



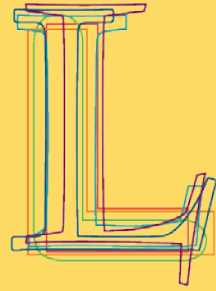
COVID-19: Insights and Guidance

An ABC webinar series featuring industry experts to answer your questions about the legal, safety and economic impacts of COVID-19.



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COVID-19 and OSHA Compliance

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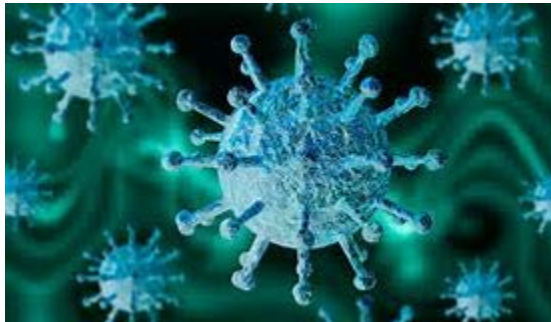
Agenda

- Understanding COVID-19 and How it is Spread
- What to Include in a Response and Preparedness Plan
- Respirator Use
- Job Cleaning Best Practices
- OSHA Interim Enforcement
- Essential Employees
- OSHA Recording



What is COVID-19?

- The novel coronavirus, COVID-19 is one of seven types of known human coronaviruses. COVID-19, like the MERS and SARS coronaviruses, likely evolved from a virus previously found in animals.
- Patients with confirmed COVID-19 infection have reportedly had mild to severe respiratory illness with symptoms such as fever, cough, and shortness of breath.



How is COVID-19 Spread?

- COVID-19, like other viruses, can spread between people.
- Infected people can spread COVID-19 through their respiratory secretions, especially when they cough or sneeze.
- According to the CDC, spread from person-to-person is most likely among close contacts (about 6 feet).
- Person-to-person spread is thought to occur mainly *via* respiratory droplets produced when an infected person coughs or sneezes, like how influenza and other respiratory pathogens spread.
- Asymptomatic persons can also spread the virus.

COVID-19 Prevention, Preparedness, and Response Plan

- Important to develop a prevention, preparedness, and response plan specific to COVID-19.
- Communicate the plan regularly to all employees.
- Monitor developments and update the plan as necessary.
- The plan should have several major components.



COVID-19 Prevention, Preparedness, and Response Plan (cont'd)

Responsibilities

- *Managers and supervisors* must be familiar with the plan and ready to answer questions. Managers and supervisors must set a good example by following the plan at all times, including practicing good personal hygiene and jobsite safety practices to prevent the spread of the virus.
- *Employees* must abide by the various housekeeping, social distancing, and other best practices at the jobsite.
- *Everyone* should be expected to report any signs or symptoms of COVID-19.

COVID-19 Prevention, Preparedness, and Response Plan (cont'd)

Recommended Job Site Protective Measures

- Any employee/contractor/visitor showing symptoms of COVID-19 should be asked to leave the jobsite and return home.
- Safety meetings should be by telephone, if possible. During any in-person safety meetings, no gatherings of more than 10 people and participants must remain at least six (6) feet apart.
- Avoid physical contact with others and direct employees/contractors/visitors to increase personal space to at least six (6) feet, where possible.
- Where work trailers are used, only necessary employees should enter the trailers and all employees should maintain social distancing while inside the trailers.
- All in-person meetings should be limited. To the extent possible, meetings should be conducted by telephone.
- Consider whether to provide or encourage face covers on the job.

COVID-19 Prevention, Preparedness, and Response Plan (cont'd)

- Stagger breaks and lunches, if practicable, to reduce the size of any group at any one time to less than ten (10) people.
- Provide access to running water for hand washing if possible; otherwise provide alcohol-based hand sanitizers and/or wipes.
- Limit the use of co-workers' tools and equipment. To the extent tools must be shared, clean tools with alcohol-based wipes, consistent with manufacturers recommendations.

