

Worker Safety Measures Ordered in Pennsylvania and Other Jurisdictions

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Pennsylvania Governor Tom Wolf has announced new measures to be taken by those businesses deemed life-sustaining to further mitigate the spread of COVID-19 and to protect the safety of employees and customers. On April 15, 2020, the Pennsylvania Secretary of Health issued an Order directing life-sustaining businesses that are permitted to operate to implement specific measures including social distancing, mitigation, and cleaning protocols. The April 15th Order follows a previous Order issued by the Pennsylvania Secretary of Health effective April 6, 2020 which directed certain building owners to undertake building safety measures, including cleaning and disinfection pursuant to government protocols. Per the Secretary of Health, the Order recognizes that certain life-sustaining businesses must remain open despite the need for strong mitigation efforts, and directs employers to take certain actions to protect “the health and lives” of their employees and employees’ families, as well as their customers who depend on their services. “Special consideration is required to protect not only customers, but the workers needed to run and operate these establishments.”

The Order contains specific protocols to be followed by businesses, including the following directives. Any business that is authorized to conduct in-person operations as a life-sustaining business, other than healthcare providers, must implement these actions. On April 21, the Pennsylvania Department of Health released a FAQ on the Order.

Routine Cleaning and Disinfection

- Routinely clean and disinfect high-touch areas in accordance with Centers for Disease Control and Prevention (CDC) Guidelines in spaces that are accessible to customers, tenants and others.
- Maintain pre-existing cleaning protocols in all other areas of the building.

Establish a Mitigation Action Plan in Event of COVID-19 Exposure in Workplace

- Establish protocols to implement upon discovery that the business has been exposed to a “probable or confirmed case of COVID-19.”
- The protocols are to include the following measures:
 - Close off areas visited by the person who is a probable or confirmed case of COVID-19; open outside doors and windows and ventilate the space; wait at least 24 hours before conducting a cleaning and disinfection of all areas visited by the ill person.
 - Identify employees that were in “close contact” with the individual with the probable or confirmed COVID-19 case within the period of 48 hours before onset of symptoms to the time the patient isolated. “Close contact” is defined as being within six feet for approximately 10 minutes or more. Employees who are identified but who are asymptomatic are to follow the CDC Guidance, “Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19.” Identified employees who become sick during the work day are to be sent home immediately, and the work area is to be cleaned and disinfected. A list is to be compiled of individuals who had close contact with the ill employee within 48 hours before onset of symptoms. Businesses are to promptly notify employees who are close contacts of any known exposure to COVID-19 at the business premises. Such notification must be made in a manner “consistent with applicable

confidentiality laws.” Business are to ensure that they maintain sufficient staff to timely and effectively implement these measures.

- Note: The Americans with Disabilities Act provides for confidentiality of employee medical information. Accordingly, employers should ensure that when they provide notification of exposure to COVID-19, they do not name the employee who is ill.
- Implement temperature screenings before employees enter the business, prior to each shift. Employees who have a fever of 100.4 degrees or higher must be sent home. Social distancing must be implemented while employees wait to have their temperature taken.
 - Note: The EEOC has published Technical Assistance addressing employer temperature screening practices in compliance with the Americans with Disabilities Act. The employer should maintain the temperature screening log as a confidential medical record. Employers should consider other steps such as ensuring that temperature screenings are conducted in a safe and confidential manner.
- Sick employees should notify their supervisor of any COVID-19 symptoms (cough, fever, shortness of breath) and stay home.
- Sick employees should follow CDC Guidelines and not return to work until they meet CDC criteria and in consultation with their medical providers and with state and local health department guidelines.

Social Distancing of Employees

- Stagger employee start and stop times when practicable to prevent large groups of employees entering and leaving work at the same time.
- Provide sufficient space for employees during meal and break times such that employees may maintain a distance of six feet. Additionally, employee seating during breaks and meals must be arranged so that employees do not sit across from each other.
- Stagger break times so that social distancing of at least six feet may be followed.
- Limit the number of people permitted in employee common areas such as break rooms, lunch rooms, conference rooms, so that social distancing of a six feet may be maintained.
- Conduct meetings and trainings virtually. In the event this is not possible, any necessary in-person meeting must be limited to 10 employees at one time, and all attendees must maintain social distancing of six feet.
- Provide employees with access to handwashing with soap, hand sanitizers, and disinfectant wipes. Additionally, employers must ensure that common areas are cleaned on a routine basis, including between shifts.
- Provide employees with masks to wear during their time at the business. Employers are to make mask-wearing mandatory while employees are on the premises, with the only exception being to eat or drink during a break.
- Employers must ensure that they have a sufficient number of employees to effectively enforce these actions, including controlling access, maintaining order, and enforcing social distancing.
- Prohibit non-essential visitors from entering the premises.
- Ensure that all employees are made aware of these requirements, either orally or in writing.

Special Measures Applicable to Businesses that Serve the Public

In addition to the above, the Order provides that businesses, other than healthcare providers, that "serve the public in a building or other defined area" are to implement the following measures:

- Businesses should conduct business with the public by appointment only, "where feasible." If this is not feasible, businesses must limit occupancy to no greater than 50% of the number stated on the certificate of occupancy at any given time. Additionally, businesses must maintain social distancing of six feet at check-out lines, and post signs throughout the site requiring social distancing by both employees and customers;
- Alter business hours to the extent necessary, based on building size and number of employees, to permit sufficient time for restocking and/or cleaning;
- Install shields or other barriers at registers to physically separate cashiers and customers;
- Encourage online ordering by providing delivery or pick-up options;
- Designate a specific time, at least once a week, for high-risk and elderly individuals to use the business if there is a continuing in-person customer facing component;
- Require all customers to wear masks while on premises, "and deny entry to individuals not wearing masks," unless the business is providing medication, medical supplies, or food, in which case the business must provide alternative methods of pick-up and delivery. An exception is provided for individuals who have a medical condition that prevents wearing a mask (no documentation may be required to substantiate) and children under the age of two;
- Limit the number of check-out lines to every other register; rotate lines; and clean check-out areas between rotations, including previously used registers and credit-card machines;
- Schedule employee handwashing breaks at least every hour; and
- Assign employees to wipe down carts and baskets in-between use by customers.

Other Jurisdictions

Employers within Pennsylvania should be aware that other local authorities have issued guidance that may include additional requirements and protocols beyond those required by the Pennsylvania Secretary of Health. For example, the City of Philadelphia Department of Health has issued several guidances for businesses addressing COVID-19 issues in the workplace. The guidances include, by way of example, what to do if an employee has a confirmed or possible case of COVID-19, best practices for cleaning and disinfecting, and strategies for social distancing.

In addition to the new restrictions announced by Governor Wolf, Connecticut, Maryland, New York, New Jersey, Rhode Island and other state and local governments have also announced restrictions. For example, New York Governor Andrew Cuomo ordered "[e]ffective at 8 p.m. on Friday, April 17, 2020 any individual who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or cloth face-covering when in a public place and unable to maintain, or when not maintaining, social distance." New Jersey Governor Philip Murphy issued an Order effective April 10, 2020 that is similar to Governor Wolf's Order in some respects.

If you have any questions, please contact Nancy Conrad (conradn@whiteandwilliams.com; 610.782.4909), George Morrison (morrison@whiteandwilliams.com; 610.782.4911), Tanya Salgado (salgadot@whiteandwilliams.com; 215.864.6368) or another member of the Labor and Employment Group.

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