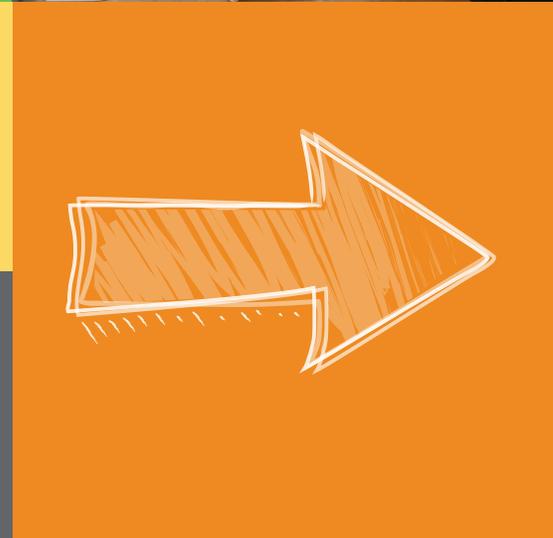
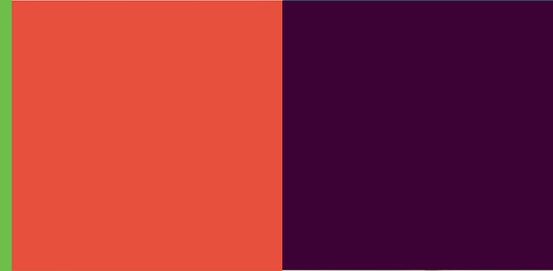


Special Report:

# Littler COVID-19 Return to Work Survey Report

May 2020



**Littler**<sup>®</sup>

Fueled by ingenuity.  
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This report summarizes and analyzes data gathered from more than 1,000 in-house lawyers, HR professionals and C-suite executives. The survey gauged employers' key concerns and strategies in reintroducing employees to the workplace in the wake of COVID-19.

*Disclaimer: Survey questions and their resulting findings do not represent any specific political affiliation or preferences of Littler, nor do they constitute any legal, economic or political advice.*

## Executive Summary

With stay-at-home orders across the country being lifted, employers nationwide face a number of difficult questions: When should we bring employees back into the workplace, if at all? How can we do so safely? What accommodations need to be made? And what steps can we take to avoid lawsuits in the process, be they related to new leaves of absence entitlements, unsafe workplace conditions or any number of other matters?

In the first two weeks of May, more than 1,000 employers responded to the **Littler COVID-19 Return to Work Survey**, providing a window into their views on these and other critical questions.

### When will employers reopen their workplaces?

At press time, the vast majority of states have lifted or relaxed their stay-at-home orders and unveiled their return-to-work plans (to view Littler's interactive reopening map [click here](#)).

On one hand, most companies appear ready to open up shop. Among respondents from organizations that are not essential businesses – and thus are not already open – the vast majority (78 percent) say they will reopen within three months, with 34 percent of those respondents saying they will do so within one month.

On the other hand, employers are moving ahead cautiously. Only 18 percent of respondents say they will bring employees back immediately after each stay-at-home order is lifted in the states in which they operate. A larger portion (33 percent) say they'll wait a few weeks, while 42 percent say they will monitor the outcome of other businesses reopening before making decisions.

### What steps are businesses taking to keep employees safe?

Survey respondents are taking a bevy of actions to keep employees safe, including increased cleaning efforts (90 percent), limiting employee contact in common areas (87 percent), providing/encouraging the use of face coverings or other protective gear (86 percent) and modifying physical workplaces to maintain distancing (78 percent).

What's more, nearly 60 percent of respondents say their organization will conduct employee health screenings and testing. Most are referring to temperature checks (89 percent) and symptom screenings (72 percent), but a small number selected antibody (8 percent) and antigen (7 percent) tests as well.

Still, uncertainty remains when it comes to testing and screening. Despite the U.S. Equal Employment Opportunity Commission (EEOC) giving employers the go-ahead on temperature checks, much remains unclear with regard to testing and other forms of health screening, from their implementation to privacy matters to litigation risks – all of which are discussed in more depth in this report.

### How will employers manage new work-from-home accommodations?

The COVID-19 pandemic has driven a dramatic rise in the number of employees working remotely. For some, the shift may be permanent: half of our survey respondents say they are considering, either somewhat or to a great extent, *requiring* more employees to work remotely to reduce office costs.

Others, however, may reopen only to find more employees seeking to stay remote, for any number of reasons. Most respondents say their organizations will be amenable to such requests, whether it's being flexible in accommodating valid requests until the pandemic subsides (52 percent) or changing remote work policies altogether and allowing employees to stay remote if they've proven effective in doing so (30 percent).

## What are employers' top liability concerns?

As debates around potential "liability shields" for employers rage on in Congress, we asked in-house counsel how concerned they are about potential lawsuits as they look to reopen their workplaces. Nearly three-quarters (71 percent) say they are at least "somewhat" concerned and 11 percent of those respondents are concerned "to a great extent."

