

In Anticipation of Workplace Reopenings, OSHA Issues Additional Guidance to Employers

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Based on changing information and recommendations relating to COVID-19, employers who recently reopened or who are considering reopening should regularly check state and federal agency guidance for the latest information. Recently, the U.S. Occupational Safety and Health Administration (OSHA) issued an updated guidance document, entitled Guidance on Returning to Work. OSHA's latest guidance reiterates that employers should look to guidance from the Centers for Disease Control and Prevention (CDC) on issues relating to possibly sick employees and exposure control. OSHA also emphasizes that training and communication are key considerations.

One additional issue that OSHA raised, however, involves the question of whether employers that conduct temperature screenings are required to retain records from these screenings for thirty years, under the Access to Employee Exposure and Medical Records Standard. OSHA notes that employers are not required to keep records of the temperature screening, and can instead note the temperature in real time. In addition, the information is not covered by the regulation unless it is created or maintained by a physician, nurse, health care personnel, or a technician. Even if the OSHA regulation is inapplicable, employers should still, of course, protect the confidentiality of employees during temperature checks to avoid potential liability under other laws and to reduce the chance of morale problems.

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OSHA's guidance is a reminder that a lot of uncertainty remains as employers move to re-open. If you have concerns about applicable guidelines, temperature checks, or other COVID-19 issues, please contact your servicing attorney.