

Reopening Your Business: Timing, Considerations, and Employment Law

Colin Walker

Michelle Friends



1801 California Street, Suite 2600
Denver, CO 80202
(303) 830-2400
fwlaw.com

What Happened?

Feb 29 – Washington State declares state of emergency

March 5- First Colorado Case

Mar 11 – World Health Organization declares a pandemic

March 13- First Colorado Death

Mar 16 – Federal issues stay at home guidelines

Safer At Home Order



Vulnerable populations and older adults must stay at home except when absolutely necessary



Retail businesses open for curbside delivery and phased-in public opening with strict precautions



No group gatherings over 10 people



Restaurants and bars remain closed except for takeout/delivery. Work towards phased reopening.



Critical businesses remain open with strict precautions



Wear non-medical cloth face coverings

Getting ready to open

Supplies

Building and office

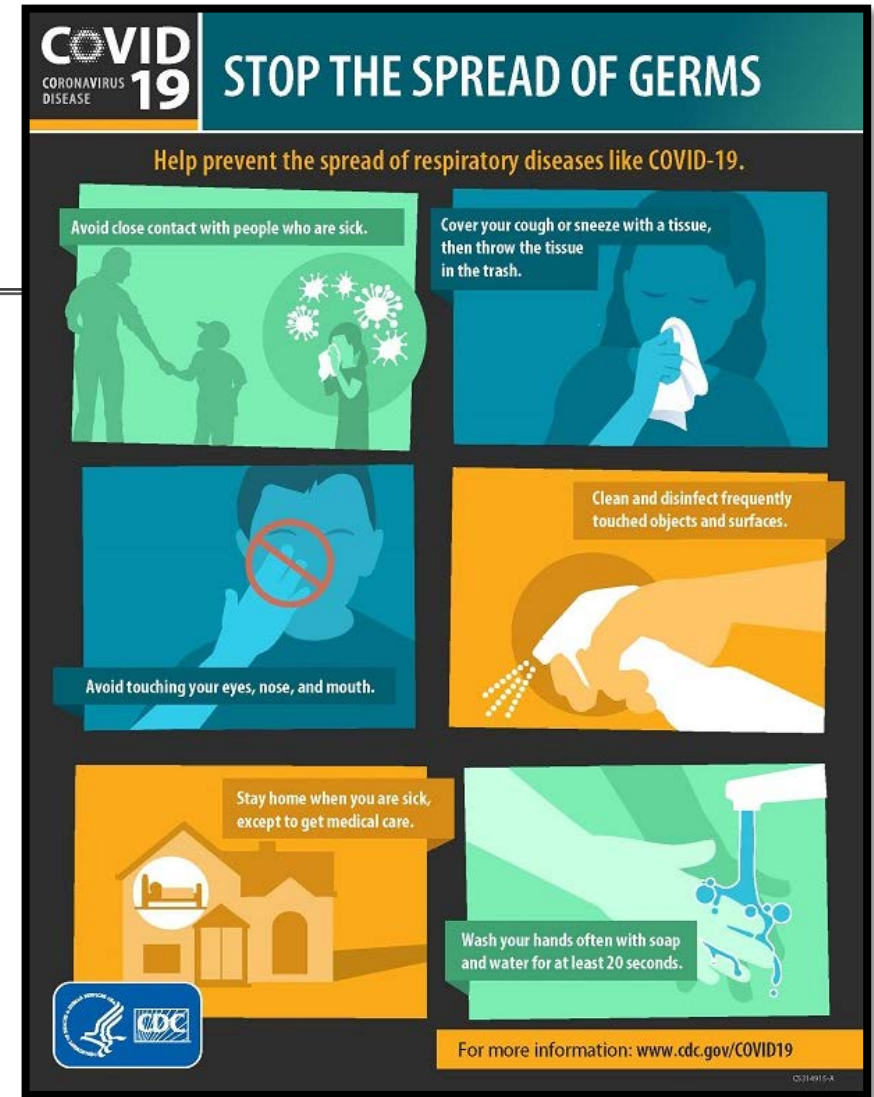
Information Technology & Security

Childcare

Staffing model & scheduling

Well-being

Signage



Workplace Laws Still Apply

Discrimination

Harassment

Disability Accommodation

FMLA

At-will employment

OSHA

News Laws

FFCRA

Colorado Health Emergency Leave with Pay (“HELP”) Rules

State and Local Stay Home Orders

Follow Health Organizations

EEOC says employers should follow guidance from the Food and Drug Administration and Centers for Disease Control (CDC)



Supplies – Order Now!

