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ICAA 2020

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Safety & Health in a Covid-19 Environment



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DISCLAIMER

The information contained in these slides and covered in this presentation is for informational purposes only.

It is not legal advice.

Each employer's situation presents unique issues and business considerations. You should consult legal counsel in advance on decisions specific to your business that are being made during this time.

Sources of Guidance and Enforcement

The pandemic occurred much faster than our slow administrative regulatory state could make rules, laws, and standards.

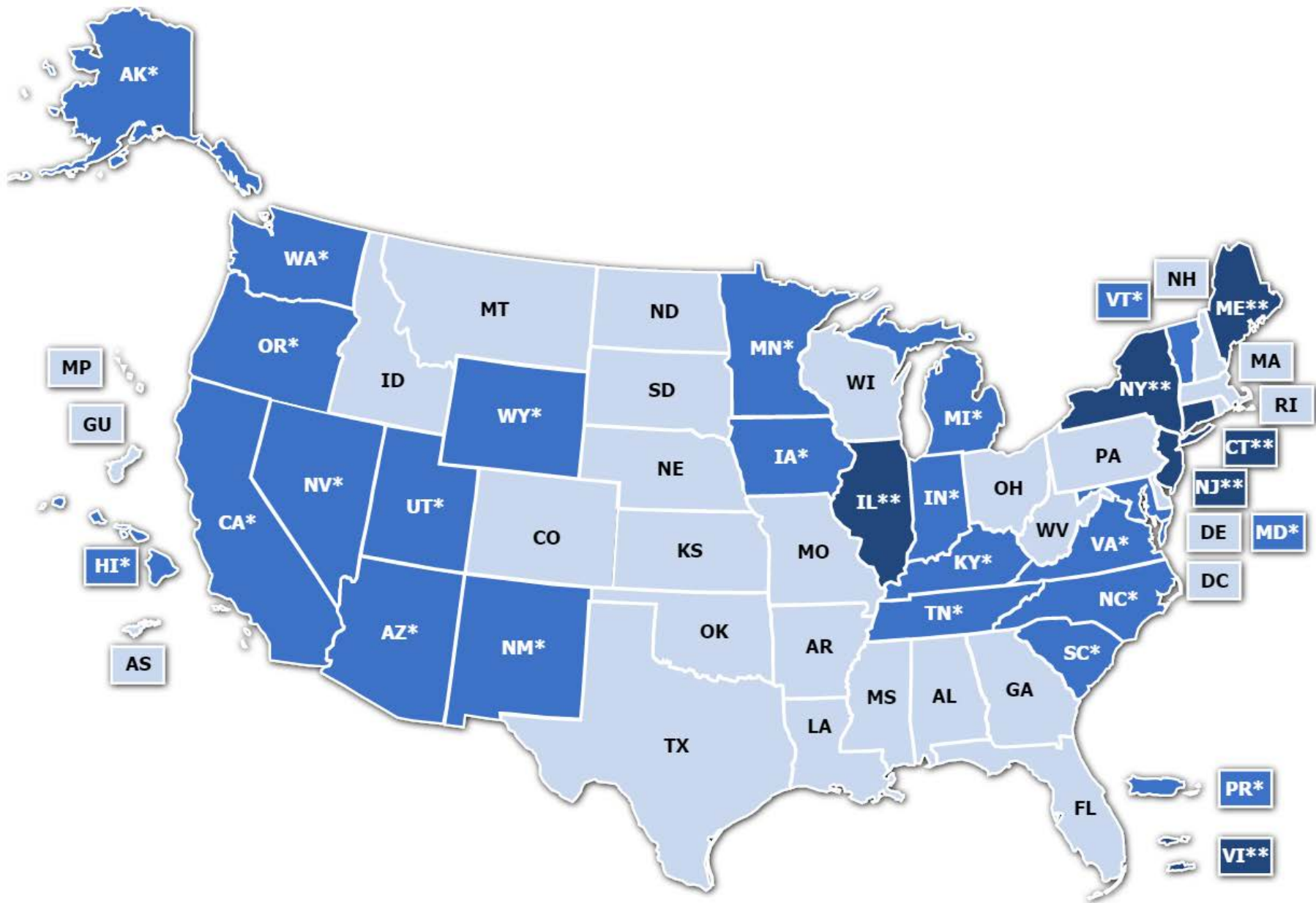
Employers must consult and comply with many different agencies and their requirements and regulations.

