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CLIENT ALERT: OSHA's Return to Work Guidance
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On June 18, OSHA issued comprehensive return to work guidance for non-essential businesses. OSHA contemplates phased return to work with enhanced health and hygiene protocol, including social distancing and isolating sick employees. OSHA states that business following their re-opening guidelines should align their decisions with federal, state, and local stay-at-home orders and public health recommendations. We provide an overview below, and the full guidance document is available [here](#). If you have any questions, please don't hesitate to contact Peter Lowe at plowe@brannlaw.com or 207-754-5672.

- **Cloth face coverings are not PPE:** OSHA explicitly states that cloth face coverings are *not* PPE because they “protect other people from the wearer’s respiratory secretions, rather than protecting the wearer.” Additional guidance on cloth face coverings in the workplace is available [here](#).
- **Testing and screening employees for COVID-19:** OSHA confirms that employers may test and screen employees for COVID-19. Those administering COVID-19 tests in the workplace must be protected with appropriate PPE and safe work practices. OSHA encourages workplace screening measures to take place in conjunction with at-home symptom monitoring and leave policies that encourage sick employees to stay home.
- **Creating and maintaining records of COVID-19 workplace screenings:** employers conducting testing and/or screenings, and keeping records of this information, may be required to retain these records for the duration of each worker’s employment *plus* 30 years. A simple temperature record will not qualify for the recordkeeping requirement unless made or maintained by a physician, nurse, or other health care personnel. More detailed screening records may be subject to the recordkeeping requirement.

Under the ADA, records must be kept confidential and should not be stored in an employee’s personnel file. Keep in mind that employers are not required under federal law to keep records of temperature checks or other screening methods. Employers should double check their obligations under state law before deciding what their testing and screening recordkeeping protocol will be.

- **Phased reopening:** OSHA outlines three very general phases for non-essential businesses to re-open. State re-opening plans remain the best guidance for organizations.

- **Specific guidance on keeping employees safe:** OSHA's guidance document contains a chart detailing a variety of measures employers should take to keep their employees safe, many of which are already required by state re-opening plans. OSHA's recommendations include: 1) providing cleaning supplies and hand sanitizer to employees, 2) posting signage to remind individuals to remain six feet apart, 3) establish a protocol for managing employees who become sick at work, including isolation, transportation, disinfecting, and contact-tracing, 4) establish a protocol for employees returning to work after recovering from COVID-19, 5) training employees on their risks of exposure to COVID-19, wearing cloth face coverings in public, and other measures to protect themselves, and 6) ensure employees understand their right to raise questions and concerns about safety and health in the workplace.