

Return to Work Toolkit

Introduction

Many counties in Washington State are moving closer, or have already moved, to Phase 2 of the Governor’s Safe Start plan to return to the workplace after COVID-19 disruptions. This CH& Return to Work Toolkit is designed to help employers navigate the changing expectations and regulations related to welcoming employees back to the workplace. It pays special attention to the requirements for construction jobsites and office locations.

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Disclaimer

This Return to Work Toolkit represents the knowledge and recommendations of the authors based on the best information known as of the date of publication (June 2020). Information about implementation of the various re-entry Phases is consistently changing and may vary based on county and city policies. Businesses are strongly advised to stay independently abreast of the re-entry rules, policies, and procedures applicable to your industry and business location. The attorneys at Cairncross & Hempelmann remain ready to help you navigate this landscape. We encourage you to reach out with any questions.

About Cairncross & Hempelmann

Cairncross & Hempelmann is a full-service law firm with office in Seattle's historic Pioneer Square District. Founded in 1987, CH& advises companies and individuals in business, real estate, land use, and litigation. Our attorneys stand ready to help clients navigate through the workplace changes created by the COVID-19 pandemic and related announcements by government and health officials.

IV. Implementing Processes and Phasing Employees Back to Work

As offices and jobsites open for employees, it is important to remain flexible. Updates from health officials and government agencies are issued regularly, and employers may need to adjust to meet new expectations. Additionally, each company has a unique set of employees, jobsites, and other nuances to consider throughout the process.

A. Phasing and Identifying Which Employees to Prioritize Returning to Work

Bringing back all employees at the same time is not only unwise due to the risk of a second wave of the virus spreading, but it is against public health guidance. Strong protections are in place for particularly vulnerable populations – those protections must be understood and complied with. Therefore, you should undertake a multi-step process to identify *who* is eligible to return to work, and then adopt a phased approach for their return to work plan.

At the outset, determine *who* is eligible to come back to work and then establish a tier of those employees so as to form the best phased approach for returning to work. For example, classify workers as essential and non-essential, including by geographic location and role. Likewise, workers who are required on-site should be categorized differently than those able to work remotely. While tiering these employees, also identify those employees that are high-risk individuals, including those who have, or are caring for, high-risk family members, including healthcare workers. Remember that employers should also provide reasonable accommodations for others by keeping in mind an employee's wellbeing and state-of-mind about returning to the workplace, as well as other factors such as childcare and transportation constraints.

Once it has been defined who is eligible to return to the workplace, create a plan utilizing a phased approach for getting workers back to the workplace. This should take into consideration workflow, physical office spatial density and limitations due to mandatory social distancing, business needs, customer demand, availability of PPE, and the ability to stagger start and end times – all of which is further discussed in the sections below.

B. Evaluate Leave Options for Employees Who Cannot Return to Work

Even as stay-at-home orders are lifted and businesses reopen, there will be employees who cannot – or will not – return to the workplace. We recommend that employers remain flexible and work with employees on alternative work arrangements and leaves of absence. Of course, keep in mind that you may be obligated to provide an employee with a leave of absence, depending on the circumstances. Things to consider:

- Does the employee qualify for leave under the Families First Coronavirus Response Act (FFCRA)? If so, have they already used this leave benefit?
- Does the employee qualify for leave under the emergency expanded FMLA rules?
- Does the employee qualify for leave under standard FMLA?
- Does the employee qualify for leave under the Washington Paid Family & Medical Leave Act?
- Does the employee require leave as a reasonable accommodation under the Americans with Disabilities Act or the Washington Law Against Discrimination?
- Does the employee have accrued and unused vacation, PTO, or sick/safe leave?

- Does the employee qualify for unemployment benefits if they choose to stay home?
- Can the employee take an unpaid leave of absence until such time that they are comfortable returning to work?

C. Social Distancing on Jobsite

In Phase 1, social distancing is mandatory on jobsites. Employers must ensure all employees keep at least six feet away from coworkers and the public. However, in Phase 2, while social distancing is urged, construction work can be performed even if workers must be within six feet of one another to accomplish that work so long as specific exposure control measures are taken. Importantly, specific types of work that will be performed by employees within a six-foot distance of one another must be identified within a contractor's Job Hazard Analysis along with the exposure control and mitigation measures for each of those activities.

Identify areas of the jobsite where workers typically congregate and determine ways to control those choke points and higher-risk areas to ensure that social distancing is always maintained. Here are some additional recommendations:

- Workers should minimize interactions when equipment or materials are delivered or picked up from the site;
- Workers should take breaks and lunches in shifts and should be encouraged to eat lunch in their vehicles or off-site to maintain six feet of separation;
- Staging points and/or a one-at-a-time drop off/pickup zone should be established for materials or work items that must be transported between workers;
- Workers should take separate vehicles if travel is necessary;
- Meetings should be held outdoors and/or conducted by telephone, Zoom, or Skype whenever possible, particularly for groups of more than 10 people;
- Stagger trades work and work shifts;
- Use stairs instead of lifts or hoists when possible; and
- One person in an elevator at a time.

Additionally, it is important that supervisors model ideal social distancing behavior at all times. L&I also recommends that jobsites have an established "social distance monitor" – that is, a person whose job it is to reinforce the six-foot distance.

Active communication and cooperation amongst the owner, contractor, consultants and subcontractors is key to ensure that everyone on the jobsite maintains the appropriate social distance and precautionary measures while performing their respective services. **Remember, the jobsite can be shut down if social distancing is not maintained and exposure control measures are not utilized.**

D. Jobsite Visitors

Per the Washington State Department of Health, employers must follow certain guidelines for all jobsite visitors during Phase 1 only – this requirement was eliminated for Phase 2 of Governor Inslee's proclamation. If your construction project is located in a county still within Phase 1, then visitors must be listed on the jobsite's daily attendance log (their full name, email address and telephone number), which should be maintained by a site supervisor or other specific designee for 4-weeks after the log's date. While

on-site, visitors must also maintain six feet of separation from other people and should wear the appropriate PPE.