Supplies

- Thermometers (Forehead)
- Gloves
- Masks
- Sanitizer for Conference Rooms/Individuals
- Clorox Wipes
- Toilet Paper (check with building)

Make sure everyone knows where to find these items

Building & Office Considerations

Office

- Testing upon arrival (some are hiring nursing students for assistance)
- Modify workspace to facilitate social distancing
- Keep heavy traffic interior doors open, consider one-way hallways
- Initial deep clean and ongoing cleaning/sanitizing & maintenance
- Kitchen protocol – use of dishes, flatware, fridge, microwave
- Update Signage of CDC Recommendations, Office Policies

Building & Office Considerations

Office Services

- Limit access to mailroom, supply room, shared printer
- Conference room protocol
 - Bring your own supplies, remove chairs to ensure social distancing
- Access to storage for personal belongings
- Consider pausing shared newspaper/periodical subscriptions
- Light switch steward – one person to turn on/off lights each day
- Coffee and meal guidelines
 - Ice dispenser vs. maker, single cup vs. pot, individual vs. shared cream & sugar, etc.

Return to Work Survey

Are you high risk for COVID-19?

Are you high exposure to COVID-19?

Is there something the firm can do to help you be more effective at home?

Is childcare an issue for you for the foreseeable future?

Do you typically take public transportation to work?

Do you prefer to remain at home?

Educate! Coronavirus Symptoms

Educate your employees on the symptoms

Ask employees if they are experiencing symptoms

Require employees to inform employer if they experience symptoms

Require an employee displaying symptoms to stay home



Sample Return to Work Policy

1. Do not take public transportation, please plan with management for on-site or nearby parking
2. Wear gloves and mask when entering the building
3. Do not get on crowded elevators. If possible, ride the elevator alone or with no more than 3 other people
4. With shorter shifts, we ask that no one prepares and consumes food in the lunchroom
5. Please do not read or congregate in the lunchroom, client lounge, conference rooms, or the mailroom. Do not visit with others in small offices. Practice social distancing when using a large conference room.
6. Practice Group and Committee meetings will still be held over Zoom. We also encourage the use of Microsoft Teams
7. Request supplies, copies, and mail be delivered to your workstation or office. Avoid or limit time in the mailroom
8. Access cards may be required for entry into the building. They are required for entry to the firm's floors
9. If you are showing signs of a cold, do not return to work. If you do return you will be sent home
10. Employees will need to self-quarantine for 14 days if they travel by air
11. Acknowledgment of this policy is required. By signing this policy, you acknowledge that you have not been in contact with anyone with a confirmed case of COVID-19 in the 14 days immediately preceding your return to work

Testing

Any testing must be:

- Job-related
- Consistent with business necessity
- Nondiscriminatory basis
- No broader than necessary to address the potential issue

Testing

What to do if an employee refuses to be tested?

Information Technology & Security

Updated security and BYOD policies

Reminders about phishing, spoofing, scams

- Banks and vendors likely have relevant webinars/training available

Equipment pool inventory and access

- With limited inventory, may need to rotate/check in & out laptops, etc.

Technical support protocols

Training for new tools

Well-being & Mental Health

Make the return fun and comfortable

- Welcome back bags (sanitizer, wipes, masks, lotion, etc.)

Communicate security and health protocols, e.g., office cleaning

Casual Attire

Focus on Resilience (we've hired a consultant to run well-being sessions)

Remind employees of EAP benefits through health plans

We're all going to miss things! We're all going to make mistakes!

Vulnerable Workers

May not delay start date of vulnerable worker (e.g., older or pregnant) because of vulnerability

May offer teleworking to vulnerable workers

May not force vulnerable workers to work on-site

Must accommodate vulnerable workers

Staffing Model

Who must return, who returns upon request, who needs permission to return

Teams and rotations

- Know your state/city policies, some may conflict
- Rotating staff, limit those working in proximity
- Default is to continue working remotely, not to rush everyone back to the office

Doctor's Note to Return

Normally, it is OK to require a doctor's note for an employee to return from an illness or injury.

Employers may require a doctor's note to return after Coronavirus.

Doctors may be too busy.

EEOC recommends considering alternatives, such as certifications, emails, etc.

Accommodating Disability

If employee has a disability which makes him or her particularly susceptible to Coronavirus, an accommodation may be necessary.

Accommodations regarding testing.

Accommodating Disability

Employers are generally required to make reasonable accommodations for disabilities.

Employer and employee must engage in interactive process re accommodation.

Employer needs not provide the accommodation the employee wants if it provides a reasonable accommodation.

