

HR Considerations to Prepare your Workplace Post-COVID

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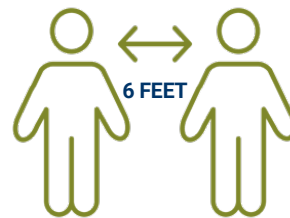
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Social Distancing

How to implement social distancing protocols

- Various Mechanisms
 - Training
 - Physical barriers
 - Floor and wall markers
 - Direct flow and direction of foot traffic
 - Staggered schedules and breaks
 - Limit space in common areas, elevators, and stairwells
 - Remote working and virtual meetings when possible
- Enforcement mechanisms



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Social Distancing Avoiding Legal Pitfalls



- Limit common areas, schedules, workplace modifications
 - Adhere to meal and rest break obligations
 - Have enough seating available
 - Post signage
- Requests for accommodations and partial workforce on worksite
 - Legitimate business reasons
 - ADA reasonable accommodations
 - Base first to return employees on objective, nondiscriminatory basis
- Apply policies uniformly
 - Leave
 - Quarantine

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OSHA Considerations



- **Basic infection prevention measures**
 - Maintenance of regular cleaning practices
 - Routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment
- **How to implement**
 - Review and revise existing cleaning protocols
 - Frequency of cleaning
 - Handwashing and/or hand sanitization stations
 - No-contact alternatives to using time clocks, microwaves, vending machines

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OSHA | PPE



- **Regulatory Guidance**
 - State and local level
 - OSHA
 - CDC recommendation: use simple cloth face covering in public settings where other social distancing measures are difficult to maintain
- **How to Implement**
 - Are employers required to pay for and provide PPE?
 - Look at state and local regulations
 - OSHA
 - General duty
 - Four risk categories to determine whether PPE is recommended
 - What should employer provide?
 - Gloves, goggles, face masks
 - Training

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OSHA | PPE Policies



- Require a policy regarding use of PPE
- Ask employee why he or she refuses to wear mask
 - Medical conditions
 - Religious accommodation
- OSHA recommends that PPE be properly removed, cleaned, and stored or disposed of to avoid contamination of self, others, or the environment

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OSHA | Recordkeeping Requirements



COVID-19 is a recordable illness.

Employers are responsible for recording COVID-19 case if:

1. Case is confirmed as a COVID-19 illness;
2. Case is work-related as defined by 29 CFR 1904.5; and
3. Case involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.

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OSHA | Whistleblower Retaliation Claims

Employees should never be disciplined or terminated because they raised or escalated complaints about a potential violation of health and safety laws or procedures, including concerns regarding the employer's response to COVID-19.

1. The specifics of health and safety complaints should be appropriately documented
2. Confirm and update the company's procedures for referring or escalating health and safety complaints
3. Remind managers to objectively listen and appropriately escalate concerns

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Screening Protocol | Symptom Check

Check state and local requirements

- Some states require or strongly recommend symptom checks by the employer
- Colorado, Connecticut, New Hampshire



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Screening Protocol | Testing



COVID-19 and Antibody Testing

- EEOC permits employers to conduct mandatory testing of employees for COVID-19

Legal Considerations

- Non-exempt employee wait time (could be compensable)
- Reimbursement
- Discipline
 - ADA does not interfere in removing employees with COVID-19 symptoms
 - OSHA ramifications if you leave a COVID-19 symptomatic employee in the workplace
- Information collecting
 - Symptoms, temperature, antibodies
 - Privacy of medical and genetic information
 - Protected characteristics
 - Who is collecting the data?
- Potential retaliation claim or a regarded as disabled claim

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Employees Who Report Symptoms

- **Before shift begins**
 - Stay home
 - Paid sick leave, PTO/vacation, FFCRA, local laws
 - ADA Accommodation for disabilities
- **During a shift**
 - Send home immediately
 - Sanitize and deeply clean work area
 - Inform individuals who came into contact with employee (do not disclose name) and send employees home to self-quarantine
- Written policy on procedure
- Training
- Be consistent



FEVER



COUGH



SORE THROAT



SHORTNESS OF BREATH

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Families First Coronavirus Response Act (FFCRA)

The **Families First Coronavirus Response Act** ("FFCRA") was signed into law on March 18, 2020, and generally requires employers with fewer than 500 employees to provide a certain amount of paid sick and paid leave to employees affected by COVID-19. It also provides affected employers with a corresponding employment tax credit.

