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## Reopening the Workplace – What Hospitality Employers Need to Consider When Bringing Employees Back to Work

The COVID-19 pandemic has largely shutdown South Carolina’s hospitality industry, causing most employers to furlough or terminate most of their employees. Now, as South Carolina begins to ease its business closure orders, hospitality employers across the state are starting to make plans for resuming operations to the fullest extent possible.

The ability of employers to fully reopen will often depend on the loosening of restrictions imposed by state and local governments – such as the current executive order prohibiting restaurants in South Carolina from offering dine-in services and the now-expiring ordinances prohibiting new hotel reservations in Myrtle Beach. Because these rules continue to change, Jackson Lewis is constantly reviewing and updating 50 state-surveys providing our clients information on a variety of topics that may affect re-opening plans: <https://www.jacksonlewis.com/covid19-advisor>.

Hospitality employers should consider a variety of health, safety, and employment law issues that are in play as operations gradually resume and reach a “new normal.” The following checklist provides a starting point for hospitality employers as they begin to plan for reopening the business to employees who have been out of work. This checklist focuses on the employment-related aspects of reopening. Employers should also consider the [COVID-19 updates and guidance for restaurants](#) issued by the South Carolina Department of Health and Environmental Control and the [Reopening Guidelines](#) published by the South Carolina Restaurant and Lodging Association, both of which address best practices regarding food safety and sanitation.

### **Getting Employees Back to Work**

- Determine whether any state and local mandates will limit or impact the reopening of your business.
- Determine which positions need to be staffed up, then use neutral selection criteria to determine which employees will be brought back, such as seniority, performance, or job classification when (if some employees will remain furloughed). Consider conducting a disparate impact analysis. Be careful not to assume someone cannot or should not return based on childcare needs, caregiving responsibilities or because they fall under the government label of “vulnerable population” (based on age, disability or pregnancy), as this may lead to discrimination claims.
- Notify employees regarding their return to work. “Return to Work” letters will typically provide information regarding their return date and schedule, as well as information regarding any changes or updates regarding pay, benefits, PTO, new policies and procedures, and an at-will employment disclaimer. Any changes to pay or hours of work require seven-days advance notice under South Carolina law.
- Send “Rehire” letters, wage payment notices, and other onboarding paperwork for employees who were previously terminated.
- Evaluate implications on employee benefit plans and whether notices or contribution changes are required.
- Ensure employees who are returning to work are properly classified as exempt or non-exempt.

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- Coordinate with state unemployment office.
- Prepare to address accommodation or other requests from employees who refuse to return to work or ask to continue telework due to health and safety concerns.
- Access whether leave and other accommodations may be required by the Americans with Disabilities Act, Family and Medical Leave Act, or Families First Coronavirus Relief Act.
- Remind and encourage employees that they should not report to work when sick.
- Evaluate impact of foregoing changes on any employee's immigration status.
- Consider terms of SBA or PPP loans.

## Health and Safety Protocols

- Consider prescreening employees before returning to work and repeat prescreen checks prior to each shift (this includes temperature checks and asking employees to report symptoms). Address compensability of any time spent on screening employees and proper safety and confidentiality measures applicable to screening employees.
- Check to see if relevant state and local governments have issued any mandates regarding social distancing, sanitation, and mask use (currently, retail businesses in South Carolina must not allow customers or guests to congregate within six feet of each other, excluding families).
- Consider workplace modifications to reduce risk of exposure to COVID-19 and comply with applicable social distancing mandates. This includes updating floor plans to ensure at least six feet of separation between tables; limiting table size; placing markers with six-foot increments wherever lines form; eliminating areas where guests may congregate (such as bar area or waiting room); installation of physical barriers, where practical, such as around cash registers; use of touchless pay systems or mobile ordering; and control of entryways and exits to limit close contact.
- Comply with state and local capacity restrictions (currently, retail businesses in South Carolina must limit occupancy to 5 customers per 1,000 square feet or 20% of the normal occupancy limit, whichever is less).
- Implement cleaning and disinfection protocols, consistent with CDC and DHEC guidance. Obtain necessary supplies in advance.
- Provide hand sanitizer for guests to use and post signs to remind guests to adhere to social distancing guidelines.
- Require employees to wash hands frequently.
- Consider staggered scheduling and group scheduling to minimize the impact of a COVID-19 exposure on your workforce.
- Evaluate mandatory or voluntary use of PPE (masks, gloves, face shields, etc.). State or local governments may mandate mask use, but, if not, it is still recommended that employers require masks for all kitchen staff and customer-facing employees.
- Send symptomatic employees home immediately.
- Develop protocol or policy for addressing employees with COVID-19 symptoms or diagnosis (including provision of adequate notice to other employees but maintaining confidentiality over

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employee medical information). Notably, SCDHEC has issued [recommendations](#) for employers confronted with symptomatic employees and confirmed cases.

- Engage in a dialogue and provide reasonable accommodations to employees when requested or when such a dialogue may be necessary.

## Update Workplace Rules

- Issue new policies, rules, and any record-keeping requirements relating to the above health and safety protocols.
- Train employees on new policies, protocols, safety practices, and rules.
- Post notices (e.g. FFCRA poster if less than 500 employees, hygiene/handwashing reminders, social distancing reminders, notices required under state and local mandates).
- Update sick leave and other leave policies.
- Add policy on FFCRA Expanded Family and Medical Leave and Emergency Paid Sick Leave if less than 500 employees.
- Ensure COVID-19 cases are [recorded per OSHA guidance](#).
- Consider updating job descriptions to address changes in job duties and essential job functions.
- Create business continuity plan(s) to plan for future outbreaks.

The above checklist is a starting point. If you have questions about returning employees to work or implementing any of the items above, please contact Chase Samples ([chase.samples@jacksonlewis.com](mailto:chase.samples@jacksonlewis.com)) or Rob Gignilliat ([Rob.Gignilliat@jacksonlewis.com](mailto:Rob.Gignilliat@jacksonlewis.com)), employment law attorneys with Jackson Lewis.