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PREPARE, RESPOND, and RECOVER: RESUMING NORMAL OR PHASED BUSINESS OPERATIONS DURING COVID-19 PANDEMIC

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If you are an employer seeking to open your work space during the COVID-19 Pandemic, you must have multiple concerns about how to prepare your workspace against the risks of COVID-19. To help employers prepare, respond, and recover during the COVID-19 Pandemic, we have compiled guidance from the Centers for Disease Control and Prevention (CDC), Occupational Safety and Health Administration (OSHA), and the Equal Employment Opportunity Commission (EEOC). We encourage employers to consider these guidelines in preparing your workspace for operations during the COVID-19 pandemic.

In its interim guidance, the CDC has recommended that businesses that are **resuming normal or phased operations** must abide by the following guidelines:

- Conduct daily health checks;
- Conduct a hazard assessment of the workplace to determine if workplace hazards are present, or are likely to be present, and determine what type of controls or Personal Protective Equipment (PPE) are needed for specific job duties such as gloves and masks;
- Encourage employees to wear cloth face coverings in the workplace, if appropriate;
- Implement policies and practices for social distancing in the workplace; and
- Improve the building ventilation system.

To undertake the execution of a COVID-19 **preparedness and response plan**, an employer must first understand the levels of risk associated with its worksite and the jobs/tasks performed by the workers. OSHA has issued detailed health and safety guidelines for employers seeking to open up their workspace during the COVID-19 Pandemic. To identify the level(s) of risks, OSHA recommends that an employer should consider the following:

- Where might the workers be exposed to SARS-CoV-2 (coronavirus)? Consider the areas at your worksite where workers are likely to be in close contact with each other or are likely to handle shared equipment and tools. This may include closed workspaces, common work areas, restrooms, and recreational areas.
- How can the workers be exposed to SARS-CoV-2? Consider the exposure of workers to sources of SARS-CoV-2 including the general public, customers, co-workers, sick individuals, or other individuals who are likely to be at a high risk of infection.
- Consider non-occupational risk factors of a worker such as the worker's exposure to

- SARS-CoV-2 at home or within the residential community of the worker.
- Evaluate individual health conditions of the workers such as old age, presence of chronic medical conditions etc.
- Identify the controls necessary to address the risks and how can they be implemented.

Apart from developing a preparedness and response plan that addresses the levels of risk as identified above, an employer must put in place basic **infection prevention measures**. OSHA recommends that all employers should implement good hygiene and infection control practices, including:

- Promote frequent and thorough hand washing, including by providing a designated place to wash hands. Provide alcohol based hand rubs containing at least 60% alcohol or sanitizers, if you do not have facilities for running water and soap. Please consider the FDA (U.S. Food and Drug Administration) issued lists for banned sanitizers that are being sold in the market and avoid using such sanitizers or hand rubs;
- Encourage workers to stay home if they are sick;
- Encourage the use of CDC recommended respiratory guidelines such as covering your mouth and nose with a tissue while coughing or sneezing or coughing and sneezing into your elbow if you don't have a tissue;
- Provide customers and the public with tissues and trash receptacles;
- Explore and establish policies and practices for flexible worksites and flexible work hours to increase physical distance among employees and between employees and others;
- Discourage workers from using other workers' phones, desks, office, or other work tools and equipment, when possible; and
- Maintain regular housekeeping practices such as regular cleaning and disinfecting of surfaces, equipment, and other tools in the work environment.

The EEOC also provides detailed guidelines for employers to implement COVID-19 specific health guidelines at workplace and **ensure compliances with the Americans with Disabilities Act (ADA) and the Rehabilitation Act**. Both the ADA and the Rehabilitation Act must be complied with during the COVID-19 Pandemic. The EEOC COVID-19 guidelines facilitate compliance with CDC and OSHA recommendations without violating the ADA and the Rehabilitation Act. The EEOC enforces these laws against a business (or some other private employer) that has (fifteen) 15 or more employees on a complaint by employee(s) who worked for the employer for at least twenty (20) calendar weeks (in this year or last) involving race, color, religion, sex (including pregnancy), national origin, disability or genetic information.

- Confidentiality of Medical Information: ADA covered employers may seek medical information related to COVID-19 symptom from their employees. Employers may measure the body temperature of the employees and maintain a log of the results. All such information must be maintained as confidential medical record in compliance with ADA. All medical information about an employee must be stored separately from the employee's personnel file, thus limiting access to the confidential information. An employer may disclose to a public health agency that its employee has COVID-19.
- Screening employees for COVID-19 before entering the workplace: Employers can screen employees consistent with advice from the CDC and public health authorities for that type of workplace at that time. For instance, employers can take the temperature and ask questions about symptoms or require self-reporting by employees before entering the workplace. These measures will be consistent with the ADA so long the employers do not engage in unlawful disparate treatment based on protected characteristics while screening and excluding employees.
- Conducting a COVID-19 test of employees: An employer will be in compliance with the ADA if the employer chooses to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus. Employers must ensure that the COVID-19 tests are accurate and reliable, based on guidance by the FDA, the CDC, and other public health authorities. However, employers **should not** require antibody testing before allowing employees to re-enter the workplace as antibody testing is not allowed under the ADA.
- Accommodation for workers to comply with CDC and public health guidelines: An employer can require employees to wear protective gear such as masks and gloves, and observe infection control practices such as regular hand-washing and social distancing protocols. An employee with disability may request reasonable accommodation and the employer should discuss and provide the modification or an alternative if feasible and not an undue hardship for the employer's business under the ADA.
- Pandemic-related Harassment due to National Origin, Race, or Other Protected Characteristics: Employers must identify and take action against discrimination based on race, national origin, color, sex, religion, age (40 or over), disability, or genetic information. Specifically, managers should be alert to demeaning, derogatory, or hostile remarks directed to employees who are or are perceived to be of Chinese or other Asian national origin, including about the coronavirus or its origins.

Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.

If you are looking to develop a preparedness and response plan or require detailed guidance on

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preparing your worksite for operations during the COVID-19 Pandemic, please reach out to Triano & Byrne at sonakshi@trianobyrne.com. Please check our website for regular updates.

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