

OSHA Issues Reopening Guidance for Non-Essential Businesses

On June 17, 2020, OSHA issued [new guidance](#) for “non-essential businesses” as they plan for reopening and bringing employees back to work. The guidance is not comprehensive and is intended to supplement resources from other federal, state and local agencies, including, specifically, the [White House's Guidance for Opening up America Again](#) (the White House Guidance). Here are some of the key takeaways from OSHA's new guidance:

Planning for Reopening

Employers should monitor federal, state and local resources to assess when and how to reopen their businesses. This includes understanding how their community is progressing through the reopening phases identified in the White House Guidance. Each phase of reopening will warrant changes to the employer's reopening plans. For example:

- [Phase 1](#): employers should permit telework where appropriate, limit the number of people in the workplace, accommodate workers at increased risk, and limit non-essential business travel.
- [Phase 2](#): telework should continue where possible but non-essential business travel can resume, employers can ease limitations on the number of people at the workplace, but should continue to maintain moderate to strict social distancing practices, and continue accommodating at risk workers.
- [Phase 3](#): businesses can resume unrestricted staffing at work sites.

Reopening plans should also address how the employer will handle the emergence or a resurgence of COVID-19 cases in either the workplace or the community.

Guiding Principles for Reopening

OSHA identifies nine guiding principles that a reopening plan should address and provides examples for how to implement each guiding principle. Those principles are:

1. [Hazard Assessment](#): determine exposure risks for various job tasks and job categories, including exposure from coworkers and the public.

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2. Hygiene: provide hand sanitizer and hand washing supplies, frequent cleaning of high traffic areas and frequently touched items, encourage proper respiratory etiquette and hand washing.
3. Social Distancing: limit occupancy of workers and customers, post signs and demarcate flooring to provide a reminder to practice social distancing.
4. Identification and Isolation of Sick Employees: require self-evaluation for signs and symptoms of COVID-19, establish a protocol for managing ill employees.
5. Return to Work after Illness or Exposure: follow CDC guidance to discontinuing self-isolation and returning to work.
6. Engineering and Administrative Controls: install barriers and shields to separate workers and/or customers; consider enhanced ventilation, staggered shifts, capacity limits and face covering requirements.
7. Workplace Flexibility: where feasible, implement telework and other options to minimize exposure risks and communication of these options to employees.
8. Training: train employees on exposure risks, precautions in place at the worksite and how employees can protect themselves, how to wear face coverings, and PPE training, as required.
9. Anti-Retaliation: ensure the right to a safe and healthful work place, inform employees of who to contact with questions or concerns, and train supervisors on these rights.

Medical Records

The OSHA Guidance addresses several FAQs, some of which confirm that nothing under the OSH Act or OSHA standards prohibits employers from conducting COVID-19 tests or taking temperatures. These FAQs also put employers on notice of a potential OSHA issue related to such testing: whether the records of these tests would qualify as medical records. Whether OSHA's standard governing retention of and access to such employee medical records will apply is a fact-specific question. OSHA notes:

If an employer implements health screening or temperature checks and chooses to create records of this information, those records



might qualify as medical records under the Access to Employee Exposure and Medical Records standard (29 CFR 1910.1020). The employer would then be required to retain these records for the duration of each worker's employment plus 30 years and follow confidentiality requirements. As explained above, employers need not make a record of temperatures when they screen workers, but instead may acknowledge a temperature reading in real-time. In addition, 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.

If you have questions about whether the OSHA standards on medical records apply to you or need guidance on preparing plans for reopening your business, please contact Brittany Lopez Naleid, Troy E. Giles or your Reinhart attorney.

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