

# Top Five Items California Employers Should Consider When Re-Opening Their Offices

By Richard K. Citron & Ofer Barlev

LOS ANGELES, CA, UNITED STATES, June 10, 2020 /EINPresswire.com/ -- Each day, we receive many questions from clients about steps employers should take when returning to the workplace. Although each scenario is unique, there are common themes that we receive as well as guidelines that we recommend. First, upon deciding to return to the office, employers should perform a risk assessment to see if the business establishment is ready for a return. This means before opening its doors to the public, the business should purchase the proper amount of sanitizer, masks, hand-wipes, and line up other relevant protections. Next, the employer should carefully plan how many employees will be initially invited, whether clients will be permitted and how many, and how often the business will be thoroughly cleaned and/or sanitized other than the routine cleaning services provided by the landlord. Please note that this is an evolving area and guidelines frequently change.

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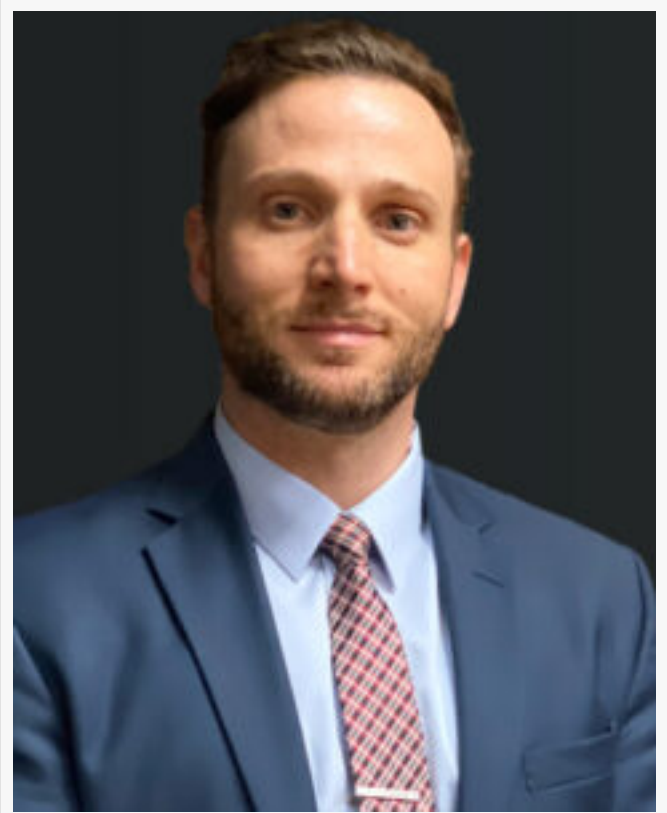


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Employment – Employers should review local ordinances as well as city, county, and state orders for guidelines and best practices. For Los Angeles County, employers should review such resources as the Mayor’s Office’s Orders (<https://www.lamayor.org/COVID19Orders>) and Toolkits for Business (<https://corona-virus.la/Business>). Moreover, employers should consider having employees fill out questionnaires about potential exposure and symptoms before returning to the office. There are permitted and prohibited questions, and these should be reviewed by your

legal counsel. Certain cities and counties also have specific requirements regarding face covering and other protective measures. Phased return to work can also present potential discrimination claims. It is best to first to ask employees to voluntarily return to work. Then, employers can invite certain individuals or departments gradually. Employers should keep these questionnaires in the employee's confidential file since these are confidential medical records.

When considering who will return to the office, gauge whether the individual must work in the office or if he/she could complete the work from home. Make sure you do not single anyone out due to his/her age or due to any other protected category (gender, ethnicity, race, religion, disability, etc.). However, if there are employees who fall into high risk areas, you can ask the employees to contact you or your HR person to seek out a reasonable accommodation. The key here is to engage in an interactive process.