The Center for Disease Control

State and local departments of Health

Federal OSHA

State OSHA

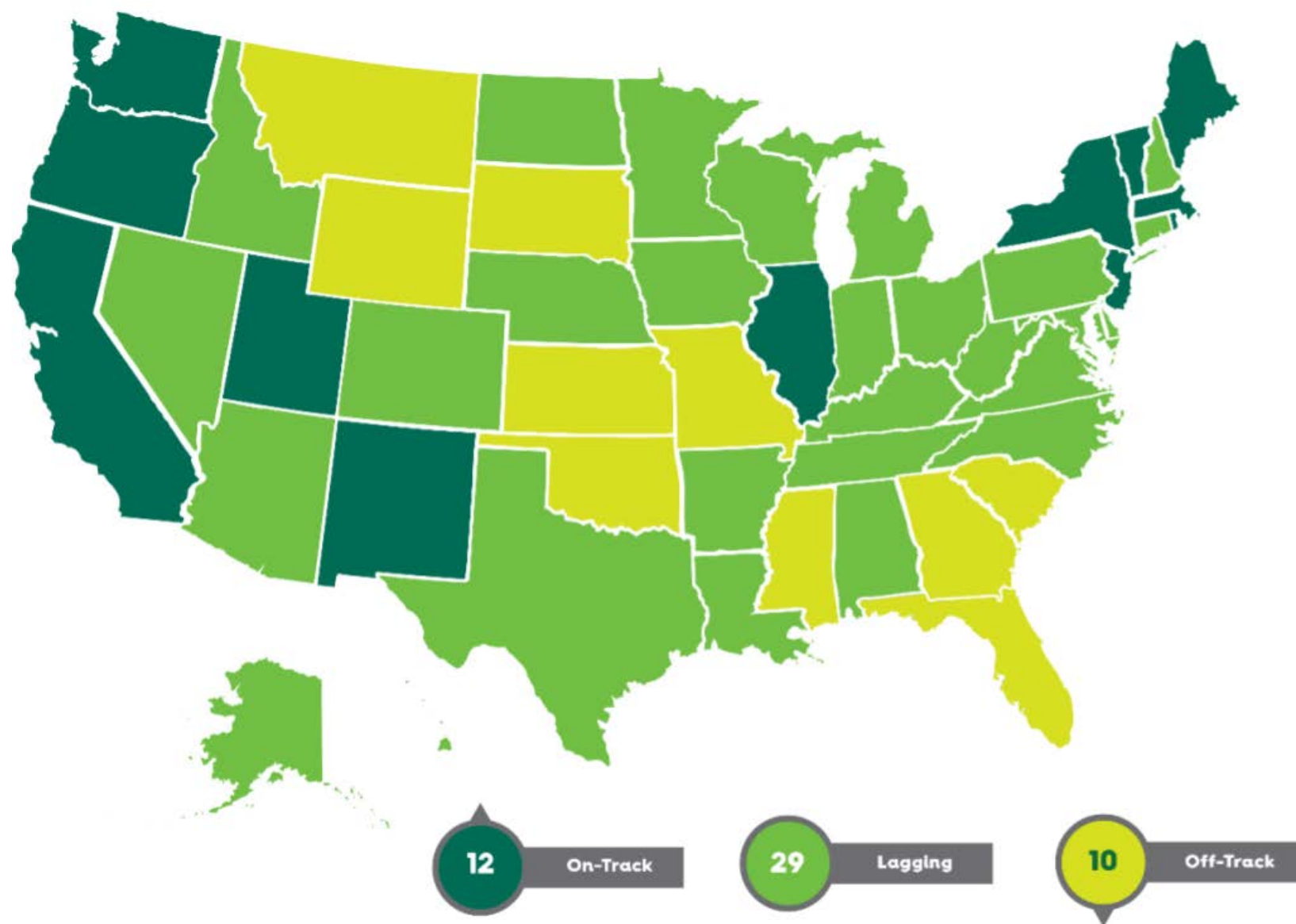


State of the Response:

