CSG The Council
of State
Governments

Facilitating a Safe and Inclusive Return to the Workplace

COVID-19 STATE POLICIES AND GUIDANCE

Table of Contents

By Elise Gurney | January 2022

This brief was produced in partnership with the [State Exchange on Employment & Disability](#) (SEED), an initiative of the U.S. Department of Labor's Office of Disability Employment Policy (ODEP). In partnership with intermediary organizations like The Council of State Governments (CSG), among others, SEED helps state and local policymakers develop and implement meaningful policies and practices that lead to increased employment opportunities for individuals with disabilities and a stronger, more inclusive workforce and economy.

In November 2020, SEED launched the COVID-19 Policy Collaborative for an Inclusive Recovery, also known as the Collaborative, to support SEED intermediary partners and state and local policymakers in responding to the pandemic and to ensure newly implemented policies align with disability and civil rights laws and policies.

From February to May 2021, key stakeholders and subject matter experts met during a series of three virtual meetings to discuss issues surrounding returning to the workplace, workforce retention and preparing for work amid and following the pandemic. Participants included SEED's formal intermediary partners; researchers; scholars; federal, state and local government representatives; disability employment policy specialists; and other thought leaders.

The content of this brief was informed by information and data gleaned through the Collaborative, including presentations, panel discussions and discussion-based breakout sessions.

Introduction

As Americans return to the workplace, states are developing policies and guidance to protect the health and safety of workers and to mitigate the spread of COVID-19.

At a minimum, these policies and practices must comply with U.S. civil rights laws and other disability-related policies, such as the Americans with Disabilities Act (ADA), to ensure the rights of individuals with disabilities are being protected. Yet, states also have the opportunity to advance equity and inclusion for all workers, including those with disabilities, in their broader workforce recovery efforts.

This report is designed to guide states in developing return to the workplace policies and practices that are safe and inclusive of individuals with disabilities. It does so by providing:

- **An overview of general worker protections,** including management strategies, measures to control the spread of COVID-19 in the workplace and steps for protecting worker rights and privacy.
- **Strategies for making worker protections inclusive of people with disabilities,** ensuring compliance with federal civil rights laws and facilitating employment for people with disabilities.
- **An overview of state vaccination policies** and strategies for making them inclusive.

- **Key considerations that state policymakers have identified** as critical to ensuring broader workforce recovery efforts are effective and inclusive.

General Worker Protections

The federal and state governments have issued policies and guidance to direct employers through returning to in-person work in a way that protects the safety and rights of workers. This guidance requires, recommends or urges that employers comply with certain procedures and practices.

At the federal level, these policies have taken the form of executive orders and sub-regulatory guidance from the Centers for Disease Control and Prevention (CDC), the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC).

State guidance references and/or builds upon CDC and OSHA guidance, and has come through executive orders, legislation, checklists and other resources provided by state departments of health and labor and other state agencies.

State and federal guidance addresses three main topics:

1. Management strategies for implementing safe return-to-work policies.
2. Measures for limiting/controlling the spread of COVID-19 in the workplace.
3. Steps for protecting worker rights and privacy.

State Example: Nebraska

An example of state guidance around general worker protections is the Nebraska Department of Labor's Sample Written Program for COVID-19 Management and Control, which provides guidance on how employers can protect employees from hazards associated with COVID-19 exposure. The document was developed in accordance with OSHA guidance, CDC guidance and the Nebraska Department of Labor's Infection Control Plan.

1. Management strategies for implementing safe return-to-work policies

Management strategies refer to the policies, procedures and systems that an organization's managers and/or leadership can implement to protect workers' safety and mitigate the spread of COVID-19. These include:

- Developing a COVID-19 preparedness and response plan.
- Designating worksite coordinators to implement, monitor and report on COVID-19 control strategies.
- Training managers, supervisors and workers on COVID-19 policies and procedures so they can effectively implement them.
- Establishing a system for communicating key information to workers, such as where and how they might be exposed to COVID-19 at work.
- Establishing an anonymous process for workers to voice concerns about COVID-19 hazards.
- Establishing policies for recording and reporting COVID-19 information to public health officials, such as around infections and deaths.

State Examples:

On June 16, 2020 (and revised in September 2020), the **California** Health and Human Services Agency issued the guidance Responding to COVID-19 in the Workplace for Employers, which serves as a checklist intended for use by employers managing COVID-19 outbreaks in the workplace. The guidance offers the following instructions:

- Empoyers should designate a workplace infection prevention coordinator to implement COVID-19 infection prevention procedures and manage COVID-related issues among workers.
- Employers must notify the local health department of any known or suspected outbreaks of COVID-19 in the workplace.

- Employers must immediately report any serious injury, illness or death occurring in any place of employment or in connection with any employment — including COVID-19 inpatient hospitalizations and deaths among workers — to the local Cal/OSHA district office.
- Employers may elect to temporarily suspend operations due to COVID-19 infection in the workplace.
- Employers should notify and provide instructions to workers who were potentially exposed to COVID-19.
- Employers should consult with the local health department and most recent CDC guidance to determine when an individual with a confirmed case may be released from home isolation and returned to work.