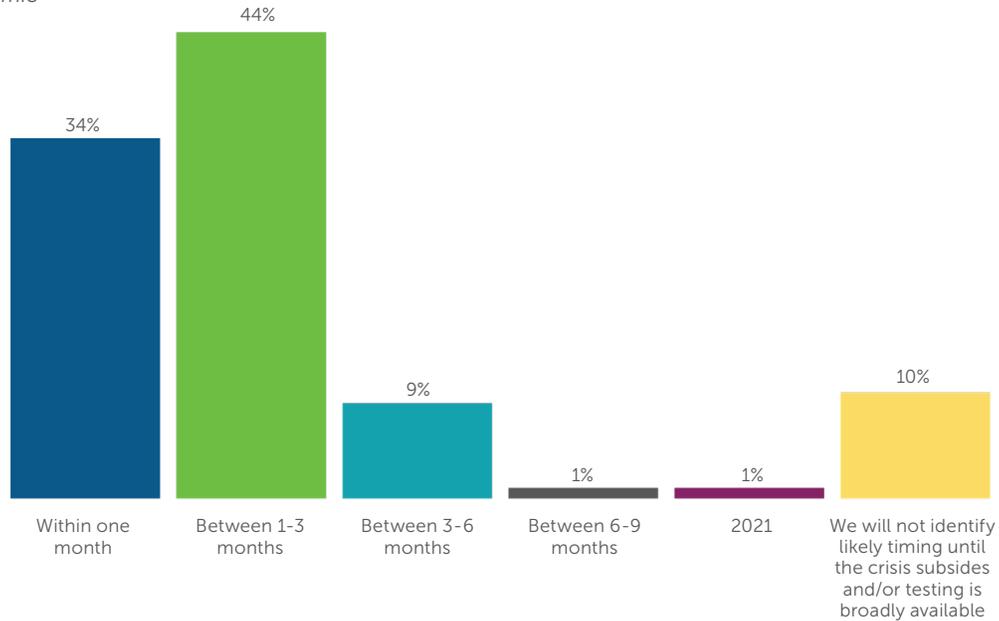
As for which areas they expect to see an uptick in workplace claims or lawsuits, the top three responses were leaves of absence entitlements (68 percent), unsafe working conditions (59 percent) and workers' compensation (43 percent).

*In the charts and analysis that follows, responses to some questions do not add up to 100 percent due to rounding, and some exceed 100 percent because respondents were invited to select more than one answer. For the full survey [methodology and a breakdown of respondent demographics](#), see page 14.*

## Timing to Reopen

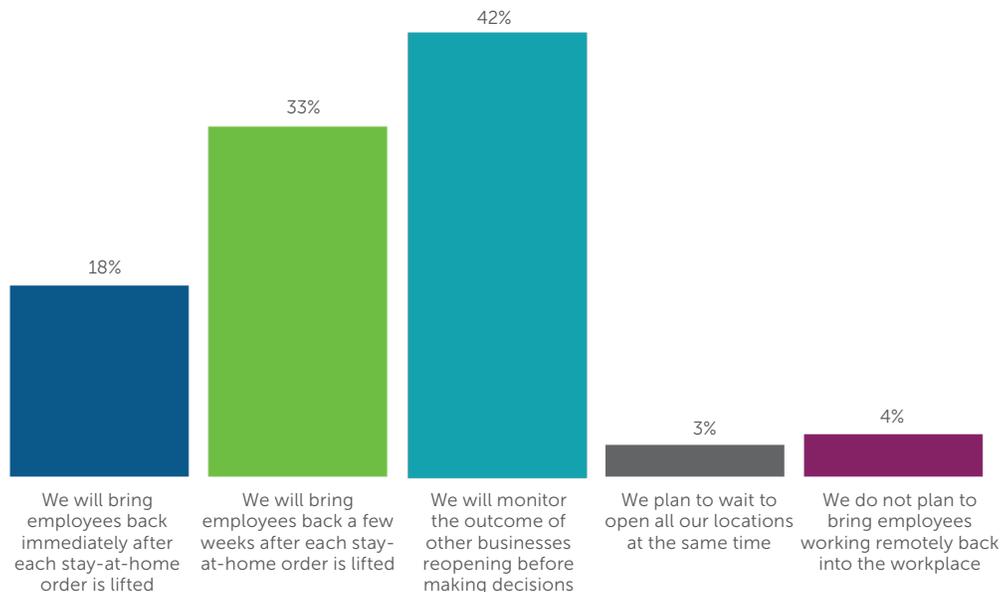
Which of the following describes the best estimate of when your organization currently plans to start bringing employees back into the workplace?

*This chart does not include responses from essential businesses that have had most employees reporting to the worksite during the pandemic*



Which of the following best describes your organization's plan to start bringing back employees who are working remotely after stay-at-home orders are lifted in the states in which you operate?

*This chart does not include responses from essential businesses that have had most employees reporting to the worksite during the pandemic*



## Littler COVID-19 Return to Work Survey Report

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The survey data suggests that employers are heading toward reopening with cautious optimism: nearly 80 percent say they will bring employees back to the workplace within three months, with 34 percent of those respondents saying they will do so within one month.

