

Municipal Office Reopening and Return to Work Checklist

PRACTICAL LAW GOVERNMENT PRACTICE

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A Checklist of legal and practical considerations for local governments reopening office facilities after closing or reducing operations in response to a public health emergency, such as the 2019 novel coronavirus disease (COVID-19) global pandemic. This Checklist addresses issues a municipality may face in allowing both workers and the public to return a typical city hall facility. It provides guidance on determining employees' suitability to work and revising existing employee policies to address pandemic-related issues.

Many local governments either partially or totally shut down their on-site office operations in response to the 2019 novel coronavirus disease (COVID-19) global pandemic. Those measures have included directing some or all office employees to work from home or closing facilities to the public. This resource addresses reopening procedures following closures and disruptions resulting from the COVID-19 pandemic. However, parts of this Checklist may be applicable to municipalities reopening facilities after a temporary closure for other reasons, including natural disasters.

For specific health and safety protocol considerations associated with reopening municipal offices, see Health and Safety Protocols for Reopening Municipal Offices Checklist ([W-025-5272](#)). For further guidance on emergency preparedness and response for local governments, see:

- Continuity of Operations Plan for Local Government Checklist ([W-024-4808](#)).
- Municipal Office Emergency Preparedness Checklist ([W-024-9698](#)).
- Municipal Office Emergency Response Checklist ([W-024-9958](#)).

- Temporary Remote Employee Considerations for Government Employers Checklist ([W-024-7118](#)).

For more information and resources on COVID-19 generally, see Global Coronavirus Toolkit ([W-024-3138](#)) and Government Coronavirus Toolkit ([W-025-0513](#)).

DEVELOP AND COMMUNICATE REOPENING PLAN

- Determine the municipality's overall strategy and approach for resuming on-site operations in its offices, including whether to:
 - follow the same standards that apply to private businesses under statewide or local emergency orders (see Monitor State Business Reopening Orders);
 - reopen at full or partial capacity; or
 - reopen in stages, with operations that support remote operations or rely more heavily on on-site presence resuming sooner.
- Seek input and collaboration from representatives of various parts of the local government's office operations, including:
 - senior administration;
 - accounting and finance operations, including payroll, accounts payable, and utility billing;
 - other departments that provide services to the government itself, such as human resources, information technology (IT), and the law department;
 - taxes and licensing;
 - the city clerk's office or other recordkeeping functions;
 - municipal court operations;
 - planning, zoning, code enforcement, and engineering functions; and
 - communications and public relations.
- Coordinate with third parties and consider their potential involvement in the reopening, including:
 - property owners if the municipality rents facilities from others;
 - building tenants if the municipality leases space in its facilities to others;

