

# What will work look like after COVID? 4 things you need to consider

As we approach a new year that's poised to end better than 2020, it's time to look ahead at work after the COVID pandemic. Soon, employers will see the COVID-19 pandemic in the rearview mirror. Vaccines are approved, under production, and being delivered to the most vulnerable already. Washington is readying a new, comprehensive national pandemic recovery plan. And COVID-19 cases may finally begin declining in the first quarter of 2021. There's much to look forward to after these next few dark months. However, it's important to be prepared for what might come next. Here's what employers should expect.



## **Vaccinations must roll out before we can entertain post-COVID work**

Getting your workforce healthy and resistant to COVID-19 infections will be job one in the first and second quarter of 2021. That means continued social distancing and masking practices, illness screening, and finally – inoculation with an FDA approved COVID vaccine. Here’s how we expect the Biden administration’s vaccination program to shape up and what precautions employers need to take:

### **COVID vaccine availability will continue to increase**

Multiple companies developed and tested or are currently testing vaccines. The FDA has already issued emergency approval to vaccines developed by Pfizer and Moderna. Still undergoing trials are vaccines by AstraZeneca, Johnson & Johnson, and Novax, among others. Once more are approved and manufactured, the push to vaccinate will gear up.

### **Mandatory or voluntary?**

Your first vaccination decision is whether to require the COVID series as a condition of employment or not. For maximum effect, you’ll want to vaccinate as many workers as possible. You *can* require vaccination as a condition of employment for legitimate reasons. Preventing a highly infectious and potentially deadly illness is one such reason. But you must make exceptions for some employees based on factors like disability and religious objections. Be prepared to make those exceptions. It’s possible you will run into worker resistance. Recent studies show that a significant portion of the workforce is opposed to vaccination for a variety of reasons. These go beyond religion and disability and include suspicion about vaccines in general. Vaccine mandates are generally legal with reasonable accommodation exceptions. However, there may be potential legal claims for COVID vaccines based on their emergency use and not full FDA approval.

### **Disability and religious objections for workers should be considered**

Some disabilities may impact safe vaccination. Workers on medications for auto-immune disorders may not be

able to be safely or effectively be immunized. That's because their medications work to reduce the immune response in the body. And some vaccinations contain 'live' virus which may make the recipient ill. Some workers may raise a religious objection to immunization. Employers should treat these requests as one for reasonable accommodations. Be sure to engage in the interactive accommodations process. Discuss possible alternatives to immunization.

### **The rollout will be a logistical challenge or businesses**

Employers should also consider the practical aspects of rolling out an immunization policy. The first step should include a frank discussion with your workers' comp carrier. Ask whether inoculating workers at work or requiring shots mean any side effects are covered workplace injuries. Then consider whether to conduct workplace immunization clinics or rely on employees to visit a pharmacy or doctor. Finally, check the cost. Does your 2021 health plan cover provisionally approved vaccines? If not, will your state? Or will your company pay?

### **Shutdowns may still be on the horizon**

Estimates are the pandemic will continue to impact Americans through most of 2021 and COVID will continue to be a factor at work for many employers. And while cases *will* fall as more Americans vaccinate, it's also likely that hot spots will emerge. That's especially true if employers begin returning workers to physical offices, retailers reopen fully and schools end remote learning. Until most of the population is immune through vaccination or illness, some regions will be hit again. Thus, inevitably, employers will experience the shutdown/reopen cycle again sometime in 2021 despite valiant efforts. Employers should plan accordingly:

### **Update your emergency shutdown plan**

See what worked in the summer and fall and what didn't. Then adjust accordingly. Do the same for your reopening plans. But make certain you don't rely on old OSHA and CDC rules. These are all expected to undergo major updates. New, binding federal rules will hit very early in the Biden administration. Plus, more and more states have updated their own binding rules. If you prepared an emergency plan anytime in 2020 - it *is* not up-to-date.

### **Review your telework plan**

Did it work as intended? If your employees were productive enough while working from home, you may want to continue to work from home after COVID. But you will want to make some adjustments. For example, is your organization following all the rules about who pays for what? This varies by state. Plus, some employees are realizing that there's a substantial cost to working from home. Expect requests for reimbursement. And if you are considering telework as a permanent option, think about providing home office upgrades. For example, a better Zoom or GoToMeeting setup could increase professionalism. Inexpensive add-ons like a ring light may be a good investment.



## **Lawsuit prevention and protection**

It is widely expected that one of the COVID relief bills coming will include some form of limited liability protection. Exactly how this will work is uncertain. Meanwhile, employers need to think in terms of lawsuit prevention. What is certain is that lawsuits over employer COVID prevention are on the rise. The best approach is to make absolutely sure you are following all relevant rules and regulations. That includes:

### **Prevention**

To prevent wrongful death lawsuits, make sure that your company follows all federal, state, and local prevention rules. If there's a local mask mandate, enforce it. If a worker falls ill, isolate her, send her home, and get her tested according to established protocols. Allow workers who may have been exposed to take leave. If you are open to the public, enforce capacity limits, distancing, and mask mandates for customers too. And if you discover that managers or supervisors aren't following through, discipline them. The goal is to convince a judge or jury that you acted responsibly and didn't disregard worker and customer safety.

### **Beware new forms of harassment and intimidation**

Not all customers and workers are willing to follow pandemic rules. Employers sometimes end up in the middle of conflicts. Violence against employees has been rising. Employers should increase security in settings where customers can do harm. For example, having cashiers and clerks enforce social distancing rules can leave them unprotected from assault and harassment. Employers may want to provide conflict resolution-trained security guards who can help defuse arguments. There have also been reports of new forms of potential sexual harassment. Servers are reporting that restaurant patrons are demanding they remove their masks. It's apparently a new twist on the cat-call command to "smile."



**Expect a focus on**

## **wages and hours to continue after COVID**

Last, but not least – the Biden administration’s COVID recovery plans include efforts to boost worker earnings. The idea is that economic recovery will happen faster if workers get a real boost to their incomes. This will have a ripple effect across the economy as case counts fall and spending rises. For employers, this means watching two big trends that will impact their bottom lines. These are:

### **Pay parity at work will remain in focus after COVID**

Several prospective Biden appointees to influential economic positions are women with a background in pay equity issues. They are widely expected to push policies that promise equal pay for equal work for all. Already, the EEOC is collecting data on pay disparities among men and women and other protected groups. This data will be used to inform policymakers as well as support EEOC discrimination litigation and guidance. Employers who want to stay ahead of the curve can use a [newly released EEOC tool](#). It allows employers to search pay by characteristics, industry, and position to see where their own policies fall.

### **Higher wages for exempt workers**

It appears that the incoming Biden administration may be redoing the overtime regulations. This may include raising the salary level for exempt status, indexing it to inflation, or even revising the tests for exempt status classifications. You may remember that in 2016, substantially higher minimum salaries than those ultimately approved under Trump were proposed. Currently, the salary threshold is around \$35,500. The original proposal was \$47,500. Expect proposals for a substantial increase to at least that amount.

**Additional Resource:** With Democrats claiming control of the Senate after a surprising double victory in the Georgia runoff elections, Biden's COVID plan will have a greenlight through Congress. See [what that plan might mean for employers](#) and what you can do now to prepare.