From Testing to SOPs – Developing a "Back to the Workplace" Framework That Will Pass the Coming Employee Referendum

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COVID-19 exposed the weaknesses and fragility of our behaviors, social norms and ways of working. It also forced many organizations to reluctantly participate in a large-scale beta test for business continuity and remote working. Organizations that have fared well so far have been able to swiftly adopt social distancing practices by making physical changes internally and enabling as many workers as possible to operate remotely.

Now, as governments slowly begin lifting restrictions, even as the threat and uncertainty of COVID-19 remains, companies face another critical test – returning employees to a safer workplace. In facing this test an organization's leadership should be asking themselves: How can we create a safer workplace? How can we make our employees feel safer? What will create trust amongst our workforce?

We are being bombarded with information about COVID-19 on a daily basis. At times, the information can be conflicting. Trying to digest the scientific guidance and data and turn these inputs into policies and procedures can be overwhelming. Finding trusted sources of information and guidance that can be easily understood and translated into action plans, policies and procedures is essential.

Since every organization is different, no universal plug-and-play action plan exists. Regardless of your industry, size or where you are in the development of your plans, however, a first and fundamental step toward implementation of your plans is conducting a risk review.

One efficient mechanism for performing the risk review, creating the framework, and helping you make key strategic and regulatory decisions in a focused and stepwise approach, is to answer a series of detailed questions addressing the following topics: employee testing, environmental and facility controls, human resources policies, administrative controls, and medical monitoring and tracking.

When employees start asking themselves "will I feel safe returning to the workplace?", they are likely looking for more than memoranda about frequent and thorough office cleanings and social distancing. They are likely wanting to see demonstrable actions that will not only make them feel safer, but also speak to why their trust is deserved. With that in mind, one such action is employee testing.

Thinking About Employee Testing

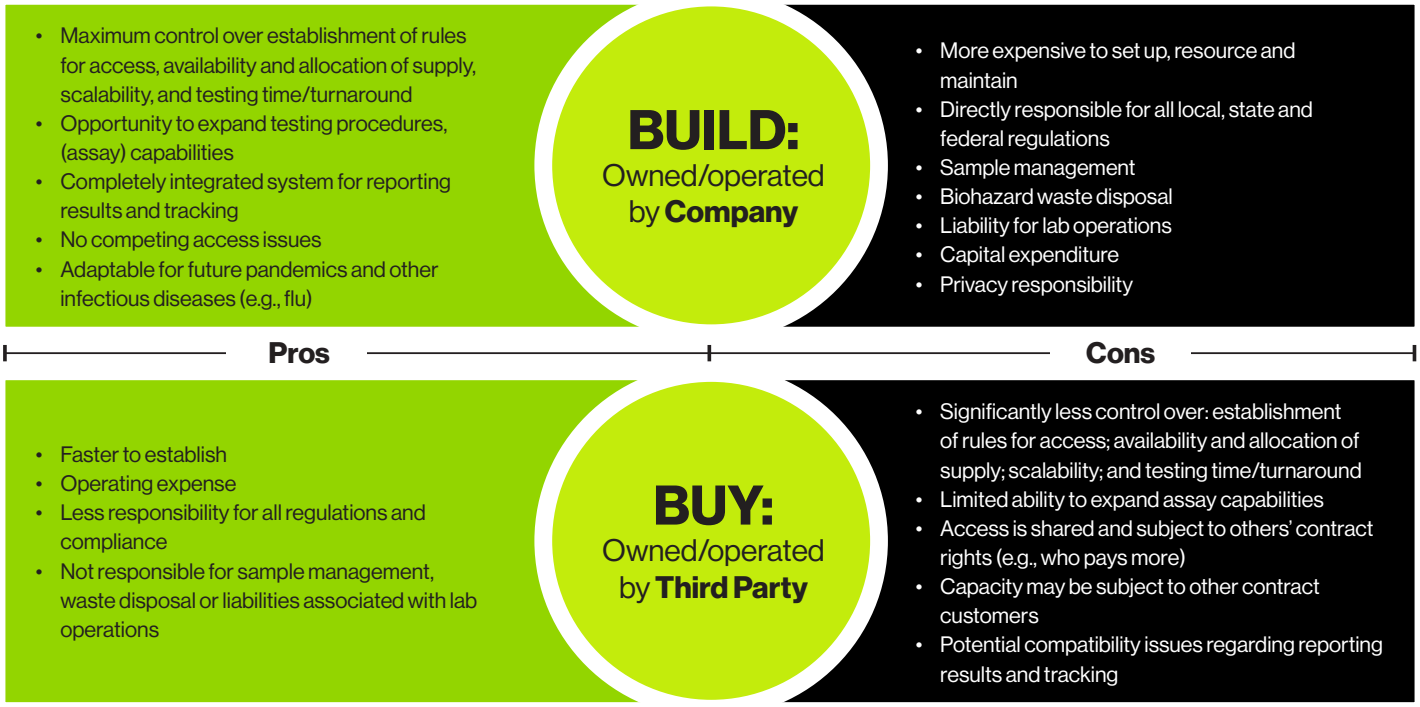
With respect to testing, a first step to consider is temperature screening. Many companies are seeking to implement, or have implemented, temperature screening. Some studies, however, have noted that fever may not be as prevalent as once thought.[1] For example, Northwell Health looked at 5,700 COVID-19 patients at its New York-area hospitals and found that only 30 percent had fever when they arrived.[2] Additionally, we now know that the number of asymptomatic cases are not insignificant. Employee testing, therefore, can be a more impactful solution to help monitor and potentially mitigate spread within the workplace.

