

Post-COVID-19 shutdown, the key to protecting your employees and your business is clear, well thought out policies

PAYCHEX
Business
Series

Coronavirus



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Full transcript

Gene Marks:

Hey everybody. Welcome back to the Paychex Business Series podcast. My name is Gene Marks. I'm a certified public accountant and regular business columnist for a bunch of publications that you probably know, like *The Guardian*, *The Hill*, *The Philadelphia Inquirer*, *Forbes*, and *Entrepreneur*. But more importantly, I'm a small business owner. My 10-person company provides financial and technology management services. And I'm always in need of expert advice. That includes real-life advice from real-life business owners like myself on how they're handling the challenges of running their small businesses. It also includes getting some advice from people outside of running a business but are either expert or knowledgeable in their fields. And today, I've got two of those people that have knowledge and experience in the field of HR and compliance. I've got Kate Hill, who is an employment law compliance analyst at Paychex. Kate, say, hello.

Kate Hill:

Hi, thanks for having me.

Gene Marks:

I'm glad that you're on. And also joining us, Rachel Dowling, who's a compliance analyst at Paychex. Rachel, I didn't give you a chance to say hi.

Rachel Dowling:

Hi, Gene. I'm happy to be here.

Gene Marks:

I'm glad that you're here as well. So Rachel and Kate, I've got some specific questions that I want to run by you which come from my own clients as they start to reopen their businesses, and they have just issues that come up with employees regarding COVID-19 and what the best practices are. Now I understand some of these answers that you might have, they might be based on some of the guidelines from OSHA or CDC, or they just might be based on your opinion or your experience being in the compliance world. But I just need some advice. So let me start out with you, because again, I have 10 employees in my company. So, Rachel, I'm going to start with you with this question. Rachel, one of my employees, it's a week after I've reopened, one of my employees says that they've contracted or they've tested positive for coronavirus. What would you recommend? What are the guidelines saying and what do you recommend that I should do as a business owner?

Rachel Dowling:

Yeah. So, well, the first thing you want to do is make sure—and this is an obvious one—make sure they stay at home. Once they have even symptoms of COVID-19, even if they don't have that confirmed diagnosis, make sure they're staying at home. Then you want to think about if they've been in the office that previous week, who else have they been around? Have they interacted with other customers? Have they interacted with other employees? If you're taking those proper social distancing measures, you may not have as big an issue, but you really should determine who else has potentially been exposed. And also take a look at your health and safety protocol about when they can return to work, and for your other employees who may have been exposed, what your next steps are with that.

Gene Marks:

Kate, what are your thoughts on that?

Kate Hill:

I completely agree with everything that Rachel's just shared. That's some great advice. And the other thing I would take into consideration is that if you're going to have any medical documentation, so you may have an email or you may have a doctor's note or something confirming the diagnosis, you're going to want to keep that documentation in a separate place in the personnel file. We know that medical records cannot be kept in a general employment personnel file. The other piece becomes a little bit more complex, but that individual might be entitled—depending on your business, the size and where you're located—to some paid leave or maybe some unpaid job-protected leave. So all of those considerations are things you'll want to keep in the back of your head when you're going through this. But first and foremost, you want to be sure that your employee is healthy and on the road to recovery.

Gene Marks:

That's great. And Kate, you bring up a really good point that if you're going to ask that person to go home, you should be familiar with the emergency paid leave laws so that person knows what's within their rights to get compensated and what your requirements are as a business owner. Kate, what happens if—and I'll switch this back to you still on this similar topic—say another employee is concerned that a workmate is showing symptoms of COVID-19. What are your thoughts on how you would handle that?

Kate Hill:

Well, first, confidentiality is key. So what we know is that when it comes to medical conditions, which a diagnosis of COVID-19 is, we would want it to be sure that we're not spreading that around. That's a little bit more difficult when your business has four employees and your business has a hundred employees. So one of the things to consider is if someone is showing signs or symptoms, you'll be able to ask them about those symptoms. The CDC confirmed for us that you can ask someone if they're having respiratory issues, they have a fever. What you can't do is ask, "Do you have COVID-19?" We can't go right to the specific. But we can ask them, and if so, we can send them home if they are exhibiting some of those symptoms. Now, when the diagnosis, or if a diagnosis does come in, one of the challenges, and more particularly if you're in a smaller business or you're in an area where maybe employees work in close proximity and you're going to plan to send those colleagues home because they may have been exposed: confidentiality, confidentiality, confidentiality. They may figure it out on their own.

