

# LABOR & EMPLOYMENT ADVISORY

## OSHA Issues Non-Mandatory Guidance for Reopening



On June 17, 2020, the Occupational Safety and Health Administration (“OSHA”) issued its [“Guidance on Returning to Work.”](#) Designed to “assist employers and workers in safely returning to work and reopening businesses deemed by local authorities as ‘non-essential businesses’ during the evolving Coronavirus Disease 2019 (COVID-19) pandemic,” the document does little to advise employers on steps that should be taken beyond what most jurisdictions, both state and local, have already implemented and, in some cases, required.

The Guidance begins by stating that employers should align their reopening “with the lifting of stay-at-home or shelter-in-place orders and other specific requirements of the Federal and state, local, tribal, and/or territorial . . . governments across the United States,” and refers employers to materials already issued by the Centers for Disease Control (“CDC”) and the National Governors Association. Despite the wealth of information, guidance, and mandates already in existence, OSHA’s Guidance lays out a somewhat tepid, three-phase plan (referring to the Centers for Disease Control’s phased reopening guidance) for reopening that it encourages employers to follow. They are as follows:

- **Phase 1:** Employers should continue to make telework available, when feasible, and should consider limiting the number of employees in the workplace in order to ensure social distancing. Accommodations should also be made for high-risk individuals.
- **Phase 2:** Employers should continue to make telework available, but travel for non-essential business can resume. Also, employers can ease the restrictions on the number of employees in the workplace, but have to maintain “moderate to strict” social distancing practices, depending on the type of work being performed.
- **Phase 3:** Employers may resume unrestricted staffing.



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In addition, OSHA outlines “guiding principles” that employers should keep in mind “based on evolving conditions.” These principles include the following:

- Performing hazard assessments in order to determine which tasks involve occupational exposure.
- Implementing good hygiene practices such as providing soap, water, hand sanitizer and providing enhanced cleaning in high-traffic areas.
- Employing social distancing by limiting occupancy, demarcating flooring, and posting the appropriate signage.
- Identifying and isolating sick employees.
- Following CDC guidance on returning to work following exposure.
- Implementing appropriate engineering controls such as physical barriers, and administrative controls such as staggered work shifts, limiting capacity, etc.
- Providing flexibility in the workplace such as telecommuting and other options that minimize exposure risks.
- Training for workers on workplace practices and in using PPE and cloth masks.
- Preventing retaliation and ensuring that employees understand their rights with respect to safe and healthy workplaces.

The Guidance concludes with a series of Frequently Asked Questions that provide some useful information for employers. For example, OSHA concludes that under its standards employers may conduct worksite COVID-19 testing as well as temperature checks and health screenings. It also notes the employers who choose to create screening records “might” be subject to the Employee Exposure and Medical Records standard found at 29 C.F.R. 1910.1020.

Overall, OSHA’s Guidance does little to inform employers of reopening steps they should be taking of which they are not already aware. Many jurisdictions, such as Colorado and Arizona, already have state and local guidance and requirements in place that provide much more detail as to how to safely reopen. While OSHA’s Guidance may be useful for employers who wish to gain a high-level understanding of basic steps to take prior to reopening, every employer should consult the requirements of their state and local jurisdictions first. To the extent that there are gaps in those requirements that may be filled by OSHA’s non-mandatory Guidance, employers should implement the practices recommended by OSHA.

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