



June 19, 2020

The U.S. Department of Labor's Occupational Safety and Health Administration Issues Guidance on Returning to Work

On June 18, 2020, the U.S. Department of Labor's ("DOL") Occupational Safety and Health Administration ("OSHA") issued guidance to assist employers and workers in safely returning to work and reopening businesses deemed "non-essential" during the COVID-19 pandemic. The guidance is intended to supplement the U.S. DOL and Department of Health and Human Services' previously issued Guidance on Preparing Workplaces for COVID-19, and the White House's Guidelines for Opening Up America Again. Moreover, reopening should align with the lifting of stay-at-home orders, as well as public health recommendations from the Center for Disease Control and Prevention ("CDC") and other federal requirements or guidelines.

PLANNING FOR REOPENING

During all phases of reopening, employers should implement strategies for basic hygiene, including hand hygiene, cleaning and disinfecting, social distancing, identification and isolation of sick employees, workplace controls and flexibilities, and employee training. In general, during:

- **Phase 1:** Businesses should consider making telework available, if feasible, limit the number of people in the workplace in order to maintain social distancing practices, limit non-essential business travel, and consider accommodations for workers at higher risk of severe illness and special accommodations with workers with household members at higher risk of severe illness.

- **Phase 2:** Businesses should continue making telework available, and continue to accommodate vulnerable workers. However, limitations on the number of people in the workplace can be eased while still maintaining moderate to strict social distancing practices, and non-essential travel can resume.
- **Phase 3:** Businesses resume unrestricted staffing of work sites.

For all phases of reopening, employers should develop and implement policies and procedures that address preventing, monitoring for, and responding to any emergency or resurgence of COVID-19 in the workplace and community. Based on evolving conditions, employer's reopening plans should address:

- **Hazard assessment**, including practices to determine likely sources of exposure to the virus by workers in the course of their duties. Examples include assessing job tasks, and considering potential exposure from coworkers, customers and visitors.
- **Hygiene**, including practices for hand hygiene, respiratory etiquette, cleaning and disinfection. Examples include providing products for hand washing and hand sanitizing, encouraging frequent and proper handwashing, identifying high-traffic areas and targeting them for enhanced cleaning and disinfection using EPA-registered disinfectants, and adhering to CDC guidance for controlling the spread of the virus.
- **Social distancing**, including practices for maximizing distance between all people. Examples include limiting business occupancy, placing demarcations on floors, posting reminders on signs, post directional signs in hallways and corridors.
- **Identification and isolation of sick employees**, including practices for worker self-monitoring or screening and excluding employees with COVID-19 symptoms from the workplace. Examples include asking employees to self-screen before coming to work, and stay home if sick, and establishing protocols for managing people who become ill in the workplace, and cleaning and disinfecting exposed spaces.
- **Return to work after illness or exposure.** Examples include following CDC guidance for discontinuing self-isolation, and ensuring that workers who have been exposed to someone with COVID-19 routinely monitor themselves in accordance with CDC guidance.
- **Controls**, including engineering controls (e.g., physical barriers and enhanced ventilation), administrative controls and safe work practices (e.g., staggering work shifts, limiting breakroom capacity, practicing social distancing, eliminating in-person meetings, ensuring use of face coverings), and providing and ensuring workers us

personal protective equipment (“PPE”).

- **Workplace Flexibilities.** Examples include evaluating existing policies and consider including policies for teleworking, sick leave and other types of leave to minimize workers’ exposure to risks, and communicate the options to workers.
- **Training,** including on the signs, symptoms, and risk factors associated with COVID-19, source of exposure, and prevention of spread in the workplace. Examples include training workers about the risk of exposure to COVID-19 and how they can protect themselves, and training on the policies on wearing face coverings in the workplace, and how to put on and take off PPE.
- **Anti-retaliation,** including practices for ensuring that no adverse or retaliatory action is taken against an employee who adheres to these guidelines or raises workplace safety and health concerns. Examples include ensuring workers understand their right to a safe and healthful work environment, right to raise workplace safety and health concerns and seek an OSHA inspection, and prohibitions against retaliation for raising workplace safety and health concerns, identifying a contact person for questions or concerns about workplace safety and health, and ensuring supervisors are familiar with workplace flexibilities, human resource policies and procedures, and workers’ rights in general.

