Late last week, the Occupational Safety and Health Administration ("OSHA") issued new guidance for employers that are reopening their businesses and returning employees to work. Intended as a supplement to the agency’s earlier Guidance on Preparing Workplaces for COVID-19, this guidance does not offer any new recommended practices or strategies for minimizing and preventing the spread of coronavirus ("COVID-19"). Instead, this guidance provides examples for how employers can incorporate recommended practices for COVID-19 control and prevention into reopening and return to work strategies, with continued focus on infectious disease control and prevention (e.g., hand hygiene; cleaning and disinfection), social distancing, workplace controls and flexibilities (e.g., methods for identifying sick individuals and removing them from the workplace), and employee training.

Under OSHA’s guidance, employers are at a minimum expected to ensure the following:

- **Hazard Assessment:** Risks of exposure to COVID-19 in the workplace are addressed through completion of a documented hazard assessment and
implementation of corresponding controls, such as engineering controls (e.g., physical barriers), administrative controls (e.g., staggered shifts, health screening, workplace policies), and, when applicable, use of personal protective equipment (“PPE”).

- **Use of Preventive Controls:** Risks of exposure to COVID-19 and spread of the disease are prevented and minimized through good hygiene (e.g., hand hygiene, respiratory etiquette, and protocols around cleaning and disinfection), social distancing, and immediate identification and removal of sick individuals from the workplace.

- **Policies and Procedures:** Effective policies and procedures are in place to minimize employees’ exposure risks, such as procedures for prompt injury and illness reporting, remote work, sick leave, and workplace flexibility.

- **Employee Training:** Employees are trained on potential workplace exposures to COVID-19 and how to prevent the spread of COVID-19 at work, including risks of exposure to COVID-19, the employer’s COVID-19 related policies and procedures, and safe work practices (e.g., use of cloth face coverings, good hygiene practices, and cleaning and disinfection measures).

OSHA’s new guidance also broadly addresses health screening, temperature checks, COVID-19 testing, and use of PPE. More specifically, OSHA’s guidance conveys that OSHA’s standards and regulations generally permit employers to conduct health screening measures, such as questionnaires, temperature checks, and COVID-19 testing to prevent sick people from entering the workplace. In doing so, however, OSHA instructs employers to ensure compliance with guidance from the Centers for Disease Control and Prevention (“CDC”) and U.S. Equal Employment Opportunity Commission (“EEOC”), along with applicable state and local laws. Employers will also need to ensure effective controls are in place to prevent COVID-19 exposures while conducting employee screening through use of effective social distancing or PPE as appropriate and may need to comply with additional OSHA standards and regulations. For example, on-site screening of employees and corresponding documentation of screening results may incur compliance obligations under OSHA’s PPE and medical records standards.

No matter how employers plan to address COVID-19 risks within the workplace, OSHA’s guidance reminds employers that they need to be aware of evolving guidance from the CDC and location specific circumstances. Further, OSHA’s guidance re-emphasizes to employers that employees have a right to raise workplace safety and health concerns without fear of retaliation, which includes a right to raise concerns over the employer’s COVID-19 policies and procedures.

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