirements remain to ensure employee safety as workplaces reopen to pre-pandemic capacity. Specifically, Washington employers are required to:

- **Ensure unvaccinated employees wear a mask when working indoors.** Although fully vaccinated employees are no longer required to wear a face covering (as discussed further below), employers may still require or encourage mask use. Employers must provide cloth face coverings or a more protective mask to employees, free of charge, when use of a mask is required.
- **Verify employee vaccination status before lifting employee mask requirements and be able to show the process used for verification.** With limited exception for certain industries (including healthcare, K-12 schools, daycares and day camps, public transportation, correctional facilities and homeless

shelters), fully vaccinated employees need not be required to wear face masks in the workplace if they are able to show proof of vaccination. Although employers must be able to show the process used to verify employee vaccination status, they are not required to keep an actual copy of the employee’s vaccination records.

- **Notify employees in writing within one business day if someone with whom they had close contact tests positive for COVID-19 (without disclosing the person’s identity).** Employees with possible or confirmed cases of COVID-19 must not be permitted to work in the proximity of others.
- **Report COVID-19 outbreaks of 10 or more employees at workplaces or worksites with more than 50 employees to the Washington State Department of Labor & Industries within 24 hours.**
- **Assess recognized hazards, including COVID-19, as part of the ongoing requirement to provide a safe and healthful workplace and, where appropriate, take additional steps to protect unvaccinated employees.** Employers must train employees to recognize and respond to workplace hazards, including COVID-19. They must also provide employees with handwashing facilities and supplies.

Recommendations for Employers

In addition to ensuring compliance with applicable state and local requirements, employers should consider the following recommended best practices as they transition employees back to the post-pandemic workplace.

- **Formulate and communicate a return-to-work plan.** Assess business needs to determine a viable return-to-work plan. Options include: (1) a

traditional plan of requiring employees to return to the office in person in the same schedule as they were required to work pre-pandemic; (2) an incremental plan of returning employees to in-person work on a gradual basis until all employees have returned to the office in person in the same schedules as they were required to work pre-pandemic; or (3) a hybrid plan where employees are required to return to in-person work on a designated part-time basis while working remotely for the remainder of their scheduled workweek. Deputize an internal point of contact to communicate with employees about the possibility of returning to in-person work well before employees are expected to be working in person, as well as to communicate the return-to-work plan once it has been finalized.

- **Update overtime and remote/work-from-home policies.** Existing policies should be reviewed and revised to ensure that they provide for the unique needs of employees in long-term post-pandemic remote work arrangements. Employers without policies on remote work arrangements should consider creating a policy that provides clear expectations for employee conduct, including with regard to overtime work as well as the protection of employer property and confidential information.
- **Protect employee privacy.** Employers should not collect employee medical information (such as COVID-19 vaccination records) unless it is reasonably necessary. All medical information that is collected should be limited, protected, and only disclosed to those who need to know. Any policy that collects

employee information should spell out the information that will be collected, how it will be used, and how it will be protected.

- **Consider standards applicable to non-employees in the workplace.** In developing requirements applicable for non-employees in the workplace (*i.e.*, for customers, clients, vendors and the like), consider standards applicable to employees. If unvaccinated members of the public are allowed to access the workplace, it may be unreasonable to suspend, reassign, or otherwise treat an employee differently if the employee is not vaccinated.
- **Communicate. Communicate. Communicate.** The pandemic has changed the way in which we work. Like any other workplace change, making sure employees are aware and understand this new world will be equally as important as the actual changes themselves.

Key Takeaways for Employers

Despite the loosening of restrictions and the official “reopening” of businesses in Washington State effective June 30, 2021, employers and employees alike must adjust to work life in a post-pandemic new world. Employers have an ongoing duty to protect employees from work-related injury and illness, including from COVID-19. To this end, employers must continue to be aware of and comply with existing legal requirements. As requirements change and new workplace policies are implemented, employers should notify employees of these changes and train employees accordingly when necessary.

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