- building management, cleaning services, and other contractors and vendors who provide on-site services;
 - insurers; and
 - outside legal counsel.
 - Conduct and document a risk assessment of the factors involved in bringing employees and the public back to the offices. Recognize that the factors to consider may continue to evolve, depending on:
 - the regional and local status of the pandemic;
 - whether staff or other parties who have been on the premises have been ill with or exposed to COVID-19;
 - the municipality's ability to implement safety measures for employees and visitors, such as providing face masks, hand sanitizer, and increased cleaning;
 - the workforce size, density, and workspace arrangements within the physical workplace;
 - the municipality's ability to alter workspace and public area arrangements or alter work schedules to increase distance between people and reduce exposure risks (see Health and Safety Protocols for Reopening Municipal Offices Checklist: Modify Workspaces and Public Areas as Necessary ([W-025-5272](#)));
 - the operations that can feasibly continue through teleworking without significantly diminishing service levels;
 - the employees who can feasibly continue to work remotely;
 - the degree to which employees rely on public transportation for commuting; and
 - whether the municipality employs unionized workers covered by a collective bargaining agreement (CBA).
 - Determine the municipality's philosophy on compliance and benefits, such as whether it intends to:
 - provide the minimum benefits and accommodations required by law or offer greater benefits on a voluntary basis; and
 - comply with minimum safety and health standards or take more aggressive measures to protect worker health and safety.
 - Understand that reopening is not necessarily a return to normal pre-pandemic operations and that expectations have changed for both employees and citizens of the municipality.
 - Determine the changes the local government should make in the delivery of public services (see Municipal Office Emergency Response Checklist: Address How to Continue Providing Public Services and Functions ([W-024-9958](#))).
 - Evaluate the municipality's legal authority for any measures that limit public visits and interactions with the government or require screening. Decide on an appropriate mechanism for implementing these measures, such as:
 - a resolution or other official action of the governing body; or
 - an order of the mayor.
 - Develop an effective and ongoing communication strategy about the status of the office facilities and the effects of the municipality's plans regarding public services and functions (see Municipal Office Emergency Response Checklist: Communicate Effectively During an Ongoing Emergency and in the Aftermath of Emergencies ([W-024-9958](#))).
 - Build flexibility into plans and protocols to:
 - anticipate the potential need for future scale-backs or closures; and
 - revise procedures as guidance and best practices evolve.
 - Develop or refine preparedness plans to prepare for a resurgence of the virus (see Continuity of Operations Plan for Local Government Checklist ([W-024-4808](#)) and Municipal Office Emergency Preparedness Checklist ([W-024-9698](#))).
 - Document initiatives to protect employees and others. During a rapidly changing legal environment and unprecedented public health concerns, adopting and documenting a reasoned and good faith approach to governmental decisions with an eye toward protecting employees and citizens from public health risks may provide a sound defense to later claims.
- ### UNDERSTAND APPLICABLE LEGAL AND SCIENTIFIC CONSIDERATIONS
- Recognize that different aspects of the municipality's operations may be subject to multiple and often conflicting directives and sources of guidance.
 - Where multiple laws or directives apply, comply with the most stringent applicable laws and laws most favorable to employees.
 - Understand applicable federal guidelines, including:
 - recommendations to state and local officials about reopening workplaces on a broader scale; and
 - guidelines on policies employers should implement. (See White House: Opening Up America Again.)
 - Recognize that reopening a municipal workplace after a pandemic or other public health emergency implicates laws and guidance by various governmental agencies and authorities, including:
 - the Centers for Disease Control and Prevention (CDC) (see, for example, CDC: Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19) and CDC: COVID-19 Employer Information for Office Buildings; see also CDC: Coronavirus (COVID-19));
 - the Department of Labor (DOL) regarding wage and hour issues under the Fair Labor Standards Act (FLSA) and leave laws it administers, such as the Family and Medical Leave Act (FMLA), as amended by the Families First Coronavirus Response Act (FFCRA), and the Uniformed Services Employment and Reemployment Rights Act (USERRA) (see DOL: COVID-19 and the American Workplace);
 - the Equal Employment Opportunity Commission (EEOC) regarding discrimination and compliance with laws it administers, such as Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA) (see EEOC: Coronavirus and COVID-19). The EEOC has provided guidance about COVID-19 testing, temperature checks, and symptom assessments and ADA compliance (see EEOC: What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (ADA Guidance)); and
 - state agencies administering occupational safety and health regulations that apply to public employers (see Practice Note,

Health and Safety in the Workplace: Overview: State Health and Safety Regulations ([9-500-9859](#)).

- Although the Occupational Safety and Health Act does not cover most public employers, consider using the principles addressed by the Occupational Safety and Health Administration (OSHA) in its June 2020 Guidance on Returning to Work (OSHA: 4045-06 2020). The non-binding OSHA Guidance provides direction regarding:
 - hazard assessment;
 - hygiene;
 - social distancing;
 - identifying and isolating sick employees;
 - return to work after illness or exposure;
 - controls, including engineering and administrative controls;
 - workplace flexibilities, such as telework and sick leave;
 - training; and
 - anti-retaliation.
- Remember that traditional workplace laws and employee protections, such as anti-discrimination and wage and hour laws, apply during a pandemic and the process of resuming business operations unless amended by law or administrative guidance. For information about avoiding potential liability under these laws when reopening, see Mitigating Employer Reopening Liability Checklist ([W-025-2473](#)).
- Understand state laws or governmental orders that apply to local government meetings, such as meetings of the governing body and other municipal boards. Know the expiration date for temporary orders and monitor whether orders are extended, revised, or replaced.
- Designate a point person responsible for tracking new legal developments and guidance as laws, guidelines, and other directives change rapidly during the stages of a pandemic.

Monitor State Business Reopening Orders

State government directives regarding workplace closures and reopening generally apply to private businesses and vary in detail by state and region. However, municipalities should:

- Understand any implications for local government offices and comply as necessary.
- Determine whether limits on the number of attendees at gatherings apply to public meetings the local government conducts.
- Determine whether the municipality's offices should follow protocols similar to those the state is requiring for private business offices as a best practice.

For information about state reopening orders and other COVID-19 developments, see COVID-19: Employment Law and Development Tracker: State Laws and Directives ([W-024-5500](#)).