This urgency is especially prevalent among respondents in the hospitality, food and beverage, and retail industries, where 40 percent say they will bring employees back within one month and 49 percent say the same of the one- to three-month range. This is not surprising given how hard these industries have been hit by the pandemic – and how significant in-person staff is to their operations.

At the same time, employers aren't rushing things. Many respondents have adopted a wait-and-see approach, as 42 percent say they will monitor the outcome of other businesses reopening before making decisions of their own. Only 18 percent say they will bring employees back immediately after each stay-at-home order is lifted in the states in which they operate, while 33 percent say they'll wait a few weeks.

A small, but not insignificant, number of organizations are being even more conservative, with 10 percent saying they will not reopen until the crisis subsides and/or testing is broadly available.

The timelines are remarkably consistent regardless of an organization's size, with survey respondents representing companies ranging from less than 100 employees to more than 10,000.

The charts and analysis above do not include the 17 percent of respondents from essential businesses whose employees have continued to report to the worksite during the pandemic. This percentage was nearly double (33 percent) for employers in the healthcare/pharmaceutical and manufacturing industries.



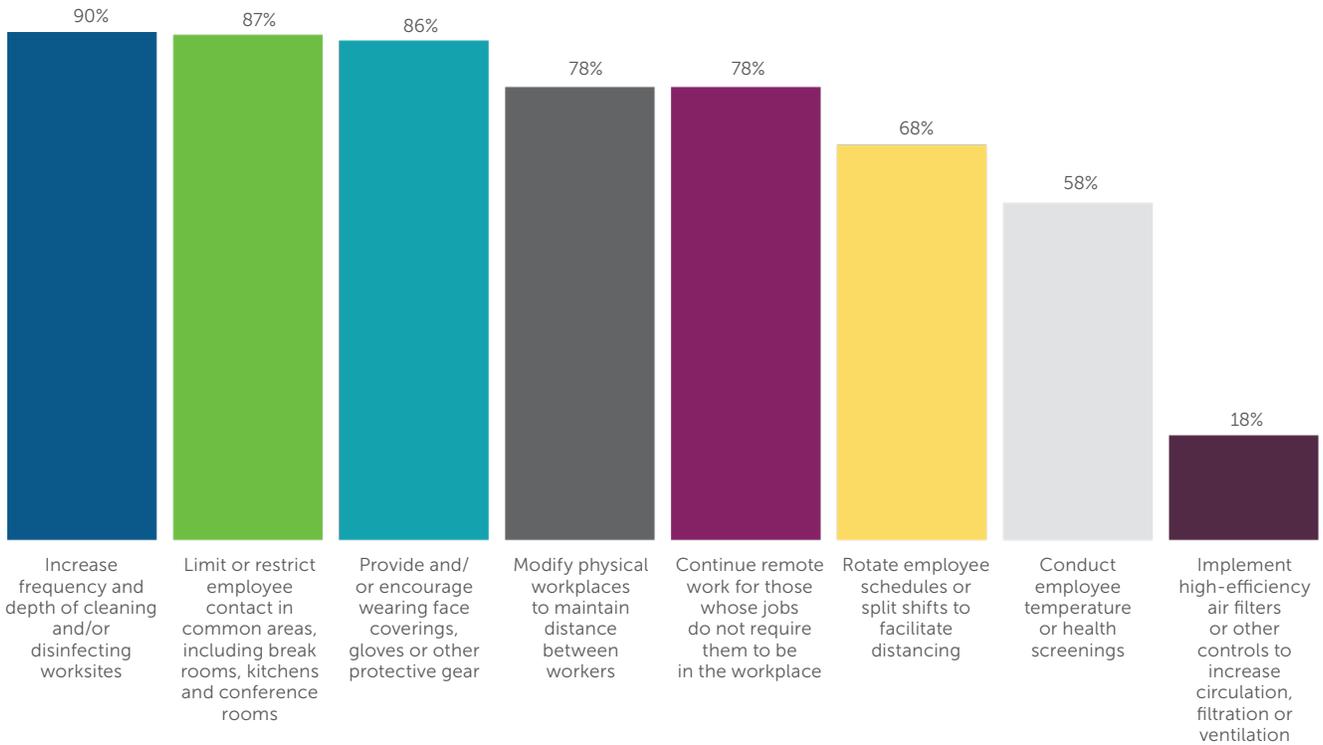
**While many businesses and their employees are eager to return to a sense of normalcy and resume in-office operations, they face a host of unknowns when it comes to what the workplace looks like in a COVID-19 era and how to keep workers and customers safe. Particularly given the wide-ranging, and often conflicting, guidelines from state and local officials, employers are left to balance multiple logistical, emotional and legal concerns in determining whether, when and how to reopen their workplaces.**