On July 29, 2020, **Michigan** Gov. Gretchen Whitmer issued Executive Order 2020-161: Safeguards to Protect Michigan's Workers from COVID-19. The order mandates businesses that require employees to leave their homes for work to implement a number of strategies for keeping workers safe, including:

- Developing a COVID-19 preparedness and response plan, consistent with recommendations from OSHA.
- Designating one or more worksite supervisors to implement and monitor the plan.
- Providing COVID-19 training to employees covering workplace infection-control practices; the proper use of personal protective equipment; steps for notifying an employer about symptoms of COVID-19 or a suspected or confirmed diagnosis; and the process for reporting unsafe working conditions.
- Posters in "languages common in the employee population" that encourage staying home when sick, cough and sneeze etiquette and proper hand hygiene practices.
- Notifying and cooperating with the local public health department when an employee is identified with a confirmed case of COVID-19.

2. Measures for limiting / controlling the spread of Covid-19 in the workplace

These measures refer to day-to-day practices, building modifications and employee requirements that help control the spread of COVID-19. They include:

- Screening, testing and contact tracing employees, including through temperature screenings, visual symptom checking and self-assessment checklists.

- Requiring masks, face shields, face coverings and/or other personal protective equipment in the workplace.

- Providing personal protective equipment to employees (including face coverings, gloves or other items, as appropriate).

- Implementing physical distancing and/or installing barriers in communal work areas.

- Quarantining workers who show symptoms or test positive for COVID-19.

- Implementing telework options to reduce the number of employees in the workplace.

- Requiring, encouraging or facilitating vaccinations (depending on the employer's preference and any federal, state or local laws), including by making a COVID-19 vaccine or vaccination series available at no cost to all eligible employees, providing sick leave for employees to receive the vaccination and providing sick leave for employees to recover from any symptoms of the vaccine.

- Improving ventilation at offices or worksites.

- Providing supplies to facilitate good hygiene practices, such as hand sanitizer and sanitizing wipes.

- Providing employees break time for repeated handwashing throughout the day and access to adequate handwashing facilities.

- Performing routine cleaning and disinfection, including enhanced cleaning and disinfection when someone at work is infected with COVID-19.

On Dec. 9, 2020, the **Illinois** Department of Public Health, in collaboration with other state agencies, issued Guidance for Employers and Employees on Workers' Rights and Safety During the Restore Illinois Plan. It includes a number of requirements that employers must follow to control the spread of COVID-19, including:

- Encouraging and facilitating remote work.

- Considering arrangements to limit the number of employees who are together in the workplace at any one time (e.g., staggered shifts) if remote work is not possible.

- Ensuring employees practice social distancing and wear face coverings when social distancing is not possible.

- Providing face coverings at no charge to employees who are not able to maintain social distancing at all times.

- Ensuring that all spaces where employees may gather (e.g., locker rooms and lunchrooms) allow for social distancing.

On May 22, 2020, **Tennessee** Gov. Bill Lee issued Executive Order 38: An Order Expanding the Number of Tennesseans Who May Return to Work Safely While Urging Continued Adherence to Health and Social Distancing Guidelines to Limit the Spread of COVID-19. The order urges employers to follow a number of practices to continue mitigating the spread of COVID-19, including:

- Implementing policies and practices to facilitate social distancing, temperature checks, sanitation, disinfection of common areas and reduced business travel.

- Monitoring employees for symptoms and prohibiting employees with symptoms from returning to work until cleared by a medical provider.

- Taking "all practicable steps to equip, encourage, allow, or require and permit" employees to work remotely.

3. Steps for protecting worker rights and privacy

These measures protect workers from discrimination or retaliation for decisions they make related to COVID-19 and protect employee information related to COVID-19. They include:

- Prohibiting discrimination against employees who wear protective gear that they have personally procured.

- Protecting employees against retaliation (i.e., termination or penalties) for requesting or taking time off work because the employee has (or is likely to have) COVID-19.

- Prohibiting employers from refusing to reinstate an employee who requests or takes time off because the employee has (or is likely to have) COVID-19.

- Protecting employees against retaliation for refusing to come to the workplace for fear of being exposed to COVID-19.

- Protecting workers who refuse to work under conditions they believe present an imminent danger of death or serious physical harm.

- Protecting workers from raising concerns, asking questions or requesting an inspection around occupational safety issues related to COVID-19.

- Maintaining all information about an employee's illness related to COVID-19 as a confidential medical record.

State Examples:

On May 13, 2020, **Minnesota** Gov. Tim Walz issued Executive Order 20-54: Protecting Workers from Unsafe Working Conditions and Retaliation During the COVID-19 Peacetime Emergency. It lays out a number of worker protections, including:

- Prohibiting employers from discriminating or retaliating in any way against any worker for wearing gloves, a cloth face covering, eye protection or other protective gear that the individual has personally procured, provided the protective gear does not violate industry standards or existing employer policies.

- Prohibiting discrimination or retaliation against a worker communicating orally or in writing with management personnel about occupational safety or health matters related to COVID-19, including asking questions or expressing concerns.

- Protecting a worker's right to refuse to work under conditions that they, in good faith, reasonably believe present an imminent danger of death or serious physical harm.

New Jersey Assembly Bill 3848 prohibits employers from terminating or refusing to reinstate an employee if the employee requests or takes time off from work based on a written or electronically transmitted recommendation from a medical professional indicating that the employee has, or is likely to have, COVID-19 or another infectious disease that may infect others in the workplace.

