




Top Return to Work Q&As Re Employees Hospitality



ALLIED MEMBER OF
 Washington Hospitality Association

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Returning to Work HR Challenges and Solutions

1. Prepare a plan for re-opening.
 - Written & acknowledged employee safety protocols
 - Temperature/Symptom Checks/Masks
 - Can I get waivers?
 - Thoroughly consider guest facing safety protocols
 - Can I get waivers?
2. Lawfully determine who and how to bring employees back.
 - Beware discrimination
 - PPP documentation
 - Be ready to address reluctant employees

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Returning to Work HR Challenges and Solutions

3. Understand employee leave rights and your obligations
 - State and local
 - Federal, including FFCRA
4. Wage -Hour Mistakes

Note: The law is changing nearly every day. These are guidelines only. Please work with an attorney if you need legal advice and stay up to date.

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RESTART PLAN Before Re-Opening

- > [Download](#): Hospitality Association Guide
- > [Review](#): Fisher Phillips' Resources
- > [Consult](#): CDC's Restaurants and Bars Decision Tool
- > [Follow](#): Governor's Guidelines

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RESTART PLAN

Before Re-Opening

- > Designate COVID-19 response team
- > Prepare policies and protocols
 - > Establish written, worksite-specific COVID-19 Plan.
 - > Employees should acknowledge a written copy of the daily safety protocols
 - > Choose a "point person" in charge of COVID-19 protocol and policies
 - > Verify OSHA/WISHA compliance (especially for employees performing testing/cleaning).
 - > No HR? Designate who will respond to employee questions and make sure they are ready for FAQs

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RESTART PLAN

Before Re Opening

- > Implement Pre-Shift Screening Protocol
 - > Employee Temperature Checks- *Optional*
 - > Employee Symptom Checks - *Required Phase II*
 - > Prepare temperature/symptom check authorization for employees to sign
 - > Train employee who will conduct temperature/symptom check and provide PPE
 - > Prepare temperature/symptom check log
 - > MUST be kept to keep it confidential and separate.
 - > Protected medical information (ADA)

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RESTART PLAN

What if employee refuses check?

- > Disability?
- > If your test protocols meet applicable CDC, state, and local standards, and no disability, then you can hold employees accountable to your policies.
 - > BEWARE. Do not terminate an employee in this situation without consulting with your legal counsel

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RESTART PLAN

Before Re Opening

- > Employee Waivers?
 - > Workers compensation claims **cannot** be waived
 - > "Injuries inflicted with deliberate intention"
 - > Acknowledgment of compliant safety protocols is key

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RESTART PLAN

Before Re Opening

> Employee is Diagnosed or Exposed to COVID-19

> Remember [6-15-48](#):

You will need infected employees to identify others who worked within 6 feet of them, for 15 minutes or more, within the 48 hours prior to the sick individual showing symptoms, or later.

> No (current) duty to report to Health Department

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RESTART PLAN

Before Re Opening

“When can employee return to work?”

> Employee is Diagnosed or Exposed to COVID-19

> Review CDC FAQ’s, particularly [“When should an employee suspected or confirmed to have COVID-19 return to work?”](#)

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RESTART PLAN

Before Re Opening

> Customers, Guests, or Vendors?

- > Communicate your safety protocols
 - > Required signage
 - > Optional signage: "Ready to Serve"
 - > Website update
 - > Written acknowledgments?
- > Consider if will implement daily wellness checks by way of posing question to customers or vendors
- > Waivers?

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RESTART PLAN

Before Re Opening

> Employee and Manager Training

Your safety plan:

- ✓ How to prevent
- ✓ Symptoms
- ✓ Not reporting to work if experiencing symptoms
- ✓ Self screening temperatures prior to reporting to work
- ✓ Proper use of face coverings
- ✓ Importance of frequent and proper handwashing
- ✓ Importance of physical distancing

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RESTART PLAN

Picking and Choosing Who Returns

- > Who gets called back first?
 - > Objective, non-discriminatory criteria such as skill set, education, and/or tenure
 - > Consider voluntary call-backs (employee option to return during first round, etc.)
- > Comply with requirements re:
 - > Non-discrimination on basis of FFCRA and related leaves
 - > Non-discrimination and non-retaliation in return to work determinations
 - > Requests for accommodation

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Preparing for Employee Questions:

"I don't feel safe coming to work."

