

What to Expect When You're Expecting to Reopen

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As businesses begin to plan the reopening of their workplaces, there are many factors to consider. Before bringing employees back to work, employers are best advised to follow the guidelines and recommendations that the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the Equal Employment Opportunity Commission (EEOC) have issued. These agencies are constantly updating their guidelines, so employers are encouraged to consult them regularly. Companies should also continue to follow state and local health department recommendations when determining the most appropriate action for their business.

Below is an overview of key safety and health considerations employers should assess as they make plans to reopen.

Social Distancing Plans

First and foremost, employers must assess their physical space and devise social distancing plans to provide sufficient space (ideally six feet or more) between and among workers, customers, and worksite visitors. Strategies include:

- Implementing work-from-home directives
- Implementing flexible work hours
- Limiting office visits by persons other than critical employees
- Increasing physical space between employees at the worksite
- Increasing physical space between employees and customers with partitions or shields

- Closing common areas where personnel are likely to congregate
- Removing seats in lunch and other communal areas to provide additional personal space
- Staggering meal and rest breaks
- Downsizing operations
- Restricting visitors from the workplace
- Delivering services remotely, via phone, video, or internet
- Upgrading teleconference equipment
- Eliminating or limiting physical interaction with customers through online or phone orders, contactless delivery, or managed entry
- Developing crowd control plans to limit the maximum number of individuals present on-site

Employers with shared office space, open floor plans, or close common areas should consider adapting or reconfiguring these spaces as much as is feasible to reduce COVID-19 transmission.

Temperature Checks and Screening Protocols

According to the [EEOC's Technical Assistance Questions and Answers](#), an employer may measure employees' body temperatures before they enter the workplace. But who will take the temperatures, and what protective gear will that person wear? What device will be used, and how will quality control be maintained? Will employees be required to wait in line, and does state law require that employees be paid for that time? If the employer's worksite is in California, the business may be subject to the California Consumer Privacy Act (CCPA), and the employer must then provide a CCPA-compliant notice to employees prior to taking

their temperatures. Other states may have similar or additional requirements. Measuring an employee's body temperature is considered a medical examination, and related information should be kept confidential and separate from the employee's personnel file.

The CDC recommends that employers establish routine, daily health checks. The EEOC has issued **guidance** that permits employers to ask employees whether they are experiencing COVID-19-related symptoms such as fever, chills, cough, shortness of breath, sore throat, or loss of taste or smell. Further, an employer may ask an employee whether he or she has had contact with anyone who has been diagnosed with or has symptoms of COVID-19 and whether the employee has traveled recently to an area that is restricted according to the U.S. State Department. Employers can develop a questionnaire for employees to complete before entering the workplace, and must maintain as a confidential medical record any medical information the questionnaire elicits.

Personal Protective Equipment (PPE)

Employers are encouraged to provide employees with personal protective equipment (PPE), including masks, gloves, goggles, and/or face shields. The CDC recommends that individuals wear cloth face coverings in public settings where social distancing measures are difficult to maintain. These cloth face coverings are not surgical masks or N95 respirators, which are critical supplies that OSHA and the CDC recognize must continue to be reserved for healthcare workers. In New York, Gov. Andrew Cuomo issued an executive order requiring all essential businesses to provide any employees who are present in the workplace with face coverings to wear when in direct contact with customers or members of the public. Other states, including New Jersey, as well as cities within California, also require masks for certain workplaces (such as restaurants and food service providers) or while individuals are in public.

Maintaining a Healthy Work Environment

The **CDC Interim Guidance for Businesses and Employers** and **OSHA's Guidance on Preparing Workplaces for COVID-19** recommend numerous ways employers can prevent and slow the spread of COVID-19 and maintain a healthy work environment. Through notice or policy updates,

employers should actively encourage sick employees and employees who have symptoms (i.e., fever, cough, shortness of breath, loss of smell) to notify their supervisor and stay home. Sick employees should be advised to follow CDC-recommended guidance to stay home and not return to work until they have met the criteria to discontinue home isolation and have consulted with a healthcare provider. Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow CDC-recommended precautions to prevent transmission. Employers should implement sick leave policies that are flexible and consistent with public health guidance and make sure employees are aware of and understand these policies. According to **OSHA** and **CDC guidance**, employers should not require a positive COVID-19 test result or a healthcare provider's note for employees who are sick as a pre-condition to taking sick leave. Healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner. But, on the flip side, the **Families First Coronavirus Response Act (FFCRA)** authorizing paid sick leave permits the employer to require medical documentation.

The CDC recommends that employers try to improve the engineering controls using a building's ventilation system. This may include increasing ventilation rates or increasing the percentage of outdoor air that circulates into the system. Employers based in multi-tenant buildings may wish to communicate with their building management to see what safety actions will be taken. Employers should also provide tissues, no-touch disposal receptacles, hand sanitizers, and disposable wipes so that employees can wipe down commonly used surfaces before each use. Employees should be discouraged from using other workers' phones, desks, offices, or other work tools and equipment.