**Alka Ramchandani-Raj**, a leader of Littler's COVID-19 Task Force



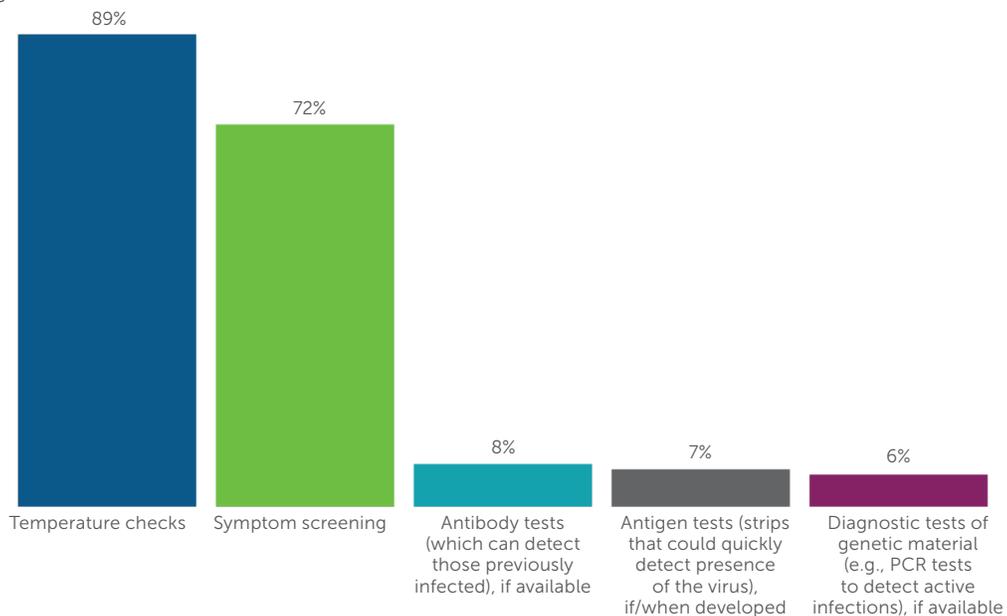
## Employee Safety and Testing

Which of the following actions, if any, is your organization taking or planning to take to keep employees safe in the workplace? (select all that apply)

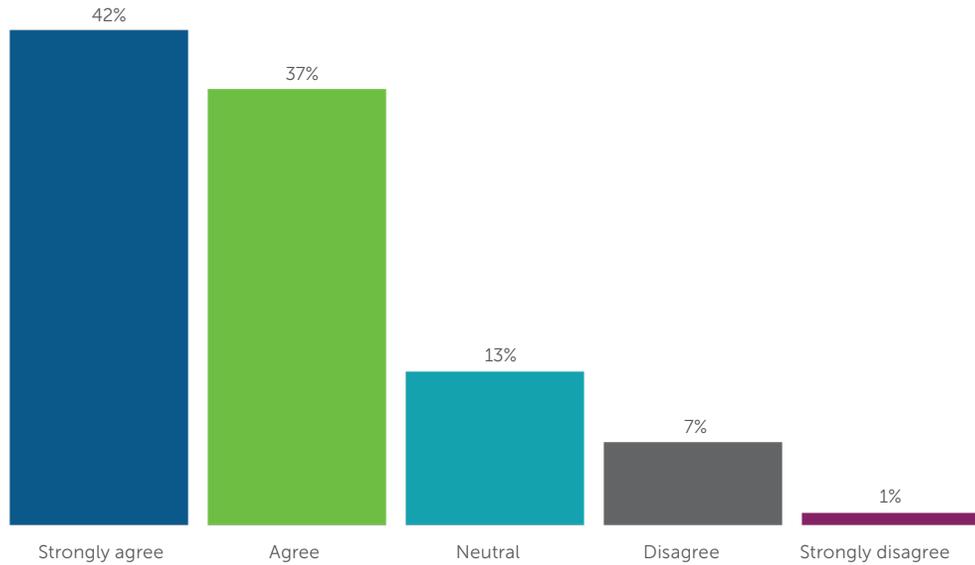


What types of testing or screening is your organization planning to conduct or ask employees to receive before entering the workplace? (select all that apply)

*This question was only asked to respondents who indicated their organizations are conducting employee temperature or health screenings*



**To what extent do you agree with this statement: My organization has formal plans and procedures in place to manage COVID-19 exposures in the workplace and situations where employees are showing symptoms or test positive.**



Employers are taking a wide range of actions to keep employees safe as they look toward reopening. A significant majority of respondents are making adjustments in the workplace, including increasing cleaning efforts (90 percent), limiting contact in common areas (87 percent), providing/encouraging the use of face coverings or other protective gear (86 percent) and making physical modifications to maintain distance between workers (78 percent). To further facilitate distancing efforts, many are also continuing remote work for those who don't need to be in the workplace (78 percent) and rotating employee schedules or splitting up shifts (68 percent).

The percentage of large organizations – those with more than 5,000 employees – taking various actions to protect employees was higher across all answer choices, with modifying physical workspaces, rotating schedules and conducting temperature or health screenings seeing roughly 10 percentage point increases when compared with all respondents. This is logical considering the risks that come with having more employees on-site and the need to absorb expenses associated with new safety measures. In reflecting on costs associated with new safety measures, an owner of a smaller home health care company pointed out that “this is a financial burden we did not have before the virus.”