Why?

- > High risk workers (\geq 65 years of age; workers with underlying medical conditions that increase risk):
 - > [Feasible alternative work arrangement](#) OR
 - > Employee can use any available PSL/PTO or unemployment benefits in any sequence.
- > Disabilities: Duty to engage in interactive dialogue
- > If there is no medical condition, actual safety violation, or leave right employees have no general right to refuse to work.
 - > But BE CAREFUL. Consult with legal counsel before terminating in this instance.

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Preparing for Employee Questions:

"I don't want to wear a mask."

Why?

- > Disabilities: Duty to engage in interactive dialogue
 - > Rely on medical information
 - > Consider alternatives: Work alone; Face shield
 - > Are they "high risk" per Governor's Order?
- > If there is no medical condition, can require
 - > But BE CAREFUL. Consult with legal counsel before terminating in this instance.
 - > <https://www.fisherphillips.com/post-pandemic-faqs>

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Preparing for Employee Questions:

"I want to take leave."

WHY?

- > WA/Seattle Paid Sick Leave
- > WA - Paid Family Medical Leave
- > Federal FFCRA (paid)
 - > Emergency Paid Sick Leave
 - > Expanded FMLA (child care only)
 - > Need application form and approval form
- > FMLA (unpaid)
- > Leave as a reasonable accommodation (unpaid)

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Families First Coronavirus Response Act: *Does my business need to comply?*

Emergency Paid Sick Leave

- > ≤ **500** employees
- > Test for 2+ entities: Joint Employers
- > "Small business" exception for fewer than 50 employees

Expanded FMLA

- > ≤ **500** employees
- > Test for 2+ entities: Integrated Enterprise
- > "Small business" exception for fewer than 50 employees

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Families First Coronavirus Response Act *Are my employees eligible?*

Emergency Paid Sick Leave

All employees **only** because of:

- 1) Federal, state or local quarantine or isolation order;
- 2) Advised by a health care provider to self-quarantine;
- 3) Experiencing symptoms and seeking medical diagnosis;
- 4) Caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine;
- 5) Caring for the employee's son or daughter if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
- 6) Experiencing any other "substantially similar condition"

Expanded FMLA

- > Have worked for you 30 days prior to the designated leave.
- > Unable to work or telework
- > **Only** qualifying reason is to care for the employee's son or daughter (under 18) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency

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Families First Coronavirus Response Act *How Much Time and Money?*

Emergency Paid Sick Leave

- > Full-time = 80 hours, can be intermittent.
- > Part-time = # hours/week worked on average during late 6 months, can be intermittent
- > "Regular rate of pay" or 2/3 "regular rate of pay depending on the reason
- > Capped at \$511/day and \$5,110 in total over the entire EPSL period.

Expanded FMLA

- > 12 weeks
- > First 10 days are unpaid, but can use EPSL, PSL, PTO, etc.
- > "Regular rate" of pay
- > Capped at \$200/day and \$10,000 in the aggregate per employee.

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Families First Coronavirus Response Act: *How Do I Track Compliance?*

Emergency Paid Sick Leave

- > Leave request, and leave approval (create form)



Expanded FMLA

- > Leave request (create form) and leave approval (FMLA form?)



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Families First Coronavirus Response Act: *How Do I Track Compliance? EPSL*

Employees must provide:

- > Name;
- > The date(s) of the leave;
- > The qualifying reason for leave; and
- > A statement they are unable to work because of the above reason.
- > If related to a quarantine or isolation order or to care for an individual subject to such an order, employees should provide the name of the government entity that issued the order or provide the name of the health care provider who gave advice.
- > If related to leave to care for a child whose school or place of care is closed, or child care provider is unavailable, employees must also provide: child's name, name of the school, place of care, or child care provider that has closed or become unavailable; and a statement that no other suitable person is available to care for your child.

[DOL](#) (16)



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Families First Coronavirus Response Act: *How Do I Track Compliance? E-FMLA*

Employees must provide:

- > Name;
- > The date(s) of the leave;
- > A statement they are unable to work because they need to leave to care for a child whose school or place of care is closed, or child care provider is unavailable;
- > child's name, name of the school, place of care, or child care provider that has closed or become unavailable; and
- > A statement that no other suitable person is available to care for your child.

