

OSHA Offers Employers ‘Guidance on Preparing Workplaces for COVID-19’

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The Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA) have issued guidance to help employers monitor and respond to the spread of novel coronavirus (COVID-19).

OSHA has a [webpage](#) dedicated to COVID-19 that provides background on the virus and identification of potential exposure hazards, as well as details some of OSHA’s expectations for employers in responding to the potential risk of COVID-19 infection. OSHA also has released a detailed guidance document for employers: [Guidance on Preparing Workplaces for COVID-19](#).

General Duty Obligations

While noting that the document is “not a standard or regulation,” OSHA reminds employers of their pre-existing general duty obligations under the Occupational Safety and Health Act to provide a workplace for employees that is “free from recognized hazards.”

OSHA also states that the guidance identifies “practical ways” for employers to address potential health risks from coronavirus in the workplace.

OSHA Recommendations

OSHA’s recommendations include:

- Developing and implementing an infectious disease and preparedness response plan that considers employees’ risk of exposure and incorporates recommendations from federal, state, local, tribal, and other territorial health agencies;
- Implementing good hygiene and infection control practices, including, in part, the frequent promotion of hand washing, requirement of employees to stay home when they are sick, reminders on respiratory etiquette, and routine cleaning and disinfecting procedures;
- Developing and implementing procedures for identifying and isolating potentially infectious individuals (*e.g.*, customers, vendors, employees, and so on);
- Actively communicating with employees about the company’s infectious disease and preparedness response plan and related procedures; and
- Implementing appropriate controls, which should take into consideration OSHA’s “hierarchy of controls” (*i.e.*, framework for managing hazards in which the most optimum control method is viewed to be the removal of a hazard in lieu of controlling it by other means) and the potential for exposure to COVID-19.

Appropriate controls identified by OSHA may include engineering controls (such as high efficiency air filters, physical barriers, and negative pressure in ventilation) or administrative controls (such as maintenance of “flexible policies” that permit employees to stay home when needed because they are sick or to take care of a sick family member and minimizing worker contact through use of remote work and virtual communications). To determine what specific controls are needed, OSHA instructs employers to assess the “worker risk of occupational exposure,” which will vary by industry type and the likelihood of employees

encountering individuals that are known to be or suspected of being infected with COVID-19 while completing job tasks.

To assist employers with evaluating the risk of occupational exposure and needed controls, OSHA categorizes employee exposure risks into four levels, consisting of “very high,” “high,” “medium,” and “lower” risk. While most workers in the United States will fall into the lower exposure risk level, OSHA’s guidance indicates that all employers should develop and implement an infectious disease preparedness and response plan and corresponding infection prevention measures. However, employers with employees that have a medium, high, or very high risk level may have an obligation to implement additional precautionary measures (*e.g.*, use of engineering controls or administrative controls to prevent exposure to COVID-19).

A comparison of OSHA’s risk levels and corresponding recommendations on the precautions employers should take is provided in [our chart](#).

OSHA’s guidance also instructs employers to follow existing safety standards, such as the Personal Protective Equipment (PPE) and Bloodborne Pathogens (BBP) standards to prevent and minimize occupational COVID-19 exposures. OSHA also specifically indicates that employers may need to provide employees with PPE such as gloves, eye and face protection, and respiratory protection when workers are exposed to high or very high risk levels. Similarly, while noting that the BBP standard is not directly applicable to respiratory secretions that may transmit COVID-19, OSHA suggests that employers should use the BBP standard as “a framework” to “help control some sources of the virus.”

Significantly, because OSHA has taken a position in the guidance document that employers have an obligation under the General Duty Clause and existing OSHA standards to take action to address potential health risks from COVID-19 in the workplace, it may take a future position that an employer’s failure to develop and implement measures identified in the guidance constitutes a health and safety violation. Therefore, employers should actively monitor potential employee exposures to COVID-19 as a result of the COVID-19 outbreak, read and be familiar with OSHA’s guidance, and implement steps as appropriate to prevent potential exposures to COVID-19 in the workplace.

Jackson Lewis attorneys and the dedicated [COVID-19 Task Force](#) are available to assist employers and answer any questions.

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