Sanitation and Disinfection of the Workplace

Employers should also develop a comprehensive cleaning plan. The CDC has released **guidance** for cleaning and disinfecting workplaces, among other spaces. The guidance provides recommendations on cleaning indoor and outdoor spaces (how, when, and how often), areas occupied by those with suspected or confirmed COVID-19, porous and nonporous surfaces, electronics, and clothing. Employers

are encouraged to develop policies for worker protection and to train all cleaning staff regarding the use and disposal of PPE and the hazards of cleaning chemicals in accordance with OSHA's Hazard Communication standards.

Plan for Handling Confirmed or Suspected COVID-19 Cases in the Workplace

Just as was the case in early March when companies found themselves with an increasing volume of employees testing positive for COVID-19, employers should expect that diagnoses may still continue as they ramp up their businesses. As such, it is imperative that employers maintain a plan to address confirmed or suspected cases of illness in their workplace. Employers are encouraged to review the [CDC's General Business Frequently Asked Questions](#) relating to suspected or confirmed cases of COVID-19 in the workplace. Further, they should consider implementing the following five-step plan:

- **Step One.** Identify a workplace coordinator who will be responsible for COVID-19 issues and their impact on the workplace. Make sure all employees and supervisors are aware they are required to report any confirmed or suspected cases of COVID-19 that impact the workplace to this individual.
- **Step Two.** Any infected or symptomatic employees should stay home until released by a physician. If an employee is unable to obtain a medical note, the employee is encouraged to use a telehealth service or the employer should follow [CDC guidelines on Discontinuation of Isolation for Persons with COVID-19](#). These guidelines contain varying requirements depending on the symptoms exhibited and whether the employee tested positive for COVID-19.
- **Step Three.** The COVID-19 workplace coordinator should investigate any infected individual's whereabouts in the workplace and should ask that individual to identify all persons with whom they worked closely during the 48 hours before the onset of symptoms. Pursuant to [CDC recommendations for community-related exposures](#), employees who have had close contact (less than six feet) for a prolonged period of time with a person with symptomatic COVID-19 from 48 hours before symptom(s) onset until the person meets the criteria for discontinuing home isolation should stay home until 14 days

after their last exposure. (Please note that the CDC has advised that "critical infrastructure workers may be permitted to continue work following potential exposure to COVID-19, provided they remain asymptomatic and additional precautions are implemented to protect them from the community.") The employer should notify identified employees about the positive test of a co-worker, but should not reveal the identity of the infected co-worker as required by the Americans with Disabilities Act (ADA). Depending on the size of the employer's office, and whether a sufficient workforce remains to continue operations, an employer may decide to shut down its offices completely for 14 days, and allow employees to work remotely, if possible.

- **Step Four.** Clean and disinfect the workplace. Follow [CDC guidelines for Cleaning and Disinfection After Persons Suspected/Confirmed to Have COVID-19 Have Been in the Facility](#).
- **Step Five.** Advise all employees who work in the area where an infected employee works that an employee has tested positive or been diagnosed with COVID-19. Again, do not reveal the employee's name. Indicate that persons who worked closely with the infected employee already have been notified and asked to quarantine. Apprise employees of cleaning and sanitizing efforts, and remind them to seek medical attention if they exhibit symptoms.

Procedures for Reporting and Investigating Employee Safety Complaints

OSHA requires employers to provide employees with a safe work environment, free from recognized hazards that are causing or likely to cause death or serious harm. To comply with this obligation, and to avoid the risk of an OSHA compliance audit, an employer should issue a COVID-19 Workplace Safety Policy. This policy should (i) clearly state the employer's commitment to ensuring safety within its workplace, (ii) explain how to report safety concerns, (iii) commit to the timely and confidential investigation of safety related complaints, and (iv) prohibit retaliation against individuals who raise safety concerns in good faith.

Employers should regularly update employees about the safety precautions they have implemented. The more employees know about

workplace safety measures, the less likely they are to make complaints to government authorities about perceived risks in the workplace. Employers are also encouraged to routinely check in with employees to ensure they are comfortable with their work conditions, and to work with employees to devise mutually agreeable solutions to safety concerns.

Conclusion

As if running a business were not hard enough, there are now a host of new safety and employment law challenges employers must confront as they move toward a post-COVID-19

workplace. We expect there will be numerous orders and guidance issued by various jurisdictions and agencies as states begin to lift prior work restrictions and promulgate new rules governing workplace reopenings. Lowenstein Sandler's Employment Law Practice Group is available to help guide you through the broad spectrum of legal issues brought about by the COVID-19 pandemic.

To see our prior alerts and other material related to the pandemic, please visit the Coronavirus/ COVID-19: Facts, Insights & Resources page of our website by clicking [here](#).

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