

Reminder to Essential Businesses: Ensure You are in Compliance with Federal, State, and Local Safety Orders

When COVID-19 first hit, many employers were initially faced with the need to identify if they qualified as an essential business under the operative orders issued by the federal and state governments, and then come into compliance with safety measures, all while ensuring compliance with other requirements such as those laid out by the Americans with Disabilities Act. Now, for those businesses that are still operating in our new normal, it is important to ensure that you are staying abreast of the most recent workplace safety directives, including those from your local county and municipality, as, like our knowledge of the virus, the requirements are evolving.

Examples of the changes that have come into effect the past few days include directives from the Centers for Disease Control (“CDC”). Specifically, on April 8th the CDC issued new guidelines for critical infrastructure workers, which are meant to make it easier for those who have been exposed to someone with the new coronavirus to return to work if they are asymptomatic. Under this new guidance, those workers should adhere to the following practices prior to and during their work shift:

- **Pre-Screen:** Employers should measure the employee’s temperature and assess symptoms prior to them starting work. Ideally, temperature checks should happen before the individual enters the facility.
- **Regular Monitoring:** As long as the employee does not have a temperature or symptoms, they should self-monitor under the supervision of their employer’s occupational health program.
- **Wear a Mask:** The employee should wear a face mask at all times while in the workplace for 14 days after last exposure. Employers can issue facemasks or can approve employees’ supplied cloth face coverings in the event of shortages.
- **Social Distance:** The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.
- **Disinfect and Clean work spaces:** Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.

Likewise, a number of counties and municipalities have recently issued Orders that require employees to wear face masks while at work, including the City of Carson, the City of Lancaster, the City of Laguna Beach, San Bernardino County and Riverside County. As of the time of the preparation of this article, other counties and municipalities are considering similar requirements, but are instead “strongly encouraging” the use of protective face gear.

Some jurisdictions have gone a step further and included other provisions for worker safety, such as handwashing. In particular, today the City of Los Angeles' Worker Protection Order ("WPO"), goes into effect. Based on the outsized risk of exposure to the COVID-19 virus faced by many workers of essential businesses, the WPO states that each employee of the following types of essential businesses must wear a face mask or face covering:

- Grocery stores, supermarkets, convenience stores, warehouse stores, farmers markets and other businesses that sell food;
- Restaurants and retail food facilities that offer food to individuals via delivery, drive-thru or for pick up;
- Individuals and businesses that deliver groceries, food and beverages directly to residences or businesses;
- Businesses and organizations that provide food, social services and other necessities of life to economically needy or otherwise disadvantaged individuals;
- Hardware and building supply stores and nurseries;
- Taxies, ride sharing services, car rental companies and private transportation services;
- Hotels and motels;
- Plumbers, electricians, janitorial workers, handyman services, landscapers and gardeners; and
- Laundromats and drycleaners.

Under the Los Angeles WPO, employers must also allow employees to wash their hands at least every 30 minutes and social distancing protocols remain intact. Businesses are encouraged, but not required, to install Plexiglass between cashiers and customers.

Note that many of these Orders require the employer to bear the burden of providing the face masks or face coverings to employees or reimburse them for the costs of the same. Even if the obligation for bearing the cost is not expressly provided in such an Order, employers should strongly consider taking on the cost as failure to do so many later raise a claim under California Labor Code section 2802.

Finally, as a reminder, the Occupational Safety and Health Act's ("OSHA") general duty clause requires employers to "furnish to each of his employee's employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." Class-action lawsuits are already being filed by employees with claims that their employers are not taking the required steps to ensure their safety, citing in part to this general duty clause. OSHA is regularly updating its webpage with information on how to protect workers from potential exposures and guidance for employers, and it is advised that employers check in regularly to stay abreast of the latest requirements.

At Buchalter, we understand that these are challenging and rapidly changing times. We have attorneys experienced in adapting and navigating clients through these trying environments and are here to help however you need. If we can be of assistance, please feel free to contact the Buchalter Attorney below.



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