Inclusive Worker Protections

Beyond the general workplace guidance described above, federal and state entities have issued policies and guidance related to ensuring return-to-work practices protect the rights of individuals with disabilities.

At the federal level, this guidance has come through the Equal Employment Opportunity Commission (EEOC), which administers and enforces civil rights laws against workplace discrimination. States have either included disability-related components in their general safety and health guidelines or have issued disability-specific guidance.

Federal and state disability guidance centers around three main themes:

- **Providing reasonable accommodations** to mitigate the risk of infection for employees with disabilities that put them at greater risk for severe illness from COVID-19.

- **Modifying COVID-19 policies or procedures** to accommodate individuals with disabilities.

- **Complying with confidentiality and non-discrimination requirements** of the ADA and other federal civil rights laws.

State Example: Colorado

One example of state efforts related to inclusive worker protections is guidance issued May 21, 2020 by Colorado Gov. Jared Polis. The document lays out measures for ensuring equal opportunity employment and providing reasonable accommodations to workers with disabilities amid COVID-19. The guidance references both the EEOC and the ADA.

Reasonable Accommodation Requirements:

Under the Americans with Disabilities Act (ADA), employers with 15 or more employees (including state and local governments) are required to provide reasonable accommodations to enable an individual with a disability to obtain equal employment opportunities, unless doing so would pose an undue hardship to the employer.[1]

The Cost of Reasonable Accommodations:

According to a study conducted by the Job Accommodation Network (JAN), accommodations are typically a one-time cost of $500 or less, while 56% of job accommodations cost nothing.[2]

1. Providing reasonable accommodations

There may be reasonable accommodations that offer protection for people whose disability puts them at greater risk from COVID-19. Even with the constraints imposed by a pandemic, some accommodations may meet employees' needs on a temporary basis without causing undue hardship on the employer. Reasonable accommodations include:

- Permitting employees to work from home when possible.
- Providing reasonable accommodations to teleworkers in their remote work settings, as-needed.
- If a job is not conductive to telework, changing job responsibilities so that work can be performed remotely.
- Restructuring marginal job duties, work schedules or shift assignments to minimize contact between an employee with a disability and customers or coworkers.
- Making changes to the work environment to reduce the chances of an individual's exposure to COVID-19 (e.g., designating one-way aisles or using plexiglass, tables or other barriers to ensure minimum distances between customers and coworkers).
- Permitting an employee to take a leave of absence (utilizing all available accrued leave options) if alternative work arrangements are not feasible.

In addition, for workers with disabilities, employers may waive medical documentation requirements to obtain reasonable accommodations, given that attaining such documentation may be difficult amid current conditions.

State Examples:

On April 27, 2020, **Massachusetts** Attorney General Maura Healey issued Rights of Disabled Persons to Accommodations During COVID-19 Crisis, which details the following rights employees with disabilities have in seeking accommodations:

- Individuals with underlying conditions that place them in a high-risk category for COVID-19 can seek reasonable accommodations, including telework.

- If a particular job is not conducive to telework, and there is some other job an employee can do by telework, the employee can request a change in job responsibilities.

On April 13, 2020, **Washington** Gov. Jay Inslee issued Proclamation by the Governor Amending Proclamation 20-05, which establishes rights for high-risk employees. Specifically, it requires employers to:

- Utilize all available options for alternative work assignments (if requested) to protect high-risk employees from exposure to COVID-19, including through telework, alternative work locations, reassignment and social distancing measures.

- Permit any high-risk employee to use any available employer-granted accrued leave or unemployment insurance, in any sequence, in a situation where an alternative work arrangement is not feasible.

2. Modifying COVID-19 policies or procedures to accommodate individuals with disabilities

Employers must make accommodations to employees who have difficulty complying with COVID-19 policies or procedures due to a disability. This includes:

- Providing reasonable accommodations where an employee cannot wear a mask or face covering because of a disability.

- Providing alternative personal protective equipment to employees who require it due to a disability (e.g., non-latex gloves, gowns designed for individuals who use wheelchairs).

- Granting exemptions or accommodations to employees who cannot meet an employer's vaccine requirements due to a disability.

- Using alternative methods of screening for employees who request accommodations due to a disability.

Highlight on Inclusive Telework:

SEED's publication, Disability-Inclusive Telework for States: State Approaches to Increasing Access & Inclusion, provides a guide for developing and/or modifying telework policies and programs to be inclusive of people with disabilities.[3]

It recommends that policies and programs consider three main principles:

- **Clarity** in expectations and procedures.

- **Flexibility** in accommodating individual situations, when needed.

- **Universal design** in the creation of policies and the selection of telework tools.

It further provides examples of how to enhance inclusion across the following three components of telework:

1. **Telework policies**, which outline the purpose of a telework program, eligibility and participation criteria, telework processes and more.

2. **Telework agreements**, which establish the specific terms and conditions for telework for an individual employee.

3. **Management of telework programs**, which refers to the methods and strategies for implementing and operating telework programs.