State Actions to Address the Pandemic



nsc
National Safety Council



NSC State Assessment

The states with the ***most*** comprehensive employer guidelines: Utah, California, Kentucky, Nevada, New Mexico, New York, Ohio, Oregon, Rhode Island

States with the ***least*** comprehensive employer guidelines: Florida, Oklahoma, Alaska, Georgia, Idaho, Mississippi, Missouri

Cal OSHA

Aerosol Transmissible Diseases standard

- Aimed at preventing illness from breathable infectious diseases including Covid-19, bacteria, or other disease-causing organisms.
- Only mandatory for some healthcare workers.

Working to adopt an emergency regulation to apply to all employees of all industries.

Cal/OSHA

Cal/OSHA is preparing an emergency regulation providing new COVID-19 workplace safety standards.

This will be considered on November 19, 2020 by California Standards Board.

The temporary standard will be in place until sometime after the pandemic subsides.

§16VAC25-220, Emergency Temporary Standard

Infectious Disease Prevention:

SARS-CoV-2 Virus That Causes COVID-19

As Adopted by the
Safety and Health Codes Board
on July 15, 2020



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY (DOLI)

Effective Date:

The Emergency Temporary Standard will take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia. The Department anticipates that publication of the Emergency Temporary Standard will occur during the week of July 27, 2020, although the exact date is not known at this time.

§16VAC25-220

Virginia OSHA

Adopted an emergency temporary standard for employers to control and prevent the spread of Covid-19.

OSHA Needs no Standard....

OSHA's Covid-19 Safety Enforcement Still Under
General Duty Clause

General Duty Clause

Catch-all safety requirement.

Used by OSHA in in the absence of
any particular OSHA standard.

General Duty Clause

1. An activity or condition in the employer's workplace **presented a hazard** to an employee;
2. Either the employer or the industry **recognized** the condition or activity as a hazard;
3. The hazard was likely to or actually caused **death or serious physical harm**; and
4. A feasible **means to eliminate** or materially reduce the hazard existed.

SeaWorld of Florida, LLC v. Perez, 748 F.3d 1202, 1207 (D.C. Cir. 2014).

OSHA Guidelines for Construction

Conduct a **job hazard analysis** before work begins (or when conditions change) to determine the risk level.

OSHA Guidelines for Construction

Risk Levels

- Low:** Tasks that allow workers to remain six feet apart and involve little contact with the public.
- Medium:** Tasks that require workers to be within six feet of each other and with customers, visitors, and the public.
- High:** Indoor worksite occupied by other workers, customers, or residents suspected or known to have COVID-19.

Job Hazard Analysis

There are two kinds of controls to mitigate the risk:

1. Engineering Controls
2. Administrative Controls

Engineering Controls

- Barriers – close doors whenever feasible
- Consider erecting plastic sheeting barriers

OSHA & CDC Recommendations

Include....

Employers promote frequent and thorough hand washing

Employee should stay home when sick

Provide employees with tissues and trash cans / receptacles

Discourage employees from using other's property or equipment.



OSHA & CDC Recommendations

Include....

Maintain effective and regular housekeeping practices

Avoid touching faces

Assess hazards

Evaluate risks of exposure

Implement engineering controls like the barriers

OSHA Recommendations

Include....

