



PROFESSIONAL LIABILITY SPOTLIGHT

October 2020

Risk alert: COVID-19 and the return to work

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The emergence of the novel coronavirus quickly upended the way businesses, including accounting firms, around the United States operated. Shelter-in-place orders prompted millions to pivot nearly overnight to halt business travel, begin working from home, and use virtual conferencing software to substitute for what previously would be in-person meetings and visits.

Now some CPA firm leaders may be considering how to phase staff back to the office environment, given that some parts of the country are experiencing lower community transmission rates of the pathogen.

Any return won't be easy, however. This won't be akin to turning a key to start a car, and it's not a matter of simply having a deep clean of the office and setting out disinfectant wipes and masks for staff. There are significant issues that CPA firms must consider before they can welcome employees back.

Failure to do so could result in confusion, running afoul of workplace safety and health regulations and, most seriously, an outbreak in the office itself, which could put employees and their loved ones at risk. Obstacles firms may face include firm leaders or employees being unaware of the plan's specifics, a lack of transparency in communication, a reactive approach rather than a proactive one, geographic differences by office and location of employees, and potential confusion about when and why in-person contact is needed.

Consult human resources (HR) professionals, public health experts, and legal counsel as well to ensure that any adopted protocols contain the most up-to-date recommendations during these challenging times.

What follows are general recommendations of how to develop a robust and safe plan to phase employees back into an office environment.

PREPARE TO MAKE YOUR PLAN

Instead of terming this a "return-to-work" plan, firm leaders should instead think of this as a workplace safety plan in the context of COVID-19, which as of this writing has no known cure and no vaccines to prevent transmission. A return-to-work lens implies the situation is temporary, whereas the goal should be to create a sustainable plan that can protect the health of staff and clients with built-in flexibility to adjust to and comply with any changes in laws, regulations, or governmental guidance regarding COVID-19.

Designate a team to manage the process of developing the workplace safety plan, consisting of at least two people with an understanding of the firm's holistic approach toward risk management and existing quality control procedures. This will avoid miscommunication and confusion about who is leading the effort, giving priority to ensuring

that whatever protocol emerges complies with all federal and jurisdictional workplace safety, employment practices, and health laws. It can also go a long way in preventing important considerations from slipping through the cracks, creating circumstances that can open a firm up to potential liabilities, given the complex legal and regulatory environment.

This is also when legal counsel should be consulted, to ensure that the plan complies with COVID-19 guidance from the Centers for Disease Control and Prevention (CDC), the U.S. Equal Employment Opportunity Commission, and the Occupational Safety and Health Administration. Plans also need to comply with federal, state, and local laws and ordinances on privacy, workplace discrimination and harassment prevention, and required training.

These laws can vary substantially by jurisdiction. Additionally, jurisdictional issues apply both to where the employee is working and where firm offices are located. To the extent an employee needs to visit a client location or meet in person with a client or other employees, applicable state and local laws and quarantine rules must be considered as well. An evaluation of existing vendor contracts and property leases should also be conducted, paying particular attention to indemnification, hold harmless, severability, and force majeure clauses.

KNOW WHAT IS AT STAKE

A key challenge will be developing specific protocols that will allow for a safe workplace environment in a situation with more unknowns than knowns. Here, too, there is no one-size-fits-all recommendation. Measures ultimately put in place will vary by specific floorplans, office workplace culture, and any relevant jurisdictional workplace safety regulations. Be prepared to ask and answer the following questions well in advance of welcoming staff back into office buildings.

- Do you have the right physical protection measures in place for your employees and clients?
 - What set of health and behavioral protocols will be needed?
 - Will employees be screened by taking temperatures, completing health questionnaires, or some other method?
 - Will there be available and adequate COVID-19 testing for your employees?
- How can your firm properly implement changes impacting workforce planning and the workplace environment, such as providing personal protective equipment (PPE), enforcing social distancing, eliminating workspace sharing, working remotely or on flexible or staggered work hours, and so forth?