State Examples:

The **California** Department of Fair Employment and Housing (DFEH) published the document DFEH Employment Information on COVID-19, which includes a section on Reasonable Accommodations for Employees with a Disability. It indicates that if an employer has a vaccination requirement, the employer must reasonably accommodate employees with a known disability that prevents them from being vaccinated against COVID-19. Additionally, it requires employees to wear personal protective equipment, and the employer must provide reasonable accommodations to employees who need them due to a disability (e.g., providing non-latex gloves or gowns designed for individuals who use wheelchairs).

The **Oregon** Department of Labor and Industries COVID Vaccinations and the Workplace webpage states that "employers with mandatory COVID-19 vaccine policies will need to consider requests for exceptions for individuals with either (1) sincerely held religious convictions, or (2) a disability that prevents them from receiving a COVID-19 vaccination. While employers are not required to grant the exception if it creates an 'undue hardship' on the business or a 'direct threat' to the safety of the employee or others, employers should engage with the employee to determine if a reasonable accommodation is possible."

3. Complying with confidentiality and non-discrimination requirements

Federal law requires employers to keep all medical information about employees confidential and prohibits discrimination in every aspect of employment. In the context of COVID-19, this includes:

- Keeping confidential the fact that an individual has requested or is receiving a reasonable accommodation.

- Ensuring that individuals with disabilities are not retaliated against for engaging in protected activities, such as seeking an exemption or accommodation from a vaccine requirement.

- Maintaining all information about employee illness as a confidential medical record in compliance with the ADA.

- Ensuring that, if an employer incentivizes employees to receive a vaccine the employer administers, the incentive is not substantial enough to be coercive.

State Examples:

On Oct. 28, 2020, **New Jersey** Gov. Phil Murphy issued Executive Order 192: Protect New Jersey's Workforce During the COVID-19 Pandemic, which includes provisions to protect the confidentiality of employee medical information. It mandates that employers who require or permit their workforce to be physically present at the worksite must:

- Conduct daily health checks of employees consistent with CDC guidance and consistent with the confidentiality requirements of the ADA.

- Notify all employees of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the ADA.

The **Wisconsin** Department of Health Services published the guide Preventing and Managing COVID-19 Outbreaks in the Workplace: Guidance for Employers in Non-Health Care and Non-Educational Settings. The document indicates that employers must inform workers about possible exposure to COVID-19 in the workplace while maintaining confidentiality as required by the ADA.

THE COUNCIL OF STATE GOVERNMENTS

Spotlight on Inclusive Vaccinations

Vaccinations play a critical role in a safe return to work. According to the Centers for Disease Control and Prevention (CDC), vaccinations are highly effective at preventing COVID-19, the benefits outweigh the known and potential risks and they are an important tool for stopping the pandemic.[4] In addition, the U.S. Food and Drug Administration (FDA) fully approved the first COVID-19 vaccine Aug. 23, 2021 for individuals 12 years of age and older, indicating that it "meets the high standards for safety, effectiveness, and manufacturing quality the FDA requires of an approved product," after initially being available under emergency use authorization.[5] In addition, on October 29, the FDA authorized the use of the Pfizer-BioNTech COVID-19 vaccine for children 5 through 11 years of age.

As part of efforts to facilitate a safe return to the workplace, state governments can (1) **increase access to vaccinations**, including among underserved and disproportionately impacted communities, and (2) **support workplace vaccination programs.** In each case, states and employers must ensure these initiatives consider the rights and needs of individuals with disabilities in order to comply with the ADA and other federal civil rights laws.

1. Increasing access to vaccinations

States are making significant efforts to ensure vaccines are available to as many people as possible. This includes initiatives such as developing vaccination incentive programs, expanding vaccine eligibility and allowing walk-up vaccines.[6]

States also are targeting vaccination efforts toward medically underserved communities and disproportionately affected populations, such as low-income and minority populations, public housing residents, individuals with limited English proficiency and individuals experiencing homelessness.[7] State efforts include:

- Moving resources to areas with low vaccination rates and/or high needs.
- Reserving vaccinations for underserved and disproportionately impacted populations.
- Ensuring vaccine information is available in multiple languages and is conveyed in a culturally sensitive manner.
- Dedicating personnel to conduct messaging and outreach to specific communities.

States can make vaccination efforts more accessible to people with disabilities in a number of ways, including:

- **Ensuring communications around vaccines are accessible.** This includes using Braille, open captions and easy-to-read materials with large text and pictures or visual cues to convey information about vaccines and vaccination clinics. It also includes ensuring any phone communication is accessible to people who are deaf or hard of hearing, including by making TTY (text telephone) options available.
- **Ensuring accessibility of the vaccination registration process.** This includes ensuring that registration websites and mobile apps conform with the Americans with ADA requirements and the Web Content Accessibility Guidelines (WCAG); enabling people to schedule vaccination appointments by phone if they are not able to navigate online vaccination appointment systems; and allowing caregivers to register individuals with disabilities directly (when necessary).
- **Ensuring accessibility of physical vaccination sites.** This includes providing

accommodations for individuals who have difficulty waiting in line or in crowds for long periods (due to sensory disabilities, for example); providing explanations that are easy to understand and available in multiple modalities (e.g., plain language and sign board); ensuring American Sign Language interpreters are available at the time of vaccination; and ensuring vaccination sites have wheelchair ramps, accessible parking ramps, handrails and other physical accessibility features.