And the example I often give is when my daughter was in daycare, she used to always be the child who got bit. There were only seven kids in the classroom. By the time we got to the car, she'd always, in her three-year-old voice, tell me which other three-year-old had bitten her. But what we can't do, the daycare couldn't tell me that it was other child A, B, or C. And as an employer, when it comes to these kinds of diagnoses, we can't go back out into the workplace and say, "Oh, it was Kate. Or it was person A." Instead, we'll just have to say, "It's come to our attention that someone has been diagnosed. And as a result here are the steps we're taking."

Gene Marks:

Excellent. Rachel, back to you now. We're talking about privacy and employee rights. Now, a lot of the guidelines are saying that we should be doing temperature checks of our employees when they come to work or even throughout the day. What if an employee refuses to take a temperature check? What would you recommend an employer do?

Rachel Dowling:

Thanks, Gene. So that is a really tricky situation if you have an employee who is refusing to get their temperature checked.

Gene Marks:

That's why I'm asking.

Rachel Dowling:

I know. Well, exactly. You ask the difficult questions here. So I'm thinking about this, again, from the health and safety perspective. One, you have an obligation to protect your fellow employees. So if you have someone who is showing up and is potentially sick and you're not following those protocols, you have the potential for increased liability because there is an expected increase in whistleblower complaints from OSHA for health and safety. And those could be valid complaints if someone even says that, "Hey, my co-worker showed up sick with symptoms of COVID-19 and my employer did nothing about it." That can be seen by OSHA as a valid complaint. So it's something you want to take very seriously if your employees are not willing to comply with measures to help screen for potential illness.

Gene Marks:

That's good. And Kate, I'm going to ask you to jump in on this. So say you've got that employee, they either refuse to take a temperature check, or maybe if you're offering testing, they refuse to participate in that. Let's say they refuse to wear a mask in the office. These are all guidelines. There's no requirements. Can you fire an employee for not doing that? Or if you send the employee home, unpaid, is that another option? What do you do, particularly if that employee is putting other employees at risk and could potentially put you ... expose your company to liability from a whistleblower angle. What are your thoughts on that, Kate?

Kate Hill:

So we're not giving legal advice.

Gene Marks:

Right. Let's be clear.

Kate Hill:

But you may want to seek legal advice, and I'll tell you why. I think the first thing, Gene, before we even get to that employee who's saying, "No, I won't let you take my temperature. No, I won't wear a face mask." There's that age-old saying that an ounce of prevention is worth a pound of a cure. And this goes back to when you're reopening and beginning to kind of bring employees back to the workplace, you want to communicate as clearly as possible with them what you can about what's the new business-as-usual for your particular business. And include things in there that are about your safety protocols and plans, which could include that you're going to be doing temperature checks, that you are going to be asking workers to wear masks. If you're only doing temperature checks or masks in certain areas of your business, or maybe those who are client-facing or whatever it might be, lay that out in that return-to-work ladder or within the safety protocol plan that you're going to share with them before they're even coming back. So you've set the groundwork; they know what the expectations are.

And if it's one of your policies and you're enforcing your policy, you may be within your rights to say, "I'm very sorry, I'm going to be sending you home with or without pay." If you're ever getting to that spot where you're thinking about terminating someone, it's a good time to check in with an HR professional or with your attorney, just to kind of limit any liability that you might have, to be sure that you're following all the different protocols for your state or location.

Gene Marks:

That really does clear things up. When you put things in term of this is our company's policy—and a lot of companies have policies against drug use or specific things to wear or behavior in the office—and if you don't comply with the policies, then you are potentially subject to termination, not that you would be. And I guess these types of protocols, particularly in this environment, would be an acceptable form of policy. So that does make sense. Does that make right?

Kate Hill:

Yeah, Gene, but there's one exception to that that I want to make sure I mention, because there's exceptions to every policy. Let's say that someone for their own medical reasons can't wear a mask. It could be a variety of different things. It could be physical, it could be mental. And they have a doctor's note. Even though we're in this COVID-19 pandemic that hopefully we're soon coming out of, we still have to comply with the Americans with Disabilities Act and a number of very similar state and local laws. So keep in mind that there's not always a hard-and-fast rule: no mask, you're fired. Well, that may be the case if that's your policy, but there also may be places where a business needs or wants to make certain exceptions.

Gene Marks:

Great advice. Rachel, you're next. So I've got an employee, he's working from home. He's been working from home during all of this. We're now reopening. And we say, "Well, that was nice working from home, but I need you to come back into the office." And he says, "No way. I don't feel it's safe. I enjoy working from home." What would you advise me?

Rachel Dowling:

Yeah, so that's another tricky situation. And again, we will start to see that. I know, you are so good at these hard questions.

Gene Marks:

I'm only seeing that every day.

