

# BACK TO “NORMAL?” TIPS ON REOPENING YOUR BUSINESS AFTER COVID-19 (PART 1 OF 2)

Across the country, states are beginning to reopen from COVID-19 shutdowns. Like the shutdowns themselves, this reopening will vary from state-to-state in terms of timing and scope. Regardless, businesses should begin to plan for this inevitable reopening and how it will affect their workforce. In this two-part article, we will explore some tips for businesses to consider during this reopening process.

## **Be aware of workplace safety guidelines and implement them.**

Under the Occupational Safety and Health Act (OSHA), employers have a duty to provide a workplace free from recognized hazards likely to cause death or serious physical harm. To mitigate the risk of harm to employees during the COVID-19 pandemic, the Occupational Safety and Health Administration issued guidance to employers on how to prepare the workplace for the virus. According to this guidance, the risk of exposure (and, therefore, the measures required to reduce the risk) depends on the profession or industry. Basic infection prevention measures are essential to preventing an outbreak of the virus in the workplace for nearly all employers.

The Centers for Disease Control (CDC) has issued additional interim guidance for businesses and employers to plan and respond to COVID-19. This guidance reiterates that a key element in controlling the spread of the virus in the workplace is to maintain a healthy work environment. To do so, the CDC encourages employers to, among other things, provide employees resources for proper hand hygiene and respiratory etiquette, perform routine environmental cleaning, as well as enhanced cleaning if an infected person is in the facility, advise employees before traveling to take additional precautions, and carefully consider the necessity of in-person meetings and gatherings.

The CDC has further recommended that individuals practice “social distancing,” including physically distancing at least 6 feet from others and not gathering in groups, to limit face-to-face contact with others. Given this recommendation, the CDC encourages employers to develop policies and practices to continue this social distancing in the workplace, whether by limiting the amount of people in the building or increasing the physical space between workers in the worksite.

## **Know (and follow) the safety guidelines for your industry and State.**

Upon reopening specific industries that may have been closed by state executive order, individual states have implemented specific safety standards for the reopening of those industries. North Dakota Governor Doug Burgum signed an amended executive order providing additional guidance for businesses that are resuming or continuing operations under “North Dakota Smart Restart” protocols. These protocols were developed in collaboration with the business community and incorporate CDC and OSHA guidance referenced above. Restrictions on physical distancing, limited gathering sizes, personal protective equipment, hygiene and cleaning, and other special measures are outlined in these ND-specific protocols, which can be found on the state’s COVID-19 response website: [ndresponse.gov](http://ndresponse.gov).

Implementation is critical for employers in North Dakota not only to ensure that they are abiding by their duty under OSHA, but also to reduce the risk of claims by returning employees that the employer failed to provide a healthy and safe working environment. Currently, North Dakota Workforce Safety & Insurance (WSI) has indicated that only first responders, health care workers, and funeral home personnel qualify for benefits if they contract COVID-19 while working, thus absolving their employers from liability due to the immunity they receive under North Dakota’s WSI laws. Whether or to what extent employers would be liable to employees for failing to provide a safe or healthy workplace is not clear at this point, but given the absence of WSI benefits for most employees contracting COVID-19 at the workplace and, thus, protection for most employers under WSI’s laws, this liability could exist. To provide the safest workplace possible and limit this liability exposure, development and implementation of clear and strong policies is essential.

Overall, when planning a reopening, employers should consider the guidance from these agencies and develop their own individualized policies on how to reduce the spread of the virus within their specific workplaces and among their employees. Policies may vary based on the specific business operations of the employer, but they should emphasize healthy practices. Once policies are developed and businesses are back in operation, employers should aggressively and consistently implement them to ensure employees stay safe and healthy.

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