While putting various safety measures in place is clearly high on the radar of employers, many respondents observed in their written feedback that new guidelines are only effective if employees actually *follow* them. One HR professional in the financial services industry noted that “getting employees to be in frequent cleaning mode, not just of their own workspaces, but in commonly used spaces” would be a significant challenge. And an in-house lawyer for a large technology company highlighted the difficulty of “changing employee behavior to maintain social distancing when a primary reason people want to come back is to socialize.”

Several other respondents remarked on how difficult it will be to strike a balance between upholding their workplace culture and employee morale while implementing appropriate safety measures. One in-house counsel noted the challenge of “ensuring culture, engagement, performance and productivity standards can be maintained while enforcing the necessary health and safety measures.”

Given these difficulties, clear, consistent communication and training on new safety and social distancing measures are crucial elements of any return-to-work plan.

## ***Covid-19 Testing And Health Screenings***

Nearly 60 percent of respondents – and almost 70 percent of respondents at companies with over 5,000 employees – say their organizations will conduct employee temperature or health screenings. When asked to specify what type of testing or screening they will do, most say they will initiate temperature checks (89 percent) or symptom screenings (72 percent). What’s more, more than 80% of those respondents say screenings will be made mandatory.

Screening employees for possible COVID-19 infection raises a host of legal considerations, including workplace privacy issues, secure storage of employee health information and compliance with EEOC and state equal employment opportunity agency requirements. While the EEOC has made clear that temperature checks of employees are permissible and that testing may be permitted, state equal employment agencies have been slower to provide similar guidance to employers. However, at a minimum, temperature checks, along with daily screening questionnaires of employees about exposure and symptoms, are key elements of a company’s defense against contagion as employees re-enter the workplace. See sidebar for more information on conducting temperature checks.

A small group of respondents plan to conduct or ask employees to receive antibody (8 percent), antigen (7 percent) and diagnostic (6 percent) tests as well – even though antibody tests currently show mixed results, antigen tests had yet to be developed at the time of the survey and diagnostic testing remains in short supply. Conducting these types of tests poses additional practical and legal issues for employers, including the lack of guidance in this area and the need to meet stringent workplace safety requirements to launch in-house testing programs. For instance, even if reliable antibody tests eventually do become available, employers would likely face challenges proving that the test is “job-related” (as required under the ADA) because healthy employees who are fit for duty, but do not have the antibodies demonstrating possible immunity, would fail the test.

Overall, about 80 percent of respondents feel that their organization has formal plans and procedures in place to manage COVID-19 exposures in the workplace, as well as for situations where employees show symptoms or test positive. This makes sense given the timeline – between one to three months – that most businesses expect to reopen, as noted above.

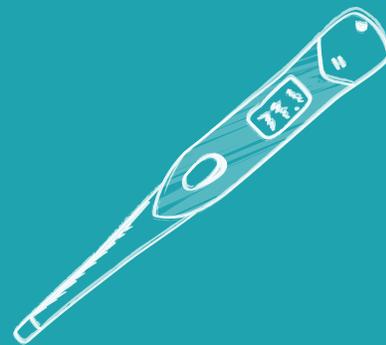
## So you want to take your employees' temperature. What now?

Under normal circumstances, temperature screening constitutes a medical exam and would be permissible under federal law only if an employer could satisfy the "direct threat" analysis under the Americans with Disabilities Act (ADA). But given the risks associated with COVID-19, the EEOC has given employers the green light to measure employees' body temperatures during the pandemic and has issued guidance clarifying its position.

However, the EEOC has not provided specific guidance on the protocols to be followed in conducting temperature checks, except to maintain the confidentiality of such records. As such, here are some issues employers should keep top of mind:

- **Follow CDC guidelines.** This includes using non-contact thermometers, ensuring personal protective equipment and proper training for those taking temperatures, and taking proper social distancing measures.
- **Consider the privacy implications.** Temperature checks should be conducted in a manner that protects the privacy of the individuals and readings should be kept confidential.
- **Scenario-planning is key.** What happens if an employee refuses to take a test? Or if someone refuses to leave the workplace with a high temperature? Should employees sent home for high temperatures be paid for the day? These and other variables must be factored into an organization's planning.
- **Institute clear and consistent protocols.** Whatever the process may be – whether employees take their temperature at home, or a medical professional or another designated person takes them – make sure it is applied consistently to all employees and clearly communicated throughout the organization.

Read Littler's [Insight](#) for more information on conducting employee screenings.



