

Staffing Decision Guidance Returning Employees to Campus



This document complements
[Returning Work to Campus](#)

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Prepared by: [Human Resources Subcommittee](#) for Reopening Campus

Guide: Determining What Employees Return Onsite

Introduction

Questions about how to decide which employees return to campus or work from home, use flexible schedules, settings or strategies, are often perceived as unfair if not all the same. Managers and supervisors often feel challenged to be fair, treat everyone the same, and yet be equitable in light of individual differences and the need for unique solutions. Sometimes it's just easier to take a universal approach, allowing no one to work from home, but that violates President Stanley's and Governor Whitmer's orders to work at home whenever possible. Or, maybe it seems easier to make a few exceptions and try to deal with questions and challenges as best you can. None of these approaches are very satisfactory, or effective – not to mention equitable.

This guide is intended to mirror the approach taken by the [Guide to Returning Work to Campus](#). Rather than universal decisions, or basing decisions on qualities or characteristics of individuals, the recommendation is to use a consistent set of questions, applied to the work and situation, to determine the best approach for unique situations. Unique situations, subjected to consistent analyses, result in different – but more equitable and accountable – solutions. Please draw upon these principles, the same ones used in the Return Work to Campus guide, to return employees to campus, or to leave them at home, or whatever arrangements achieves the work, with as little impact on the person as possible.

Returning Employees to Campus: who comes in to do it?

The same principles used in determining what work returns to campus, and why, can be deployed at the individual level. After determining the necessity of what work returns to campus, it's time to consider who returns to campus to do the work, how that is fair and equitable, and most importantly, why.

Start, always, with the largest context

In the current situation, Governor Whitmer's and President Stanley's imperatives to work from home *whenever possible* is the largest context. Then, ask consistently what is the necessity for a particular individual to be assigned to on-campus work? Look at the risk questions (nature, probability, severity and scope) in terms of 1) risks to the individual, and 2) risks to the work. Identify which poses the greater risk - at home or on-campus. This analysis should provide direction as to how to handle who returns and who doesn't, and why.

Keeping in mind equitable recall strategies and consideration of individual contexts will be important in deciding fairly who returns to campus. Individual situations subjected to consistent principles of analysis should result in different but equitable solutions. But first, we will tackle the most obvious considerations, and then we'll look at a question/analysis protocol more deeply.

Legal Considerations

The first tier of considerations would be decisions that differentially impact a member of a protected class under Michigan or federal human rights legislation. Requiring only, or disproportionately, people who are members of a protected class (religion, race, color, national origin, age, sex, height, weight, familial status, or marital status) to return to campus or take on greater risk would be subject to examination as potentially discriminatory.

The next tier of decisions on individuals returning to campus is to consider those with legal protections under the Americans with Disabilities Act (ADA). Medical conditions (including conditions resulting in

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immunosuppression, chronic conditions including but not limited to inflammatory, gastro-intestinal, musculo-skeletal, neurological, cardiac, pulmonary, respiratory conditions, many of which require medications with side effects of immunosuppression), as well as sensory, motor, psychological, and other conditions that affect an individual's participation in major life activities are considered under the ADA.

That said, there must be a direct connection, or nexus, between the condition and the task participation or setting in question. There may or may not be a relationship between the condition to be accommodated and the work environment or actions required. This intersection must be considered before determining a work setting based on accommodation.

Additionally, you must retain records for your decision for any employee who can do their job remotely but must do their job on-premise. State regulations which detail requirements and make the safety measure part of Michigan Occupational Safety and Health Administration (MIOSHA). MIOSHA regulations: MIOSHA will accept a written policy that indicates that employees cannot perform in-person work activities where the work activity can feasibly be completed remotely. Units are obligated to demonstrate the infeasibility of remote work. Employers should include in the remote work determination information which covers at least:

- Which positions/classifications report for in-person work and why they must be physically present in the workplace;
- Reasons that this work cannot be performed remotely; this must include enough specificity to show this analysis has been performed.

This written policy may be part of the Unit's COVID-19 preparedness and response plan. It does not have to be a stand-alone document.

Examples

An example of a connection or nexus between the functional impairment resulting from a condition and the work environment: An employee with pre-existing rheumatoid arthritis, an inflammatory condition treated with steroid medication that reduces immunity, is asked to return to work in an open office area with high traffic with low compliance rates with safety precautions. The connection between the condition (inflammatory disease and low immunity) and the risk of contracting COVID through heightened exposure is clear. The nexus is in the high risk to this employee from more exposure than they would have at home (or in an accommodated setting, such as a private office, with high compliance by all people they work with, etc.).