CLEARLY COMMUNICATE WITH EMPLOYEES AND PREPARE THEM FOR THE REOPENING PLAN

- Maintain regular communications with employees during workplace closures. For laid off or furloughed employees, use a means of communication other than an employee's work email

to avoid claims that the employee must be paid for time required to regularly check a work email account.

- Provide information to the extent available about possible or anticipated reopening without committing to a date or promising to hire or rehire any individual employees.
- Ask employees to inform the employer if their plans or availability to return to work have changed, such as if they have:
 - accepted another job; or
 - relocated too far from the local government offices to return.
- Communicate the municipality's continued commitment to employee health and safety and maintaining a safe workplace.
- Explain the measures the local government is taking to protect employees and citizens, especially those that go beyond the minimum requirements.
- Explain the employer's expectations regarding workers coming to the workplace rather than working from home.
- Consider circulating information to all employees about CDC and other state or local guidelines cautioning certain categories of employees deemed at higher risk of contracting the disease with serious consequences. Do not single out individuals believed to be at higher risk.
- Inform employees where current information on the pandemic and the municipality's response can be found, for example, on:
 - the local government's internal website or intranet; and
 - a bulletin board.
- Provide ways for employees to ask direct questions and get answers, such as:
 - designating a local government representative to answer questions; or
 - providing an email address monitored by designated knowledgeable persons.

DETERMINE HOW THE MUNICIPALITY WILL HANDLE PUBLIC GATHERINGS AND PROCEEDINGS

- To the extent state statutes or governmental orders allow, consider whether the municipality should:
 - implement or continue to use electronic means to conduct meetings of the governing body and other municipal boards and committees (see Holding Virtual Municipal Public Meetings During the COVID-19 Emergency Checklist ([W-024-7342](#))); or
 - suspend nonessential agenda items until later phases, which may result in the cancellation of some board and committee meetings.
- If the local government office includes courtroom facilities, consider whether to:
 - resume normal municipal court operations but with new health and safety protocols;
 - resume court operations in a more limited way, such as limiting the size of dockets and adding court dates and times to reduce the number of persons in the courtroom;
 - conduct court by electronic means to the extent parties are able to participate; and
 - suspend court until the municipality can fully address public health concerns or risks have been minimized.

DETERMINE THE TIMING, MANNER, AND SELECTION OF WORKER RETURN

- Determine whether it is in the best interests of the municipality and its employees to fully resume office operations even if government restrictions that forced other workplace closures have been lifted.
- Consider a phased approach to the return of employees to the workplace.
- Determine whether bringing employees back to work, especially laid off or furloughed employees, is in the best interests of the organization and the employees, considering:
 - the municipality's ability to deliver services while offices are closed or partially closed;
 - overall risk factors for the employees; and
 - the possibility of subsequent waves of infections leading to quarantining.
- Determine if some employees can or should be reassigned to different tasks.
- Determine which categories of employees are most needed to return to the physical workplace.
- Determine how to notify workers about the reopening and how much notice to provide. Consider reminding employees that once recalled from layoff or furlough or resuming their in-person work arrangements:
 - their employment continues to be on an at-will basis unless provided otherwise by state law, CBA, or local policy; and
 - there is no guarantee that additional future layoffs or furloughs will not be necessary.
- Determine whether the selection criteria for workers recalled after a layoff or furlough is dictated by any:
 - state statutes or regulations;
 - existing employee handbook or personnel policy; or
 - CBA.
- Absent preexisting policies or agreements, set non-discriminatory criteria for selecting individuals among categories of workers for rehire or return from furlough. Possible suitable criteria include the employee's:
 - tenure with the employer;
 - past performance ratings;
 - inability to perform job functions from home; and
 - job skills or experience required to perform certain essential tasks or transferrable to new essential tasks.
- Do not exclude employees from in-person recall based on their actual or perceived degree of risk for contracting the disease unless:
 - an applicable government order requires certain categories of individuals to remain at home; or
 - an employee's disability poses a direct threat to the employee's health that cannot be eliminated or reduced by reasonable accommodation, as determined after conducting an individualized direct threat assessment (see EEOC: ADA Guidance: Questions G4 and G5).
- For at-risk populations, consider extending any available teleworking solutions.
- Recognize that while avoiding greater risk of an employee contracting or spreading a disease is arguably a legitimate governmental reason, using this criteria may disparately affect:
 - older employees;
 - employees with disabilities; or
 - pregnant employees.
- For more on discrimination risks, see Mitigating Employer Reopening Liability Checklist: Avoid Common Discrimination Claims ([W-025-2473](#)).
- Avoid exclude individuals from coming back to the workplace based on a belief or perception that they may be entitled to take protected paid sick or expanded family leave under the FFCRA or other leave laws.
- Determine whether initiating or continuing remote work arrangements is feasible during initial reopening phases and potentially beyond (see Temporary Remote Employee Considerations for Government Employers Checklist ([W-024-7118](#))).
- For employees coming to the workplace, consider staggering schedules:
 - by day so that fewer employees are physically in the workplace on a given day; or
 - based on starting and ending times so that employees are not all working simultaneously or arriving or leaving the workplace at the same time.
- Determine the social distancing measures the municipality will implement at its offices, including whether changes to the workplace environment require the municipality to:
 - reduce or change employees' hours; or
 - change employees' essential job functions.
- For further guidance on social distancing measures, see Health and Safety Protocols for Reopening Municipal Offices Checklist: Implement Social Distancing Measures ([W-025-5272](#)) and Standard Document, Social Distancing Policy ([W-025-3320](#)).
- Be aware that a pay reduction or change in job functions may require reclassification of some employees from exempt to nonexempt (see Practice Note, Wage and Hour Law: Overview: Minimum Wage and Overtime Pay Exemptions ([2-506-0530](#))).
- Be prepared to respond to employees' concerns about health and safety measures in the workplace and employee refusals to return (see Respond to Accommodation Requests). Clear communication about efforts to protect employees and citizens helps ease all involved back into a new normal.
- For employees returning from teleworking, account for the return of all equipment the municipality provided for use at employee homes unless otherwise agreed.

