



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
June 19, 2020 Edition



**“We believe in the ideas of family, mutuality,
the sharing of benefits and burdens
for the good of all, feeling one another’s pain,
sharing one another’s blessing
recognizing that at the heart of the matter
we are bound to each other.”**

-Mario M. Cuomo-

OSHA ISSUES GUIDANCE DIRECTING EMPLOYERS TOWARD PHASED REOPENING WITH ACCOMMODATIONS AND FLEXIBILITY FOR WORKERS

On June 18, 2020, the federal Occupational Safety and Health Administration (“OSHA”) issued a new advisory, “Guidance on Returning to Work,” which calls for employers in non-essential businesses that are in the process of reopening to implement a three-phase reopening that allows for workers with particular health needs for themselves and their family members to telework or have other accommodations while conditions are too hazardous for unrestricted business operations. The guidance is available at <https://www.osha.gov/Publications/OSHA4045.pdf>

In *Phase 1*, OSHA advises businesses to make telework available, whenever possible and feasible with business operations. The number of employees who return to the workplace should be limited. Accommodations should be considered for workers at higher risk of serious illness, including elderly workers and workers with underlying health conditions. In addition, OSHA recommends that businesses should also consider extending accommodations to workers with household members at higher risk of severe illness.

In *Phase 2*, OSHA repeats its recommendation that businesses continue to make telework available where possible, but that non-essential travel can resume. Limitations on the number of people in the workplace may be eased but strict social distancing should be maintained. Vulnerable workers should be accommodated as recommended in Phase 1.

In *Phase 3*, businesses should resume unrestricted staffing of the work site.

For all phases of reopening, employers are directed to put into place policies and procedures that address preventing, monitoring for, and responding to any emergence or resurgence of COVID-19 in the workplace or community. OSHA notes that changing outbreak conditions in each community will directly affect workers’ exposure risks to SARS-CoV-2, which causes COVID-19.

OSHA establishes a number of guiding principles which employers should evaluate and adhere to in planning reopening: hazard assessment, hygiene, social distancing, identification and isolation of sick employees, workplace controls, workplace flexibilities, including remote work and sick leave, employee training as appropriate, and anti-retaliation.

For all phases of reopening, employers need policies and procedures that address prevention of, monitoring for, and responding to any emergence or resurgence of COVID-19 in the workplace or community. Employers should continue these practices to the extent possible to help prevent COVID-19 from emerging or resurging in their workplace.

The guidance is not a standard or a regulation but is intended to ensure that employers comply with their obligation to provide a safe and healthful workplace and prevent the spread of COVID-19. Employer practices should also be aligned with the relaxing of stay-at-home or shelter-in-place orders of state and local governments.

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