In addition, the FFCRA temporarily expands Family and Medical Leave Act (FMLA) requirements to offer protected leave related to the coronavirus.



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Families First Coronavirus Response Act (FFCRA)

What does FFCRA cover in general?

FFCRA guarantees free coronavirus testing, establishes paid family and medical leave and corresponding tax credits, enhances unemployment insurance, expands food security initiatives, and increases federal Medicaid funding.

Emergency Paid Sick Leave Act

- **Are there any exceptions for health care providers and emergency responders?**
 - An employer of an employee who is a health care provider or an emergency responder may elect not to provide FFCRA paid sick leave to such employees.
- **How much leave time are eligible employees entitled to take?**
 - Full-time employees are entitled to take up to 80 hours of paid sick leave. Part-time employees are eligible for the number of hours equal to the average hours worked over a two-week period.

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Families First Coronavirus Response Act (FFCRA)

Emergency Paid Sick Leave Act

- **For what reasons are employees entitled to take paid sick leave?**

Employees who are unable to work or telework due to any one or more of the following conditions:

- They are subject to a federal, state, or local quarantine or isolation order ("isolation order") related to COVID-19
- They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19 ("quarantined employee")
- They are experiencing symptoms of COVID-19 and seeking a medical diagnosis
- They are caring for an individual who is subject to an isolation order or is a quarantined employee
- They are caring for a child if the school or place of care of the child has been closed, or the child-care provider is unavailable due to COVID-19 precautions
- They are experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services

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Families First Coronavirus Response Act (FFCRA)

Emergency Paid Sick Leave Act

- **How much are eligible employees entitled to be paid?**
 - Paid sick leave will be based on employees' regular compensation, but is capped at a maximum 100% of wages up to \$511 per day (and a total of \$5,110) for employees in categories 1-3 above, and two-thirds of wages up to \$200 per day (and a total of \$2,000) for employees in categories 4-6 above.



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Families First Coronavirus Response Act (FFCRA)

Emergency Family and Medical Leave Expansion Act (Emergency FMLA Act)

- **Are there any exceptions for health care providers and emergency responders?**
 - In addition to the Department of Labor's ability to exclude certain employers, an employer of an employee who is a health care provider or an emergency responder may elect not to provide FFCRA Emergency FMLA leave to such employees.
- **What are the reasons an employee can take leave?**
 - Eligible employees can take leave for "a qualifying need related to a public health emergency." A qualifying need related to a public health emergency for purposes of the FFCRA Emergency FMLA Act is limited to when an employee is unable to work (or telework) due to a need to care for a child under the age of 18 if the child's school or place of care has closed or the child care provider for the child is unavailable due to the public health emergency.

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FFCRA

Avoiding Legal Pitfalls



Employer Discretion

- Employers may choose to allow paid sick leave and expanded family and medical leave in certain circumstances or for shorter periods of time.
- **For example:** an employer may decide to exempt these employees from leave for caring for a family member but choose to provide them paid sick leave in the case of their own COVID-19 illness. Or, an employer may allow an employee to take some, but not all, of the 12 weeks of expanded family and medical leave to care for his or her child whose school is closed if allowing the full 12 weeks off would be a hardship.

Apply leave under FFCRA **uniformly to all employees**
and document every decision!

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Americans with Disabilities Act (ADA)

Receptionist Rick would like to work from home because he is very depressed due to COVID. He'd like to adjust his medication. His doctor thinks it would be best if he remained home during that time.

What should the employer do?

1. Engage in the interactive process
2. Discuss reasonable accommodations
3. Before the request is denied, perform an undue hardship analysis



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Title VII

An Asian medical assistant comes to you and says that she is being harassed about being a carrier of COVID, due to her ethnicity/nationality.

What should the employer do?

- Investigate and address the situation immediately!



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Questions?