DETERMINE INDIVIDUAL EMPLOYEES' SUITABILITY AND WILLINGNESS TO WORK IN THE OFFICE

- Determine the status of individual employees who have been away from the workplace and whether they are:

- willing to return to work at the workplace; or
 - eligible for more time off under the FFCRA or any other law, regulation, or policy that entitles them to time off.
- Recognize that under certain circumstances, quarantined or self-isolating employees may be eligible for paid sick leave under the FFCRA, but employers may require them to consult with a medical professional to qualify for paid leave (see Practice Note, COVID-19: Paid Sick and Family Leave Under the FFCRA ([W-024-7536](#)) and COVID-19: FFCRA Paid Sick and Family Leave FAQs ([W-024-8645](#))).
 - Ensure the safety and health of the local government workplace by taking reasonable measures to:
 - prevent infected individuals from entering the workplace (see Health and Safety Protocols for Reopening Municipal Offices Checklist: Implement Screening Measures for Employees ([W-025-5272](#))); and
 - promptly remove individuals who have become infected, may be infected, or have been exposed to an infected individual (see Health and Safety Protocols for Reopening Municipal Offices Checklist: Control Exposure to Infected or Potentially Infected Employees ([W-025-5272](#))).

RESPOND TO ACCOMMODATION REQUESTS

- Anticipate an increase in accommodation requests following reopening or asking employees to return to the office.
- Be prepared to respond to employees who are hesitant or outright refuse to return to the workplace because, for example, they:
 - are a member of a vulnerable population more susceptible to suffering serious consequences from the disease;
 - live with or are responsible for caring for a member of a vulnerable population (such as an older parent or child with a compromised immune system);
 - do not have childcare due to school and daycare closures;
 - are concerned about using public transportation, especially if it is their only viable option for commuting to work; or
 - are concerned that reopening is occurring too soon.
- Explore the basis for employee concerns and explain the measures being taken to keep employees safe and comply with (or go beyond what is required by) applicable laws, guidance, and directives.
- Address employee fears with open dialogue and engage in the interactive process with employees requesting an accommodation due to:
 - a physical disability, for example, one that requires modified protective gear;
 - a mental disability, though it is unclear whether or to what degree stress or anxiety that arose in response to the pandemic qualifies as a disability under the ADA; or
 - a religious belief, for example, one that requires modified equipment to allow for certain religious garb.
- Be creative and flexible when considering reasonable accommodations. Consider potential accommodations suggested by the employee or the EEOC (see ADA Guidance: Question G.5).
- Recognize that if an employee has a preexisting mental illness or disorder that has been exacerbated by the COVID-19

pandemic, the employee may now be entitled to a reasonable accommodation (absent undue hardship).

