



BRUBAKER CONNAUGHTON
GOSS & LUCARELLI
ATTORNEYS AT LAW

DEPARTMENT OF HEALTH ISSUES NEW ORDER DIRECTING PUBLIC HEALTH SAFETY MEASURES FOR BUSINESSES PERMITTED TO MAINTAIN IN-PERSON OPERATIONS

April 16, 2020

On April 15, 2020, the Pennsylvania Department of Health issued a [Public Health Order](#) directing safety measures by businesses that are permitted to maintain in-person operations under the Governor's Closure Order. Compliance will be enforced beginning Sunday, April 19th at 8:00 p.m. The Order directs operating businesses to immediately implement specific social distancing, mitigation and cleaning protocols, which mirror the recommendations issued by the CDC.

Businesses permitted to maintain in-person operations are required to do the following:

- Maintain pre-existing cleaning protocols.
- Routinely clean and disinfect high-touch areas in spaces that are accessible to customers, tenants or other individuals.
- Establish protocols to execute if the business is exposed to a person who is probable or confirmed case of COVID-19.
- Stagger start and stop times for employee work shifts.
- Stagger employee break times and provide sufficient space for employees to social distance while on break.
- Limit the number of persons in common areas.
- Conduct meetings and trainings virtually.
- Provide employees access to regular handwashing, hand sanitizer and disinfectant wipes.
- Provide masks for employees to wear and make it *mandatory* to wear masks at the work site.
- Ensure a sufficient number of employees to perform all measures required under the Order, to control access, maintain order and enforce social distancing of at least 6 feet.
- Prohibit non-essential visitors.
- Ensure that employees are made aware of all required procedures under the Order, orally or in writing in their native or preferred language as well as English.

Businesses that serve the public within a building or defined area such as grocery stores and other essential retail stores, must do the following:

- Where feasible, conduct business by appointment only. When this is not possible, limit occupancy to no greater than 50% of the number stated on the certificate of occupancy.
- Alter hours of operation to permit sufficient time to clean and restock.
- Install shields or other barriers at registers and check-out areas.
- Encourage use of online ordering by providing pick-up or delivery.
- Designate a specific time for high risk and elderly person to use the business at least once per week.
- Require all customers to wear masks on the premise, and deny entry to those not wearing masks.

- In businesses with multiple check out lines, use every other register or fewer. Rotate registers every hour.
- Scheduling handwashing breaks for employees at least every hour.
- Where carts and handbaskets are available for customers, assign an employee to wipe down carts and handbaskets before they are available to customers.

OSHA ISSUES UPDATED GUIDANCE ON RECORDKEEPING AND ENFORCEMENT

OSHA recently issued two enforcement memos outlining guidance for businesses during the pending COVID-19 outbreak.

Enforcement Guidance for Recording of Cases of COVID-19

Under OSHA's normal recordkeeping requirements, COVID-19 is a recordable illness which employers must record on their OSHA logs if the occurrence is work-related. In an [Enforcement Memo](#) issued on April 10, 2020, OSHA acknowledged that employers may have difficulty determining whether employees who contracted COVID-19 were exposed at work. In light of this difficulty, OSHA is exercising its enforcement discretion as follows:

- Employers of workers in the healthcare industry, emergency response organizations and correctional institutions must continue to make work-relatedness determinations as usual under OSHA's recording standard.
- For all other employers, OSHA will not enforce its recording standard to require employers to make work-relatedness determinations, *except where*:
 - There is objective evidence that a COVID-19 case may be work-related (for example, a number of COVID-19 cases developing among a group of employees that work closely together); and
 - The evidence was reasonably available to the employer (for example, information provided to or learned by an employer).

Interim Enforcement Response Plan for COVID-19

On April 13, 2020, OSHA issued an [Interim Memorandum](#) to its Area Offices and compliance safety and health officers (CSHOs) providing guidance and instructions for handling COVID-19-related complaints, referrals and severe illness reports. The Memorandum indicates that, in conducting site inspections, CSHOs should take into account current CDC guidance when evaluating workplace hazards and the adequacy of an employer's protective measures for workers.

Businesses that have not already done so should immediately review and implement the CDC's [Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19](#). Many of the CDC's recommendations have been incorporated into the Department of Health's Order for Pennsylvania. Failure to comply with these requirements could result in enforcement if OSHA receives an employee complaint.

If you have questions about the new Public Health Order or your workplace safety obligations, BCGL's Employment Team of Theresa Mongiovi (theresam@bcgl-law.com) and Angela Sanders (angelas@bcgl-law.com) are available to assist you.