

## Back to Business: Part 2

PUBLISHED ON

**May 6, 2020**

---

**Note:** This is the second a three-part series on what business should be considering as they prepare to reopen - whenever that day comes. [You can read Part 1 here.](#)

One of the most important parts of any business reopening will be the consideration of workplace safety and prevention strategies.

The new normal workplace requires continued physical distancing, expanded use of personal protective equipment, general health screening, cleaning the workplace, and possibly COVID-19 testing.

The secretary of the Pennsylvania Department of Health issued an order mid-April requiring the continued use of telework, if possible, and requiring employees and customers to wear face masks whenever on the premise of a business. Under that order, businesses are required to:

- Provide face masks for all employees to wear while at work
- Maintain a work environment that adheres to a social distancing protocol of six feet
- Provide sufficient space for employees to have breaks and meals
- Limit in-person meetings to 10 employees at one time
- Opt for virtual meetings and training
- Schedule handwashing breaks for employees at least every hour

There is indication that these requirements will continue even after restrictions are lifted on nonessential business.

### **WATCH: Getting Your Business Back To Business COVID-19 Webinar**

#### **The physical office space and returning employees**

Consider de-densification. Depending on the nature of the business and its operations, consider an incremental return to operations by assigning teams of employees to physically work in the office, while others continue to work remotely (and then swap) for a designated period of time. When determining which employees first return to the physical workspace, the decision should be based on legitimate business needs and not on employees' protected classifications, such as age. Manufacturers may consider staggering shift times and meal and rest breaks, while still maintaining compliance with state law requirements.

#### **Confirm compliance with social distancing guidelines**

Before any employee sets foot back into the workplace, audit whether the physical space allows or

encourages employees to comply with social distancing guidelines. Spread out workstations where possible and designate six feet of distance where lines are likely to form, such as near entrances, time clocks and in cafeterias. The Centers for Disease Control and Prevention recommends that common areas be closed or that a plan be put in place to limit congregation in those areas. For example, in eating areas, all or a portion of the tables or chairs may need to be removed. Limit in-person meetings to a small number of attendees and only as needed. To the extent possible, curtail visitor access to the workplace. Where in-person visitor access is business-critical, consider requiring a visitor self-screening questionnaire to identify potential risk of exposure.

## **Hygiene and personal protection equipment**

Employers must require employees to wear masks and observe infection control practices, such as regular hand washing. Employers should work to [follow applicable guidance from the U.S. Department of Labor](#). Ensure that the office space is sufficiently stocked with the necessary sanitization and protective equipment, including soap, hand sanitizer, disinfectant wipes and potentially masks for employees. Schedule frequent and regular cleaning of high traffic areas like shared equipment, time clocks, kitchens and cafeterias, water coolers, doors, bathrooms and copy machines.

## **Testing & health screening**

**Temperature Checks:** To ensure workplace safety, employers will want to introduce testing and health screening procedures and protocols for certain employees and third-parties (customers, visitors, etc.) In March, the Equal Opportunity Employment Commission confirmed the [COVID-19 pandemic meets the "direct threat" standard](#) for employee medical examinations and disability related inquiries. Employers do not violate the Americans with Disabilities Act by requiring employees to undergo medical examinations, such as temperature checks, or asking employees disability-related questions, such as whether the employees suffer from underlying health conditions that may make COVID-19 more severe for them. As with all medical information, the fact that an employee has a fever or an underlying health condition is subject to the ADA's confidentiality requirements. Employers who institute temperature checks should do so in the least invasive manner possible. And again, if any data is retained after checking temperatures, it should be handled as confidential medical information.

**COVID-19 Testing:** The EEOC issued guidance that [employers can legally screen employees for COVID-19](#) since employers have an obligation to the health and safety of everyone in the work environment. Employers can choose to administer COVID-19 testing before employees enter the workplace. But, diagnostic testing should be safe and accurate and should be done in the least invasive and most private manner feasible and so it does not reveal results to others. The EEOC guidance does not make clear if antibody testing is also included with the testing guidance.

Employers may want to consider engaging a professional service provider trained on the use of the medical equipment, and who can handle the medical information properly in compliance with applicable health information and data privacy laws.

If anyone has any questions about reopening their business safely and in line with federal and state guidance, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

*Coming in Part 3: Employee health and welfare*

**DISCLAIMER:** As we face an unprecedented time of legal and business uncertainty, we are working to provide updates on the status of important legal news related to COVID-19. It is important to note that the situation is changing rapidly and the information provided in our alerts is not intended to create an attorney-client relationship. The information contained in our alerts is for general informational purposes only and should not be construed as legal advice or a substitute for legal counsel. If you have questions about your legal situation or about how to apply information contained in this alert to your situation or about how any other information found on our website may affect your business, you should reach out to one of our attorneys. We assume no responsibility for the accuracy or timeliness of any information provided herein or by any linked site. As information changes rapidly, users are strongly advised to verify any information before relying upon it.