Continued.

- What changes are needed to your existing HR policies regarding health and welfare, compensation concerns, leaves of absence, stress management, work furloughs, and reductions in force?
- What resources and advice will you provide to employees to help protect themselves and family members from infection?
- How can you prepare your managers and other firm leaders to properly communicate with employees and clients to build trust that the new protocols are adequate and supportive of their continued health and financial well-being?

Having clear and thorough responses around all of these questions, and likely others specific to your circumstances, will again help reassure returning staff.

HR CHANGES

As part of your overall plan, firm leaders should examine current HR policies and make changes where needed to address issues such as paid sick leave and child care leave, both of which are addressed in the Families First Coronavirus Response Act, P.L. 116-127, signed into law on March 18, 2020. Stress management resources also may be available through group health insurance plans. Be prepared as well to respond to staff who may have situational concerns and wish to continue working remotely, including those with children who may be in remote learning plans or who have household members with compromised immune systems. Examine existing policies as applied to requests for leave and time off submitted since shelter-in-place orders began, and review any applicable COVID-19 laws, regulations, and guidance issued by federal, state, and local governments. Staff training should be provided both verbally and in writing.

Returning staff will undoubtedly also have concerns about how the adopted workplace safety plan and existing health care benefits will affect them. Provide them with up-to-date resources such as public health bulletins and guidance issued by state and local governments to help mitigate the risk of infection.

Finally, given the unprecedented economic effects stemming from the pandemic, legal counsel should be consulted regarding compliance with federal, state, and local labor and employment laws applicable to furloughs or reductions in force. If staff were furloughed and are returning to work, brief them on any changes in work protocols, policies, and employee benefits as well as the availability of employee wellness programs, especially for mental health and emotional support.

Have a plan in place as well to deal with any potential COVID-19 cases, including requiring staff to follow current CDC quarantine guidance. HR personnel will need to notify employees who have come in close contact with someone at the office who either tested positive or was in close contact with an individual who contracted the virus or exhibited related symptoms, while providing only necessary information to protect health and safety. Employee confidentiality must be respected, and any shared information should not include identifying information beyond their position with the firm. HR personnel and legal counsel should be consulted before information is released to employees.

LOGISTICAL CONSIDERATIONS

Before welcoming staff back into the building, provide clear guidance on what their workday will look like. Perform a physical site inventory to assess areas where people may not be able to comply with social-distancing requirements. Given the related risks, eliminate workspace sharing, and offer clear guidance regarding the use of shared spaces such as kitchens, lounges, and restrooms.

Consider whether it is possible or preferable to keep some personnel working remotely. Decisions on allowing employees to work remotely or requiring employees to return to the office must be nondiscriminatory and must be made in consultation with HR personnel and legal counsel. Staggered schedules will help limit the number of people in the office at any one time. PPE should be made available to all office personnel.

Ask your property management company about its health and security screening protocols for building entry; any restrictions on occupancy, visitors, hours, cleaning, and disinfection practices; and access restrictions and controls over elevators, breakrooms, or cafeterias, bathrooms, and other common areas. Obtain written confirmation of these protocols.

COMMUNICATE CLEARLY AND FREQUENTLY

Managers and other firm leaders will need to communicate consistently with employees and clients to build trust that firm protocols are adequate and supportive of their continued health and financial well-being.

The actual methods and frequency will vary by firm depending on the office structure and firm culture. Updates about the plan and any adjustments or changes should be relayed in timely, concise, and clear communications. Use multiple communication platforms, including text (if employees give permission), email, telephone, webinars, or virtual conferencing platforms.

Employees should have a clear understanding of firm protocols and management expectations. Be transparent about what is and isn't known, to maintain trust with staff.

In the end, implementing a carefully constructed plan and updating it as needed based on changing conditions will go a long way in helping to protect the well-being of staff as well as the short- and long-term interests of the firm.

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