

# COVID-19 Safety Plans Can Reduce Return-to-Workplace Fears

By Allen Smith, J.D.

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**E**mployers are taking steps to make their workplaces safe from COVID-19, but many aren't pulling these actions together in a comprehensive plan. That's a missed opportunity, as such plans can reduce workers' fears about returning to worksites and defend employers from Occupational Safety and Health Administration (OSHA) penalties. Moreover, the plans are required in some places, such as New York and Puerto Rico.

"Also referred to as preparedness plans, COVID safety plans are a way for employers to demonstrate to their employees, the public for public-facing businesses and, in certain cases, state governments that they have considered the risks associated with COVID-19 in their respective workplaces and have developed a response to these concerns," said Brian Cousin, an attorney with McDermott Will & Emery in New York City.

OSHA recommends that employers develop an infectious disease preparedness and response plan, and that each establishment conduct a hazard assessment for all jobs ([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/OSHA-Return-to-Work-Guidance.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/OSHA-Return-to-Work-Guidance.aspx)). This plan "is the first thing OSHA requests when investigating a complaint that an employer failed to maintain a workplace free from recognized hazards likely to cause serious injury or death to its employees," said Eve Klein, an attorney with Duane Morris in New York City.

Feedback

## Plan's Contents

So what should go in a COVID-19 safety plan?

That depends on a variety of factors, such as location, size of business, hazard exposure level for employees and industry (<https://www.osha.gov/SLTC/covid-19/controlprevention.html#interim>), said John Ho, an attorney with Cozen O'Connor in New York City. "Not all employers will do the same thing, nor should they," he stated.

"Some state and local orders have very specific requirements for these plans and employer operations," said Jenifer Bologna, an attorney with Jackson Lewis in White Plains, N.Y.

New York ([https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_www.governor.ny.gov\\_sites\\_governor.ny.gov\\_files\\_atoms\\_files\\_NYS-5FBusinessReopeningSafetyPlanTemplate.pdf&d=DwMFAg&c=nQOnw6HHAeKBNxj23OXhOw&r=p7iC2HXrwyQWqy2PPr\\_8QBz6ATCPv8F7AX9KJvr9Ec0&m=9gDHsSb-bfAWYoOH88wWSUOgO0eRcDSeDgwYvCqCfhY&s=QQCVE\\_ClgknETYi2atfBYHZk2RfZ47\\_GBtuf7VxLs\\_w&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.governor.ny.gov_sites_governor.ny.gov_files_atoms_files_NYS-5FBusinessReopeningSafetyPlanTemplate.pdf&d=DwMFAg&c=nQOnw6HHAeKBNxj23OXhOw&r=p7iC2HXrwyQWqy2PPr_8QBz6ATCPv8F7AX9KJvr9Ec0&m=9gDHsSb-bfAWYoOH88wWSUOgO0eRcDSeDgwYvCqCfhY&s=QQCVE_ClgknETYi2atfBYHZk2RfZ47_GBtuf7VxLs_w&e=)) and Minnesota ([https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_www.dli.mn.gov\\_sites\\_default\\_files\\_pdf\\_COVID-5F19-5Fbusiness-5Fplan-5Ftemplate.pdf&d=DwMFAg&c=nQOnw6HHAeKBNxj23OXhOw&r=p7iC2HXrwyQWqy2PPr\\_8QBz6ATCPv8F7AX9KJvr9Ec0&m=9gDHsSb-bfAWYoOH88wWSUOgO0eRcDSeDgwYvCqCfhY&s=owefl5w5m3V4cqMovYVAgN2Xv6jP8kgCMrY4mHpxymk&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.dli.mn.gov_sites_default_files_pdf_COVID-5F19-5Fbusiness-5Fplan-5Ftemplate.pdf&d=DwMFAg&c=nQOnw6HHAeKBNxj23OXhOw&r=p7iC2HXrwyQWqy2PPr_8QBz6ATCPv8F7AX9KJvr9Ec0&m=9gDHsSb-bfAWYoOH88wWSUOgO0eRcDSeDgwYvCqCfhY&s=owefl5w5m3V4cqMovYVAgN2Xv6jP8kgCMrY4mHpxymk&e=)) have provided templates and instructions for their safety plans, Cousin noted.

