

## **WATERBURY REGIONAL CHAMBER**

### **Reopening CT and Bringing Employees Back to the Workplace: Maintaining a Safe and Effective Work Environment**

**Please note: The program will begin promptly at 9:30 a.m. If you experience difficulties with the audio portion of the program, there is an audio tab in the upper right corner of the webinar program. Click on that tab, and you will be given instructions for dialing in by phone to hear the audio.**

Robert C. Hinton  
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May 18, 2020

- Guidance on personnel matters
- Counseling
- Training
- Drafting Policies, Contracts
- Employee Benefits
- Immigration
- Investigations
- All union matters – including negotiations and grievance defense
- Litigation

# Our Blogs - COVID-19 Response Page

- <https://www.pullcom.com/newsroom-publications-FOCUS-Responding-to-COVID-19>

The screenshot shows the Pullman & Comley website's COVID-19 response page. The header includes the firm's logo and navigation links: ABOUT, LEGAL SERVICES, TEAM, INCLUSION, NEWS & INSIGHTS, CAREERS, and CONTACT. The main content area features a large image of a coronavirus particle. A text box on the right side of the image reads: "Responding to COVID-19 (coronavirus). Pullman & Comley attorneys are actively monitoring the legal implications of COVID-19 for businesses, municipalities, educational institutions and other organizations. Please visit our FOCUS page for the latest advisories. More". Below this, there are three smaller sections: "WEBINAR 03.27.2020", "ALERT 03.19.2020", and "ALERT 03.28.2020".

# Our Blogs – Labor & Employment Law

- <https://workingtogether.pullcomblog.com/>

**PULLMAN & COMLEY 100 YEARS** Working Together<sup>SM</sup>  
Developments in Labor, Employment and Employee Benefits Law

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**APRIL 30, 2020**  
**Yes, We're Open: Important Considerations for Employers Preparing to Reopen in a Post-COVID-19 World**  
by Zachary Zeid

As the country moves towards reopening, many employers are concerned about the issues raised by returning employees to working on-site. Even before employees set foot on the premises, employers should begin communicating with them to explain what steps the organization is taking to maximize health and safety in the workplace. Although most employers implemented COVID-19...

[READ MORE](#)

**APRIL 29, 2020**  
**Update: July 15, 2020 is the Last Day for Making IRA and HSA Contributions**  
by Sharon Freilich

On March 23, 2020 we suggested that April 15, 2020 was the safe date for making contributions to traditional and Roth Individual Retirement Accounts ("IRAs") and Health Savings Accounts

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**About Our Labor, Employment and Employee Benefits Law Blog**  
Alerts, commentary, and insights from the attorneys of Pullman & Comley's Labor, Employment and Employee Benefits Law practice on such workplace topics as labor and

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# “REOPEN CONNECTICUT”

**Continue to follow CDC guidance.**

**Sector Rules for May 20<sup>th</sup> Reopen**

**Goal: “Proactively protect public health and speed up the pace of economic, educational, and community recovery while restoring Connecticut’s quality of life.”**

- Based upon specific sectors/industries
- Limitations on your operations may affect who you “recall”
- Envision certain sectors will continue telework where possible
- Envision social distancing for the time being.
- Social distancing, masks and hygiene/screening protocols remain
- Continue to control settings/meetings



# Remote Work and Returning Employees to Work

- You probably have been permitting some employees to work remotely. As you seek to resume normal operations (as permitted by law), you should notify employees of their obligation to return to performing their duties in the workplace.
- Employer should put its employees on notice (in writing) that it reserves right to:
  - a) Require particular individuals or groups to return to workplace in phases, while others continue to work remotely until directed otherwise (PHASE 1: offices at 50% capacity; telework where possible);
  - b) Assign employees to split performance of duties, including splitting between workplace and remote work (e.g., having employees alternate between specified days in the workplace and other days working remotely);
  - c) Revise employee schedules/shifts so that number of employees physically present in workplace at any particular time is sufficiently limited to permit requisite “social distancing,” comply with applicable guidance for a safe workplace, minimize congregation, and reduce risk of exposure;
  - d) Limit workplace access for employees outside of normal work hours; and/or
  - e) Create work schedules that better provide for social distancing.