Rachel Dowling:

Yeah, seriously. So again, we're going to start to see more of that in the near future. Right now, the recommendation is really to allow or require employees to work from home if at all possible. But when we get to the point where employees are starting to come back, we are absolutely going to face that question. So some of it is this the time to start to take a look at what your teleworking policy is, too. So if somebody has been working from home for two months, and they've been really productive, and you have all the measures in place to allow for that, what do you do at this point? Do you look at your policies again? Do you start to take a look? Do you poll your employees to see where this is favorable, where it might not be favorable, are there people who prefer it?

And when you do start to bring employees back, you can take this into consideration as well, if you're starting with maybe half of your employees coming back into the office, things like that. And Kate, from an employment law perspective as well, there's probably other considerations from the health and safety. You want to make sure that an employee really does truly feel safe coming back. And again, we keep going back to those written health and safety protocols and policies that will help your employees understand the measures that you're taking to really make sure they're coming back to an environment that is as safe as possible.

Gene Marks:

That makes sense. And Kate, I guess this also gets back to the policies of your company. If you have a work-from-home policy that says it's at the discretion of the employer, or that it's limited to X number of days per week, you can bend it a little bit, but at some point an employee, they're either going to be conforming to the policy or not.

Kate Hill:

Yes and no, which I know is not the answer you're hoping for there, Gene. But I think it very much depends on your particular business. So we're seeing a number of governmental leaders, whether they're at state or local levels, that are really issuing some strong guidance around vulnerable populations and companies making every effort they can to allow those individuals to telework. Which, if you're an IT business, maybe that works for you. If you're in retail, that might not work for you.

So I think when it comes to those ... If you have that policy, but then someone who doesn't fit the criteria for your telework or work-from-home comes to you and says, "I'm really asking for an accommodation, and I want to work from home." Now, they may not use those magic words. They may not say accommodation. The first thing the employer's going to want to do is ask why. And if the reason is, "Well, it's getting to be summer. I have a beautiful pool, and I'd like to have my laptop right next to it and work on my tan," likely the exposure there if you say no, if you were to find yourself in some sort of litigation, that's not a legitimate business reason. But if someone were to say, "I have had upper respiratory issues, and they lead to these significant problems, here's my doctor's note," you may then want to say, even though we don't have a work-from-home policy, we can or cannot make this accommodation.

Gene Marks:

That makes complete sense. Okay guys, final question and then we can wrap things up, and just your thoughts. And Rachel, I'll jump back to you. What do you think the future of open-air offices is going to be?

Rachel Dowling:

Oh, the future of open-air offices. I know, we were starting to see a trend toward more open offices. And now all of a sudden we need more restrictions. So again, I think this is a time where businesses are going to start to really look at what makes the most sense for those businesses. When I think open-air offices, I'm thinking a lot of trendy and startup companies where your office is almost like an extension of your life. And then I'm thinking of larger companies like Facebook and Google who have now announced increased telework so that we have the possibility of some of those trendier startup companies may look to more work-from-home policies as well, especially if they're finding that collaboration works just as well from a telework perspective as it did in their open office, and then maybe look for other team-building opportunities that don't involve working in that open-air office every day. Those are just a few thoughts, of course. We're still yet to see where this goes, but I'm thinking we might start to see more teleworking and more other opportunities for team building.

Gene Marks:

Kate, what do you think?

Kate Hill:

Gene, let me look into my crystal ball here.

Gene Marks:

All right. That's exactly what I wanted you to do.

Rachel Dowling:

No, I don't have a crystal ball. But in my opinion, I think we're going to see some hopefully short-term impacts. When I say short term, I mean while we're under a declaration of a pandemic and we're bringing workers back. And the question that remains to be seen is how is this going to impact the American workplace into the far future? Is this the end of open-air workplaces? Or will we see a temporary pause in that and then some return to those spaces that we were growing to love and having the increased collaboration. So I think only time will tell.

Gene Marks:

Who knows? Who knows? Kate Hill is an employment law compliance analyst at Paychex, and Rachel Dowling is a compliance analyst at Paychex as well. Guys, thank you so much. That was a really great conversation. I have a lot more similar questions to ask of you, but we only have a limited amount of time. So we'll bring you guys both back and beat you up again just to find out what your opinions are and get you into trouble with your bosses when you say the wrong thing. But thank you both, you guys are fantastic and I appreciate your time.

Gene Marks:

For more information about what we discussed today and other coronavirus questions and topics, please visit the Paychex COVID-19 Help Center. The address is paychex.com/coronavirus-resources. Thanks, everyone, for listening. Thanks again, Kate and Rachel. And we will see you all next time.