



Benefits Association, Inc.

New OSHA Return to Work Guidance

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The Occupational Safety and Health Administration (OSHA) has published a [“Guidance on Returning to Work” booklet](#) for businesses. Although largely consistent with prior OSHA guidance, the new booklet does clarify OSHA’s position on common employer concerns, like temperature checks, testing and PPE.

The new guidance focuses on the need for employers to develop and implement strategies for basic hygiene (e.g., hand hygiene, cleaning and disinfection), social distancing, identification and isolation of sick employees, workplace controls and flexibilities, and employee training. This guidance is based on the application of traditional infection prevention and industrial hygiene practices to a phased approach for reopening. As has been the case with other recent guidance, the OSHA booklet splits recommendations into phases, based on the degree to which a particular area has re-opened. As a practical matter, few regions are following the formal phased approach to re-opening, which creates additional complications for employers who may technically be in a phase that allows for reduced restrictions even though COVID-19 cases are rising.

Some key highlights:

- Employers may perform temperature checks but must ensure the safety of employees who perform the checks and the proper training of said employees. Additionally, employers are not obligated to create or maintain records when performing temperature checks, which may reduce compliance obligations. OSHA also reminds employers that temperature checks on their own may not be particularly helpful in preventing the spread of COVID-19 as many contagious individuals may be asymptomatic.
- COVID-19 testing is allowable under both the new OSHA guidance and EEOC guidance, but testing must be “applied in a transparent manner applicable to all employees.” It is not clear if requiring tests only of employees who return to work following a suspected COVID-19 exposure would meet this requirement. The EEOC has recently made clear that an employer may not require an [antibody test](#) before returning to work, but appears to allow return to work certifications, which could include “a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.”
- Employers must assess which jobs may require PPE (such as gloves, masks and face shields) and must provide PPE where applicable. These jobs will often involve public interaction. If an employer cannot obtain the necessary PPE, the job should be discontinued until PPE is obtained. Cloth face coverings do not count as PPE since they are intended to prevent the spread of contagions rather than protect the wearer.
- Even where PPE is not necessary, such as jobs that do not involve public interaction, employers are expected to conduct a hazard assessment to identify the necessary protective measures, such as social distancing, increased hygiene practices and modified shifts.

Overall, the new OSHA guidance is helpful, but not groundbreaking. Employers should examine the new guidance along with recent information from the [EEOC](#), [CDC](#) and local agencies to maintain employee safety, remain open and demonstrate good faith compliance. There is no “one-size-fits-all” solution and federal guidance remains somewhat vague and evolving.

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