

OSHA OUTLINES EMPLOYER GUIDELINES FOR SAFE COVID-19 PRACTICES

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As we, a society of individuals, prepare to re-open business after consciously trying to “flatten the curve” in efforts to slow the spread of [COVID-19](#), the [United States Department of Labor](#), through the [Occupational Safety and Health Administration](#) (OSHA), have provided all employers with guidelines to aid in the implementation of safe work practices of all employees.

The guidelines put forth are not formal regulations or standards that must be complied with, but were developed as a resource to help employers of any size prepare to have employees return to their jobs in a safe and healthy manner.

As all employers should consider actionable items to reduce employee exposure to the coronavirus, the following list includes a series of steps employers should take to maximize work performance and minimize recurrent outbreaks of [COVID-19](#):

- Develop an infectious disease [preparedness and response plan](#)
 - Identify the where, how and what sources of COVID-19 might workers be exposed to, whether from the general public at large or from sick individuals who may not know they are carriers of the virus
 - Identify non-occupational risk factors whether at workers’ homes or in the community in which they live, travel through, or socialize in
 - Evaluate workers’ risk factors in their current health status, age, or life-style
 - Implement controls to address risk, at whatever level of potential exposure
- Prepare to implement basic infection measures
 - Promote frequent handwashing and places to do so throughout the employment location
 - Provide alcohol wipes
 - Encourage workers to stay home if they are sick or feel unwell
 - Encourage respiratory etiquette by covering coughs and sneezes
 - Provide sufficient amount of tissues and garbage receptacles
 - Provide flexible worksites or alternative hours to limit large groups working in confined spaces
 - Discouraging shared workspaces
 - Ensuring regular cleaning and housekeeping of all surfaces and communal work areas
- Develop policies and procedures for prompt identification and isolation of sick people
 - Implement prompt identification of infectious individuals early
 - Encourage employees to self-monitor for signs and symptoms of COVID-19
 - Create policies and procedures to report when they are feeling unwell or are experiencing symptoms of COVID-19
 - Establish immediate procedures for isolation of those exhibiting symptoms of COVID-19 such as isolation rooms with closable doors to ensure containment of airborne droplets
 - Providing employees with appropriate protective equipment such as masks and gloves

- Communications to workers
 - Encourage workers to stay at home if they are sick or exhibiting symptoms of COVID-19
 - Create sick leave policies that are flexible
 - Suspend requirement of providing a healthcare provider's note to confirm illness
 - Maintain flexibility to allow workers to stay at home to care for a sick relative

OSHA has identified [four different COVID-19 categories](#) of worker exposure hazards in the workplace: Very High, High, Medium, and Lower Risk. Regardless of the level risk of exposure to hazards, OSHA has suggested four potential workplace "controls" that can be implemented by employers depending on the level exposure to hazards by their employees, described below:

Type 1 — Engineering controls. These measures seek to reduce exposure to hazards without relying on worker behavior while at work. Several examples of engineering controls might include installation of high efficiency air filters to improve ventilation rate, installation of physical barriers such as sneeze guards or plastic shields, installation of drive-through windows to avoid close contact with customers, or installation of negative air-pressure ventilation.

Type 2 — Administrative controls. This type of control seeks to change an existing policy or procedure to minimize exposure to hazards. Obvious examples of these changes would be encouraging workers to stay home if sick, minimizing contact between workers, reducing face to face meetings, implementing alternative days or shifts, reducing the number of employees at one time, eliminating non-essential business travel, or providing education and training to workers.

Type 3 — Safe work practices. These essentially are procedures to ensure the safe and proper work of employees while performing their jobs. Some examples would include providing resources and a work environment promoting good personal hygiene, requiring regular handwashing, and posting signs promoting handwashing.

Type 4 — Personal protective equipment (PPE). Commonly known PPE, this equipment include gloves, goggles, face shields, masks, and gowns.

The purpose of establishing various measures of workplace controls is essential to determining which level exposure any given worker is subject to during their regular assigned job activity. Those in the Very High exposure category such as healthcare workers, laboratory personnel, or morgue workers performing autopsies, or those in the High exposure group such as delivery or support staff, medical transport workers, or mortuary workers, should expect more implementation activity than others. Those in the Medium exposure group such as people working in close proximity (within six feet) to others, those frequently in contact with international travelers, or those who work in high-density populations like schools, as well as those in the Lower Risk group with limited exposure to coworkers or members of the public at large, would likely demand less implementation of workplace controls.

For those workers in the Very High and High exposure groups, OSHA recommends implementation of engineering controls (air handling systems and isolation rooms), administrative controls (policies to reduce exposure, posting signs to report symptoms, and job-specific training), safe work practices (providing alcohol wipes), and PPE (gloves, goggles, masks, face shields, and gowns).

For those workers in the Medium exposure group, OSHA encourages engineering controls (construction of physical barriers), administrative controls (minimizing contact, restricting access), and PPE (using gloves, gowns, and masks).

Interestingly, for the workers classified as in the Lower Risk exposure group, OSHA suggests only administrative controls (monitoring public health concerns, posting signs). There is no recommendation to engage in PPE.

PRACTICAL IMPLICATIONS

The implications for the various guidelines identified by OSHA are both intuitive but difficult to implement. For example, are employers with workers in the Very High, High and Medium exposure groups really expected to install air ventilation systems, negative air pressure systems or purchase large quantities of PPE? The cost in implementing these guidelines would be exceedingly high, particularly after the global economy has been so dramatically affected.

Further, these guidelines are not codified regulations or even requirements imposed on employers. Rather, these suggestions are merely ways to assist in avoiding further pandemic spread of the contagious virus COVID-19. Would employers be subject to liability for their inability to implement these guidelines? At this point, the answer would be no.

However, with the influx of a significant amount of COVID-19 litigation, including those actions by infected employees against employers, it is entirely conceivable that employers who fail to implement these “guidelines” could face potential liability to their employees due to their inaction. Whether the specific failure to implement controls may provide conclusive evidence of improper safety procedures, it could conceivably be used as evidence to establish a complete failure to provide proper procedures to ensure safety of the workforce.

There are likely to be numerous claims by workers infected by COVID-19 while performing their jobs. The influx of employee-related litigation due to this pandemic is likely to sky-rocket.

Litchfield Cavo attorneys are continuously monitoring the complexities of COVID-19 and is ready to assist on this and all coronavirus-related legal matters. To discuss how OSHA guidelines may impact your claims, please contact [Alan Bernover](#), and please visit LitchfieldCavo.com/COVID-19.

Alan Bernover focuses his practice on insurance defense litigation in the areas of construction negligence, catastrophic personal injury and wrongful death, and commercial litigation relating to labor and employment disputes. He also has experience in executive and employers’ liability defense, professional malpractice, products liability, trucking liability, general liability, and general corporate and business defense.

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