Screen visitors to construction sites for symptoms of Covid-19

Stagger work schedules to limit number of employees and promote social distancing

Eliminate employee “choke points” where workers are forced to stand close together

Shorten in-person meetings and maintain social distancing (like during toolbox talks)

Face Masks

CDC recommends facemasks in addition to social distancing

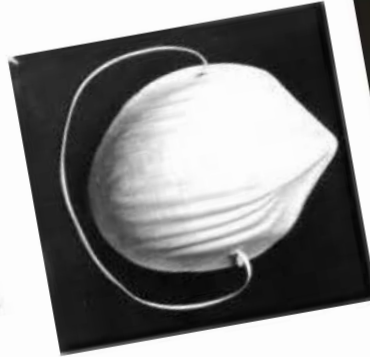
Employers should ensure the masks:

- Fit over the nose and mouth and fit snugly
- Are secured with ties or ear loops
- Include multiple layers of fabric
- Allow for breathing without restriction

Face Masks

- Can be laundered using the warmest appropriate water setting and machine dried daily after the shift, without damage
- Are not used if they become wet or contaminated;
- Are replaced with clean replacements, provided by employer, as needed
- Are handled as little as possible to prevent transferring infectious materials to the cloth
- Are not worn with or instead of respiratory protection when respirators are needed.

Face Masks



More more searches like silica respirators



mium
spirator



Breathing
Respirator



Ammonia
Respirator



Chlorine
Respirator



Quarter Mask
Respirator



Welding
Respirator



Wood Dust
Respirator

Face Masks

Voluntary use: If employer permits voluntary use of dust masks [including N-95] the employer must:

1. Provide info in Appendix D.
2. Masks must be cleaned and maintained.
3. Implement elements of the written program necessary to ensure that the employees are medical able to use the respirator [Fit testing? No.]

Appendix D to Sec. 1910.134 (Mandatory) Information for Employees Using Respirators When Not Required Under the Standard

Respirators are an effective method of protection against designated hazards when properly selected and worn. Respirator use is encouraged, even when exposures are below the exposure limit, to provide an additional level of comfort and protection for workers. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. Sometimes, workers may wear respirators to avoid exposures to hazards, even if the amount of hazardous substance does not exceed the limits set by OSHA standards. If your employer provides respirators for your voluntary use, or if you provide your own respirator, you need to take certain precautions to be sure that the respirator itself does not present a hazard.

You should do the following:

1. Read and heed all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirators limitations.
2. Choose respirators certified for use to protect against the contaminant of concern. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will tell you what the respirator is designed for and how much it will protect you.
3. Do not wear your respirator into atmospheres containing contaminants for which your respirator is not designed to protect against. For example, a respirator designed to filter dust particles will not protect you against gases, vapors, or very small solid particles of fumes or smoke.
4. Keep track of your respirator so that you do not mistakenly use someone else's respirator.



ICAA Model Respiratory Program

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 - E. Respirator Training

Administrative Controls

Follow CDC procedures, state, and any local rules

Train employees about the spread of disease in the geographic area in which they work

Pandemic Protection Plan

Employers Must Have a COVID-19 Pandemic Protection Plan in Place for Your Employees

Model It After Your Emergency Action Plan

Site Specific

Must Include Training and Enforcement

**Construction Industry Safety Coalition Recommendations:
COVID-19 Exposure Prevention, Preparedness,
and Response Plan for Construction**

The purpose of this plan is to outline the steps that every employer and employee can take to reduce the risk of exposure to COVID-19. The plan describes how to prevent worker exposure to coronavirus, protective measures to be taken on the jobsite, personal protective equipment and work practice controls to be used, cleaning and disinfecting procedures, and what to do if a worker becomes sick.¹

[INSERT COMPANY NAME] takes the health and safety of our employees very seriously. With the spread of the coronavirus or “COVID-19,” a respiratory disease caused by the SARS-CoV-2 virus, we all must remain vigilant in mitigating the outbreak. This is particularly true for the construction industry, which has been deemed “essential” during this Declared National Emergency. In order to be safe and maintain operations, we have developed this COVID-19 Exposure Prevention, Preparedness, and Response Plan to be implemented throughout the Company and at all of our jobsites. We have also identified a team of employees to monitor available U.S. Center for Disease Control and Prevention (“CDC”) and Occupational Safety and Health Administration (“OSHA”) guidance on the virus.

This Plan is based on currently available information from the CDC and OSHA, and is subject to change based on further information provided by the CDC, OSHA, and other public officials. The Company may also amend this Plan based on operational needs.