[DOL](#) (16)



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Families First Coronavirus Response Act: *What if I get it wrong?*

Emergency Paid Sick Leave

- > Employee was not eligible = no tax credit
- > Employee was eligible: wage lawsuit, leave interference lawsuit, wrongful termination, etc.

Expanded FMLA

- > Employee was not eligible = no tax credit
- > Employee was eligible: wage lawsuit, leave interference lawsuit, wrongful termination, etc.

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Washington Paid Sick (and Safe) Leave Seattle Paid Sick (and Safe) Leave

Covered Reasons (Now) Include:

Washington (Non-exempts)

- > If their child's school or place of care has been closed for any health reason by order of a public health official;
- > To care for a covered family member who is ill; or
- > Self-care or diagnosis, including quarantine.

Seattle (All)

- > Self-care or diagnosis, including quarantine;
- > \geq 250 FTEs worldwide, if employer has reduced operations for any health or safety reason;
- > If their **family member's** school or place of care closes;
- > To care for a covered family member who is ill.

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Washington Paid Sick Leave: Common Pitfalls




- > "High Risk Worker" can use PSL, PTO, **or** apply for unemployment if you cannot [accommodate](#)
- > Assuming PSL is not available if you are open (e.g., essential workers), but:
What if my employer is still operating, but has restrictions on operations due to the governor's coronavirus orders? Can I use paid sick leave then?
If an employer lays off someone, either permanently or temporarily, to comply with the Governor's orders, the employee would be eligible to apply for unemployment benefits. If a person is no longer considered an employee of a business, they are no longer eligible for paid sick leave.

[LNI FAQ](#)


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Washington Family Care Act

> All employees have the right to use any available employer provided "earned," or accrued, paid leave benefits to cover time off to care for **sick** family members.



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Washington Paid Family Medical Leave

➤ Eligible employees (820+ hours in WA) may use PFML for:

Time (Weeks)	Qualifying Reasons
12	Family or Medical Leave
16	Combination of Family or Medical Leave
18	Pregnancy + Serious Medical Condition
	<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="display: flex; align-items: center;"> Bonding with child </div> <div style="display: flex; align-items: center;"> Care for own serious medical condition or injury* </div> <div style="display: flex; align-items: center;"> Care for family member's serious medical condition or injury </div> <div style="display: flex; align-items: center;"> Certain military-related events </div> </div>

*Not COVID-19 diagnosis or self-quarantine

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Federal, State and Local Leave Rights: Common Pitfalls



- > Forgetting to offer leave
- > Forcing employees to use FFCRA leave
- > Forcing employees to use Washington Paid Sick Leave
- > Denying leave because you think employee can WFH even with young children
- > Promising both paid sick leave/PTO and unemployment benefits
- > Inadequate leave tracking (especially to curb abuse and to help obtain tax credits)
- > Unclear PTO or vacation policies

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Beware of Wage-Hour Issues

- > Be sure to examine overtime adjustments to account for extra bonuses being paid to hourly employees.
- > Pay for time spent doing required temperature checks.
- > Follow exemption rules:
 - > Cannot ask exempt employees to work during a "furlough" week.
 - > Avoid frequent changes to an exempt employee's salary based on hours worked.
 - > Consider if you have "lost" managerial exemption because of lower pay or change in duties.

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Resources – Fisher Phillips and Washington Hospitality

- > For a Post-Pandemic FAQs for Employers: read it [here](#)
- > For a wide variety of COVID templates and forms: click [here](#)
- > For all 50 State Restaurant Reopening Guide: click [here](#)
- > For the Association’s Reopening Guide: click [here](#)

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Resources – Government

- > For the news straight out of the Governor’s office: click [here](#)
- > For Phase II Guidelines right from the Governor: click [here](#)
- > For a DOL QA on the Families First Coronavirus Response Act: click [here](#)

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Resources – Fisher Phillips

- > For relevant Additional Fisher Phillips posts look below;
 - > [CDC Guidance](#)
 - > [Employee Temperature Checks - Optional](#)
 - > [6 – 15 – 48, Steps you need to take to identify risk if an employee tests positive](#)
 - > [Alternative Work for High – Risk Employees](#)

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Questions?

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Thank you.



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