

EMPLOYERS' GUIDE TO COVID-19 RETURN TO WORK OR RESUMPTION OF OPERATIONS

The questions and responses below are designed to offer guidance as employers begin the process of reopening workplaces. EPIC's coronavirus resource center also provides insights, webinars and overviews on timely topics related to COVID-19 (<https://epicbrokers.com/coronavirus/>).

Category	Question	Guidance
FFCRA: Requirements	What new federal requirements must be followed with regard to COVID-19 and how should employers apply them?	<p>The Families First Coronavirus Response Act (FFCRA) requires certain employers to provide COVID-19 related paid sick leave, and expanded medical and family leave for specific COVID-19 related reasons. See the following websites for more information on FFCRA and other pertinent requirements.</p> <ul style="list-style-type: none"> • Department of Labor • CDC • OSHA • The White House
CDC: Reopening Measures	What protective or preventative measures should employers consider upon reopening?	<p>As public officials begin to loosen or lift restrictions on work and travel, employers should consider how to address employment issues as they look to reopen. The CDC has created a tool to help business owners and managers assess the appropriate time to reopen to best protect its employees (www.cdc.gov/coronavirus/2019-ncov/downloads/fs-reopening-america-workers-at-risk.pdf). In addition, the five step process from Fisher Phillips LLP accessed here is based on CDC guidelines:</p> <p>Further guidance from the CDC (www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html) recommends:</p> <ul style="list-style-type: none"> • Heightened sanitation procedures • Continued social distancing in the workplace • Use of face coverings • Employee education on reducing the spread
Employer Guidelines: Temperature	May employers take the body temperature of employees during the COVID-19 pandemic?	<p>Generally, measuring an employee's body temperature is considered a medical examination. As the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. Employers should be aware, however, that some people with COVID-19 do not have a fever: www.eeoc.gov/facts/pandemic_flu.html</p>

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Employer Guidelines: Medical Information	May employers store medical information it obtains related to COVID-19, including temperature results or an employee's self-identification as having this disease, in existing medical files? Or, must employers create a new medical file system solely for this information?	The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this confidential information. An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he/she has the disease or suspects he/she has the disease, or the employer's notes or other documentation from questioning an employee about symptoms. The EEOC answers this question here: www.eeoc.gov/coronavirus/webinar_transcript.cfm#q9
Employer Guidelines: Masks	May employers require employees to wear a mask?	According to the EEOC, yes. "An employer may require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the Americans with Disabilities Act (ADA) (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship."
Employer Guidance: Sick Employees	What should employers do in response to sick employees?	<p>Employees who appear to have symptoms (e.g., fever, cough, or shortness of breath) upon arrival at work or who become sick during the day, should immediately be separated from other employees, customers, and visitors and sent home.</p> <p>If an employee is confirmed to have the COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace, but maintain confidentiality as required by the ADA. The employer should instruct fellow employees about how to proceed based on the CDC Public Health Recommendations for Community-Related Exposure: www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html</p>
CDC and OSHA: Industry Specific Guidance	What industry specific guidance is available for employers reopening or expanding operations?	<p>Information for essential businesses such as grocery and food retail, meat and poultry, and delivery services may be found at the CDC's website: https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html</p> <p>Information for additional industries such as healthcare, emergency response, laboratories, retail operations, correctional facilities, in-home repair services, and airlines may be found at OSHA's website: https://www.osha.gov/SLTC/covid-19/controlprevention.html</p>
OSHA: Standards Enforcement	Is OSHA enforcing standards related to the COVID-19 pandemic?	<p>OSHA released a memo on April 16, 2020, outlining the policy of "discretion in enforcement when considering an employer's good faith efforts during the COVID-19 pandemic."</p> <p>See the entire memo here: www.osha.gov/memos/2020-04-16/discretion-enforcement-when-considering-employers-good-faith-efforts-during</p>

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OSHA: Recordkeeping	Do employers have to record cases of COVID-19 in the OSHA Log of Injuries and Illnesses?	<p>Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness and employers are responsible for recording cases of COVID-19 in the OSHA Log of Injuries and Illnesses (OSHA Form 300). However, in areas where there is ongoing community transmission, employers (other than those in the healthcare industry, emergency response organizations and correctional institutions) may have difficulty making determinations about whether workers who have contracted COVID-19 did so due to workplace exposures. In light of these difficulties, OSHA is exercising enforcement discretion.</p> <p>See the entire memo here: www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19</p>
OSHA: Respirator Guidance	What is OSHA's guidance on respiratory protection during the COVID-19 pandemic - particularly as NIOSH-approved N95 filtering face piece respirators are in short supply?	<p>On April 3, 2020, OSHA issued a memo providing "enforcement guidance for respiratory protection and the N95 Shortage Due to the Coronavirus Disease 2019 (COVID-19) Pandemic." Employers whose employees are required to use or are permitted voluntary use of respiratory protection must continue to manage their respiratory protection programs (RPPs) in accordance with the OSHA respirator standard, and should pay close attention to shortages of N95s during the COVID-19 pandemic.</p> <p>Due to the impact on workplace conditions caused by limited supplies of N95 respirators, all employers should reassess their engineering controls, work practices, and administrative controls to identify any changes that can be made to decrease the need for N95 respirators. Employers should, for example, consider whether it is possible to increase the use of wet methods or portable local exhaust systems, or to move operations outdoors. In some instances, an employer may also consider taking steps to temporarily suspend certain non-essential operations.</p> <p>Employers should also consider alternative classes of respirators that provide equal or greater protection than an N95 respirator, such as NIOSH-approved, non-disposable, elastomeric respirators or powered, air-purifying respirators (PAPRs). Other filtering face piece respirators, such as N99, N100, R95, R99, R100, P95, P99, and P100, are also permissible alternatives to N95s.</p> <p>See the entire memo here: www.osha.gov/memos/2020-04-03/enforcement-guidance-respiratory-protection-and-n95-shortage-due-coronavirus</p>

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