

# The Post-Pandemic Handbook

A GUIDE FOR EMPLOYERS RETURNING TO THE WORKPLACE

PLEASE  
KEEP YOUR  
DISTANCE



  
City of Westminster



# INTRODUCTION

This post-pandemic guide will provide an outline for employers regarding issues they're likely to face when offices reopen following the vaccine rollout. While it touches upon whether employers can mandate vaccines, this guide does not provide guidance about workplace safety.

Instead, we will explore the legal and business issues surrounding returning employees to the office. Employers are likely to face issues about employee safety concerns and employee reluctance to return to the office following prolonged work from home arrangements. We will provide guidance for employers navigating these issues post-pandemic.

# CONTENTS

PAGE 3: Introduction to CGL

PAGE 4-6: What's Yet to Come: 7 Important Planning Considerations for Employers

PAGE 7-9: Exploring Real Issues: Planning for Ongoing Telecommuting

PAGE 10-11: Exploring Real Issues: Planning for a Return to the Office

PAGE 12: Have You Updated Your Workplace Policies for the New Normal?

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## 7 Tips for Employers Navigating the Post-Pandemic Normal



### 1) You can ask employees about their vaccine status

You are entitled to ask your employees about their vaccination status, but you should have proper processes in place to ensure discrimination, harrasment, or disability-related workplace protections aren't infringed upon. We recommend assigning the task of enquiring about vaccination status to a particular person (or persons, depending on the size of your company). Any other employees, including managerial staff, should avoid asking any questions about the vaccine.

The assigned person should only ask whether an employee has received the vaccine. Follow up questions (including why/why not, when and/or what vaccine) may trigger the American Disability Act (the ADA), since the answers to these questions may elicit disability-related information. An employer would then need to consider if the follow-up questions are 'job-related and consistent with business necessity'.

The answer as to whether an employee has received the vaccine can be recorded in the employee's file and does not need to be stored separately, since it's not a disability-related or medical inquiry.

# WHAT'S YET TO COME

[We covered the COVID-19 Vaccine & Employee Rights in a previous blog post.](#) Read it for deeper insights into the legal and business considerations of mandating the vaccine in your workplace.

## 2) If you choose to return to the workplace, planning must be based on relevant guidances

State and local governments are responsible for establishing the protocol employers must follow in creating safe return-to-work plans. In California, most cities have a return-to-work plan employers must follow. These are usually prepared on an industry-by-industry basis.

It remains to be seen how this planning will change following the vaccine rollout. However, employers must follow these state and local ordinances in planning for a return to the office. If the burden of doing so is too onerous for your business, you should consider continuing to telecommute.

## 3) Prepare for some employees to not receive the vaccine

Employers should have processes in place to accommodate employees who will not receive the vaccine. [The U.S. Equal Employment Opportunity Commission guidance](#) outlines that employers should determine whether the unvaccinated employee poses a direct threat due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” If it is determined that they do pose a risk, the employee may request that an accommodation be made. When this occurs, you must go through the interactive process of finding a reasonable accommodation for the employee (if any). If the worker can continue to do their job remotely, then you may need to consider telecommuting as an adequate accommodation.

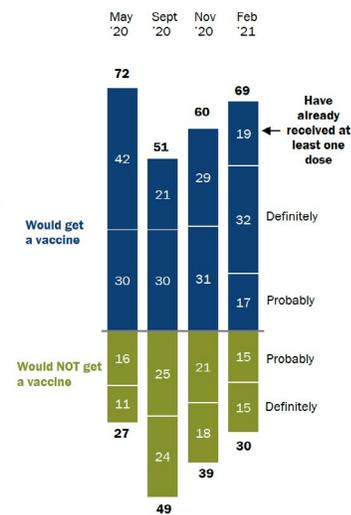
Managers and supervisors should be trained to recognize an accommodation request and all workplace policies regarding the employer’s harassment policy and COVID-19 vaccinations. They should be reminded of their obligation to not engage in discriminatory or retaliatory behavior against employees who do not receive the vaccine.

