



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Transitioning Employees Back to Work

Many organizations have halted operations, altered their workforces, hours or pay structures, and changed the way they are working during the COVID-19 pandemic. Many employees who can do so have been working from home. This article will summarize some of the things nonprofit employers should be start to consider as we get closer to the loosening of the shelter-in-place requirements and employees start to return to work. *Please be aware that this article is not intended to induce any organization to re-open facilities before it is safe or feasible to do so, but is intended to help you to start thinking about those items that need to be considered before and when you do re-open.*

Nonprofit employers will need to consider how they are going to achieve their mission going forward, and whether the new reality involves changes to the way that work will be performed now as compared to how work was performed before the pandemic, changes to where work is performed, or other changes in the timing of work, pay and work environment. Throughout this crisis, we have learned a lot about flexibility, and those lessons will be instructive as you are designing the processes you will use in returning employees to the workplace.

How to Bring Employees Back to Work

1) After Furlough or Layoff

- a. Were employees laid off or furloughed temporarily? Was the furlough or layoff a separation from employment or a leave of absence? Did employees retain pay or benefits? Did you pay out accrued leave at departure?
 - i. If employees were treated as though they were on *leave* (pay or benefits continued; no employment termination processes followed, such as the payout of accrued leave), they can be recalled to work. Please see the information below regarding job changes and considerations for returning after leave.
 - ii. If it was an *employment separation* (no pay or benefits; termination processes followed, such as payout of accrued leave if required by organization policy), you will need to re-hire the employees, including using your normal hiring procedures, such as I-9 and e-Verify compliance, issuing offer letters, reissuing employee policies, and reinstating benefits, if any.

2) After Job Changes

- a. *Different Job Upon Return Than During Crisis*: If you are returning employees to a job that is different from the one they were doing during the crisis, you should re-establish the terms of employment for the employee. It is a good idea to issue a new offer letter or at least a written document to the employee outlining the terms of employment, including the position the employee will be taking or resuming, the date the position will start, the pay and benefits, if any, and a job description, to “reset” the employee’s employment.

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- b. *Wage and Hour Implications*: Please be sure to consider whether there are changes to the employee's status as exempt or non-exempt from the requirements of the Fair Labor Standards Act (FLSA) when you are resuming more normal operations. In order to be exempt under the FLSA, an employee must satisfy the duties test for the specific exemption, be paid on a salaried basis, and meet the minimum salary requirements (\$35,568/year). (See this [webcast](#) for additional information about the FLSA requirements). If any of these items have changed or are changing now, the employee may no longer be exempt from the minimum wage and overtime requirements of the FLSA. Also, if you are now transitioning an employee from one status to the other, be mindful of the timing of the transition (you may want to start the transition at the start of a workweek) and the need for timekeeping by non-exempt employees.

3) After Leave

- a. If an employee is returning from leave, the reason for the leave may impact some of the processes that need to be followed:
 - i. If an employee was sick with COVID-19, you may request documentation from a medical professional indicating that it is safe for the employee to return to work but please be aware that access to medical providers is more difficult at this time, and you may need to exercise some flexibility, such as accepting an email or other less formal communication than would normally be accepted. The following are some of the processes recommended by the CDC for individuals who were diagnosed with COVID-19 and are being isolated:
 - 1. If the employee has not been tested to determine if he or she is still contagious, in accordance with CDC guidelines, an employee should not leave isolation unless he or she:
 - a. Has had no fever for at least 72 hours without the use of medicine to reduce fever; and
 - b. Other symptoms have improved; and
 - c. At least 7 days have passed since symptoms first appeared.
 - 2. If the employee will be tested to determine if he or she is still contagious, in accordance with CDC guidelines, an employee should not leave isolation unless he or she:
 - a. Has had no fever for at least 72 hours without the use of medicine to reduce fever; and
 - b. Other symptoms have improved; and
 - c. The employee has received two negative tests in a row, 24 hours apart.
 - ii. If an employee was caring for someone who was sick with COVID-19, you may require the employee to quarantine for 14 days after the last exposure prior to returning to work. If possible, you may want to allow the employee to work from home.

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- iii. If employees who are not aware of any exposure to COVID-19 are returning to work, please consider the Safety guidelines under the New Workplace section below as you are bringing employees back to work.
 - iv. As more testing sites open in Georgia, it might be possible for an employee to locate and undergo a COVID-19 test. While testing is not necessarily required to return to the workplace, a negative COVID-19 test, disclosed by the employee to the employer, can be helpful information as employers plan to return employees to work. Testing may or may not be available in many areas.
- 4) Accommodation Requests: If the organization is subject to the Americans with Disabilities Act or Title VII of the Civil Rights Act of 1964 (employers with 15 or more employees), you may have an obligation to accommodate requests to modify work or schedules due to disabilities or religious requirements in your workplace. If employees are seeking modifications to the workplace, to their schedules, or to the way that they do their work, please bear these legal requirements in mind. Please seek legal assistance before denying such requests.

The New Workplace

- 1) No Discrimination, Harassment or Retaliation: It is *crucial* that employers monitor employee and supervisor behavior and that they enforce policies prohibiting inappropriate comments and conduct that may constitute harassment, discrimination or retaliation. This pandemic has given rise to public comments inappropriately associating the virus with different national origins, races or religions – such comments and suggestions are inappropriate in the workplace and likely violate your nondiscrimination and anti-harassment policies. Employers should take concerns related to workplace behavior seriously, conduct prompt and thorough investigations and take appropriate corrective action if any inappropriate conduct is found. Also, it is important to maintain the privacy of employees who were previously diagnosed with COVID-19.
- 2) Maintaining A Safe Workplace: Employers need to consider and comply with Centers for Disease Control (CDC) guidelines and Occupational Safety and Health (OSHA) requirements related to maintaining a safe workplace. The need for these precautions is not going to end merely because shelter-in-place rules become more relaxed over time. Employers need to be aware of these recommendations and abide by them to keep their employees safe.
 - a. Encourage Sick Employees to Stay Home: Avoid having anyone in the workplace who is sick. Review your sick leave policies to ensure that there is no incentive for employees to come to work if they are sick.
 - b. Cleaning: The CDC (see this [link](#)) has outlined cleaning protocols for organization offices and other facilities, cleaning protocols if you have had a COVID-19 positive employee in the workplace, and advisories regarding cleaning workspaces and equipment used by employees.
 - c. Personal Safety of Employees: The CDC has made recommendations regarding personal protective equipment that may be needed (such as face masks), social distancing guidance in the workplace (such as rules advising employees to avoid touching or handshaking, separating employees in work spaces, limiting meeting size, and avoiding gatherings in common areas), and other safety measures that need to be taken in the workplace. See the link above to the CDC guidelines for more information.

- d. Temperature Checks: This is something that employers are permitted to do if they have a good faith basis for the need for such checks in the workplace. If the organization institutes temperature checks, please consider how to be sure that the checks are being applied consistently to all who enter the facility – the same rules should apply to exempt and nonexempt employees, volunteers, guests or anyone else who enters. If possible, make an effort to keep the checks in a private location so that information is not shared among those being checked. Also, it is very important to keep any records or information related to the checks confidential. Consider a system of self-reporting temperature checks before the employee comes to work. Consider self-administered temperature checks. Make sure any employee administering the tests has proper personal protective equipment, such as gloves and a mask. If an individual does have a fever, consider the options that may be available, including sending the individual home, and allowing either telecommuting or leave, if those are available.

Please contact your PBPA attorney with any questions you have as you transition employees back to work.