

Employers: Set Yourself Up for COVID-19 Prevention; Self-Certification of Your Plan is Now Required!

Some employers have been lucky enough to continue their operations through remote work or on-site if exempted from shelter-in-place orders. But luck and good management alone may not suffice nowadays. Prevention and planning will be among an employer’s most powerful moves to avoid or reduce potential legal exposure, especially regarding occupational safety, in this unprecedented contagion where the likelihood of employment litigation increases as the pandemic unfolds.

As Puerto Rico prepares to reopen its economy, the Governor issued Executive Order 2020-038 (“EO”) on May 1, 2020, relaxing the shelter-in-place restrictions and broadening the businesses and industries exempted from prior lockdown orders. At the same time, the Puerto Rico Department of Labor and Human Resources (“PR DOL”) has imposed new responsibilities on employers who must self-certify their COVID-19 Exposure Control Plan (“Control Plan”) before reopening their businesses (“Employer Self-Certification”) or risk the imposition of fines. In the case of businesses and industries that were already exempted, the Employer Self-Certification must be submitted as soon as practicable without suspending operations.

On May 1, 2020, the PR DOL issued Circular Letter 2020-03 (“CL”) addressing the requirements of the Employer Self-Certification and supplementing its prior April 15, 2020, letter about the mandated adoption of the Control Plan. Please, see our April 22, 2020 Notice: “Employers: It’s Time to Have Your Workplace Safety Contingency Plan Ready!” for more details. Per the CL, the Employer Self-Certification must confirm that the Control Plan satisfies all the PR DOL requirements addressed in the April 15, 2020 letter. But the CL goes a step further and, in essence, has added or modified requisites of the Control Plan as follows:

- It must establish risk classifications depending on the level of potential exposure (high, medium or low risk);
- Restrict access to common areas such as lunchrooms, to limit the number of employees in them;
- Contain control measures to promote social distancing between employees, clients and public;
- Ensure adequate ventilation for proper airflow and effective air filters in places with air conditioning systems;
- Establish a schedule for employees to wash their hands;
- Describe monitoring practices of positive cases and their inclusion in Form OSHA 300;
- Describe handling of high-risk groups such as pregnant employees and personnel over 65 years of age or with pre-existing health conditions;
- Address the use of face coverings, which is now compulsory; and
- In the case of unionized workplaces, indicate discussion of the Plan with labor organizations and certify compliance with the applicable collective bargaining agreement.

Other COVID-19 control measures not addressed by the CL such as taking body temperature and contagion or possible exposure questionnaires and COVID-19 testing are subject to additional guidelines issued by the Equal Employment Opportunity Commission (“EEOC”). Employers must also comply with employment antidiscrimination and antiretaliation laws and applicable confidentiality obligations. In that respect, the PR DOL encouraged employees to report unsafe working conditions, failure to provide the necessary personal protective equipment or failure to comply with the self-certified Control Plan to the PR DOL. Employees and labor unions may also file a confidential complaint against the employer.

The Employer Self-Certification, may be obtained in the [PR DOL’s webpage](#) and must be completed in full, signed by the employer’s authorized representative and sent along with the Control Plan to autocertificacionprosha@trabajo.pr.gov. Submitting the self-certification will constitute consent to appear on the public online list to be published by the PR DOL naming the employers in compliance with the Employer Self-Certification and thus authorized to operate their business.

While self-certification seems as yet another nuisance in this non-stop regulatory tsunami, self-certification of a well-thought-out, bona-fide and compliant COVID-19 prevention plan can be a blessing in disguise and a shield against litigation and penalties. Our COVID-19 multidisciplinary taskforce is available to assist you address all regulatory requirements and related practical considerations.

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us at your convenience.

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