Employers are not required to make accommodations that cause an “Undue Hardship,” which may be more common as a result of Coronavirus:

- Loss of revenue
- Fewer workers make it more difficult to reassign duties

Childcare

Update or establish policy, availability, space, costs, alternatives, exemptions

- No requirement to return initially
- Conference rooms for children
- Be careful to not operate like a daycare, unless that's your intention
- Programs to Monitor
 - YMCA Summer sports
 - Summer camps
- School Districts in Fall

FFCRA Leave

In effect until December 31, 2020

Emergency Paid Sick Leave

- Employee has symptoms and seeking medical care
- Quarantine or isolation order—employee
- Quarantine or isolation order—other individual
- Childcare-school closure
- Childcare—day care unavailable
- “Substantially similar condition”

Expanded FMLA Leave for childcare

- School closure
- Day care unavailable

Colorado HELP Rule

Two weeks of paid leave for COVID-19 testing or treatment

Covered industries: leisure and hospitality, food services, retail establishments, real estate sales and leasing, **offices and office work**, elective health services, **personal care**, food and beverage manufacturing, child care, **education at all levels**, home health care, operating a nursing home, or operating a community living facility.

Returning to Work

Potential Coronavirus Liability

- OSHA
- Workers Comp
- Whistleblower laws
- Negligence: Third Parties

Near-term Considerations

Insurance coverage

When will visitors be allowed?

Review staffing regularly. (Current CO limit is 50% workforce)

Air travel policy

Vacation return policies

Building access policy

Positive COVID-19 test protocol (We will shut down again if on-site worker is diagnosed)

Test protocol before allowing a return to work (CDC guidelines for demonstrating recovery)

In it Together- Contact Us



Colin Walker

Director

cwalker@fwlaw.com

(303) 894- 4450



Michelle Friends

Executive Director

mfriends@fwlaw.com

(303) 894- 4427

Resources

Fairfield and Woods COVID-19 Hub

<https://www.fwlaw.com/services/covid-19-resource-hub>

PreventEpidemics.Org – When and How to Reopen After COVID-19

- https://preventepidemics.org/wp-content/uploads/2020/04/COV020_WhenHowLoosenFaucet_v4.pdf?fbclid=IwAR34NqMIkifiA1IAj-xDi0HRg4onhz9xZXfn8Z4x-bXYAxIO3rROGWancs0

Getting Back to Work – Furia Rubel Communications

- <https://www.furiarubel.com/what-were-up-to/getting-back-to-work-in-the-coronavirus-world-what-is-the-new-business-as-usual/>

EEOC What You Should Know About COVID-19 and ADA, Rehabilitation Act & EEO Laws

- https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm?fbclid=IwAR1p8DM0qSlcPzozOB5UZ0IKk63VM02qq3ITITtYg99j04OUKvBv0FPAtkY

Resources

Cushman & Wakefield – Recovery Readiness Guide (including office reconfiguration)

- <https://www.cushmanwakefield.com/en/insights/covid-19>

American Bar Association COVID-19 Mental Health Resources

- <https://www.alpma.com.au/useful-links-support-your-firm-through-covid-19-pandemic>

Australasian Legal Practice Management Association COVID-19 Toolkit

- <https://www.alpma.com.au/useful-links-support-your-firm-through-covid-19-pandemic>

International Legal Technology Association COVID-19 Resources

- <https://www.iltanet.org/resources/areas-of-knowledge/covid-19>

Resources

RB Consulting – Resilience in the Midst of the COVID-19 Crisis

- <http://www.reneebranson.blog>

The Tilt Institute – When Crisis Calls: How Leaders Are Responding to COVID-19

- <https://www.thetiltinstitute.com/tiltthink/2020/3/27/when-crisis-calls-how-lawyer-leaders-are-responding-to-covid-19>

Corcoran Consulting Group – Executive Committee guidance for profitable adaptation

- <http://www.bringintim.com>

COVID-19 Recovery Playbook

- <https://lawvision.com/client-resources/covid-19-recovery-playbook/>

Resources

CDC Guidelines for Businesses & Employers to Plan & Respond to COVID-19

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

Supplies

- Intivity.com – masks, gloves, disinfectants
- GetGarveys.com – masks, gloves, disinfectants
- Premier Supplies – masks, gloves, disinfectants
- Joolamedical.com – face masks
- Geosyntec.com – air quality consultants, HVAC, filters, etc.

Resources

OSHA

<https://www.osha.gov/Publications/OSHA3990.pdf>

Department of Labor

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Families First Act

<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>