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eSupport Member Resource



eSUPPORT/Operations/COVID-19/Re-Opening



[HOME](#) [ESUPPORT](#) [BLOG](#) [FORUM](#) [ACCOUNT](#)

COVID-19 | RE-OPENING

WEBINAR | RE-OPENING YOUR ASC

Webinar Recording | Ready, Set, Go! Re-opening Your ASC in the Wake of COVID-19

RE-OPENING CHECKLIST

Use this checklist to guide you in the process of re-opening your ASC after closure or reduced operations due to COVID-19.

NOTE: This checklist is representative of recommended actions for re-opening as of April 22 based on available information to date. Additional guidance may be forthcoming from your state or municipality that may change or add to your action plan. You are advised to follow your state Department of Health, CMS, CDC and professional societies closely for updated guidance.

ASC Re-Opening Checklist

POLICIES AND PROCEDURES

These policies and procedures were written according to recommendations and guidance from CMS, CDC, ASCA and OSHA. Please ensure you review them and make necessary revisions so they are customized to the protocols you will be implementing in your facility.

NOTE: These policies and procedures are representative of recommendations and guidance for re-opening as of April 24 based on available information to date. Additional guidance may be forthcoming from your state or

- COVID-19
 - Overview
 - Regulatory Guidance
 - Accrediting Organization Guidance
 - Closure/Reduced Operations
- Re-Opening**
 - QAPI
 - Financial Guidance
 - Employer Guidance
 - PPE/Supplies
 - Posters
 - COVID-19 Webinar



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eSupport Member Resource



eSUPPORT/Operations/COVID-19/Employer Guidance



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COVID-19 | EMPLOYER GUIDANCE

NEW RESOURCES | BEST PRACTICES FOR EXPOSURE

PSS Resource | Best Practices for Possible COVID-19 Exposure (updated 7/27)

PSS Resource | FFCRA Summary Sheet

PSS Resource | Employee Furloughs and Layoffs

PSS Resource | Unemployment Insurance FAQ

Interim US Guidance for Risk Assessment and Work Restrictions for HCP with Potential Exposure to COVID-19

This interim guidance is intended to assist with assessment of risk and application of work restrictions for asymptomatic HCP with potential exposure to patients, visitors, or other HCP with confirmed COVID-19

Strategies to Mitigate HCP Staffing Shortages

CDC guidance to assist healthcare facilities in mitigating HCP staffing shortages that might occur because of COVID-19

Criteria for Return to Work for HCP with SARS-CoV-2 Infection (Interim Guidance)

CDC guidance for SARS-CoV-2 infection may be adapted by state and local health departments to respond to rapidly changing local circumstances.

Prepare your Small Business and Employees for the Effects of COVID-19

Recommendations from the CDC to protect your employees and prepare your business for disruption

Department of Labor on FMLA and FLSA

Information on common issues employers and employees face when responding to public health emergencies, and their effects on wages and hours worked under the Fair Labor Standards Act and job-protected leave under the Family and Medical Leave Act

- COVID-19
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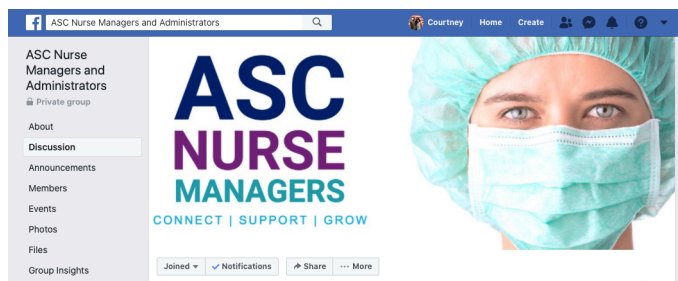


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www.facebook.com/groups/ascmanagers/



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The 2020 Webinar Line Up!

DATE		CE	WEBINAR TOPIC	SPEAKER
September 28	60 min	✓	ASC Leadership Panel	Panel TBD
October 30	20 min		Medical Record Audit Walkthrough	Debra Stinchcomb
November 30	60 min	✓	Current Trends in HIPAA and Cybersecurity	Kurt Bratten
December 18	20 min		Annual Survey Watch Report	Vanessa Sindell

www.ProgressiveSurgicalSolutions.com/webinars