I. Responsibilities of Managers and Supervisors

Pandemic Protection Plan

Can be a stand-alone plan, or part of your Emergency Action Plan.

- Emergency Action Plans account for possible emergencies that could impact the workplace – whether man made or natural (storms, fires, earthquakes, and even pandemics)
- Detail the employer's responses to these, such as evacuations, rescues, expected actions of employees, etc.
- A Pandemic Protection Plan will fit easily into an EAP.

Pandemic Protection Plan

Follow CDC procedures, state, and any local rules

Train employees about the spread of disease in the geographic area in which they work

Pandemic Protection Plan: Training

- Signs and symptoms and how disease is potentially spread
- All policies and procedures applicable to employee's duties
- Information on social distancing and hygiene practices
- Types and limitations of PPE

Pandemic Protection Plan: Training

- Importance of staying home when sick
- Proper wearing of face coverings
- Need to use standard PPE
- Use of EPA approved cleaning chemicals
- Need to report any safety and health concerns

It's the Law

29 CFR 1926.20(B)(1):

“It shall be the responsibility of the employer to initiate and maintain such programs as may be necessary to [create a safe work environment].”

Safety Program

Demonstrates your awareness of the safety responsibility

Communicates expectations to employees

Sets out steps to enforce your safety program through training, discipline, etc.

Safety Programs

- You must use them.
- Must fit your business
- Don't try to adapt another employer's programs for your company.

General Duty Clause

1. An activity or condition in the employer's workplace **presented a hazard** to an employee;
2. Either the employer or the industry **recognized** the condition or activity as a hazard;
3. The hazard was likely to or actually caused **death or serious physical harm**; and
4. **A feasible means to eliminate or materially reduce the hazard existed.**

SeaWorld of Florida, LLC v. Perez, 748 F.3d 1202, 1207 (D.C. Cir. 2014).

Feasible and Safe

If the work practice, administrative control, or engineering control is not feasible or creates a greater hazard then OSHA should not (but probably will) cite you.

For example, requiring employees to wear a mask in high heat environments might create a greater risk of heat stress.

Or it may simply not be feasible to erect some kind of barrier between employees.

OSHA Temporary Enforcement Guidance

OSHA recognizes that it might be impossible to comply with the Respiratory Protection Standard given the pandemic and the demand for respiratory equipment like N95 masks.

OSHA might not (but probably will) cite you if you:

- Conserve your supply of N95 masks
- Otherwise fully comply with the standard
- Make changes to reduce or eliminate the need for N95 masks (like moving work outside)
- Keep trying to obtain N95 masks and fit testing supplies
- Use other kinds of respirators (like P100, powered respirators, etc) that offer equivalent or higher protection.

Employee Has Covid-19 Symptoms

Now what?

Send them home and advise them to see a doctor

Employee Has Covid-19 Symptoms

Advise employee on return to work requirements.

Employer must create a return to work policy.

Recommendation – Allow return to work with doctor's clearance (via note), but not before CDC's timeframes:

- Free of fever, without use of fever-reducing medications, for at least 3 days; and
- Improvement in respiratory symptoms for at least 3 days; and
- At least 10 days have passed since symptoms first appeared.

Employee Has Covid-19 Symptoms

Warning: State health dept / state order guidelines may contain different timeframes.

Example: Ohio says at least 7 days must have passed since symptoms first began.

Employee Has Covid-19 Symptoms

Alternative test-based option:

1. Require doctor's clearance (via note) plus
2. negative COVID-19 test, plus
3. resolution of fever without use of fever-reducing medications and improvement in respiratory symptoms.

Employer should incorporate discretion to deviate
from policy if needed.

Employee w/ Confirmed Covid-19

1. Instruct employee to stay home.
2. Advise employee on return to work requirements.
3. Notify local health department.
4. Conduct the OSHA work-related investigation
5. Follow the CDC Recommendations

CDC Recommendations

1. Determine if employee had close contact with other employees within 48-hour period before symptoms began
 - Close contact = within less than 6 feet for greater than 15-30 minutes
 - Employees who did have close contact should be sent home to self-quarantine for 14 days
 - This also implicates employer's return to work policy, which should be applied to these employees as well.