## 3) Reflect on your flexible paid time off policies

Many small businesses have allowed flexible paid time off policies for the past twelve months. In many cases, implementing these flexible paid time

### Half of Americans intend to get a COVID-19 vaccine; 19% already have

% of U.S. adults who say, thinking about vaccines to prevent COVID-19, they ...



Note: Respondents who did not give an answer are not shown.  
Source: Survey conducted Feb. 16-21, 2021.  
"Growing Share of Americans Say They Plan To Get a COVID-19 Vaccine" or Already Have"

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off policies wasn't what the employer initially envisioned. Employers need to consider whether they are going to continue to offer this flexibility to employees.

You are well within your rights to return to your traditional policies legally, but you shouldn't expect your employees will be happy to lose any of the flexibility they have enjoyed during the pandemic. Be prepared to navigate employee complaints about any policy changes that reduce their freedoms.

## **5) Review your oversight processes**

Many employees have been subjected to less oversight for the duration of the pandemic than they would usually experience when working on-site. Whether you're intending to return to the office, adopt a hybrid model, or move to a permanent distributed workforce, your oversight processes will likely need to be revised. Ultimately, the level of oversight you provide in your workplace is a business culture decision. But, those changes should be communicated to your employees by way of amended policies to minimize conflict - and to reduce the likelihood of an unfair dismissal claim if an employee is fired.

## **6) Now is the time to train your HR team**

Human resources teams are very likely to face an influx of issues once a company makes a decision about what its post-pandemic workforce looks like. They need to be prepared for this challenge. Employers should begin training in-house HR teams to navigate return to work questions as early as possible. Moreover, you should empower HR teams to respond to issues they may face by regularly reviewing and updating workplace policies to reflect the company's post-pandemic reality.

## **7) Women have (largely) had a different pandemic experience than men. You need to be cognizant of this reality.**

Women have experienced significantly more stress during the pandemic, largely due to the invisible work that often falls on the shoulders of women in relationships. As a result, more women have reduced their workload during the pandemic or left the workforce altogether. This exodus is in addition to the higher percentage of female workers who were furloughed or laid off at the beginning of the pandemic. The result is that the pandemic has disproportionately impacted female workers. Employers should be cognizant of the challenges faced by all its workers but, in particular, its female workers when deciding whether to mandate a return to the office. Flexibility will be key in recruiting and retaining female workers into the future.

## Moving to a Permanent Remote Workforce



### Picture this:

You're a small business owner with 20 employees. You have always offered flexibility to your employees. Parents could arrive and leave early to cater to kids' schedules, while anyone who had an appointment could make up time later.

During the pandemic, your entire team adapted to work from home. You have since hired workers from two different states, since you were working online anyway. Your office lease was up for renewal in early 2021 and you decided to exit the lease. Going forward, your team wants to keep working remotely and you're happy to oblige. But you're concerned about whether your patchwork of 'good enough' solutions are effective for the long term.

### **So, what are some of the legal considerations business owners must contemplate before adopting a permanently distributed workforce?**

*Workers' compensation is a critical issue for distributed workforces.*

You need to tell your workers' compensation carrier that you intend to move to a hybrid or fully-distributed model. The consequences for not doing so are significant - with the worst case scenario being that your company is responsible for compensating an injured worker at a home office.

# EXPLORING REAL ISSUES

Importantly, your workplace policies need to **strongly** impart the importance of employees notifying an employer whenever they intend to move, travel, or work from an alternative workspace. If an employee is supposed to have been working from their home in California for the past year but, instead, has moved to Idaho without notifying the company, your workers' compensation policy may not cover that employee if they are injured. As a result, companies are not required to permit employees to move from state to state whenever they please. You should consider your company's position on employee movement and ensure any workplace policies reflect your stance.

*Education and communication are key in promoting health & safety in a distributed workplace*

Communication is key in maintaining workplace safety in a distributed workforce. It's one thing to virtually inspect your employees' home offices or co-work stations for health and safety issues, but empowering your employees to work safely at home is a sustainable long-term solution.