An example of no connection or nexus between a condition and the work environment would be someone with a well-healed amputation and prosthetic limb whose distance ambulation or lifting is limited, working in an office setting. Presumably, this person would not be at any greater risk of contracting COVID than anyone without a mobility impairment. While distance ambulation might be compromised or lifting with a prosthetic arm might present a challenge, there is no relationship between a prosthetic limb and vulnerability to COVID by virtue of being at work. Therefore, the presence of a mobility impairment due to an amputation may not, in and of itself, require an accommodation of working from home. Limited distance mobility might require other accommodations, like accessible parking, or proximate washroom facilities, and those could be achieved without necessarily working from home. Co-existing conditions might merit an accommodation of working from home, but something unrelated might not.

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Union Considerations

When scheduling employees, supervisors need to be cognizant of [FLSA](#) and [MSU union overtime rules](#).

Equally Important but Not Formally Protected

After considering the legally identified characteristics that might guide a determination of who returns to campus, the equally important but not formally protected areas must be reviewed. The MSU Policy on Temporary Accommodation sets some priorities including people with vulnerable family members or family caregiving needs: <https://hr.msu.edu/policies-procedures/university-wide/accommodations-flexibility-covid19.html>. Along with those articulated considerations, we want to keep in mind first and foremost that “equal does not mean the same”. It is necessary to have both the courage and a mechanism to contemplate unique, individual contexts that result in different outcomes for different

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people. The way to accomplish this is through an authentic, mutually respectful exploration of the elements of the situation.

Application

As mentioned above, individual situations addressed with consistent principles of analysis can help identify different but equitable solutions. Utilizing the following questions in an analysis of the situation provides a mechanism for equitable, individualized solutions. While similar questions were applied to the analysis of whether *the work could be done* remotely or not, now apply them to whether *an individual can work* remotely.

1. Focus on the job/task, not the individual person or reason for the request
 - a. What is the nature of the task/job? Key responsibilities ?
 - i. What outputs or indicators of success must be evident?
 - ii. What shows accountability on those indicators? (How do you know the job is done successfully, or well enough?)
 - b. What is the impact of working remotely on the work/unit, if any? (These questions will have been answered when analyzing the work for return to campus or continued remote work.)
 - i. Nature of the impact? Positive? Neutral?
 - ii. Probability of impact?
 - iii. Severity of impact?
 - iv. Scope of impact?
 - c. If impact of being flexible is neutral or positive, why not be flexible? (We have a mandate from the Governor and President to work from home if possible. In other words, be flexible.)
2. Consideration of multiple means to the same end (not a change in the end goal)
 - a. Is there only one way to do this job?
 - b. What is the evidence/reason for the need to do this job in a particular way/time frame/schedule - or location?

The criteria are *not* whether others are coming back, how the department “looks” if no one comes back, what kind of “message” does it send (to whom?), or what someone will think if someone else does not return to campus, or other tangential notions. This is a public health crisis, not an image competition. The way to “look good”, the role modeling to be demonstrated, is to successfully protect our people and keep the incidence of COVID-19 declining.

The criterion is whether the workplace can be made safe enough, by mutual discussion and agreement, for the individual to return, or not. Like a flexible work or telework agreement, clear expectations with solid rationales from all parties must be identified, mutually understood, and respected. Strategies for meeting needs must be explored and articulated. A trial period for effectiveness, safety and continued productivity might be a desirable approach, with clear considerations for evaluation determined in advance. This is a time when there is no “one-size-fits-all” solution to any of these questions. This is a time of intense questioning, examination, re-examination and an opportunity to recreate our approaches, and our very notions of what work is, what it looks like, where it gets done and how we make those decisions.

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Pull out your best creativity, courage, negotiation and analysis skills. Get on the same side of the table with employees, and together - maybe even with the whole team - figure out how to do this better, even differently – for everyone. Helpful resources for considering and developing a remote work arrangement can be found here: <https://worklife.msu.edu/workplace-assistance/flexible-work>. Specific support for defining a remote work or telework agreement can be found here: <https://worklife.msu.edu/workplace-assistance/flexible-work/telecommuting>

Additional Support

For additional information or specific questions regarding the document feel free to contact:

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