CDC Recommendations

2. Other Employees should be informed about possible exposure to someone who tested positive and should monitor for symptoms and social distance (do not reveal name of employee who tested positive)
3. Perform extra cleaning of equipment used by employee in days before positive test.

When is Covid-19 **Work Related**?

Employers are required to make a reasonable determination regarding whether an employee's Covid-19 was contracted at work.

Reasonable Determination

Employer must take affirmative steps to question employee.

Ask employee: How do you think they contracted COVID-19?

If the employee states that they contracted it outside of work, and such a statement is reasonable, then no need to proceed further.

Reasonable Determination

If employee is not sure, or believes illness is work-related, continue discussion with employee about out-of-work activities:

- Discuss out-of-work activities that may have led to the COVID-19 illness – but respect employee's privacy; and
- Review the employee's work environment for potential exposure. (Consider of other instances of workers in that environment contracting COVID-19 illness).

Reasonable Determination

If employee is not sure, or believes illness is work-related, continue discussion with employee about out-of-work activities:

- Only record the illness if it is “**more-likely than not**” work-related.
- If you decide not to record the illness, document the reasons you concluded the illness was probably unrelated to work.

Reasonable Determination

We are not doctors, or expected to be....

Employers are not expected to undertake any extensive medical inquiries.

Make a reasonable effort to obtain information.



Factors Suggesting Work Related

- Several cases develop among workers who work closely together and there is no alternative explanation.
- Illness contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 and there is no alternative explanation.

Factors Suggesting Work Related

- Job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.
- Medical provider opinion (or employee belief) that the illness is work related

Factors Against Work Related

- Employee is the only worker to contract COVID-19 in the vicinity and job duties do not include frequent contact with the general public.
- Employee, outside the workplace, closely and frequently associates with someone who has COVID-19 and that person exposes the employee while infectious.

Is Covid-19 Recordable?

Yes!

Employers with more than 10 employees must record every instance of an employee contracting Covid-19 at work.

This must be recorded in your OSHA 300 log when each of the following criteria are met.

When to Record Covid-19?

Employee has a confirmed case of COVID-19
as defined by CDC.

Case is work related

Meets recordkeeping criteria.

When to Record Covid-19?

CDC considers a confirmation as at least one respiratory specimen that tested positive for Covid-19.

If there is no confirmed diagnosis, then stop the analysis...

Meets Record Keeping Criteria

Treatment beyond first aid or results in

- light duty
- Missed work or
- Loss of consciousness.

Subcontractor's Employees?

Extend the reasonable determination inquiry to employees of a subcontractor.

Employers that control a subcontractor's employees must record those subcontractor's employees work injuries and illness (unless the subcontractor agrees to do it).

Recording Covid-19

- Employers have just 7 days to record the injury / illness on their OSHA log.
- Record the illness as soon as determining that is work related.
- Document the reason that you did not initially enter it on the log (or face a citation for late recording).
- And if you initially record the illness, but later determine that the case is not work related, draw a line through it on the log, and keep a record of your analysis.

Workers Compensation?

If an employer records a Covid-19 case on the OSHA log, does that make it a compensable workers compensation claim?

No.

An injury is a work injury when it occurs in the course of and arises out of work.

- **Course of:** review the time, place, and circumstances
- **Arising from:** did the work activity somehow cause it.

Reporting to OSHA?

An employer must report an injury or illness to OSHA when the injury or illness :

1. Causes death (make the report within 8 hours of the death)
2. Results in in-patient hospitalization and treatment within 24 hours of the work injury or exposure
3. Causes an amputation
4. Results in the loss of an eye

Timing is the trick when dealing with Covid-19

Reporting to OSHA?

- Determining when the exposure occurred could be difficult.
- Difficult to determine whether inpatient hospitalization (and treatment) occurred within 24 hours of the exposure.
- If an employee dies from Covid-19 contracted at work, the death is reportable if it occurs within 30 days of the exposure.

QUESTIONS?



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