



Are You Prepared To Have Your Employees In The Workplace?

WEBINAR: Top 3 Issues Addressed in Preparing/Continuing Your Return to the Workplace

What are the top issues you need to address before you reopen your office if you haven't already? If your answer solely discusses social distancing, you're only addressing one aspect of a safe work environment. Other critical topics could make or break your return plans.

Your return to work strategy can ensure the safety of your employees and customers through:



Top Legal Considerations



Workplace Utilization Best Practices



Return-to-Work Clinical & Testing Protocols

Below we break down each of these topics to provide a foundation for a successful return to work strategy.

Top Legal Strategies

Michael Eckard | Ogletree Deakins

1. Temperature Screenings

Given that there is a declared pandemic, the EEOC has issued guidance stating that employers may ask questions about symptoms and may conduct temperature screenings. This is permitted under the Americans with Disabilities Act (ADA). At a state level, there are state laws that might be more restrictive than federal guidelines, so you have to consider what the state law restrictions are in the area where you have operations.

2. COVID-19 Testing

EEOC updated their guidelines stating it is also lawful for employers to administer viral tests to employees. It's important to work with advisors and testing providers like BioIQ to determine the appropriate kinds of test to administer.

3. Legal Considerations for the Testing Process

Determine what your testing goals and strategies are to determine what type of test to facilitate. Testing should be done in addition to PPE, social distancing, and other precautionary measures.

HIPAA Release: Your testing provider is most likely going to be a HIPAA covered entity and they are not going to be able to release the test results of your employees without a HIPAA compliant records release authorization. You should obtain a HIPAA release as part of your upfront enrollment and registration process.

ADA Confidentiality Requirements: Under the ADA, medical records must remain confidential. As the employer, you should keep these in separate confidential files for the employee, maintained by human resources in a secure fashion with limited visibility to others.

ADA and Title VII Accommodations: If the restrictions around testing are due to a medical or disability issue, you may have a legal obligation to give an ADA accommodation just as you would for any other disability in your workplace.

- The Process: Engage in a conversation with the employee and explore the reason they need an accommodation, the type of accommodation they might need, and whether it's a reasonable accommodation vs. an undue hardship to the company.
- Title VII: There may be some limited circumstances where an employee has a sincerely held religious belief that impacts their ability to comply with your testing program. Under Title VII, you can determine if it's a situation you're obligated to accommodate.

4. Compensability

The issue on whether you have to compensate employees for the time spent screening typically depends on where your operations are located.

Compensability

- **Federal FLSA**
 - **At-home screening activities - Not Compensable**
 - **On-premises, pre-shift screening activities**
 - Required by state/local order – Likely Compensable
 - Required by employer (only) – Likely Not Compensable
 - **Screening activities during work shift - Compensable**
- **States – varies**

STATE	COMPENSABLE	RATIONALE
Alabama	No	See FLSA
Alaska	No	See FLSA

At a state level, laws vary. Click here for a helpful 50 state survey that gives you highlights of these laws from state to state.

5. Handling Infected Employees

You're likely to have an employee who gets infected with COVID-19. While maintaining ADA Confidentiality in this situation, you should:

Handling Infected Employees

- **Isolate Employee and Send Home or to Medical Care**
- **Contact Tracing**
 - Others in close contact with infected employee going back **48 hours prior to onset of symptoms**
 - Stay home for 14 days and self-monitor for symptoms
- **Notification of Coworkers and Others**
 - Maintain ADA Confidentiality
 - <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Workplace Utilization Best Practices

Gillian Baikie & Brooks Morris | Cresa

1. The Return to Office (RTO) Process

There will be some mid-term and long-term steps that need to happen before arriving at the new normal. You should prepare an adequate amount of time planning re-entry, looking at best practices and current guidelines, and considering your team and its culture.



2. Evaluate Your Space

Analyzing your space can inform your re-entry strategy and show areas to consider space modifications. Plans may include:



Click [here](#) to view a sample Return to Office Space Plan developed by Cresa's Workspace Planning, Design & Support Team.

3. Develop and Communicate Guidelines

Outline the initial steps taken to ensure a safe work environment (the elevated sanitation, etc.). Reassure your team that you have taken every precaution to ensure their health and wellness and that everyone must follow the protocols outlined within the guidelines. It's important to not only communicate to employees ahead of re-entry, but also be sure to create opportunities for feedback. Insights gathered during this time may help shape future plans.

4. What We're Hearing

There is still a need for the office. People want a place to meet, collaborate, and have mentorship. It may look a little different when we get back as flexible work schedules balance out, but many are looking forward to returning at some point.



5. Do You Know Your Landlord?

What's beyond your four walls is out of your control. Having a relationship with your landlord and knowing what's expected of them is critical, especially during this time. The types of landlords include:

Sole Proprietor – “Mom and Pop”: Straight forward, easy going, and typically best suited for small businesses with simple needs.

