

Avoid discrimination allegations as your staff returns

As you've dealt with the COVID-19 pandemic, you may have temporarily reduced your staff. And while helping them return should be a positive experience, it can be potentially fraught with unexpected risks. The hypothetical example below illustrates one of them. To help you avoid the risk of a discrimination problem, we've included some ideas for you to consider as you plan your employees' return to work.

THE LOSS

Following a civil order related to the COVID-19 pandemic, a business shut down for six weeks. Upon reopening, they brought staff back in phases—essential employees first, followed by sales, administrative, and service employees. The business's self-defined employee categories meant many younger employees returned first, unintentionally creating the perception of age discrimination. The company was served with an age discrimination lawsuit, with legal fees and settlement costs exceeding \$500,000, along with more than \$55,000 in uninsured expenses.

THE LESSON

The business's leaders failed to recognize their risk for age discrimination allegations. Working with an employment attorney or human resources professional could've helped them establish a more objective employee categorization system.

This description is a hypothetical and isn't based upon any specific individual, entity, or set of facts.

You can find additional safety resources by visiting [sentry.com](https://www.sentry.com). You can also reach our Safety Services team at 800-443-9655.

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PREVENTIVE STRATEGIES

Consider the following ideas, among others, in the context of your business circumstances:

- Review your plan with an employment attorney or human resources professional.
- Use legitimate, non-discriminatory business criteria to create a preliminary return-to-work plan for your employees. Once you've determined the plan, analyze it (preferably with an employment attorney or human resources professional) to ensure it doesn't create unintended discrimination risks, and make appropriate changes to the plan to reduce or eliminate those risks.
- Once you've defined your approach, consider communicating the value points you're basing these decisions on (skills, experience, etc.), but avoid specifics on scores or ratings.
- Be responsive to employees' concerns, questions, and comments.
- Develop basic procedures and response planning strategies that could help you manage a similar event in the future.
- Monitor local and national guidelines regarding sanitation and disinfecting. As guidelines evolve, modify your safety plan based upon your specific circumstances.

WE'RE HERE TO HELP

We're committed to helping you protect your business and your employees by providing resources that can help you manage loss-producing situations.