
Prepared by Gust Rosenfeld, P.L.C.

Jennifer MacLennan, Esq. | 602.257.7475 | maclennan@gustlaw.com
Robert Haws, Esq. | 602.257.7976 | rhaws@gustlaw.com
Susan Segal, Esq. | 602.257.7425 | spsegal@gustlaw.com
Carrie O'Brien, Esq. | 602.257.7414 | cobrien@gustlaw.com
Brittany Reed, Esq. | 602.257.7963 | reed@gustlaw.com

The purpose of this document is to provide general information on preparing school district workplaces for re-opening now that Governor Ducey has determined that the Stay Home, Stay Healthy, Stay Connected Executive Order will expire on May 15, 2020. Additional guidance is expected to be issued by the Superintendent of Public Instruction Kathy Hoffman regarding the potential re-opening of schools for students. The purpose of this guidance is to provide measures for school districts to consider regarding the re-opening of administrative offices and other workplaces. School districts are encouraged to contact the Trust or their selected legal counsel for specific legal advice. Citations to guidance provided by the Center for Disease Control (CDC), the Equal Employment Opportunity Commission and the U.S. Department of Labor are below.

I. Stay Healthy, Return Smarter, Return Stronger Order

Executive Order 2020-36 issued May 12, 2020 states as follows regarding businesses operating in Arizona are required to develop, establish and implement policies based on guidance from the CDC, Department of Labor, Occupational Safety and Health Administration (OSHA) and the Arizona Department of Health Services to limit and mitigate the spread of COVID-19 including the following:

- Promoting health hygiene practices;
- Intensifying cleaning, disinfection and ventilation practices;
- Monitoring for sickness;
- Ensuring physical distancing;
- Providing necessary protective equipment;
- Allowing for and encouraging teleworking where feasible;
- Providing plans, where possible, to return to work in phases; and
- Limiting the congregation of groups of no more than ten (10) persons when feasible and in relation to the size of the location.

II. Phased Approach

The Center for Disease Control has indicated that employers should follow the White House guidelines for opening up the country using a phased approach based on current levels of transmission and health care capacity. Districts may wish to consider a tiered approach.

Any efforts to reduce transmission must comply with all local orders of the Governor's office and the county health department. The CDC recommends that all employers consider how best to decrease the spread of COVID-19 and lower the impact in the workplace. This should include activities to:

- prevent and reduce transmission among employees,
- maintain healthy business operations, and
- maintain a healthy work environment.

Districts may wish to consider graduating the return to work to a physical building or consider a team based approach to returning to work so that the entire work force doesn't return at the same time.

III. CDC Interim Guidance for Businesses

The CDC issued new interim guidance to businesses on May 6, 2020 regarding those seeking to resume normal or phased business operations: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

The strategies discussed include:

- Conducting daily health checks;
- Conducting a hazard assessment of the workplace;
- Allowing employees to wear face covering in the workplace, if appropriate;
- Implementing policies and practices for social distancing in the workplace; and
- Improving the building ventilation system.

The CDC has published tables that address a tiered response.

IV. Preventing and Reducing Transmission Among Employees

A. Actively encourage sick employees to stay home

Employees who have symptoms should notify their supervisor and stay home. Sick employees should follow CDC guidelines regarding care and return to work, in consultation with health providers. Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor.

B. Consider conducting daily in-person or virtual health checks

Employers may conduct limited screening to ensure the health of the work force, including screening for symptoms and/or temperature screening of employees before they enter the facility,

in accordance with state and local public health authorities. If a district is going to conduct an in-person health check, it should conduct them safely and respectfully. Employers may use social distancing, barrier or partition controls, or personal protective equipment (PPE) to protect the screener. The CDC has provided businesses with specific direction regarding conducting any health checks: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html> in the General Business Frequently Asked Questions. Districts would need to make any health screening as private as possible and to maintain confidentiality.