A second step in a discussion about testing requires a focus on the disease and an understanding about testing options, pros and cons. At the outset, you will need to identify the objective of any potential testing framework: Do you want to test to determine who may currently have the virus or do you want to test to see who may have had the virus?[3] After determining that answer, it is important to understand the accuracy and processing times of the applicable tests. For instance, what is the sensitivity and specificity of the applicable test?

- *Sensitivity* measures how often a test correctly returns a positive result for infected patients. A test that is highly sensitive will identify almost everyone who has the disease and generate few false negative results.
- *Specificity* measures how often a test will correctly generate a negative result for patients who do not have the disease. A test that is highly specific will identify almost everyone who does not have the disease and generate few false positive results. Put another way, a test is highly specific when the test generates a positive result and the patient actually has the disease for which testing is being performed.

In addition, you should consider what, if any, impact speed of processing has on the sensitivity and specificity of the applicable test.

The next decision is **Build** (operate and perform your own testing – either build new or retrofit an existing health clinic space) or **Buy** (align with a third party to perform testing on your behalf – on site or at a third-party location). As your leadership team tries to decide between these options, they will need to consider the merits and demerits of each. Building tends to be more expensive, but the process is more in your control. Buying or partnering with a lab tends to be less expensive, but is less under your control and can add complexity to the process.



1. https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2766228; https://feinstein.northwell.edu/news/the-latest/largest-covid-19-study-of-hospitalized-patients-in-us-links-comorbidities-to-acuity.
2. https://feinstein.northwell.edu/news/the-latest/largest-covid-19-study-of-hospitalized-patients-in-us-links-comorbidities-to-acuity.
3. The EEOC recently issued guidance that it, in addition to screening employee temperatures prior to entry, it may be permissible under the Americans with Disability Act for employers to require a viral test to detect an active infection prior to re-entering the workplace. However, in a June 17, 2020 press release, the EEOC stated that the ADA "at this time does not allow employers to require antibody testing before allowing employees to re-enter the workplace."

Whatever your team decides, a qualified scientific and experienced team should oversee the testing program, ideally one that has previously addressed and functioned in crisis or high-pressure situations. Further, you will need to develop a series of policies and procedures to address related topics, including: when and how often to test; reporting of results; and when an employee can return to the workplace following a positive test (excluding antibody testing).