The examples provided are non-exhaustive, nor do they apply to every employer. Employers are urged to refer to the Guidance on Preparing Workplaces for COVID-19 and the OSHA COVID-19 webpage for additional recommendations for addressing and implementing these guiding principles.

APPLICABLE OSHA STANDARDS AND REQUIRED PROTECTIONS IN THE WORKPLACE

All of OSHA’s standards that apply to protecting workers from infection remain in place as employers and workers return to the workplace. While covered employer are always responsible for complying with all applicable OSHA requirements, the agency’s standards may be especially relevant for preventing the spread of COVID-19 including standards for PPE (29 CFR 1910.132), respiratory protection (29 CFR 1910.134), and sanitation (29 CFR 1910.141).

While there is no OSHA standard that is specific to the COVID-19 virus, employers are responsible for providing a safe and healthful workplace that is free from serious recognized hazards under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (“OSH”) Act of 1970. [Appendix A](#) of the guidance outlines some of OSHA’s general industry rules applicable to protecting workers from occupational exposure to COVID-19.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

Employers may conduct work site COVID-19 testing. Consistent with EEOC and CDC guidance, OSHA's guidance confirms that neither the OSH Act nor OSHA standards prohibit employer testing for COVID-19, if applied in a transparent manner applicable to all employees.

Employers may conduct work site temperature checks and other health screening. Similarly, consistent with EEOC and CDC guidance, OSHA's guidance confirms that neither the OSH Act nor OSHA standards prohibit employer screening for COVID-10, including conducting daily in-person or virtual health checks, if applied in a transparent manner applicable to all employees. Any such screening should consider ways to maintain confidentiality, as required by the Americans with Disabilities Act ("ADA").

Employers must follow OSHA requirements when conducting health screening, temperature checking or COVID-19 testing. According to OSHA's guidance, if an employer implements health screening or temperature checks and chooses to create records of this information, those records might qualify as "employee medical records" under the Access to Employee Exposure and Medical Records standard, and the employer would be required to retain those records for the duration of each worker's employment plus 30 years, and follow confidentiality requirements (29 CFR 1019.1020). However, temperature records do not qualify as medical records under the Access to Employee Exposure and Medical Records standard unless they are made or maintained by a physician, nurse or other health care personnel or technician. Moreover, the OSHA guidance clarifies that records do not need to be retained if employers do not make a record of the temperature checks, but instead acknowledge a temperature reading in real-time. Under the EEOC's guidance, employers are permitted to maintain a log of temperature check results, but does not specify any mandatory document retention period. Additionally individuals administering health screening, temperature checks or COVID-19 tests must be protected from exposure to the virus.

Employers must follow OSHA requirements regarding PPE. Employers must conduct a hazard assessment in accordance with OSHA's PPE standard, if applicable, to determine the PPE requirements for their unique work site (29 CFR 1910.132). Employers subject to this standard must determine if PPE is necessary for employees to work safely after considering whether engineering and administrative controls and safe work practices can effectively mitigate identified hazards. Employers should consider modifying worker interactions in order to reduce the need for PPE. If PPE is necessary to protect workers from exposure to COVID-19 during particular tasks, employers should consider delaying those tasks until the risk subsides, or utilizing alternative means to accomplish the task. If PPE is needed but unavailable, and no alternatives means are available, the work tasks must be discontinued. Face coverings are not PPE, but can be worn to reduce the spread of the virus to others. Employers may consider requiring cloth face coverings to be worn in the workplace as an administrative control.

Employers should consult the EEOC guidance on other labor, disability and employment laws when conducting health screening. OSHA's guidance encourages employers to review the EEOC's guidance on health screening, workplace policies and return to work plans to avoid violating labor, disability and employment laws associated with health screening and medical issues related to COVID-19.

Employers should review the CDC's guidance on return to work after exposure to COVID-19. OSHA's guidance also refers employers to the CDC guidance on discontinuation of isolation for people with COVID-19 who are not in the healthcare settings.

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If you have any questions regarding this alert, please do not hesitate to contact us.

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