That said, a safety plan—which Eric Conn, an attorney with Conn Maciel Carey in Washington, D.C., refers to as an exposure control and response plan—should outline ways for employers to identify risk factors unique to the coronavirus.

Conn said the plan should describe physical changes due to the pandemic, including:

- Spacing workstations farther apart.
- Installing barriers to prevent the transmission of the virus.
- Adjusting the heating, ventilation and air-conditioning system, such as increasing the sophistication of filters or increasing the airflow.
- Using outside stand-alone purifying systems or fans to move the air faster and make it cleaner.

On the administrative side, policies and procedural updates may be outlined. These adjustments may include changes to policies on:

- Telework, which can help reduce exposure.
- Paid sick leave to encourage workers to stay out if they are experiencing symptoms or think they have contracted the illness.
- Prewrite health screening protocols, which may include temperature taking ([www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/eeoc-coronavirus-temperature.aspx](http://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/eeoc-coronavirus-temperature.aspx)) and questioning employees on symptoms before they are allowed in the workplace.

The safety plan should include a response component, such as how to:

- Identify and remove from the workplace infected employees.
- Conduct any contact tracing ([www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/contact-tracing-employers.aspx](http://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/contact-tracing-employers.aspx)).
- Communicate with other employees lawfully about potential exposures.

In addition, Conn said employers should explain their policies on how employees who've had the virus can return to the worksite. These policies may range from requiring a negative test to asking the employee not to return until a certain number of days have passed without experiencing symptoms or taking medication that would mask those symptoms. Employers should figure this out now so that they "are not making it up as they go along," he said.

Conn suggested other policies that might be addressed:

- Staggered work shifts and break times.
- No water coolers or—hold on to your hat—shared coffeepots.

These steps can reduce crowding and the spread of the virus.

"A business should consider whether modifications are necessary," Ho said. "One important factor is the rate of exposures and whether it is going up or down in your locality."

Safe-work practices should be addressed in safety plans, too:

- Encouraging individual hygiene practices.
- Enhanced housekeeping.

Include information about the use of protective equipment in the plans, Conn added, such as face coverings, which may be encouraged or required, and gloves, face shields and gowns, depending on tasks.

"Part of the plan should include holding someone responsible for the daily monitoring of OSHA and CDC [U.S. Centers for Disease Control and Prevention] guidance," Ho said. Both these agencies and other health care authorities are publishing new information almost daily.

**🔒 SHRM RESOURCE SPOTLIGHT**

Coronavirus and COVID-19 ([www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx](http://www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx))

**Purpose of Plan**

A plan should be the first step in employers' response to the pandemic and should be communicated to staff, according to Conn.

"I see a lot of employers with prework screening over here and personal protective equipment over there and changes made but they're made all over the place," Conn said. These employers haven't shown the collective response they've brought to the pandemic.

A safety plan is a significant form of communicating to key audiences all the employers' actions in response to coronavirus. Employees may refuse to come to worksites because they are scared ([www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/fear-of-coronavirus-not-covered-by-ffcra.aspx](http://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/fear-of-coronavirus-not-covered-by-ffcra.aspx)) and don't know if the employer has taken enough action to protect them, he said. They may file complaints with OSHA because they don't know what steps employers have taken. When investigating complaints, OSHA in turn will want to know what the employer has done.

An exposure control plan is Exhibit A that the employer has taken all the steps it needed to take if it faces, for example, a wrongful-death lawsuit ([www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/coronavirus-wide-range-of-lawsuits.aspx](http://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/coronavirus-wide-range-of-lawsuits.aspx)), Conn said. Even if the employer responded to COVID-19 responsibly, if the employer can't explain its response in a coherent way, "it will face liabilities and significant distractions in the workplace," he predicted.

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