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COVID-19: Considerations for Returning to Work

Returning to work can present businesses with a number of challenges during the COVID-19 pandemic. This is especially true with regard to employee safety and compliance with existing government regulations. Two Federal agencies, the Occupational Safety and Health Administration (OSHA) and the U.S. Equal Employment Opportunity Commission (EEOC) have recently issued COVID-19 guidance for employers.

Exposure to COVID-19 is considered a workplace hazard for purposes of OSHA compliance. As such, employers should be cognizant of the application of existing OSHA requirements to the prevention of occupational exposure to COVID-19. In general, these regulations require the use of personal protective equipment (PPE) when job hazards warrant it. OSHA has provided a resource (<https://www.osha.gov/SLTC/covid-19/hazardrecognition.html>) to assist employers in assessing the risk of exposure to employees. More recently, the agency has published FAQs (<https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#cloth-face-coverings>) on wearing masks while at work. While employers may require employees to wear masks at work, the employer is not required to provide masks. However, it should be noted that cloth face masks are not considered PPE.

The EEOC has provided employers with guidance (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>) on how COVID-19 restrictions affect the application of disability and discrimination laws. Of note in the EEOC guidance is the following significant statement:

The EEO laws, including the ADA and Rehabilitation Act, continue to apply during the time of the COVID-19 pandemic, but they do not interfere with or prevent employers from following the [guidelines and suggestions made by the CDC or state/local public health authorities](#) about steps employers should take regarding COVID-19.

The detailed guidance is directed at employers grappling with how to safely return employees to the workforce, particularly those employees with certain underlying conditions. The agency guidance includes a FAQ section which answers important questions about testing employees for the virus and temperature checks. While an employer may require testing for the presence of the virus, the employer cannot require an antibodies test. There are also responses to questions about reasonable accommodation, discrimination, age, return to work and pregnancy.

As always, ECIA members should stay abreast of state and local restrictions. In most cases, state and local laws control return to work and the lifting of travel and public gathering restrictions. ECIA has found this link to be a useful resource in monitoring state restrictions: <https://www.multistate.us/research/covid/public>