- **Addressing barriers to transportation.** This includes offering free rides to vaccination sites via paratransit and regional public transportation and utilizing mobile vaccination clinics and home visits to reach people with limited mobility or those who are immunocompromised.

State Examples:

Thirty-four states plus **Washington, D.C**. provide phone hotlines to assist with scheduling vaccine appointments (as opposed to offering online scheduling tools only).[8] For example, the **West Virginia** Department of Health and Human Resources established a telephone hotline where residents can ask questions about how and where to get the vaccine, as well as schedule appointments.

The **Minnesota** Department of Health published a resource titled, "Best Practices for COVID-19 Testing and Vaccination Sites: Disability-related Accessibility," which outlines how vaccination sites can improve access for people with disabilities before and during an appointment.

The **Tennessee** Council on Developmental Disabilities published a plain language guide to communicate key vaccination information to people with cognitive disabilities.

Vermont offers free public transportation to vaccine clinics for people who do not have access to personal transportation. The Vermont Public Transportation Association serves as the central point of contact and bills the ride to the appropriate funding source (e.g., Medicaid, Elderly/Disabled program). The rides are provided by regional public transportation providers using a combination of volunteer drivers in cars or vans/buses. These rides are ADA compliant and accommodate people with disabilities.

2. Supporting workplace vaccination programs

Workplace vaccination programs are plans for how employers will educate, encourage and motivate their employees to get vaccinated.[9] Employers can facilitate vaccinations in a variety of ways, including:

- Requiring employees to get vaccinated.
- Making vaccines available at no cost to all eligible employees (including by hosting vaccination clinics on-site at the workplace).
- Providing incentives for employees to get vaccinated (as long as they are not substantial enough to be coercive).
- Allowing employees to get vaccinated during work hours or take paid leave to get vaccinated at a community site.
- Allowing employees to take paid leave to deal with side effects from receiving the vaccine.

Whether an employer is required or allowed to mandate COVID-19 vaccination is a matter of federal, state and other applicable laws. For example, on Sept. 9, 2021, President Joe Biden issued the Path Out of the Pandemic: COVID-19 Action Plan and two executive orders, which are designed to reduce the spread of COVID-19 by increasing the share of the workforce that is

vaccinated in businesses across the country and by extending vaccination requirements in the health care field.

Any employers requiring vaccines among their employees must comply with the ADA and applicable state laws. This includes:

- Ensuring if a vaccination requirement screens out (or tends to screen out) a person with a disability, an employer shows that the standard is job-related and consistent with business necessity (meaning the failure to be vaccinated would pose a direct threat to the health or safety of the individual or other employees in the workplace).

- Allowing medical/disability exemptions for people who may be at risk for an adverse reaction because of an allergy to one of the vaccine components or due to an underlying medical condition (for example, autoimmune conditions or Bell's palsy).

- Providing reasonable accommodations to employees who qualify for medical/disability exemption from the vaccine requirement to eliminate or reduce the direct threat posed by them not receiving a vaccine, including allowing an employee to work remotely or providing them with personal protective equipment.

To support employers in developing workplace vaccination programs, states can:

- Encourage and/or incentivize employers to develop workplace vaccination programs, including by arranging on-site and mobile vaccination events.

- Provide guidance to employers on developing and implementing workplace vaccination programs, and ensuring these programs comply with relevant disability rights laws.

- Mandate that employers provide paid leave time for employees to get vaccinated.

State Examples:

California has produced an Employer Vaccination Toolkit to provide information to employers who are interested in supporting employees in getting vaccinated. In addition, the California Department of Public Health assists employers in setting up offsite vaccination events and requesting a Worksite Mobile Clinic. The state also issued a Frequently Asked Question document titled "DFEH Employment Information on COVID-19," which addresses how an employer complies with the state equivalent to the ADA if it decides to require employees to be vaccinated against COVID-19.

Colorado offers a workplace vaccination program, which allows employers, unions and trade associations of any size to request a free, on-site vaccination event. All staffing, logistics and vaccine supplies are coordinated and provided by the Colorado Department of Public Health and Environment.

New York Labor Law §196-C, passed March 12, 2021, requires employers to provide paid leave time for employees to receive COVID-19 vaccinations and prohibits them from retaliating in any way against any employee who requests or obtains a leave of absence to be vaccinated for COVID-19.

Key Considerations for an Inclusive Recovery

State and local policymakers have identified key considerations for ensuring that broader COVID-19 workforce recovery efforts are effective and inclusive. These themes are drawn from research, policy analysis and discussions that took place through the three-part series of COVID-19 Policy Collaborative for an Inclusive Recovery convenings facilitated by the State Exchange on Employment & Disability (SEED) team from February to May 2021. They include:

1. Addressing the digital divide and other barriers to telework.

2. Reskilling and upskilling workers to keep pace with workforce shifts.

3. Prioritizing racial equity in recovery efforts.

4. Addressing the mental health consequences of the pandemic.

5. Targeting communication and outreach toward underserved communities.

1. Addressing the digital divide and other barriers to telework

The increase in telework during the pandemic has created new opportunities for many workers, who can now enjoy greater flexibility in when and where they live and work. However, a divide still exists for many individuals with disabilities due to lack of broadband access, accessible technology and accommodations. State COVID-19 recovery efforts should address these disparities and ensure that people with disabilities have access to the accommodations and technology to facilitate telework, as well as the skills to use remote work technology.