Define the Process Setting Re-entry Standard Operating Procedures (SOPs)

Regardless of where your organization lands on employee testing, your "back to the workplace" plans should focus on identifying additional steps you can take to help reduce workers' risk of exposure to COVID-19. While your plan's needs may vary depending upon the size, functions and complexity of your organization, a comprehensive reopening strategy should include elements across these four categories:

- Environmental and facility controls – Initiatives to isolate employees from work-related hazards without relying upon worker behavior change, such as ventilation, physical barriers, spacing (workers and customers/site visitors), flow, badge tracking and monitoring.
- Human resources policies – Changes in work policies or procedures to reduce exposure to the hazards that require engagement by the worker or employer, such as sick leave policies, shift management, and work from home and travel policies.
- Administrative controls – Controls that promote safer work practices to reduce the duration, frequency, or intensity of exposure to the hazards, such as PPE and/or other face coverings, hand sanitizers, waste bins, and training on implementation of all the above.
- Medical monitoring and tracking – Efforts to promptly identify and isolate infected employees and prevent additional spread, such as symptom awareness and assessments, real-time employee communications, contact tracing that incorporates internal requirements and complies with federal, state and local laws and requirements, and, as mentioned above, policies and procedures related to testing frequency and reporting of results.

Performing your risk review and establishing a framework for your policies and procedures to address these four categories is an essential part of creating a safer work environment. Moreover, creating comprehensive and thoughtful policies and procedures remove guesswork for managers and employees.

Framework for Building a Plan

To begin building new or pressure-testing existing policies and procedures, you can anticipate a five-step process.

Step 1: Assess/re-assess requirements for re-entry

This step includes a risk assessment of your employee functions, demographics and business profile. It will help you better understand your areas of need, strengths, weaknesses and enhancement opportunities in order to establish a roadmap for SOP creation - including the identification of future changes that may require you to pivot from your current situation.

You will need to critically review and analyze (on a continuing basis) guidelines and requirements to create and maintain a "baseline" for re-entry from all levels of government, as well as professional organizations and associations. Additionally, your plan should address the following issues:

- Aligning "what you would like to do" versus "what you need to do" to get employees back to the workplace.
- Identifying key factors and potential hurdles to restarting activities, such as contact tracing, testing (type, sequence and frequency), new credential requirements and employee safety requirements (e.g., PPE and training).
- Assessing what infrastructure and resources are needed to support the return of the workforce.
- Determining how to communicate with employees and customers about the employee-focused risk mitigation strategies you have implemented.
- Transforming and transitioning your workforce to match the current and future scenarios.

Step 2: Monitor the changing environment

In addition to staying updated on guidance from professional organizations and associations, put mechanisms in place to continually monitor and review updated scientific data and changes to guidelines and requirements from all levels of government. As part of this mechanism, analyze and identify the impact of updates and changes to activities of employees, key sources of risk, and necessary actions to mitigate risk. Your "return to the workplace" plan should have built-in flexibility and allocations of resources to enable rapid adaptation in response to changing local conditions.

Step 3: Develop strategy and options for re-entry

Prioritize the uncovered risks from your risk assessment, and identify gaps and hurdles that must be overcome in order to operationalize a strategy. For example, if one of your identified risks is the need to test employees for COVID-19, testing itself might be an operational hurdle if you do not already have a third-party testing partner. Also, how will you earn employee trust and foster adherence to the new policies and procedures? What resource requirements and contingency plans should be addressed?

As you prioritize needs, begin developing strategies and troubleshooting potential associated scenarios to incorporate key factors, such as local contagion rates and potential impacts, public health controls and readiness of systems, and customer preparedness and receptivity. Establish a governance structure and framework for decision-making -- outline the criteria and processes to determine: 1) which risk mitigation efforts will take priority and why; 2) what resources will be allocated from where; 3) what external factors will trigger changes to the plan; and 4) which internal stakeholders will implement and oversee such changes.

Once priorities and the decision-making framework take shape, or if you have already drafted policies and procedures, engaging an independent third-party expert (who ideally can benchmark against other companies) to review your work and identify potential blind spots or where additional depth may be necessary can be a prudent exercise.