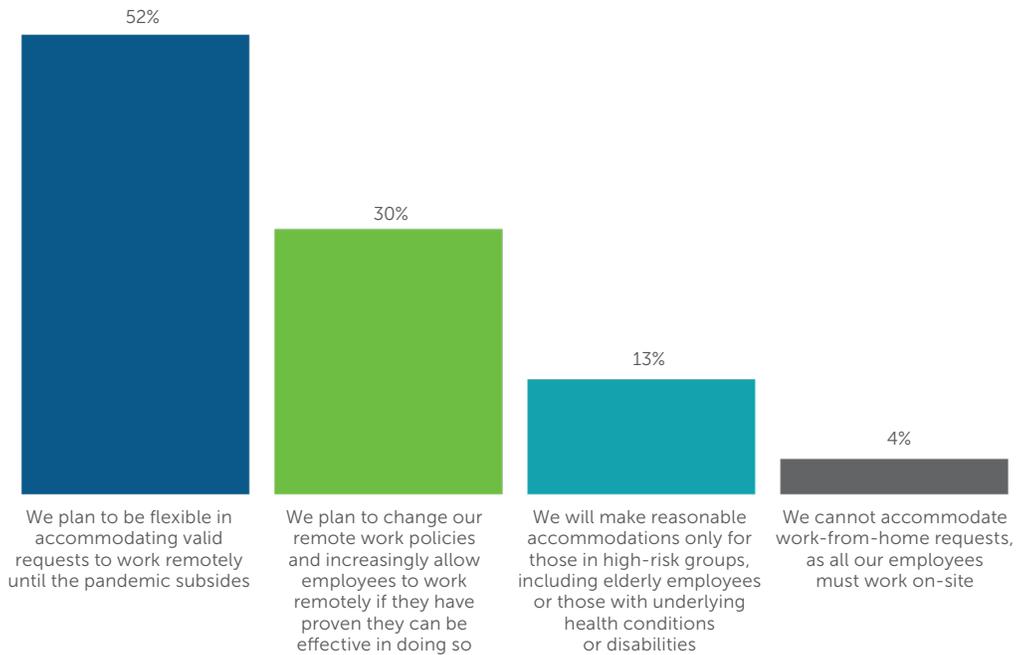
**There is no 'one-size-fits-all' approach to returning to work, which makes the process all the more challenging for employers. However, in the health and safety realm, communications and training have always played a vital role and are especially paramount now given the stress and anxiety everyone is under as the pandemic continues to unfold.**

**[Melissa Peters](#)**, a leader of Littler's COVID-19 Task Force

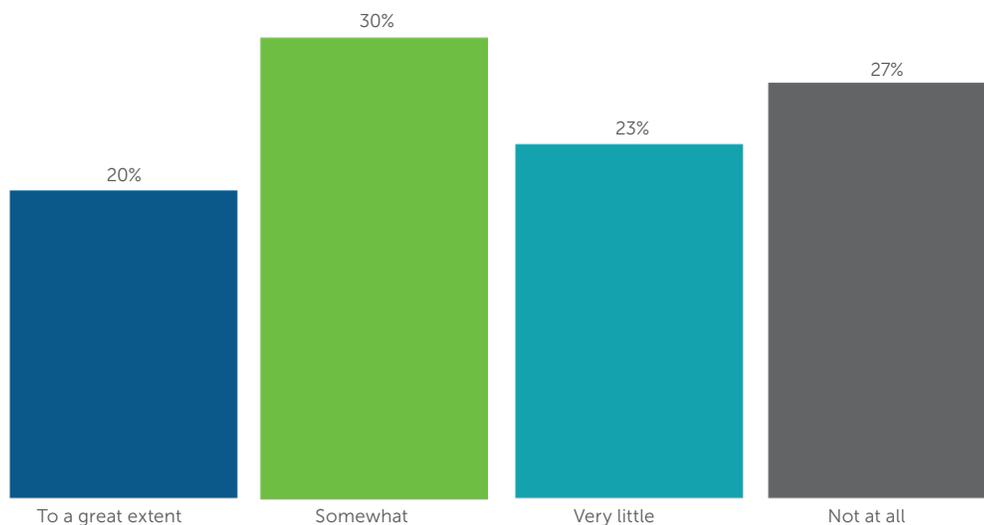


## Managing Work-from-Home Accommodations

Which of the following best describes how your organization plans to manage work-from-home requests after reopening?



To what extent has your organization considered requiring more employees to work remotely in order to reduce physical office costs, including real estate?



As has been widely reported, COVID-19 has caused employers (and their employees) to dramatically rethink remote work. One element of this – the opportunity to reduce physical office costs – led half of our respondents to say their organizations are considering, either somewhat or to a great extent, *requiring* more employees to work remotely. This number was even higher (60 percent) for companies with over 10,000 employees.

Depending on the organization, however, the new working environment may prove to be a tricky balancing act.

In some instances, employees may *want* to return to an office. As one HR professional put it: “We are well equipped to work remotely. The bigger problem for us is likely to be employees who want to return to an office due to cramped space, kids or roommates at home. We’re now considering options to support these employees separate from returning to our offices.”

In other cases, employees worried about their safety or childcare availability may want to stay remote despite workplaces opening back up. An HR professional from an essential business in the manufacturing industry (where employees need to work on-site) said, “For us, the biggest challenge will be for working parents. Schools are canceled, but we are waiting to hear state news on summer camps, daycares, etc. If we continue to have issues with daycare unavailability, we will have a handful of employees who will exhaust their FFCRA/CARES leave.”

