

New Order from Arizona Governor and New OSHA Guidance Put Multi-State Employers in a Quandary with Reopening Plans

Alert

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Arizona Executive Order

Arizona's Governor Doug Ducey issued an [executive order](#) laying out efforts to contain the spread of COVID-19. This executive order follows a spike in confirmed COVID-19 cases after Arizona re-opened last month. While many states remain actively in the reopening phase, Arizona is among the first states to issue a more restrictive order with California following suit by [issuing an order](#) requiring face coverings throughout the state. The Arizona order includes the following:

- It directs the Arizona Department of Health Services (ADHS) to implement a statewide system for investigation and contact tracing until such procedures are available at the local level. The Arizona National Guard can be activated as part of this effort.
- It directs businesses to assist to “contain the spread” by updating and enforcing written policies based on OSHA and ADHS guidance.
- It allows counties, cities or towns to adopt policies requiring face coverings in public.
- The provisions are enforceable by law enforcement and regulatory agencies, but enforcement should first focus on education and compliance assistance.

With the order, Arizona issued requirements for [businesses](#) and [restaurants](#) that go into more detail about developing, updating and implementing plans and procedures to comply with the order. In the press release announcing the order, Governor Ducey also pledged to continue expanding diagnostic testing, focusing on long-term care settings, and enhancing safe workplace recommendations.

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The situation in Arizona is one example of the challenges facing multi-state employers as they struggle with creating cohesive plans for reopening their workplaces. While the White House has issued guidance for reopening the economy, there is no framework that applies consistently across the nation. As a result, states are left to issue their own reopening plans. In many cases, states have opted to allow individual cities or counties to decide on reopening, or as was the case in Arizona, leave it up to businesses to determine best protocols for reopening. In other jurisdictions, states have formal phased approaches where milestones based on scientific data must be reached before moving into the next phase of reopening. These milestones are inevitably met at different times in different locations.

The patchwork reopening guidance and differences in stages of reopening across the country puts multi-state employers in a quandary. Best practice in this case is to review CDC guidance on reopening for employers, OSHA guidance, and all state and local requirements and recommendations applicable to that employer. Where there are inconsistencies among the different guidelines, employers should consider implementing the most restrictive approach to ensure compliance across the board while applying a cohesive approach to reopening all offices regardless of location. Alternatively, employers can take a location-by-location approach to reopening their offices if they are up for the administrative and logistical challenge created by a multi-city reopening plan.

New OSHA Return to Work Guidance

While Arizona pivots to “contain the spread,” [OSHA issued guidance](#) to assist non-essential businesses with returning to work and launched a series of webinars to discuss how it is helping workers and employers by reducing regulatory burdens and making it easier to understand how to comply with the law. Over the next two weeks, webinars will be held for the following sectors: agriculture, manufacturing and construction, food service, and health care and emergency responders.

The new OSHA guidance largely mirrors the three phases of reopening identified in the [White House Guidelines for Opening Up America Again](#):

In addition, the guidance outlines the policies and procedures that should be developed and implemented to address preventing, monitoring for and responding to COVID-19 cases in the workplace, including:

- Hazard assessments to determine when, where, how and to what sources of COVID-19 workers are likely to be exposed to as part of their job duties
- Hygiene practices
- Social distancing practices
- Identification and isolation of sick employees, including practices for self-monitoring or screening

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- Returning to work after illness or exposure
- Administrative and engineering controls, safe workplace practices and PPE selected after the hazard assessment
- Workplace flexibilities, including telework and sick leave
- Training on COVID-19 and workplace practices
- Anti-retaliation practices

The guidance also includes an FAQ that discusses COVID-19 testing of employees (allowed if applied in a transparent and non-retaliatory manner, and recognizing that the testing is not always accurate and does not replace other safe workplace practices), employee health screenings (same considerations and flagging obligations in the event screenings create medical records), and hazard assessments (for PPE and administrative and engineering control determinations).

The guidance primarily reiterates existing guidance issued by OSHA and the CDC. However, because this guidance is the most recent of only a handful of guidance issued at the federal level, practically it may become enforceable as industry standard from either a regulatory enforcement or civil liability perspective. So, as with all COVID-19 guidance, it should be evaluated to determine how it can be implemented as part of safe workplace practices and procedures.

For more information on Arizona's new order or OSHA's reopening guidelines, please contact [Brittany Barrientos](#), [Elizabeth Chatham](#), [Molly Walsh Keppler](#), [Sharon Ng](#) or the Stinson LLP contact with whom you regularly work.

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