Step 4: Develop and deploy SOPs

In this step, reduce to writing all of the "rules of the road" for re-entry as guided by the results of your risk assessment, framework and the four categories referenced above. An essential part of this step is establishing a core team and governance structure to serve as the creators and implementers of the policies and procedures. Lastly, training on your new policies and procedures is a material part of any plan. Focus on employee engagement and empowerment, as these are critical prerequisites to gaining employee trust and adherence.

Step 5: Implement a continuous monitoring plan

As a final step, ensure that your plan establishes a regular cadence and checkpoints to continuously monitor the re-entry plan implementation, progress and effectiveness. Incorporate methods for addressing revisions and adapting the re-entry strategy and SOPs as issues or new risks are identified. To do so, answer questions like:

- How will updates and revisions impact employees and customers?
- What downstream impacts can be anticipated?
- Can the triggering event be mitigated without revisions to strategy or SOPs?
- What technologies to deploy?

It is also helpful to develop a master data management system that accommodates real-time monitoring. This keeps key pieces of data readily available for easy access and review, therefore making it easier to monitor changes as they happen in real-time, and to communicate quickly and effectively with key stakeholders and, ultimately, your employees.

Lastly, consider how to get indirect feedback to gauge the program's effectiveness. For example, considering leadership teams rarely, if ever, have full insight into employee culture, it can be helpful to monitor social media to gain awareness of general or particular concerns about returning to the workplace and experiences following re-entry. This can help you anticipate and address potential employee concerns.

Moving Forward, Deliberately

As a guiding principle to effectively managing your "back to the workplace" strategy and action plan, try to consider the harsh environment and challenges you face. Namely, if you think you've covered everything with sufficient depth and breadth, it's likely you may not have – and that's OK. If you think you don't have any blind spots, it's likely you may – and that's OK too. And, as the past several months have demonstrated, we probably should not presume that we know everything about this disease and how it gets transmitted. For example, the guidance on transmission (initially thought only by large droplets but now by aerosols as well), wearing masks (initially the public was told not necessary, but now mandated in certain states), and asymptomatic transmission has varied greatly. Data is changing daily, but if you've done the risk assessment, considered the four categories, followed the five steps, and had an independent review of your plan and SOPs, you likely will have created a plan that is flexible and can adapt to accommodate any necessary adjustments as more becomes known about the disease, cases fluctuate and circumstances change.

Also, keep in mind that while your testing and re-entry actions will speak loudly, your words will also be critical. If something is not working and you need to change it, explain to employees why. For instance, if you need to alter testing restrictions in anticipation of cold and flu season, tell employees why. Transparency, even when conveying difficult information, helps foster trust. In these circumstances, it will also help quell fear, confusion and the spread of misinformation.

As you move forward, be honest in your critical analysis of your own strategies and plans, as well as their implementation. Resist the temptation of trying to replicate pre-pandemic conditions in the workplace – whether in a physical or remote location. Build your business on a foundation capable of evolution. The post COVID-19 world will not be a return to how things were. Instead, we will be thrust into an environment of how things will need to be. Ultimately, developing and implementing a comprehensive, thoughtful plan will help you prepare for the next similar scenario[4] and garner the trust that will be essential in retaining employees once the current crisis ends.

Additional Resources

- For up-to-date information on the disease itself, including guidance for businesses on planning, preparing for and responding to the disease, refer to the U.S. Centers for Disease Control and Prevention, go **here**.
- For more information on "How to Build a Compliance Program That's Rightsized for Your Organization," go **here**.

4. Over the past 20 years, the world has experienced major disease events such as SARS, H1N1, MERS, Ebola and COVID-19.

About the Author

Ellen Zimiles is a partner and Guidehouse's Financial Services Advisory and Compliance Segment leader. She has more than 30 years of litigation and investigation experience, including 10 years as a federal prosecutor. Ellen is a leading authority on financial crime compliance and investigative matters and corporate governance issues. Prior to entering the private sector, Ellen was an assistant United States attorney in the Southern District of New York for more than 10 years where she was responsible for many high-profile money laundering, fraud and forfeiture cases. In recognition for her contributions as a federal prosecutor, Ellen received the United States Department of Justice's John Marshall Award for Outstanding Service and the United States Department of Health and Human Services' Integrity Award.