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OSHA Issues New Business Reopening Guidance

As many nonessential businesses begin to slowly reopen, they have been left to navigate workplace safety questions without much federal guidance. Many questions have arisen about how best to protect employer and patron safety. Yesterday, the Occupational Safety and Health Administration (OSHA) helped fill that void with its [“Guidance on Returning to Work”](#) (the Guidance). Specifically, the nonbinding, detailed Guidance outlines recommended measures for a three-stage reopening plan for nonessential businesses, including a helpful “Frequently Asked Questions” section, with reference to applicable OSH Act provisions.

The Guidance supplements the previously issued [“Guidance on Preparing Workplaces for COVID-19”](#) issued by the U.S. Department of Labor and U.S. Department of Health and Human Services and the [“Guidelines for Opening Up America Again”](#) issued by the White House. These recommendations also overlay state and local requirements, including the relaxing of stay-at-home orders and specific requirements such as masks, social distancing and wellness checks, as well as recommendations from the Centers for Disease Control (CDC), as these are being regularly updated.

“Phase 1” of business reopening contemplates making telework available to the extent feasible, a small number of workers returning to the workplace with appropriate protections, limited nonessential business travel and accommodations provided where feasible for vulnerable workers and those with vulnerable household members, such as the elderly. “Phase 2” contemplates continued telework where possible, with a resumption of nonessential business travel and more individuals returning to the workplace with appropriate protections and continued accommodation of vulnerable workers. “Phase 3” is a resumption of unrestricted staffing in the workplace. The Guidance cautions that, at all stages, employers should continue workplace safety practices in order to prevent a resurgence of COVID-19.

The Guidance outlines specific principles that should be addressed—hazard assessment, hygiene, social distancing, identification and isolation of sick employees, return to work after illness or exposure, controls, workplace flexibilities, training and anti-retaliation—and provides (non-exhaustive) examples of how to implement each. For example, the Guidance indicates that employees should be asked to evaluate themselves for symptoms *prior to* coming to work. (Presumably, this is to avoid infecting others in the workplace; this could potentially also be handled by doing wellness/temperature checks in employee’s own vehicles on-site prior to their entering the worksite.) Employees should be trained in the appropriate language and literacy level about safety measures. Employees should be encouraged to raise safety concerns and questions with a designated contact person.

The FAQs discuss permissible worksite temperature checks and other health screening, which are acceptable “if applied in a transparent manner applicable to all employees (i.e., non-retaliatory),” with the caveat that such screening should consider medical confidentiality. The Guidance encourages employers to consider the interplay of wellness checks and requiring workers to self-isolate with paid sick leave policies in order to encourage employees to stay home

when they have signs of illness. OSHA defers to CDC recommendations, as adapted by state and local health departments, regarding when employees can return to work after testing positive or exhibiting COVID symptoms. The FAQs also address personal protective equipment (PPE), and OSHA recommends considering modifying workplace interactions to reduce the need for PPE, especially in light of potential equipment shortages. The Guidance cautions that, if PPE is needed but not available and alternative means of accomplishing business needs safely cannot be identified, the work tasks must be discontinued.

While this Guidance is not binding, employers heeding it will go a long way toward demonstrating that they are taking reasonable steps to promote workplace health and safety, and can reduce potential liability for COVID exposure with respect to employees, patrons and secondhand infections. ([Click here](#) for our client alert on secondhand exposure liability.) Employers therefore would be well-advised to consider and implement this Guidance as applicable to their business operations and also should ensure that they are following all applicable state and local requirements.

[Click here to read more Brownstein alerts on the legal issues the coronavirus threat raises for businesses.](#)

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