The Size of the Digital Divide:

People with disabilities are less likely than non-disabled people to own computers, smartphones and tablets for accessing the internet. For example, 62% of people with a disability have a desktop or laptop computer, compared to 81% of people without disabilities. In addition, people with disabilities are slightly less likely to have home broadband (72% of people with disabilities versus 78% of people without disabilities).[10]

State Examples:

The **Delaware** Department of Human Resources issued a [Telecommuting Policy](#) for state agencies, which addresses reasonable accommodations for teleworkers with disabilities. It indicates that employees who already were receiving a reasonable accommodation prior to transitioning to telework may be entitled to additional or modified accommodation if it does not cause the agency undue hardship.

Montana issued [Telework Assistance Grants](#) of up to $1,000 per person to help individuals with disabilities access the equipment needed to adapt to the change in work environments due to COVID-19.

2. Reskilling and upskilling workers to keep pace with workforce shifts

The COVID-19 pandemic has accelerated many "future of work" trends and led to the rapid digitization and automation of many industries. As the economy recovers, policymakers should ensure those impacted by this transition to automation have the skills needed to obtain employment in high-demand industries. This may require states to make reskilling and upskilling trainings available to workers remotely, while social distancing and stay-at-home measures are still in place.

State Examples:

New Jersey has taken steps to expand apprenticeships by engaging diverse and underrepresented populations, including individuals with disabilities, and by establishing programs in non-traditional sectors. [Senate Bill 3064](#) established a task force to develop a statewide plan to increase diversity within apprenticeship programs. [The Growing Apprenticeship in Nontraditional Sectors (GAINS) program](#) — part of the state's broader efforts to "ensure that prospective workers have the skills and education they need to match 21st century workforce needs" — issued $3.5 million in grants to create apprenticeship opportunities in medical occupations, telecommunications, hotel management and cybersecurity.

The **South Carolina** Vocational Rehabilitation Department offers [Information Technology Trainings](#) that help people with disabilities prepare for and attain jobs in computer-related fields, including customer service and office support, computer-aided drafting, networking and server support and positions that require Microsoft Office suite.

Highlight on the Future of the Workforce:

The SEED report The Future of the Workforce: Approaches to Increasing Access & Inclusion provides recommendations and best practices to help policymakers make the workplace accessible to all — including people with disabilities — in the context of dramatic shifts in how and where work is performed.[11]

The report considers three main issues that impact the future of state workforces, as well as corresponding challenges and opportunities for improving employment options for people with disabilities and other underrepresented populations. These are:

1. Advances in automation and technology
including web-based systems artificial intelligence, autonomous vehicles, 5G technology and "smart" states and cities.

2. The rise of the gig economy
including worker classification, civil rights and other worker protections, portable benefits, informed choice of worker status and data collection.

3. The changing nature of apprenticeship
including technological advancement and resulting industry diversification, globalization, structural flexibility, worker migration, education and transportation.

In addition, the report lays out five key themes for policymaker consideration:

Incorporating Universal Design principles into both policymaking and the design of products and places, to consider the widest range of users (including those with disabilities) from the start.

Improving access to and accessibility of transportation, which is a critical employment support for many people, including people with disabilities.

Facilitating data collection and dissemination to gauge success and identify areas in need of improvement.

Addressing algorithm bias by creating expectations for the technology industry to actively prevent and repair it.

Ensuring cross-stakeholder engagement to understand how changes impact all sectors, rather than imposing "one-size-fits-all" solutions.

3. Prioritizing racial equity in recovery efforts

The pandemic has exacerbated racial disparities due in part to the relative lack of adequate health care and safe employment options for certain populations.[12] State COVID-19 recovery efforts should address the unique needs of racial minorities, including those with disabilities, to ensure they have equal access to vaccinations, accommodations and safety-conscious work opportunities. Outreach and communications efforts also should be tailored to minority populations by collaborating with organizations and other community partners that work with underserved groups.

State Examples:

Maine's legislature passed Legislative Document 2, a bill that requires the inclusion of racial impact statements in the legislative process. The bill allows legislative committees to request that state agencies provide analysis of the impact of pending legislation on historically disadvantaged racial populations.

Michigan Gov. Gretchen Whitmer issued Executive Order 2020-55, which establishes the Michigan Coronavirus Task Force on Racial Disparities. The duties of the Task Force include studying the causes of racial disparities in the impact of COVID-19 and recommending actions to address such disparities.

Minnesota has developed a number of policies and programs to promote greater equity in the state's workforce development activities. This includes creating a Racial Equity Committee within the Governor's Workforce Development Board; issuing equity grants, along with successor grants, to invest in training for youth, communities of color and individuals with other barriers to employment; and creating a New Americans Project and an American Indian

Liaison position to provide employment-related vocational rehabilitation services to immigrant and American Indian populations.

