

A Phased Approach: OSHA Issues Guidance for Reopening ‘Non-Essential’ Businesses

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As state and local authorities around the country continue to lift stay-at-home orders, the next challenge for businesses deemed “non-essential” under these orders is clear: How do we reopen safely during an ongoing pandemic? On June 17, the Occupational Safety and Health Administration (OSHA) set out its view on the question. The [new OSHA guidance](#) recommends a three-phase approach for reopening and lists nine “guiding principles” that employers should address in their reopening plans. During all three reopening phases, OSHA recommends that businesses implement strategies for basic hygiene, social distancing, identification and isolation of sick employees, workplace controls and flexibilities, and employee training. The OSHA guidance begins with this introduction: “[t]his guidance is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace.”

In Phase 1, OSHA suggests that businesses take the following measures:

- Consider allowing employees to telework.
- Consider limiting the number of employees in the workplace to strictly maintain social distancing.
- When feasible, accommodate [workers at higher risk](#) of severe illness, including elderly individuals and individuals with underlying health risks.
- Consider accommodating workers with family members at higher risk.
- Limit non-essential business travel.

Unfortunately, OSHA’s guidance does not offer any precise metrics for employers to determine when they should move from Phase 1 to Phase 2. Businesses should consider OSHA’s guiding principles (discussed below), continue to closely monitor local conditions, and heed the advice of state and local authorities when deciding to transition phases.

When an employer moves to Phase 2, OSHA suggests implementing these practices:

- Continue to make telework available where possible.
- Ease limitations on the number of employees in the workplace, but continue to maintain moderate to strict social distancing policies where appropriate.
- Continue to accommodate workers at higher risk.
- Resume non-essential business travel.

OSHA also does not offer guidance on when to move from Phase 2 to Phase 3. However, Phase 3 is a return to business as normal, so it is likely that businesses should only move to Phase 3 after the ongoing COVID-19 pandemic is substantially over.

OSHA's guidance is clear that there is no one-size-fits-all reopening plan; each business will need to develop its own plan, one that takes into account the nature of the business itself and local conditions. To assist employers with developing these plans, OSHA's guidance includes nine principles that every reopening plan should address and provides examples of how to implement those principles (review the guidance itself for examples). Here are those principles:

1. Hazard Assessment, including practices to determine when, where, how, and to what sources of COVID-19 workers are likely to be exposed in the course of their job duties.
2. Hygiene, including practices for hand hygiene, respiratory etiquette, and cleaning and disinfection.
3. Social Distancing, including practices for maximizing to the extent feasible and maintaining distance between all people, including workers, customers, and visitors. Six feet of distance is a general rule of thumb, though social distancing practices may change as changes in community transmission of COVID-19 and other criteria prompt communities to move through the reopening phases.
4. Identification and isolation of sick employees, including practices for worker self-monitoring or screening, and isolating and excluding from the workplace any employees with signs or symptoms of COVID-19.
5. Return to work after illness or exposure, including after workers recover from COVID-19 or complete recommended self-quarantine after exposure to a person with COVID-19. Here, OSHA refers employers to the [CDC guidance](#) on returning to work, which differs for critical infrastructure workers and [non-critical infrastructure employers](#).
6. Controls, including engineering and administrative controls, safe work practices, and personal protective equipment (PPE) selected as a result of an employer's hazard assessment.
7. Workplace flexibilities, including those concerning remote work (i.e., telework) and sick leave.
8. Training, including practices for ensuring employees receive training on the signs, symptoms, and risk factors associated with COVID-19; where, how, and to what sources of COVID-19

employees might be exposed in the workplace; and how to prevent the spread of COVID-19 at work.

9. Anti-retaliation, including practices for ensuring that no adverse or retaliatory action is taken against an employee who adheres to these guidelines or raises workplace safety and health concerns.

OSHA describes its guidance as supplemental to the [Opening Up America Again](#) guidance issued by the White House and Centers for Disease Control (CDC). Additional guidance from OSHA during the ongoing COVID-19 pandemic can be found on [OSHA's COVID-19](#) resource page.

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