Family Office Investors: Stable tenants, best suited for small to large businesses, looking for a partner and a landlord who can accommodate their growth needs.

Real Estate Developers: Develop properties that are usually Class A with a lot of amenities, high security, and are looking to generate the highest rents possible.

Institutional Investors: Professionals at managing money, will usually invest in Class A or Class B buildings, and are interested in generating strong cash flow as well as achieving high rents.

6. What's Most Important?

In order to build a strong relationship with your landlord, you first need to have one. This starts with hiring a professional real estate advisory firm, like Cresa, whose market knowledge and existing relationships can create leverage when communicating with landlords. Your advisor should identify the landlord's expectations and make sure they have an achievable return to office plan set up.

 <h3>Expectations Of Your Landlord</h3>			
Social Distancing	Parking Garages	Signage	Personal Protective Equipment (PPE)
<ul style="list-style-type: none"> Decrease density in certain areas such as lobbies and elevators, following 6-foot distancing guidelines. Keep lobbies open for travel and avoid gathering in large groups. 	<ul style="list-style-type: none"> Valet parking should be put on a temporary hold. Parking decks will continue to be open with signage displayed to promote social distancing. 	<ul style="list-style-type: none"> Signage will be posted to remind people of high-touch surfaces, traffic flows, amenity space availability, and social distancing. 	<ul style="list-style-type: none"> Face masks/covering will be mandatory in all common areas. Tenants may be required to undergo preliminary health checks upon reentering the building.

 <h3>Expectations Of Your Landlord</h3>			
Increased Cleaning	HVAC Equipment Checks	Touch Free Interactions	Common Area Access Protocols
<ul style="list-style-type: none"> Regulate what sanitization products are being used in nightly cleaning routines and to what extent Increase cleaning in high-touched areas Wipes and hand sanitizer stations available in high-traffic areas 	<ul style="list-style-type: none"> Optimized ventilation systems installed to deliver higher than average rates of fresh air into the building. 	<ul style="list-style-type: none"> Sensor-activated controls added and utilized upon entering the building property or any public area. Building doors propped open to reduce touchpoints. 	<ul style="list-style-type: none"> Determine recommended capacity with building management. Post signage reminding people of high-touch surfaces (buttons/doors) Cafes will have limited hours with capacity restrictions.

Return-to-Work Clinical & Testing Protocols

Justin Bellante | BioIQ

1. Back to Work Framework

At the beginning of the pandemic, a basic clinical protocol was applied that combines:

-  Symptom/Exposure Assessment
-  Testing
-  Contact Tracing and Notification
-  Quarantine and Treatment

This protocol should be applied in varying degrees of intensity depending on the company. A high-intensity example would be a nurse going to a nursing home, where that person is going to be tested every 3-14 days. A low-intensity example would be a technology-based business executive returning to the office where they can easily socially distance, and thus test only based upon exposure or symptoms. Many businesses will fall somewhere in the middle.

When working with employers to determine protocol intensity, BioIQ uses standard population health management tools, including:

-  Population Segmentation
-  Targeted Protocol
-  Risk Stratification

When developing your re-entry timeline, consider the risk of various employee roles within the organization. How probable is transition within each office environment? What's the mortality rate for that patient type?

It will be vital to understand the disease and outcomes risks associated with different departments and individuals. Airline company segmentation, for example, may treat baggage handlers differently from home office or call center staff. University segmentation may similarly warrant different protocol for student athletes versus health staff.

There is no “one size fits all” approach.

2. Testing Goals

What type of testing should you apply during the testing component of the protocol? There are two types of tests you should consider:



Diagnostic Testing – RT-PCR is the current standard.

Lets you know if you have the virus. Typically tested from a nasal or throat swab or a saliva sample. Emergency Use Authorization from the FDA created a new pathway to quickly get these tests to market, including an expanding pool of in-home test kits.



IgM / IgG Antibody or Serology Testing.

Let's you know if you've had the virus or previously been exposed to it, and your body has registered an immune response. Typically tested from a blood sample. Although antibody testing is valuable to help us understand prevalence of the disease and what percentage of the population may have had the disease, a lot about immunity is still not understood at this point and is being researched.

These tests all have beneficial clinical uses and can be done in a variety of settings for a variety of purposes. Testing models and locations include at-home self-collection, tent or drive-through testing, home visit by clinician, and retail site or work site testing.

3. Managing the Process

Testing needs to be supported by technology-driven methods of identifying and mitigating risk. A supporting platform is needed to effectively deliver and manage testing at scale. It also provides a centralized point of access for employers and convenience for consumers.

BioIQ offers a daily online assessment for employee symptom screening where individuals can also tap into resources to guide them through the next steps in the testing process, be it through home test kits, a worksite event or at a local retail clinic. These resources help employees navigate and adhere to a protocol. They help employers track the protocol, determine who is able to safely return to the workplace, and track disease prevalence and recovery within the employee population.

