
OSHA and COVID-19: Applicable Regulations and Compliance Issues

By Greg Flores, Randolph T. Struk / Apr 06, 2020

COVID-19 presents unique challenges for employers to remain compliant with applicable OSHA standards and regulations while continuing to operate their businesses during this pandemic. Although no specific OSHA provision directly addresses COVID-19, OSHA has [issued guidance](#) on preparing workplaces for the virus. However, the rapidly changing nature of the outbreak, and the fact that the risk of infection varies greatly depending upon the industry, job task, and location of work, makes it difficult for employers to assess their OSHA responsibilities and avoid potential OSHA liability. Employers are increasingly being confronted with employees' refusal to work, claiming the general risk of infection, and/or refusing to work unless respirators and other personal protective equipment, which may not be available, are provided.

The following discusses the OSHA standards applicable in the current pandemic, while also addressing steps employers can take to remain compliant and to minimize potential OSHA liability.

Applicable Regulations and Standards

The "General Duty" Clause: OSHA recently identified the "general duty" clause (29 U.S.C. § 654(a)(1)), which requires employers to provide employment and place of employment free from hazards causing or likely to cause death or serious physical harm, as a potential source of liability for employers who fail to take appropriate steps to protect their employees from contracting COVID-19.

PPE Requirements: Employers may be required to provide employees with Personal Protective Equipment (PPE) to prevent potential exposure to COVID-19. Under 29 C.F.R. § 1910.132(a), all employers must provide, use, and maintain PPE wherever "it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact." Jurisdictions with state-approved OSHA regulatory schemes may impose different and more stringent requirements (e.g., CalOSHA's "Aerosol Transmissible Disease Standards" requiring certain healthcare employers to provide protective equipment, respirators, training, and medical services to any employee with potential occupational exposure to airborne diseases).

Reporting Requirements: Employers will be required to record on their OSHA 300 log instances of workers contracting COVID-19 if:

- The employee is diagnosed with a confirmed COVID-19 infection;
- The infection is caused by on-the-job exposure, i.e., is work-related as defined by 29 CFR 1904.5; and
- The case meets the general recording criteria outlined in 29 CFR 1904.7 (e.g. days away from work, restricted work or transfer to another job, medical treatment beyond first aid, etc.).

OSHA's Hazardous Communication Standard: If employers are utilizing cleaning agents or cleaning chemicals other than standard household cleaners to disinfect workplaces or work equipment, employers may need to comply with the HazCom standard (29 CFR 1910.1200) regarding proper chemical labeling, MSDS's, training regarding potential hazards and proper use, etc.

Proactive Steps to Maintain Compliance and Minimize Potential OSHA Liability

The level of risk, and therefore the appropriate precautions and practices necessary to protect worker safety, will vary greatly depending upon industry type, job task and worksite conditions. To assist employers in determining what precautions and work practices are appropriate, OSHA's COVID-19 Guidance has identified four risk exposure levels:

Very High – Healthcare workers performing aerosol-generating procedures (e.g., intubation, bronchoscopies, cough induction procedures) or invasive specimen collection on known or suspected COVID-19 patients, employees collecting or handling specimens from known or suspected COVID-19 patients, and morgue workers performing autopsies on known or suspected COVID-19 patients.

High – Healthcare delivery and support staff, medical transport workers and mortuary workers exposed to known or suspected COVID-19 patients.

Medium – Workers whose jobs require frequent and/or close contact (i.e., within 6 feet of) people who may be infected with COVID-19, but who are not known or suspected to be COVID-19 patients. In areas of ongoing community transmission, the medium risk exposure category includes workers in contact with the general public. In areas without ongoing community transmission, this risk category includes workers having frequent contact with travelers who may have returned from locations with widespread COVID-19 transmission.

Low – Workers whose jobs do not require frequent close contact with the general public, and do not require contact with people known or suspected to be of being infected.

Employers necessarily will need to make their assessments of potential exposure risk, to determine what steps must be taken to protect worker safety and maintain OSHA compliance. However, OSHA has also offered the following general recommendations for all employers in response to the COVID-19 pandemic:

-
- Develop an infectious disease preparedness and response plan, including an assessment of the level of risk associated with your workplace and employee job tasks;
 - Implement basic infection prevention measures (e.g., promoting proper hygiene; routine cleaning and disinfecting practices);
 - Develop policies and procedures for prompt identification and isolation of sick people, including flexible work-from-home policies or isolation rooms;
 - Develop, implement, and communicate about workplace flexibilities and protections; and
 - Implement workplace controls (e.g., PPE, physical barriers) to protect against the spread of COVID-19.

It is important to take a proactive approach, assessing your business's exposure risks and implementing preventative measures to protect your workforce. If you need further guidance regarding your business's COVID-19 response, you may contact Randy Struk (RStruk@ClarkHill.com), Greg Flores (GFlores@ClarkHill.com), or any member of Clark Hill's Labor and Employment Group.