C. Identify where and how workers might be exposed to COVID-19 at work.

Districts may wish to conduct a hazard assessment in the workplace to determine and identify any potential hazards. The district should implement a combination of controls to limit the spread of COVID-19, including engineering controls, workplace administrative policies, and personal protective equipment (PPE) to protect workers from the identified hazards. The CDC recommended controls include:

- Conduct a thorough hazard assessment to determine if workplace hazards are present, or are likely to be present, and determine what type of controls or personal protective equipment (PPE) are needed for specific job duties.
- When engineering and administrative controls cannot be implemented or are not fully protective, employers are required by the Occupation Safety and Health Administration (OSHA) standards to:
 - Determine what PPE is needed for their workers' specific job duties,
 - Select and provide appropriate PPE to the workers at no cost, and
 - Train their workers on its correct use.
- Encourage workers to wear a cloth face covering at work if the hazard assessment has determined that they do not require PPE.
- Remind employees and visitors that the CDC recommend wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain, especially in areas of significant community-based transmission. Wearing a cloth face covering, however, does not replace the need to practice social distancing.

OSHA guidance on Preparing Workplaces for COVID 19 is found at:
<https://www.osha.gov/Publications/OSHA3990.pdf>

D. Separate sick employees:

Employees who appear to have symptoms upon arrival at work or who become sick during the day should immediately be separated from other employees and visitors, and sent home. Districts should have a procedure in place for the safe transport of an employee who becomes sick while at work. The employee may need to be transported home or to a healthcare provider.

E. Take action if an employee is suspected or confirmed to have COVID-19 infection:

CDC indicates that, in most cases, employers will not need to shut down the facility. If it has been less than seven (7) days since the sick employee has been in the facility, close off any areas used for prolonged periods by the sick person:

- Wait 24 hours before cleaning and disinfecting to minimize potential for other employees being exposed to respiratory droplets. If waiting 24 hours is not feasible, wait as long as possible.
- During this waiting period, open outside doors and windows to increase air circulation in these areas.

If it has been seven (7) days or more since the sick employee used the facility, additional cleaning and disinfection is not necessary. Continue routinely cleaning and disinfecting all high-touch surfaces in the facility. Employees responsible for cleaning should be trained in the appropriate methodology and should follow the CDC guidance regarding cleaning and disinfecting: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.

School districts will need to determine which employees may have been exposed to the virus and may need to take additional precautions. Districts should seek guidance regarding informing other employees of their potential exposure without identifying the sick individual. The Arizona Attorney General's office has issued guidance on this issue, as has the Trust.

Districts must assess whether exposed individuals should stay home for fourteen (14) days and telework if possible. Certain employees may be unable to telework and may be deemed as critical infrastructure workers. Employers in critical infrastructure may have to manage potentially exposed workers' return to work in ways that best protect the health of those workers, their co-workers, and the general public.

An employee exhibiting symptoms who seeks a medical diagnosis may be entitled to leave under the Families First Coronavirus Recovery Act and can use other accrued leave.

F. Educate employees about steps they can take to protect themselves

Encourage employees to follow any new policies or procedures related to illness, cleaning and disinfecting, and work meetings and travel. Advise employees to stay at home if they are sick, keep their supervisor informed, wash their hands often with soap and water for at least twenty (20) seconds or to use hand sanitizer with at least 60% alcohol if soap and water are not available, avoid touching their eyes, nose, and mouth with unwashed hands, and use coughing and sneezing etiquette.

G. Social Distancing

Districts should practice social distancing by avoiding gatherings of more than ten (10) during the initial reopening and maintaining distance (at least six (6) feet) from others when possible. Districts should consider altering workspace to help workers and members of the public maintain

social distancing and physically separate employees from each other and from visitors, when possible. Here are some strategies suggested for consideration issued by the CDC:

- Implement flexible worksites (e.g., telework).
- Implement flexible work hours (e.g., rotate or stagger shifts to limit the number of employees in the workplace at the same time).
- Increase physical space between employees at the worksite by modifying the workspace.
- Increase physical space between employees and visitors (e.g., drive-through service, physical barriers such as partitions).
- Use signs, tape marks, or other visual cues such as decals or colored tape on the floor, placed 6 feet apart, to indicate where to stand when physical barriers are not possible.
- Implement flexible meeting and travel options (e.g., postpone non-essential meetings or events in accordance with state and local regulations and guidance).
- Close or limit access to common areas where employees are likely to congregate and interact.
- Prohibit handshaking.
- Deliver services remotely (e.g., phone, video, or web).
- Use of remote meeting platforms.
- Maintain groups of employees (such as by shift) so as to limit exposure.