- Understand that accommodation requests that did not create an undue hardship for the employer in the past may now be an undue hardship during or shortly after a workplace closure for a public health emergency.
- Acknowledge that a work-from-home accommodation request may be more difficult to deny if the employee successfully worked from home during a stay-at-home order.
- Consider possible accommodations for employees unwilling or unable to use public transportation to commute to the workplace, such as:
 - a stipend to subsidize the cost of driving and parking or other private transportation; or
 - extended teleworking arrangements.
- Consider possible accommodations for employees needing assistance with childcare, such as:
 - adjusting work hours to fit family schedules;
 - offering childcare services on-site or elsewhere; or
 - a stipend to subsidize the cost of childcare that meets employees' needs.

For more on accommodation requests, see Practice Note, Disability Accommodation Under the ADA ([9-503-9007](#)).

EVALUATE AND REVISE EXISTING EMPLOYEE POLICIES AND PROCEDURES

Pandemic and post-pandemic phases may have implications for several key employee policies and procedures. As the municipality plans to reopen its offices, it should evaluate and, if necessary, revise:

- **Sick leave and vacation or paid time off (PTO) policies.** Consider that:
 - the FFCRA mandates paid sick and expanded family leave for local government employees for certain COVID-19-related reasons (for more on FFCRA leave, see Practice Note, COVID-19: Paid Sick and Family Leave Under the FFCRA ([W-024-7536](#)));
 - employers (especially those in states that prohibit “use it or lose it” vacation or PTO policies) may want to require employees to use accrued paid leave under these policies concurrently with expanded family leave under the FFCRA to the greatest extent allowed by law (see Vacation Pay State Laws Chart: Overview ([1-584-6885](#)) and Practice Note, COVID-19: Paid Sick and Family Leave Under the FFCRA: Leave Usage and Sequencing ([W-024-7536](#)));
 - when an employer requires an employee to be away from work due to the employee’s potential exposure, the employer will need to determine how the time off will be classified and whether it will be paid or unpaid;
 - some existing policies, such as bonuses for not using sick leave, may encourage employees to come to work sick and may need to be re-evaluated;
 - as states and travel begin to reopen, employers should be prepared for a surge in employee requests for vacation time and devise a system and criteria for granting time off requests; and

- it may be appropriate to allow a one-time carryover of accrued vacation time if employees generally forfeit unused leave at year's end.
- **Telecommuting or work-from-home policy.** Consider:
 - if employees successfully teleworked during a stay-at-home order, whether that degree of teleworking is desirable or feasible going forward, which may vary depending on the phase of reopening (for example, employees may fear using public transportation before a vaccine is available);
 - that a demonstrated ability to telework effectively during a stay-at-home order may affect the reasonableness of (or undue hardship posed by) an employee's request to work from home as an accommodation for a disability, particularly given the now commonplace use of remote meeting technologies (see Respond to Accommodation Requests); and
 - that the criteria and conditions required for assessing work-from-home requests must be handled in a non-discriminatory manner.
- **Travel policies.** Consider whether:
 - non-essential business travel should be discouraged or prohibited during one or more phases of reopening;
 - employees should be discouraged from traveling to any specified regions during the pandemic; and
 - the municipality will question employees about personal travel and require a period of quarantine after return, if consistent with CDC or other guidelines. However, be aware that certain states have laws prohibiting employers from taking actions against employees for lawful off-duty conduct (see Employee Privacy Laws: State Q&A Tool: Questions 1 and 11).
- **Employee job descriptions.** Consider whether as a result of government closures the employer has identified certain essential job functions for any positions, such as an employee's physical presence in the workplace, or determined that certain functions are no longer essential (see Mitigating Employer Reopening Liability Checklist: Comply with Applicable Wage and Hour Laws ([W-025-2473](#))).
- **Expense reimbursement policies.** Evaluate policies regarding reimbursement for expenses like:
 - personal protective equipment (PPE) or other health and safety equipment;
 - work-from-home expenses, such as high-speed internet, computer monitors, ergonomic chairs, or cell phones required or requested for performing telework (see Temporary Remote Employee Considerations for Government Employers Checklist: Set Out Workspace Parameters and Determine What the Employee Needs to Work Remotely ([W-024-7118](#))); or
 - mileage, tolls, and parking for employees unable to safely use public transportation but needing to come to the workplace.
- **Training requirements.** Before employees return to work:
 - train managers and employees on all new protocols and policies relevant to their positions;
 - establish the consequences for policy violations; and
 - get written acknowledgments of receipt of the policies and training.

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