**Read Littler’s [Insight](#) on handling concerns from employees hesitant to return to the workplace for more information.**

It follows, then, that just over half of respondents (52 percent) plan to be flexible in accommodating remote work requests until the pandemic subsides, and that another 30 percent plan to change policies to allow for more remote work (as long as employees proved effective in doing so). Feedback from respondents was consistent from companies of every size, suggesting organizations across the board plan to offer employees more flexibility as they continue to navigate the pandemic.

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**Managing employee leave and accommodation requests was already an area fraught with difficulty and potential liabilities for employers and COVID-19 has only exacerbated that. Effectively handling these issues will require adhering to an ever-evolving patchwork of federal, state and local laws while ensuring procedures for remote work are applied consistently, without any discriminatory impact on certain groups.**

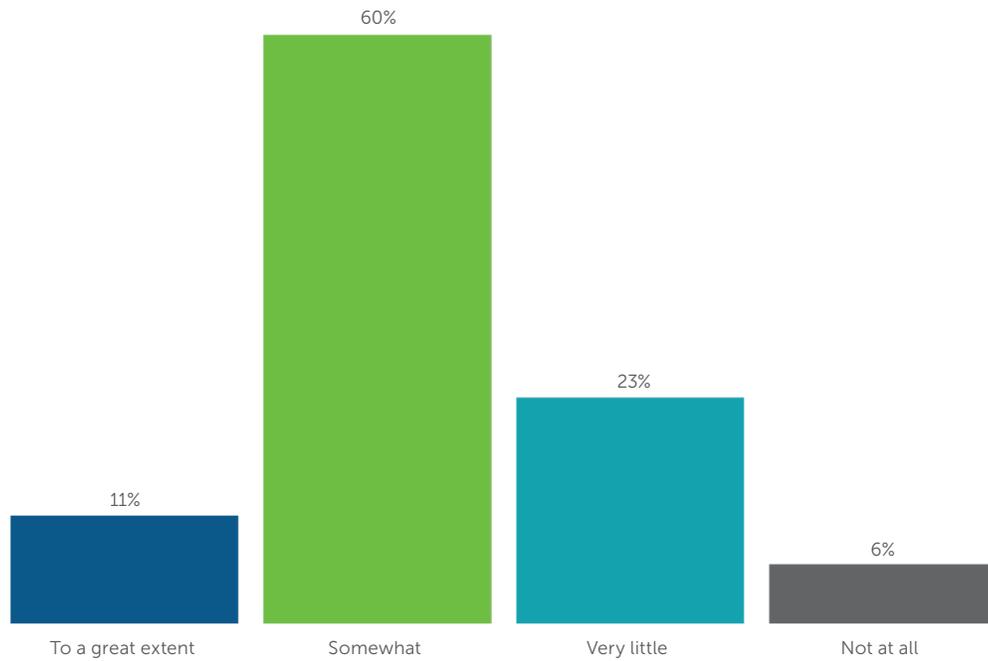
**[Michelle Barrett Falconer](#)**, Co-Chair of Littler’s Leaves of Absence and Disability Accommodation Practice Group