All changes to the work space or common areas should be communicated. Districts should revisit visitor policies during the various phases, including limiting access to certain parts of buildings or having separate entrances.

H. Face Coverings

There is currently not a specific state or federal regulation requiring the wearing of face coverings. Certain workers such as health care workers are required to wear personal protective equipment (PPE) such as a respirator. Respirators, including those intended for use in healthcare settings, are certified by the CDC and other regulatory agencies.

The CDC recommends wearing a cloth face covering in public settings where other social distancing measures are difficult to maintain, especially in areas of significant community transmission. These face coverings are not surgical masks or respirators and are not appropriate substitutes for them in workplaces where masks or respirators are recommended or required.

Districts should allow any employee to wear a face mask if the employee chooses and may wish to consider requiring them for employees who will be regularly interacting with the public. District may require the use of face coverings if it chooses to do so.

I. For employees who commute to work using public transportation or ride sharing,

Districts can consider offering employees incentives to use forms of transportation that minimize close contact with others, such as offering reimbursement for parking or single-occupancy ride

shares. Districts may allow employees to shift their hours so they can commute during less busy times. Districts should ask employees to wash their hands.

J. Give employees and visitors what they need to clean their hands and cover their coughs and sneezes.

- Provide tissues and no-touch trash cans.
- Provide soap and water in the workplace. If soap and water are not readily available, use alcohol-based hand sanitizer that is at least 60% alcohol. Ensure that adequate supplies are maintained.
- Ideally, place touchless hand sanitizer stations in multiple locations to encourage hand hygiene.
- Place posters that encourage hand hygiene to help stop the spread at the entrance to your workplace and in other workplace areas where they are likely to be seen. This should include signs for non-English speakers, as needed.
- Discourage handshaking. Encourage employees to use other noncontact methods of greeting.

K. Additional Measures

Districts should practice routine cleaning and disinfection of frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, and doorknobs. Dirty surfaces can be cleaned with soap and water prior to disinfection. Care should be taken to avoid using other employees' phones, desks, offices, or other work tools and equipment, when possible. Districts may wish to create a system for reporting increased cleaning.

V. Supporting Employees

School districts will need to evaluate each situation if an employee indicates that he or she is unwilling to return to a physical location. In some circumstances, the employee may be entitled to leave under the Families First Coronavirus Recovery Act. In others, the employee may be entitled to accommodations under the Americans with Disabilities Act.

Certain employees are at a higher risk for severe illness. The EEOC's guidance on this issue states that the employer cannot decide to exclude these individuals unless the condition creates a "direct threat" for the employee or others. See <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>. If school districts require employees to return to work at a physical location, school districts may evaluate accommodating those vulnerable employees who ask for an accommodation by considering the following options:

- Engage in an interactive process and consider options such as telework, reassignment to an open position, or leave.
- Consider offering vulnerable workers duties that minimize their contact with visitors and other employees.

- Ensure that any other businesses and employers sharing the same workspace follow guidance.

School districts may wish to consider designating an individual to respond to COVID-19 concerns in the workplace. Districts should encourage employees to use their employee assistance programs (EAPs) during this crisis.

Disclaimer: This document has been prepared for general informational purposes only and is not intended as legal advice or a substitute for legal advice.

Links:

Executive Order 2020-36: https://azgovernor.gov/sites/default/files/executive_order_2020-36_return_stronger.pdf

White House guidelines for Opening Up America: <https://www.whitehouse.gov/openingamerica/>

CDC Interim Guidance for Businesses and Employers Responding to COVID19: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

CDC guidance for community spaces and schools: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>

CDC guidance re re-opening: <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>

CDC guidance re community mitigation framework: <https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html>

CDC guidance for schools and child care facilities: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/index.html>

CDC Interim guidance for Administrators of K-12 schools: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>

CDC guidance re cleaning and disinfecting: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

EEOC Guidance re ADA, Section 504 and COVID19: <https://www.eeoc.gov/wysk/what-you-should-know-about-ada-rehabilitation-act-and-coronavirus>

OSHA guidance on Preparing Workplaces for COVID19: <https://www.osha.gov/Publications/OSHA3990.pdf>