

CDC Issues Compilation of Guidance to Assist Reopening Initiatives

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On May 17, 2020, the U.S. Centers for Disease Control and Prevention (CDC) issued a 60-page document entitled [CDC Activities and Initiatives Supporting the COVID-19 Response and the President's Plan for Opening America Up Again](#). In the document, the CDC (1) explains and expands upon the gating criteria articulated in President Donald Trump's [Opening Up America Again guidelines](#); (2) outlines the CDC's various COVID-19 activities and initiatives, including monitoring the continued progression of COVID-19, support of increased contact tracing capacity, and other activities; and (3) provides testing guidance. While the document does not contain much in the way of new guidance, it does provide a helpful consolidation of various previously published recommendations, including critical infrastructure employer guidance, general business guidance, and some industry- or occupation-specific guidance. The document also relies on recently published traffic-light decision-making tools, such as the [Workplace Decision Tool](#) that walks employers through considerations for reopening.

Below is a summary of the components of the Activities/Initiatives document likely to be of most interest to employers (with the appendices summarized in order of interest).

Introduction: A summary of CDC initiatives

The first several pages of the document provide a useful summary of the CDC's various initiatives taken as part of the "Whole-of-Government" response to the COVID-19 pandemic. The CDC describes its surveillance of the virus and its detailed guidance to state, tribal, and local public health authorities to aid in contact tracing, infection control, and other measures.

Appendix D: Testing

In its Activities/Initiatives document, the CDC notes that "[e]xtensive, rapid, and widely available COVID-19 testing is essential" and also outlines its various testing guidelines and initiatives.

The Activities/Initiatives document briefly addresses serologic (antibody) testing, which the CDC breaks into two broad categories: (1) serologic surveillance of populations and (2) serologic testing of individuals for proof-of-prior infection. The CDC notes that antibody testing “has the potential to provide important insights into the transmission dynamics of the disease, as well as a more complete picture of the total burden of COVID-19 infections in a community or among first responders and front-line health providers” and “may play a role in a back-to-work strategy provided it can be shown that serologic testing can reliably infer immunity.”

However, the CDC notes it is not yet clear how antibody testing will correlate with possible immunity and that further information is needed. In a sign of the current lack of definitive information on the relationship between antibodies and immunity, the CDC uses the word “feel” in the following statement: “[M]ost experts feel immunity from infection is likely at least in the short term.” Thus, the potential application of antibody testing for purposes of employees in the workplace continues to be uncertain.

While the CDC acknowledges the public optimism in using antibody tests to return employees to work, the CDC points out there currently are numerous unknowns and impediments to using antibody testing for return-to-work purposes. For example, the CDC states, the accuracy and specificity of antibody tests are uncertain and “likely not enough for [a return to work] purpose, given the potential consequences of COVID-19.” The CDC also points out that “[a]t best, the use of serologic testing for a back-to-work strategy would likely benefit fewer than 10% of the population currently.” The CDC also indicates that combining two different tests may be critical for improving test performance and should be part of any strategy to utilize antibody/serologic testing for “immunity” determinations.

Ultimately, nothing in the CDC Activities/Initiatives document appears to support the use of antibody tests by employers at this time as part of an employee-screening program. Also, as we [previously discussed](#), the permissibility of requiring antibody tests remains in question under the current [Equal Employment Opportunity Commission guidance](#).

As the CDC concludes, “[t]he stakes are high for such a policy, so that in addition to the scientific data, there is also a need to have political consensus on this issue.”

Appendix F: Safety Measures and Practices When Reopening

Appendix F provides interim guidance to specific settings and industries, largely consisting of previously published recommendations but consolidated in a helpful form. In a component likely applicable to most employers across multiple settings and industries, Appendix F also includes CDC guidance for dealing with high-risk employees. The CDC notes that the guidance is meant to supplement the use of its decision tools, such as its [Workplace Decision Tool](#) and its [Restaurants and Bars Decision Tool](#).

The guidance lists minimum safety measures and specific practices to consider when reopening various operations, including:

- child care programs;
- schools and day camps;
- employers with workers at high risk;
- restaurants and bars; and
- mass transit administrators.

The EEOC also has issued [guidance on assessing and dealing with high-risk employees](#).

Appendix E: Gating Criteria

The CDC provides an elaborated discussion of the six “gating” criteria from President Trump’s three-phased reopening plan. In Appendix E, each of the six gating criteria are further defined and explained.

Appendix C: Infection Control, Exposure, and Contact Tracing

Appendix C provides a helpful consolidated list of the CDC’s various guidance publications regarding infection control and contact tracing. This includes many of the guidelines relied upon by employers in determining how to handle potential exposures, positive cases, and other work-related COVID-19 situations, as well as the CDC’s guidance for specific settings, such as long-term care facilities, dialysis clinics, pharmacies, food processing facilities, general business environments, small businesses, and various critical infrastructure sectors. Appendix C also provides consolidated lists of tools such as CDC frequently asked questions (FAQ) pages, resources on donning and doffing personal protective equipment, guidelines for cleaning and disinfecting facilities, and links to various third-party resources.

The CDC Activities/Initiatives document serves as a high-level overview of factors employers may want to consider as part of the decision-making process when determining when and how to reopen operations. Employers also may wish to evaluate the various employee screening and testing options currently permissible under federal law.

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