States are taking various steps to make vaccines available to underserved and disproportionately affected populations. This includes reserving additional vaccine doses for those populations — such as in **California, North Carolina** and **Massachusetts** — and locating vaccine clinics in underserved areas, such as through an initiative from the **Tennessee** Department of Health. Learn more about how states are addressing racial equity in COVID-19 vaccine efforts from the Kaiser Family Foundation.[13]

4. Addressing the mental health consequences of the pandemic

Social isolation, stress due to diminished work-life balance, loss of work or reduced hours and increased caregiving responsibilities have contributed to a rise in reported mental health conditions, or worsening of existing conditions, since the start of the pandemic.[14] [15] As states respond to COVID-19, policies and guidance should consider the mental health needs of those teleworking or in essential jobs, as well as those who may have been laid off or left the workforce as a result of COVID-19.

The Mental Health Toll of COVID-19:

Forty-one percent of adults reported symptoms of anxiety and/or depressive disorder in January 2021, compared to 11% in 2019. In addition, people with disabilities may respond even more strongly to crises like the pandemic.[16][17]

41%
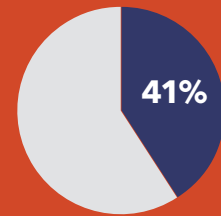
State Telehealth Expansion:

States have taken a number of approaches to expand telehealth amid the pandemic, which has functioned as a key way to meet peoples' mental health needs.[18] Thirty-six states, Washington D.C. and Puerto Rico have enacted more than 79 bills changing telehealth policies, either permanently or temporarily, during the pandemic.[19] Specific measures have included:

$ = $

Requiring payment parity between in-person and telehealth visits

Amending state employee health plans to cover telemental health services

Allowing patient-provider relationships to be established through telehealth

Allowing more types of providers to receive reimbursement for telehealth services

Expanding settings where patients can receive telehealth care (e.g., at home and school)

State Examples:

Indiana's Community Connections for People with Disabilities program provides grants to local governments to "develop innovative strategies and cultivate strong community partnerships to address the negative social, economic and health effects of COVID-19 on [people] with disabilities and to increase community and workplace inclusion for this population."

Louisiana enacted House Bill 449, which expands the types of health providers who can perform telepsychiatric evaluations. Psychiatric mental health nurses are among newly included providers as long they meet certain requirements, including that such an examination takes place over videoconferencing technology.

Minnesota Gov. Tim Walz issued Executive Order 20-28 allowing out-of-state mental health providers to render telehealth aid and permitting certain licensing boards to provide license and registration relief during the COVID-19 pandemic.

New Jersey enacted Assembly Bill 3843, which requires the state's Department of Banking and Insurance to issue a bulletin mandating that telemedicine services be treated the same as in-person visits and paid at the same rate as in-person services.

5. Targeting communication and outreach toward underserved communities

In addition to the topic areas listed above, state and local policymakers recommended ways to effectively communicate information about COVID-19 with underserved communities and provide outreach to ensure all individuals are included in recovery efforts. Potential strategies include partnering with community organizations and advocacy groups to develop grassroots efforts, using a variety of channels and mediums to reach different age groups and incorporating plain language and universal design principles to help people of all backgrounds understand the resources available to them.

State Examples:

The **California** Department of Aging developed a COVID-19 guide to information and resources for older adults, people with disabilities and families. The guide includes resources in English, Spanish and Mandarin. The Department also worked with health care providers and organizations to make 1.7 million check-in calls during the first month of quarantine. The state further engaged in a $40 million paid media effort, which prioritized ethnic and multicultural media and deployed non-traditional methods to reach people.

In **Massachusetts**, the Governor's Office launched a targeted outreach initiative in the 20 hardest hit communities to increase equity in COVID-19 vaccine awareness and access. The Office also provided $1 million to the Massachusetts League of Community Health Centers to support vaccination in historically underserved communities.

The **Vermont** Developmental Disabilities Council, in collaboration with Green Mountain Self-Advocates, published a plain-language guide COVID-19 Information By and For People with Disabilities to help people with intellectual and developmental disabilities understand pandemic-related issues. It covers topics such as what to do if someone is worried about missing work due to the pandemic, and what to do if a staff person is sick.

The state of **Washington** has developed a website with resources for communities that may be disproportionately impacted by COVID-19. These include Black, American Indian and Alaskan Native, Latino, LGBTQ, immigrant and refugee communities, among others.

Conclusion

As states develop plans and policies to return to work as part of COVID-19 recovery efforts, they have the opportunity to protect worker safety *and* enhance equity and inclusion for all individuals, including those with disabilities. Immediate return to the workplace guidance can direct employers in protecting the safety of workers and the rights of people with disabilities. Broader workforce recovery efforts can focus on expanding opportunities and addressing challenges for historically underserved and underrepresented populations.

Appendix:

Federal Resources Addressing Protections for Workers with Disabilities Amid COVID-19

The White House

Executive Order 13995 Ensuring an Equitable Pandemic Response and Recovery

Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors

Executive Order on Requiring Coronavirus Disease 19 Vaccinations for Federal Employees

National Strategy for the COVID-19 Response and Pandemic Preparedness

Path Out of the Pandemic: COVID-19 Action Plan

U.S. Equal Employment Opportunity Commission

Pandemic Preparedness in the Workplace and the Americans with Disabilities Act

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

Centers for Disease Control and Prevention

COVID-19 Vaccines for People with Underlying Medical Conditions

Employers with Workers at High Risk

General Business Frequently Asked Questions

Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19)

Guidance for Wearing Masks

Guidance for Vaccinating Older Adults and People with Disabilities at Vaccination Sites