COVID-19 Prevention, Preparedness, and Response Plan (cont'd)

- Divide crews/staff where possible so that projects can continue working effectively in the event that one of the divided teams is required to quarantine.
- Minimize ride-sharing. While in vehicle, employees must ensure adequate ventilation.
- If practicable, employees should use/drive the same truck or piece of equipment every shift.
- In lieu of using a common source of drinking water, such as a cooler, employees should use individual water bottles.

Job Site Visitors

- The number of visitors to the job site, including the trailer or office, should be limited to only those necessary for the work.
- Screen all visitors in advance of arriving on the job site. If the visitor answers “yes” to any of the following questions, he/she should not be permitted to access the jobsite:
 - Have you been confirmed positive for COVID-19?
 - Are you currently experiencing, or recently experienced, any acute respiratory illness symptoms such as fever, cough, or shortness of breath?
 - Have you been in close contact with any persons who have been confirmed positive for COVID-19?
 - Have you been in close contact with any persons who have traveled and are also exhibiting acute respiratory illness symptoms?

Respirator Use

New OSHA Enforcement Memoranda on Respiratory Protection – Reuse and Expired

Respirators

- All employers whose employees are required to use or are permitted to use respiratory protection, must continue to manage their respiratory protection programs in accordance with the OSHA respirator standard.
- All employers should reassess their engineering controls, work practices, and administrative controls to identify any changes they can make to *decrease* the need for N95 FFRs.
- If respiratory protection *must* be used, employers should consider alternative types of respirators that provide equal or greater protection compared to an N95 filtering facepiece respirator (“FFR”).
- When alternative respirators are not available, or where their use creates additional safety or health hazards, employers *may* consider the extended use or reuse of N95 FFRs or use of N95 FFRs that were NIOSH-approved but have since passed the manufacturer’s recommended shelf life.

Respirator Use (cont'd)

New OSHA Enforcement Memoranda on Respiratory Protection – Non-NIOSH Approved

- OSHA's respiratory protection standard requires that any respirator required or permitted to be used be approved by NIOSH. As a result of the COVID-19 outbreak, however, OSHA is also relaxing those requirements.
- OSHA is permitting the use of FFRs and air-purifying elastomeric respirators that are either certified under certain standards of other countries; or previously certified under the standards of other countries, but beyond their manufacturer's recommended shelf life.
- Employers should prioritize the acquisition and use of equipment in the following order:
 1. NIOSH-certified equipment.
 2. Equipment certified in accordance with standards of other countries or jurisdictions except the People's Republic of China, unless equipment certified in accordance with standards of the People's Republic of China is manufactured by a NIOSH certificate holder.
 3. Equipment certified in accordance with standards of the People's Republic of China, the manufacturer of which is not a NIOSH certificate holder.
 4. Facemasks (*e.g.*, medical masks, procedure masks).



Job Site Cleaning

- Jobsite trailers and break/lunchroom areas should be cleaned at least once per day, using proper PPE, such as nitrile, latex, or vinyl gloves and gowns, as recommended by the CDC.
- Any trash collected from the jobsite must be changed frequently by someone wearing nitrile, latex, or vinyl gloves.
- Any portable jobsite toilets should be cleaned by the leasing company at least twice per week and disinfected on the inside. Frequently touched items (i.e. door pulls and toilet seats) should be disinfected frequently.
- If an employee has tested positive for COVID-19, OSHA has indicated that there is typically no need to perform special cleaning or decontamination of work environments, unless those environments are visibly contaminated with blood or other bodily fluids.

Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)

- Provides instructions and guidance to Area Offices and compliance safety and health officers (CSHOs) for handling COVID-19-related complaints, referrals, and severe illness reports.
- Covers all investigations and inspections related to COVID-19.
- This Interim Enforcement Response Plan sets forth interim procedures that allow flexibility and discretion for field offices to maximize OSHA's impact in securing safe workplaces for workers.

Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19) (cont'd)

General Enforcement Guidance

- OSHA should investigate complaints, referrals, and employer-reported fatalities and hospitalizations to identify potentially hazardous occupational exposures and to ensure that employers take prompt actions to mitigate hazards and protect employees.
- “In most cases, Area Offices should process complaints from non-healthcare and non-emergency response establishments as “non-formal phone/fax,” following the non-formal complaint and referral procedures in the Field Operations Manual (FOM), CPL 02-00-163, September 13, 2019, at www.osha.gov/enforcement/directives/cpl-02-00-163.”
- Prior to any inspection related to COVID-19, each area director should evaluate the risk level of exposure at the workplace, and prioritize resources.
- If on-site inspection is warranted, CSHOs must carefully evaluate potential hazards and limit any possible exposure(s). For these inspections, maximize the use of electronic means of communication (remote video surveillance, phone interviews, email correspondences, facsimile and email transmittals of documents, video conferences, etc.), and consult with their regional solicitors when appropriate.

Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19) (cont'd)

- Lower exposure risk jobs are those that do not require contact with people known to be, or suspected of being, infected with COVID-19, nor frequent close contact with, *i.e.*, within 6 feet of, the general public. Workers in this category have minimal occupational contact with the public and other coworkers.
- Formal complaints where employees are engaged in medium or lower exposure risk tasks (*e.g.*, billing clerks), will not normally result in an on-site inspection. In such cases, Area Offices will use the non-formal procedures for investigating alleged hazards. Inadequate responses to a phone/fax investigation should be considered for an on-site inspection.
- Employer-reported hospitalizations will be handled using the rapid response investigation (RRI) in most cases.
- ***“Use of CDC recommendations.*** The most current CDC guidance should be consulted in assessing potential workplace hazards and to evaluate the adequacy of an employer’s protective measures for workers. Where the protective measures implemented by an employer are not as protective as those recommended by the CDC, the CSHO should consider whether employees are exposed to a recognized hazard and whether there are feasible means to abate that hazard.

Critical Infrastructure Employers and Employees

- On April 8, 2020, new CDC guidance for employers regarding safety practices for “critical infrastructure workers” who may have been exposed to a person with a suspected or confirmed case of COVID-19.
- CDC is now advising that critical infrastructure employees who have been exposed to the virus can continue to work, provided they remain asymptomatic. In order to permit exposed employees to continue to work, the CDC advises that employers should, among other things, adhere to the following practices prior to and during work:
 - measuring temperature before employees enter the facility;
 - regular monitoring of asymptomatic employees;
 - having affected employees wearing a mask/face covering in the workplace for 14 days after exposure (employer-issued or employee-supplied);
 - having employees maintain social distancing (six feet apart), as work duties permit; and
 - routinely disinfecting work spaces.

Use of Face Coverings

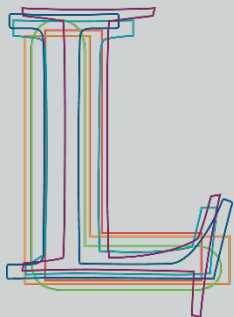
- The CDC recommended that all persons wear face coverings when in public.
- Many states and localities have implemented or are considering implementing requirements that essential workers wear face coverings.
- OSHA has stated that face coverings are not PPE.
- Check CDC recommendations for use and maintenance of PPE.
- Check local ordinances for requirements as to payment, etc.

OSHA Recording and Reporting

- OSHA's recordkeeping rules apply only to injuries or "illnesses." The rule defines an injury or illness as "an abnormal condition or disorder."
- COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, if:
 - the case is a tested-positive confirmed case of COVID-19, as defined by Centers for Disease Control and Prevention (CDC);
 - the case is "work-related," which is defined as an event or exposure that either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness; and
 - the case involves one or more of the following:
 - death
 - days away from work
 - restricted work or transfer to another job
 - medical treatment beyond first aid
 - loss of consciousness
 - a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.
- Given that most every employer directs employees to remain away from work after a positive COVID-19 test, every instance of a positive test could result in a recordable event if the illness was "work-related."

OSHA Recording and Reporting (cont'd)

- Employers of workers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions must continue to make work-relatedness determinations pursuant to 29 CFR § 1904. Until further notice, however, OSHA will not enforce 29 CFR § 1904 to require other employers to make the same work-relatedness determinations, except where:
 - There is objective evidence that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
 - The evidence was reasonably available to the employer. For purposes of this memorandum, examples of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees.



Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.



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