You should also establish strong workplace policies regarding home office setups. At a minimum, you should implement a health and safety policy that:

- Sets a minimum standard for home offices (including desk height, etc.).
- Mandates employee safety training.
- Details employee reporting obligations.
- Includes a health and safety checklist providing details of recognized hazards that your employees need to complete and keep up to date to the office.

*Business owners need to adapt hiring strategies & practices for distributed workers.*

One significant benefit of adopting either a remote or distributed workplace is you gain access to skilled workers you may not have previously been able to consider for employment. This isn't just limited to talent from other cities or states. You can also tap into markets for workers who may not be suitable candidates for traditional 9-5 roles - like military spouses, parents, talented rural recruits, and individuals with disabilities.

You need to adapt your hiring strategies and practices to attract and recruit distributed workers. Since employment laws differ from state-to-state, you need to consider whether your hiring practices are compliant for each state in which you have employees. This includes ensuring proper information in offer letters (such as permissible background checks) and required notices are distributed.

[You can read an article we previously published about 'Distributed Hiring: 5 Tips To Keep Compliant here.](#)

*Payroll compliance is critical for business owners with employees in other states*

You need to comply with the workplace laws that apply based on where your employees live, not where your business is based. If you hire (or even interview) out-of-state workers, the first step you need to take is to check out that state's labor office guidelines.

[Here's a directory for state labor offices in the US.](#)

Next, you'll need to develop your internal wage-and-hour policies so that they reflect any relevant legislation. These policies should be strongly communicated to staff, particularly those working on an hourly basis. Communication about these internal policies should be ongoing with your team to ensure compliance.

We're strongly predicting that payroll companies are going to become more popular as workforces become more distributed. These payroll companies have the capacity to handle payroll compliance across every state, whereas local bookkeeping providers may not have the expertise or infrastructure to cater to inter-state employees.

## Bringing Your Workforce Back On-Site



### Picture this:

You're a medium-sized business with 100 employees who work across 3 premises prior to the pandemic. Since the shelter-in-place orders came into effect, your employees have all worked from home. However, you're looking forward to returning to the workplace as soon as it's safe to do so. You're concerned that employees won't want to return to on-site work arrangements. You want to assess your options regarding mandating return to on-site work and develop a plan that addresses likely employee issues.

The main issue in this situation is that you're revoking freedoms employees have experienced throughout the pandemic. Employees may be reluctant to give up the freedom and flexibility they've enjoyed since your workforce moved to telecommuting.

*Can you require your workforce to return to the workplace?*

Legally, you can require your employees to return to the office full time once the workforce is vaccinated and your state and local government ordinances allow for offices to reopen. There are limits to an employer's power to require workers to return to the office, including federal and state protections for employees with religious and disability accommodations.

# EXPLORING REAL ISSUES

At the end of the day, however, your employees are real people with families and lives outside of the office. Just because it's lawful for you to mandate a return to on-site work, doesn't mean your employees will positively respond to losing freedoms they've grown accustomed to enjoying.

Senior management should discuss how to position the return to work taking into account changed circumstances, such as lack of childcare or a move out of state, or even out of country. Each employee's situation must be handled individually. There is (unfortunately) not a one size fits all formula for a return to work plan.

*Personnel issues are likely to arise following a return to the office*

As your employees return to the office, you're likely to face some conflict between the workers. As outlined above, your employees may feel resistant to the additional oversight that will likely follow a return to the office.

New hires may also give rise to conflict. The current reality is you may have hired someone with a need for a workplace accommodation and not even realized it. While this is less likely than the possibility that you've hired someone who isn't a good cultural fit, it highlights the unique human resource issues created by the pandemic.

Your HR team has been critical throughout the pandemic and will remain essential in managing the transition back to the office. They should be prepared for an increase in personnel issues. Your HR team should be able to rely on up-to-date policies that reflect your company's current reality - not pre-pandemic reality.

# Have you updated these policies for *your* new normal?

Vacation & sick leave policies

Flexible/remote work policies

Expense reimbursement

Timekeeping policies, including timekeeping training for hourly employees

**Need some  
*guidance?***

# Let's Talk