# Remote Work and Returning Employees to Work

- Employees who are not yet reassigned to work in the workplace (or are not scheduled to be in the workplace on a specific date or shift) may nonetheless be expected to perform their duties (including via remote work) as may be directed by the employer.
- Those employees who are assigned to work in the workplace but who wish to change their schedules or to be allowed to work remotely must contact their supervisors to request permission.
- Unless otherwise required by law, government order, or company policy, a company may, in its sole discretion, make determinations about remote work based upon its interests and needs and the duties and requirements of the position in question. No employee must be guaranteed to work remotely. (But consider “at risk” groups)
- Should it be necessary due to further government orders, changes in health conditions (due to outbreaks of COVID-19, or otherwise), a company may, in its discretion, re-assign employees to work remotely.

# Follow Leaves Policies and the Law!

- Employees assigned work (at workplace or home) but unable to work for COVID-19 related reasons may be eligible for Emergency Paid Sick Leave (“EPSL”) or Expanded FMLA (“EFMLA”) Leave under the Families First Coronavirus Response Act (“FFCRA”).
- Employees who have been directed to quarantine/isolate at home who are not symptomatic but are unable to work from home may (after using EPSL leave, if available) use any other available PTO. Employees eligible for EFMLA leave may be required to use PTO concurrently.
- Employees who have been directed to quarantine/isolate at home who **are** symptomatic and cannot work from home may (after using their EPSL Leave, if available) use any other PTO.
- Consider granting addition paid or unpaid leave time to those who used up all their leave.
- Wage/hour issues for those working remotely during a quarantine for both non-exempt employees and exempt employees.



# Resuming Safe Workplace Operations

- All businesses have numerous important obligations during this COVID-19 pandemic.
- While it is important to resume normal operations as soon as practicable in order to serve customers and maintain and support your workforce, the highest priority must be protecting the health and safety of employees, their families, your customers and communities.
- These protocols will assist businesses in meeting all of these goals.
- But employees must be advised that they are expected to comply with every policy and may be subject to discipline for any violations.

# Social Distancing

- Employers must implement protocols for social distancing in the workplace.
- Maintain distance (approximately 6 feet) from others.
- Avoid in-person meetings (clients, vendors **or** co-workers) as much as possible.
- Encourage employees to use telephone, video and online conferencing, and e-mail to conduct business, even when participants are in the same building.
- When in-person meetings are absolutely necessary, they should be limited to a maximum of 5 people (depending on size of room). Each attendee must have a mask.
- Employees should avoid all person-to-person contact such as shaking hands.
- Social distancing applicable at elevators (and queues); passenger limits; signage.
- Maintain a log for visitors.
- Training and policies for workers.
- Adequate signage on social distancing, cleaning, PPE protocols, hygiene, policies.
- DECD self-certification for employers

- Employers may require their employees to remain within assigned discrete areas in the workplace and to prohibit employees from entering any areas outside of their assigned work areas.
- Do not congregate in conference rooms or common areas.
- Employees should only leave workstations as necessary to perform duties and must follow social distancing guidelines at all times.
- Reorganize office arrangements to preserve 6 feet of distance; empty desks and partitions?
- Consider restricting use of break rooms, cafeterias and kitchens; may require employees to bring lunches, meals, snacks or beverages from home, and to eat or drink at their workstation (or outside of the facilities).
- If you permit break areas to remain open, access should be limited to no more than 5 employees at any one time in order to maintain appropriate social distancing (depending on the size of the room).
- Touchless appliances and doors?

# Masks or Cloth Face Coverings

- Employees are required to wear a mask (or other cloth material that covers the mouth and nose), except when eating/drinking in places permitted by the employer.
- Employers must issue masks/face coverings to employees. Otherwise, don't open!
  - **POSSIBLE EXCEPTION:** If you cannot supply them, a) provide materials and [CDC tutorial](#) about how to create them, or b) compensate employees for reasonable costs employees expend on materials to make own masks or face coverings.
- Employees must wear masks/face covering from time of entry into building until arrival at office/cubicle/workstation, and any time they leave their work station and move around common areas (e.g., hallways, stairwells, going to restroom or break room).
- Employees may remove their masks where working alone in private spaces (e.g., cubicles with walls and not within 6 feet of another employee, private offices).
- Employees working in congregate settings (e.g., open manufacturing floors, warehouses, areas open to the public, shared offices) must wear a face covering.
- Continuous wearing of masks or face coverings is not required in outdoor workspaces where employees are not within 6 feet of any other person.
- Use of a mask or cloth face covering is not required by anyone for whom doing so would be contrary to his or her health or safety because of a medical condition. Employees unable to safely wear a mask or face covering because of a medical condition should notify human resources department and a record should be made.