Guidance for Vaccinating Older Americans and People with Disabilities: Ensuring Equitable COVID-19 Vaccine Access

Resources for Workplaces and Businesses

Toolkit for Businesses and Workplaces

Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination

Workplace Vaccination Program

U.S. Department of Labor Occupational Safety and Health Administration

Coronavirus Disease (COVID-19) Webpage

COVID-19 Healthcare ETS

Frequently Asked Questions about COVID-19

Control and Prevention Guidance

Guidance on Preparing Workplaces for COVID-19

Guidance on Returning to Work

National Emphasis Program—Coronavirus 19 (COVID-19) Directive

Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace

U.S. Department of Health and Human Services

Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)

Strategies for Helping Older Americans and People with Disabilities Access to COVID-19 Vaccines

Job Accommodation Network (JAN)

Accommodation and Compliance: Coronavirus Disease 2019 (COVID-19)

Accommodation Strategies for Returning to Work During the COVID-19 Pandemic

The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19

Employer Assistance and Resource Network on Disability Inclusion (EARN)

COVID-19 and Job Applicants and Employees with Disabilities: Emerging Practices to Employ and Protect Workers

COVID-19 Workplace Resources and Tools

Disability-Inclusive COVID-19 Workplace Health and Safety Plan

State Exchange on Employment and Disability (SEED)

COVID-19 Federal Disability-Specific and Other Related Guidance

SEED COVID-19 Policy Collaborative: Frameworks for a Disability-Inclusive Recovery

SEED COVID-19 Policy Collaborative for an Inclusive Recovery Convenings Report

SEED COVID-19 Policy Collaborative: Policy Checklist for a Disability-Inclusive Recovery

Endnotes

1. U.S. Equal Employment Opportunity Commission, "Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA," October 17, 2002, https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada

2. Job Accommodation Network, "Benefits and Costs of Accommodation," Updated October 21, 2020, https://askjan.org/topics/costs.cfm.

3. The Council of State Governments, "Disability-Inclusive Telework for States: State Approaches to Increasing Access & Inclusion," December 2020, https://www.ncsl.org/research/health/health-innovations-database.aspx.

4. Centers for Disease Control and Prevention, "Key Things to Know About COVID-19 Vaccines," Updated August 19, 2021, https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html.

5. U.S. Food and Drug Administration, "FDA News Release: FDA Approves First COVID-19 Vaccine," August 23, 2021, https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine.

6. Ballotpedia, "Coronavirus (COVID-19) vaccination rates and distribution plans by state," Updated September 9, 2021, https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine.

7. Centers for Disease Control and Prevention, "Ensuring Equity in COVID-19 Vaccine Distribution," Updated August 23, 2021, https://www.cdc.gov/vaccines/covid-19/planning/health-center-program.html.

8. The Council of State Governments, "Analysis for States: Availability of COVID-19 Vaccination Scheduling Websites and Phone Hotlines," March 2021, https://web.csg.org/covid19/wp-content/uploads/sites/10/2021/04/Analysis-of-State-Vaccination-Tools.pdf.

9. HealthPartners, "Why your business needs a COVID-19 vaccination strategy now and how to get started," https://www.healthpartners.com/plan/blog/covid-19-vaccine-strategy-business-case/.

10. Pew Research Center, "Americans with disabilities less likely than those without disabilities to own some digital devices," September 10, 2021, https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices/.

11. The Council of State Governments, "The Future of the Workforce: Approaches to Increasing Access & Inclusion," January 2020, https://seed.csg.org/wp-content/uploads/2020/06/SEED_2020_ACCESSIBLE-1.pdf.

12. Proceedings of the National Academy of Sciences of the United States of America, "Pandemic precarity: COVID-19 is exposing and exacerbating inequalities in the American heartland," February 23, 2021, https://www.pnas.org/content/118/8/e2020685118.

13. Kaiser Family Foundation, "How are States Addressing Racial Equity in COVID-19 Vaccine Efforts?" March 10, 2021, https://www.kff.org/racial-equity-and-health-policy/issue-brief/

how-are-states-addressing-racial-equity-in-covid-19-vaccine-efforts/.

14 Kaiser Family Foundation, "The Implications of COVID-19 for Mental Health and Substance Use," February 10, 2021, https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

15 Centers for Disease Control and Prevention, "Coping with Stress," Updated July 22, 2021, https://www.cdc.gov/mentalhealth/stress-coping/cope-with-stress/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fdaily-life-coping%2Fmanaging-stress-anxiety.html.

16 Kaiser Family Foundation, "The Implications of COVID-19 for Mental Health and Substance Use," February 10, 2021, https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

17 Centers for Disease Control and Prevention, "The Mental Health of People with Disabilities," Updated November 30, 2020, https://www.cdc.gov/ncbddd/disabilityandhealth/features/mental-health-for-all.html.

18 U.S. News and World Report, "The Growing Connection Between Telehealth and Mental Health During COVID-19," April 16, 2021, https://www.usnews.com/news/health-news/articles/2021-04-16/mental-health-conditions-dominate-reasons-for-pandemic-telehealth-usage.

19 National Conference of State Legislatures, "Health Innovations State Law Database," Updated August 15, 2021, https://www.ncsl.org/research/health/health-innovations-database.aspx.