
Back to Business: OSHA

Video Transcript

As part of our ongoing video series, Back-to-Work in the Wake of the COVID Virus, in this alert we are going to consider occupational safety and health issues. We will not try to describe the Occupational Safety & Health Administration or its enforcement structure. We suspect that over the past several weeks many of you have learned as much as you ever wanted to learn about OSHA. Instead, what we're going to try to do is focus on the return-to-work issues that will arise in the wake of the COVID virus.

First, let's consider what you can do. Most importantly, you should develop a thoughtful and thorough plan that helps you to provide appropriate protection to your employees. That, after all, is the obligation imposed under the various requirements of the Occupational Safety & Health Act. So, what are some of the things that you can do? Well, first, you need to consider the risks imposed by this virus on your employees and, conversely, the risks posed by your employees to others because of this virus? In trying to develop a procedure that's going to help you to best protect employees, the Occupational Safety & Health Administration, the federal agency that regulates workplace safety, has developed two tools to enable you to do this. One involves ranking employees according to the risk exposures that they pose. The higher risk exposure is presented by people who are more likely to interact with employees or individuals who have, or are suspected to have, the COVID virus; and the lower risk is presented by people who do not generally interact with other employees, with the general public, or otherwise with people who might be sick. Most people in healthcare situations are going to be in the high to very high tiers. In the typical office environment, they'll be in the lowest level, unless they are in a situation where they are dealing extensively with the public, in which case they might be at a medium level.

Then you want to ask, how can I reduce the risks to those people by utilizing a well-known hierarchy that OSHA uses, by trying to eliminate risks through engineering controls? This means structural changes to your workplace, or administrative controls, which means work changes; and last, relying on what is known as PPE, or personal protective equipment, to provide safety to employees. Why is PPE the last? Because it relies on people like you and me to utilize the correct equipment, to utilize it properly, and to keep it cleaned and appropriately disinfected. That's the weakest link – your employees, your supervisors, and people like you and me, who may not always comply. So, part of your plan is to think about how to eliminate the variability introduced by other human beings.

Now, as you think things through, does your plan enable you to address these issues? Did you take into account any specific local requirements imposed by the state or the municipality in which your business is located? And for those of you who have multiple business locations across the United States, or even across the state, there may be varying obligations. Your plan will need to consider all of these relative to the location where your workers are. Have you considered these risk factors, and have you thought, do I need to redo any workspace? Do I need to impose barriers or shields to protect employees? Do I need to stagger work shifts, or bring different people in? Think about elevators for those of you who work in high rises, which enable your employees to get to and from work, while continuing to use whatever social distancing requirements that may be imposed by local governments, OSHA, or your own plan.

Once you decide what the risks are and what you can do to strategize, to minimize them, then you need to think, okay, how and what do I communicate to employees? But don't stop there, because it's important to think about how you communicate these

issues to the supervisors, because they're going to be the people who help to make sure that the plan that you have so carefully and thoughtfully put together is effectively communicated and implemented. Make sure that it is as successful as possible.

Obviously, we have only touched on the myriad issues presented by occupational safety, and we haven't even tried to examine the closely connected issues related to potential litigation, or the other labor and employment considerations that are attendant to any sort of plan, such as medical screening and the compensability of time spent getting into and out of the workplace as a result of the necessary restrictions imposed to combat this. We know this is challenging, so we encourage you to contact any of the Labor & Employment attorneys at Venable to help you with these answers and to visit [Venable.com/COVID-19](https://www.venable.com/COVID-19) to learn more about our services.

Thank you so much, and good luck in planning your back-to-work strategies.

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Ronald W. Taylor

Partner

rtaylor@Venable.com

Baltimore, MD | +1 410.244.7742