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Employees do not have the right not to return to work because he/she is scared or he/she is making more money under unemployment. Instead, he/she must have a reasonable belief of death or serious injury if required to return to the office. For employees who are afraid to return to the office because of a medical condition such as anxiety or underlying medical condition, employers must have reasonable accommodation in place (and can even require that the employee provide medical documentation). Employers may ask the employee what the concerns are and then address the concerns through accommodations to alleviate the concerns. If this does not work, and the reasonable accommodation still does not resolve the issue, the employer should consider re-assigning the employee to a different, less exposed, position. However, at the end of the day, the employer may have to consider termination if it is a small business and there is no other way of utilizing the employee while at the same time the business is suffering a decrease in operations making retaining the employee not viable. Employment in California is at-will, and if there is a legal reason to terminate an employee, the employer may proceed but in a compliant way.

**Employee Discipline.** For employees who do not follow rules and keep breaking with written policies, there are certain recommended steps for employers. An example is an employee who keeps removing his or her mask and thereby placing other employees and clients in jeopardy of contracting COVID-19. Employers can take certain reasonable measures such as verbal warnings that are then documented. After several warnings, employers can enforce their policies through

termination. Employers should ensure that they keep as much documentation as possible. This will mitigate potential discrimination, retaliation, or wrongful termination claims. Please note that employees cannot sue the employer if they get COVID-19 in the workplace as that is covered under workers compensation's exclusive remedy rule (however, there is a possibility of being sued for gross negligence or recklessness). Nonetheless, clients may sue the business if they can prove that they got COVID-19 by visiting the premises. Therefore, an employee who neglects to follow safety guidelines may expose the employer to liability – especially if the employer knows about (or should know about) such employee misconduct and does not take any steps to mitigate the situation.

If an employee notifies the employer that he/she was exposed to someone with COVID-19 during off-work hours, employers are permitted to ask the employee to self-quarantine. The California Labor Commissioner's Office states that in this instance the employees can use their paid sick leave to self-quarantine. Otherwise, employees would not have to be paid. Under the CARES Act, there is now Paid Sick Leave measures allowing employers to permit the employees to quarantine for up to 80 hours and still get paid (see our previous newsletters and California's resources here [https://www.dir.ca.gov/dlse/Coronavirus-\(COVID-19\)-Information.htm](https://www.dir.ca.gov/dlse/Coronavirus-(COVID-19)-Information.htm)). Such employers would then receive tax credits for paying the employees while they are on paid sick leave. They should not discipline or “retaliate” against the employees. Instead, encourage the employee to self-quarantine (rather than “punish” the employee). Finally, employers cannot forbid employees from, say, travel. However, employers can require that those employees work from home for 14 days upon return from the travel.

The employer needs to have a plan in place on how to uniformly send employees to get tested and how often. Such a policy should be set in advance in writing and disseminated to each of the employees. Some employers may even have the employees acknowledge in writing that they have been tested and are ready to return to the office.

Interacting with Clients – There should also be a plan in place on how to handle customers when a business is public-facing. There should be an understanding on who should be the person in charge of interacting with each new client that is entering the office. In an office environment, there should be someone at the reception area that can observe the visitor, ask certain questions about whether this person has a fever or experiences any symptoms. Then, this designated person can also provide the guest with a mask. As for clients who you believe have COVID-19, employers are permitted to prevent them from entering your office, especially those who are not wearing a mask.

Landlords/Leased Premises Liability – Landlords should focus on reasonability. The landlord should more frequently clean highly attended areas such as bathrooms and kitchens. There are no legal requirements, but best practices are to place signage on certain areas to reduce traffic. There should also be a limit on the number of people who ride an elevator together or sit at a common area. Landlords cannot forbid tenants from using their rented space. However, they may require certain safety guidelines and reasonable measures such as placing markers on the

ground to ensure social distancing.

Privacy – Local laws require that employers inform employees if the employer finds out that one of the employees who they were in close contact with has COVID-19. Employers should document this information. (See EEOC Guidelines here <https://www.eeoc.gov/coronavirus>).

The information above should not be relied upon as legal advice. Instead, it should be used for informational purposes only. For specific items relevant to your business, feel free to contact our office.

### [Citron & Deutsch](#)

Please feel free to contact Citron & Deutsch at the contact information below if you wish to discuss any of the items contained in this Newsletter.

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