

Concerns as Companies Reopen Workplaces Amid COVID-19, Littler Survey Finds

Littler, the world's largest employment and labor law practice representing management, has released the results of its COVID-19 Return to Work Survey Report, completed by 1,010 in-house counsel, human resources professionals and C-suite executives.

As states increasingly relax stay-at-home orders, Littler's survey highlights the range of complex issues facing employers as they plan to reopen their workplaces in the wake of COVID-19. Employers' concerns centered on when to bring employees back and how to do so safely, how to accommodate increasing remote-work requests and liability concerns stemming from the rise in COVID-19-related employment claims and lawsuits.

"While many businesses and their employees are eager to return to a sense of normalcy and resume in-office operations, they face a host of unknowns when it comes to what the workplace looks like in a COVID-19 era," said Alka Ramchandani-Raj, a leader of Littler's COVID-19 Task Force. "Particularly given the wide-ranging, and often conflicting, guidelines from state and local officials, employers are left to balance multiple logistical, emotional and legal concerns in determining whether, when and how to reopen their workplaces."

Timing to Reopen and Safety Concerns

Most respondents from businesses not considered essential – and thus not already open – appear ready to return to the physical workplace. More than three-quarters (78 percent) say they will reopen within three months, with 34 percent of those respondents planning to do so within one month.

At the same time, employers are moving forward with caution, as only 18 percent plan to bring employees back immediately after stay-at-home orders expire. Another 33 percent will wait a few weeks and 42 percent plan to take a “wait and see” approach to gauge the outcome of other business’ reopening efforts.

Employers are also taking numerous steps to maintain employees’ safety, including increased cleaning (90 percent), limiting employee contact in common areas (87 percent), providing and/or encouraging the use of face coverings or other protective gear (86 percent) and modifying workspaces to maintain safe distances (78 percent). In written feedback, many respondents expressed concern about the difficulty of ensuring employees follow new safety guidelines, as well as upholding their workplace culture and employee morale while implementing safety measures.

More than half (58 percent) of respondents also plan to conduct testing or health screenings on employees, with most referring to temperature checks (89 percent) and symptom screenings (72 percent) and a small number selecting antibody (8 percent) and antigen (7 percent) tests. Yet while the U.S. Equal Employment Opportunity Commission has released some guidance about screening employees for COVID-19, uncertainty remains around implementation, privacy matters and litigation risks.

“There is no ‘one-size-fits-all’ approach to returning to work, which makes the process all the more challenging for employers,” said Melissa Peters, a leader of Littler’s COVID-19 Task Force. “However, in the health and safety realm, communications and training have always played a vital role and are especially paramount now given the stress and anxiety everyone is under as the pandemic continues to unfold.”

Managing Remote Work Accommodations

The pandemic has drastically shifted the remote work landscape, and for some workers, the shift could be permanent. Half of survey respondents are considering requiring more employees to work remotely to reduce physical office costs. Most employers surveyed also report being amenable to accommodating work from home requests: 52 percent are willing to be flexible on granting valid requests until the pandemic subsides, while 30 percent are open to changing their remote work policies and allowing employees to remain remote if they have proven effective working outside of the office.

“Managing employee leave and accommodation requests was already an area fraught with difficulty and potential liabilities for employers, and COVID-19 has only exacerbated that,” said Michelle Barrett Falconer, Co-Chair of Littler’s Leaves of Absence and Disability Accommodation Practice Group. “Effectively handling these issues will require adhering to an ever-evolving patchwork of federal, state and local laws while ensuring procedures for remote work are applied consistently, without any discriminatory impact on certain groups.”

Employer Liability Concerns

As the debate over granting employers “liability shields” to protect against COVID-19 lawsuits rages on in Congress, 71 percent of in-house counsel respondents report being at least somewhat concerned about potential lawsuits upon reopening. Only 6 percent say that they are not concerned at all. As for the bevy of claims and lawsuits employers could face, respondents ranked leaves of absence entitlements (68 percent), unsafe working conditions (59 percent) and workers’ compensation (43 percent) as the top three areas in which they expect to see an uptick.

“The wave of COVID-19 litigation has begun in haste and poses a real threat to employers, most of whom are already grappling with the economic fallout from this pandemic,” said Michael Lotito, Co-Chair of Littler’s Workplace Policy Institute. “In

the face of so much uncertainty, legislative safeguards and clear guidance from federal and state agencies are important in providing employers with sufficient confidence to reopen their workplaces – and to do so in compliance with the law.”

Download the ***Littler COVID-19 Return to Work Survey Report***.

View the survey infographic.