# Proper Hygiene and Cleaning

- Make hand sanitizer and disposable wipes available to employees, including at all contact areas (e.g., entryways, common areas, printers, copiers, phones, keyboards, remote controls, desks, other work tools and equipment); expect employees to use basic hygiene.
- Educate/require employees to follow CDC guidelines for preventing transmission of COVID-19, such as:
  - frequent hand washing with warm, soapy water (for at least 20 seconds) or use hand sanitizer,
  - avoid touching mouth and nose,
  - avoid close contact with others,
  - clean and disinfect surfaces,
  - use appropriate cough and sneeze etiquette (i.e., cover your mouth - even if alone),
  - stay at home when sick and have reason to believe you may have been exposed to COVID-19,
  - discarding used tissues in wastebaskets.
- Provide a clean workplace - increase the frequency of cleanings and sanitization of objects and areas that are frequently used- company vehicles, bathrooms, kitchens/breakrooms, conference rooms, door handles/railings, company equipment, all common areas.
- Control access to and within facilities for employees, customers, and visitors.
- Prohibit employees from using other employees' phones, desks, offices, or equipment when possible; if such items (or work stations) need to be shared, clean before and after use.



# Sick Employees: Stay Home!

- Employees must not report to work when ill or experiencing any symptoms noted by CDC/public health officials as being associated with COVID-19, such as:
  - Fever (generally, temperature at or above 100 degrees Fahrenheit)
  - cough
  - sore throat
  - runny or stuffy nose
  - body aches
  - headache
  - chills
  - respiratory issues
  - loss of taste or smell
  - gastrointestinal issues (e.g., nausea, diarrhea, vomiting)
  - fatigue
- Employers should require employees to remain home if they are sick, known or suspected to have been exposed to the virus, or if employer otherwise believes they pose a threat to the safety and health of others.
- Those reporting to work with symptoms or become ill at work must be sent home.

# Employee Travel/Meetings

- Employees should avoid any nonessential travel; postpone meetings.
- Employees should minimize in-person contact with customers by providing services remotely (telephone/video conference) if possible.
- Can require employees to notify you of work-related (or any out of state) travel.
- If offsite duties must be performed, employees should wear face coverings, adhere to social distancing guidelines, and follow basic hygienic measures (at the meeting **and** in transit).
- Employees should travel separately to, from, and within worksites and avoid crowded public transportation when possible.
- You may require employees who travel out of state for any reason to stay home consistent with CDC guidance upon return, based on individualized assessment of risks to health and safety of others.

# Visitors to Your Facilities

- Control access to facilities by visitors (general public or customers)
- Can prohibit entry for all visitors, permitting visits by appointment only, or limit the number of visitors at any particular time.
- May screen visitors to the workplace to limit the risk of exposure to our employees (e.g., inquire about current health and recent travel history, taking temperatures at points of entry).
- Visitors should comply with posted safety and hygiene requirements, (sanitizing hands, maintaining appropriate social distancing).
- Visitors should wear masks/face coverings at all times while on premises (same as employees).

# Know What to Do in the Following Scenarios:

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- An employee is confirmed to have COVID-19
- An employee is exposed/in close proximity to a person with COVID-19
- When to allow an employee to return to work after being exposed to COVID-19

# What Should You Do When an Employee Tests Positive for COVID-19?:

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- Isolate/Quarantine Confirmed Employee
- Notify and Isolate Employees Working Near Infected Employee
- Clean and Disinfect the Workplace
- Notify Your Employees
- Notify Others Who May Have Been Exposed



What do you do if your employee notifies you that he/she came into contact with someone who had a presumptive case of COVID-19?

- Treat the situation as if the exposed employee has a confirmed case of COVID-19.
- When is it permissible to allow an employee who has tested positive for COVID-19 to return to work?
- Governor Lamont's guidance:
  - “Employees should not return to work until the criteria to end home isolation is met as instructed in consultation with healthcare providers and state and local health departments.”

