

OSHA Guidance for COVID-19 Workplace Safety & Temporary Enforcement Guidance for Healthcare Industry

Employers are aware that the “General Duty Clause” (§5(a)1) of the Occupational Safety and Health Act of 1970 requires employers to furnish a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” During the current global COVID-19 pandemic, caused by the severe acute respiratory syndrome virus known as “SARS-CoV-2,” there are issues in every workplace to varying degrees regarding application of the General Duty Clause.

Although there currently is no specific OSHA standard covering SARS-CoV-2 exposure, OSHA recently published guidance to assist employers in all industries in minimizing occupational exposure to SARS-CoV-2. While OSHA's new guidance does not establish new legal obligations for employers, it provides useful instruction on how to minimize COVID-19 related workplace hazards, and also provides some detail as to how existing OSHA regulatory standards such as the personal protective equipment (PPE) requirements in 29 C.F.R. §1910, Subpart I and the hazard communication requirements set forth in 29 CFR §1910.1200 may apply to COVID-19 circumstances. In addition, OSHA has issued temporary enforcement guidance to assist healthcare providers grappling with respiratory supply shortages.

General COVID-19 Guidance for All Employers

OSHA's March 2020 “Guidance on Preparing Workplaces for COVID-19. OSHA Publication 3990” can be found [here](#). OSHA's new guidance is based on traditional infection prevention and industrial hygiene practices and focuses on the need for employers to identify risk levels in workplace settings and to implement engineering, administrative, and work practice controls and personal protective equipment (PPE) that are appropriate for a given workplace or task.

OSHA recommends that every employer develop an infectious disease preparedness and response plan if it has not already done so. The plan should take into consideration [evolving guidance from the CDC](#) and other federal, state and local agencies. Such plans should embody basic infection prevention measures, procedures for prompt identification and isolation of sick people, and sick leave policies that are flexible and consistent with public health guidance. Such plans should also incorporate appropriate controls for employees that are tailored to SARS-CoV-2 exposure “risk levels” (e.g. lower, medium, high and very high) that can be assigned based on general criteria set forth in OSHA's guidance. In addition, the plan should require compliance with any applicable existing OSHA standards such as those mentioned below.

Existing OSHA Standards

Employers should familiarize themselves with the below existing OSHA standards that may be applicable to workplace exposure to SARS-CoV-2, and possibly even cleaning agents used to combat it.

Personal Protective Equipment (PPE) - General Industry (29 CFR 1910 Subpart I). Subpart I requires the proper use and maintenance of a broad array of protective clothing and equipment “wherever it is necessary by reason of hazards of processes or environment ... 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.” See [here](#). When respirators are necessary to protect workers or where employers require respirator use, such as in the healthcare industry as noted below, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection Standard (29 CFR § 1910.134). See [here](#).

Hazard Communication (HazCom) Standard – General Industry (29 CFR § 1910.1200). OSHA's HazCom standard requires employers to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a written hazard communication program, labels and other forms of warning, safety data sheets, information and training. Employers should be aware that common sanitizers and sterilizers, including those that might be used to prevent the transmission of COVID-19, could contain hazardous chemicals. Even consumer products are covered by the HazCom standard, unless the employer can show that they are used in the workplace for the purpose intended by the manufacturer, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers.

Recordkeeping Requirements (29 CFR Part 1904). Many employers with more than 10 employees are required to keep a record of serious work-related injuries and illnesses on their OSHA 300 log. COVID-19 can be a recordable illness if (1) the case is a confirmed case of COVID-19; (2) the case is work-related as defined by 29 CFR 1904.5; and (3) the case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).

General Environmental Controls (1910, Subpart J). Permanent places of employment must comply with general environmental controls enumerated in Subpart J including, among other things, basic housekeeping measures such as sanitary storage, waste disposal, floor cleaning, required minimum bathroom facilities, cleansing agents, clean towels and hygienic food service facilities.

Temporary Enforcement Guidance for Healthcare Industry Respirator Use

OSHA's March 14, 2020 Temporary Enforcement Guidance - Healthcare Respiratory Protection Annual Fit-Testing for N95 Filtering Facepieces During the COVID-19 Outbreak can be found [here](#). In accordance with CDC guidance, OSHA has determined that the § 1910.134 Respiratory Protection Standard discussed above applies for healthcare personnel (HCP) providing direct care of patients with known or suspected COVID-19. OSHA's temporary enforcement guidance is intended to provide interim relief to HCPs from certain aspects of § 1910.134 in light of current supply shortages of N95 filtering facepiece respirators.

The current § 1910.134 standard requires employers to prepare and implement a written program for medical evaluation, fit-testing, and training of workers in the use respiratory protection when necessary to protect their health. OSHA's interim guidance recommends that HCP employers follow existing CDC guidelines, including taking measures to conserve supplies of respirators while safeguarding HCP, through such measures as the use of specified comparable respirators, reusable respirators, powered air purifying respirators and changes to fit testing methods. CDC's PPE conservation practices for hospitals may be found [here](#). OSHA has directed its field offices to exercise enforcement discretion concerning annual fit testing requirements as long as HCP employers make good faith efforts to comply with § 1910.134 and meet other conditions specified in OSHA's temporary guidance.

Bond is continuing to monitor COVID-19 legal issues and is hosting weekly webinars on the latest federal and state developments. You can register for the complimentary weekly webinar [here](#).

If you have any questions about this memorandum or OSHA compliance matters generally, please contact any of the attorneys in our [OSHA practice](#) or the attorney in the firm with whom you are regularly in contact.



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