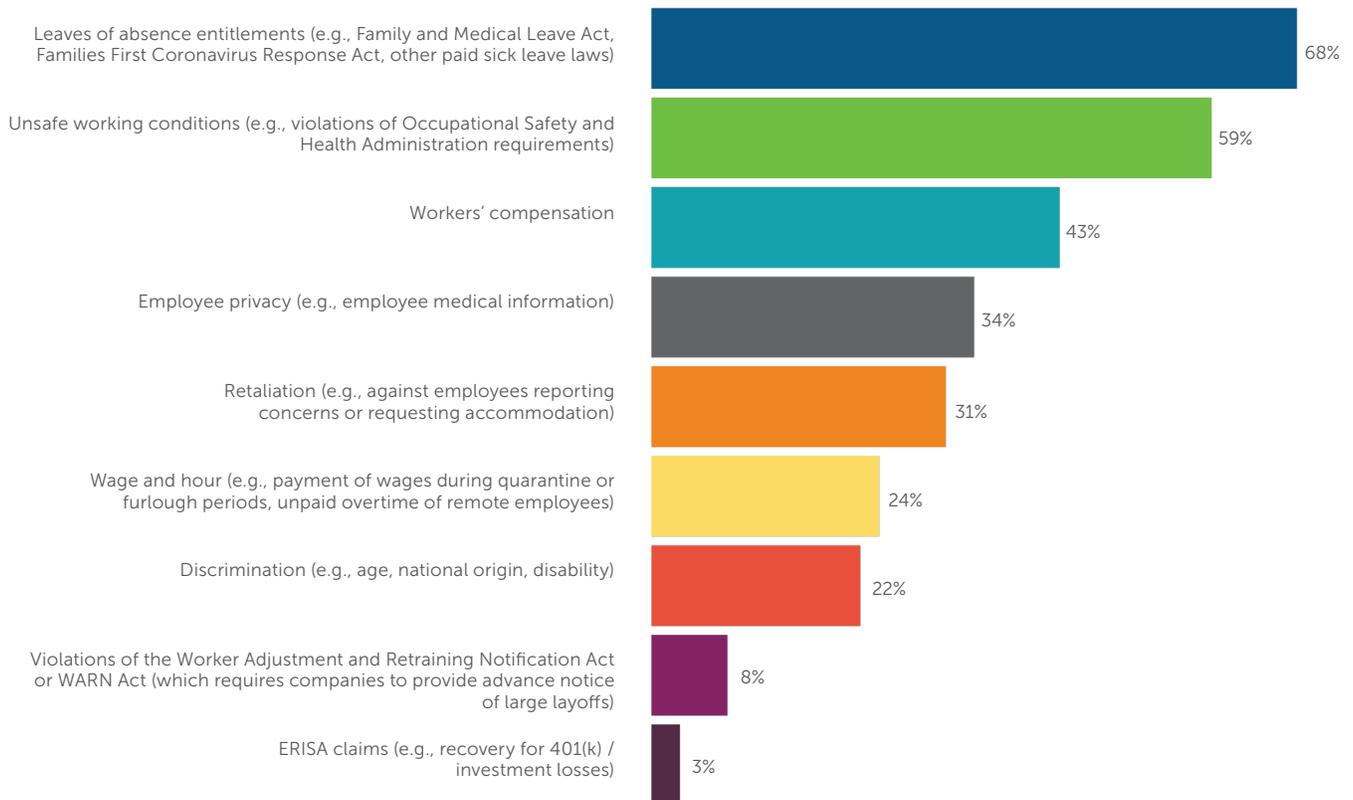
## Liability Concerns

To what extent is your organization concerned about reopening due to liability over coronavirus-related claims and the potential for lawsuits if workers contract the virus?

*This question was only asked to in-house counsel*



**In which of the following areas do you expect an uptick in workplace claims or lawsuits as the COVID-19 pandemic continues and employees start coming back into the workplace? (select all that apply)**



Over 70 percent of in-house lawyers are at least somewhat concerned about reopening their workplaces due to potential coronavirus-related claims and lawsuits, and only six percent are not concerned at all.

Their liability concerns are warranted: the volume of these filings has already begun to accelerate sharply, with many more predicted to come. According to a [Washington Post article](#) from early May, the website Top Class Actions – which, funded by plaintiffs’ attorneys, advertises numerous COVID-19-related investigations – received over 10,000 submissions in April alone.

The notion of providing employers acting in good faith with liability shields if workers contract the coronavirus has unleashed a heated debate among lawmakers, who are weighing the benefits of encouraging businesses to reopen while ensuring workers are protected.

Respondents to our survey expect an uptick in workplace claims or lawsuits in several areas, mainly related to leaves of absence entitlements (68 percent), unsafe working conditions (59 percent), workers’ compensation (43 percent) and employee privacy (34 percent).

The fact that leaves of absence entitlements emerged as the greatest area of concern – even over workplace safety violations during a medical pandemic – is not surprising given the difficulty in navigating the tangled web of criteria involved with federal, state and local leave-related laws. For instance, the Families First Coronavirus Response Act (FFCRA) includes new obligations for providing paid sick time that are likely to leave companies vulnerable to litigation. And of the 22 COVID-19-related lawsuits filed in federal court in April, the largest portion (eight lawsuits) allege violations related to leaves of absence.

Large employers (those with over 5,000 employees) expressed greater concern over an increase in litigation across all answer choices. The greatest differences were in retaliation claims (44 percent of large employers compared to 31 percent overall), employee privacy (45 vs. 34 percent overall), workers' compensation (53 vs. 43 percent overall) and unsafe working conditions (69 vs. 59 percent overall).

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**The wave of COVID-19 litigation has begun in haste and poses a real threat to employers, most of whom are already grappling with the economic fallout from this pandemic. In the face of so much uncertainty, legislative safeguards and clear guidance from federal and state agencies are important in providing employers with sufficient confidence to reopen their workplaces – and to do so in compliance with the law.**

**Michael Lotito**, Co-Chair of Littler's Workplace Policy Institute



### Methodology and Demographics

From May 5-14, 2020, 1,010 professionals completed the **Littler COVID-19 Return to Work Survey** via an online survey tool. Nearly all respondents (98 percent) said their organizations have operations throughout the United States and many also indicated having operations in Western Europe (22 percent), Asia-Pacific (21 percent), Canada (20 percent) and Mexico (13 percent), among others.

Respondents included:

- Human resources professionals (59 percent)
- General counsel/in-house attorneys (31 percent)
- C-suite executives or other professionals (10 percent)

Companies represented were of a variety of sizes:

- More than 10,000 employees (14 percent)
- 5,001 to 10,000 employees (8 percent)
- 1,001 to 5,000 employees (22 percent)
- 501 to 1,000 employees (12 percent)
- 101 to 500 employees (28 percent)
- 1 to 100 employees (15 percent)