# Permitting Positive COVID-19 Employees to Return to the Workplace

**When is it permissible to allow an employee who has tested positive for COVID-19 to return to work?**

- Know the CDC Guidance
- Know the CDC Return-to-Work Criteria
- Special criteria for return to work for healthcare personnel with confirmed or suspected COVID-19
- For critical infrastructure workers, they may continue to work following potential exposure to COVID-19 if they are asymptomatic and you implement additional safety precautions

## **IMPLEMENTING SAFETY PRACTICES FOR CRITICAL INFRASTRUCTURE WORKERS WHO MAY HAVE HAD EXPOSURE TO A PERSON WITH SUSPECTED OR CONFIRMED COVID-19:**

- Pre-Screen
- Regular Monitoring
- Wear a Mask
- Social Distance
- Disinfect and Clean Work Spaces

# What If Employees Refuse to Return to Workplace?

- Unsubstantiated/vague fear does not justify refusal to return.
- Under FFCRA, employee could refuse to return to work (and seek emergency paid sick leave) if he/she has been advised by a health care provider to self-quarantine due to provider's belief that employee has, may have, ***or is particularly vulnerable to COVID-19.***
- Telework as an option to avoid need for leave, or ...
- If someone refuses to return to work, eligible for unemployment compensation?:
  - Con: “voluntary quit”/refusal to turn to work.
  - Pro: CT DOL's own guidance. If employee believes that returning to work poses a health risk, the DOL may find that the work is not suitable employment and claimant would not be denied benefits.

# Employer Inquiries and Testing

## Updated to Reflect New DOL Guidance

### Issued 5/7/2020

- You may make reasonable medical inquiries of employees in order to address the risk of transmission of COVID-19 are legal.
- You may measure employees' temperatures upon entry to or while at the workplace.
- You may inquire about symptoms associated with COVID-19, and about an employee's contacts with other persons.
- You may require such testing and/or make such other inquiries as necessary to monitor and control potential and actual exposure of employees to COVID-19, as permitted by law.
- If an employee is out sick, shows symptoms consistent with COVID-19, or may have been exposed to COVID-19, an employer may request information from the employee and/or their health care provider.
- Employers may request medical information to confirm the employee's need to be absent.
- But on May 7, 2020, the U. S. Department of Labor issued this new guidance on questioning employees about FFCRA leave requests:
  - In order for your employee to take leave under the FFCRA, you may require the employee to identify his or her symptoms and a date for a test or doctor's appointment. **You may not, however, require the employee to provide further documentation or similar certification that he or she sought a diagnosis or treatment from a health care provider in order for the employee to use paid sick leave for COVID-19 related symptoms.** The minimal documentation required to take this leave is so that employees with COVID-19 symptoms may take leave and slow the spread of COVID-19.
- Employers may also make inquiries about other employees with whom an employee may have come into contact (i.e., employee "contact tracing").



# Confidentiality of Medical Information

- Medical information must be kept confidential as required by law (e.g., EEOC Guidance on ADA, DOL on FMLA).
- All employee-provided medical information (including information with respect to workforce and employee contact tracing) must be treated as confidential medical records.
- If necessary, medical information may be shared in limited circumstances and subject to appropriate controls, with the company's supervisors and/or managers, first aid and safety personnel, and government officials, as required by law or other relevant guidance.

# Anti-Harassment and Non-Discrimination

- Be vigilant in adhering to policies prohibiting harassment and discrimination in the workplace. (Especially with respect to those who may be suspected to have had COVID-19).
- EEOC Guidance: “only a determination of direct threat to self (i.e., to his own health) justifies exclusion from the workplace of an employee because he has a preexisting, underlying condition that places him a higher risk for severe illness from COVID-19 if he contracts it. And reaching the conclusion of direct threat to self requires an individual assessment.”
- Make reasonable accommodations to employees with preexisting conditions that places them at greater risk from COVID-19.
- Flexibility by Employers and Employees is key.

# COVID-19 Contact Tracing



Reference: CFCF and CDC

- Information and Guidance:
  - Pullman & Comley LLC
  - DOL Guidance
  - CT DOL
  - EEOC
  - OSHA
  - CDC
  - State and Local Government Orders and Advisories

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**Thank you for joining us.**

Please visit our website at:

<https://www.pullcom.com/newsroom-publications-FOCUS-Responding-to-COVID-19> for further information.

State of Connecticut's Coronavirus Website:

<https://portal.ct.gov/coronavirus>





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