



Mar 25, 2020

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# OSHA and Coronavirus: Guidance for Employers

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In response to the impact of novel coronavirus (COVID-19) on businesses and employers nationwide, the Occupational Safety and Health Administration (OSHA) has released a variety of guidance materials for employers and employees for maintaining workplace health and safety. Specifically, OSHA recently released its “[Guidance on Preparing Workplaces for COVID-19](#),” which provides practical recommendations for preventing the spread of COVID-19 in workplaces. OSHA subsequently issued its “[Temporary Enforcement Guidance](#)” directed at healthcare providers, which includes a temporary enforcement modification concerning the use of filtering facepiece respirators. Although OSHA has yet to promulgate any specific workplace safety standards related to COVID-19, in its guidance, OSHA reminds employers that requirements of several of its existing standards may apply to workplaces affected by COVID-19. It adds that OSHA can issue citations alleging violations of the general duty clause, Section 5(a)(1) of the Occupational Safety and Health Act, when employers fail to furnish workplaces free from recognized hazards that are causing or likely to cause death or serious physical harm.

## OSHA’s General Guidance for Workplaces

In its initial guidance for employers, OSHA provides a host of information on the COVID-19 virus, outlines different job classifications based on the risk of exposure, and recommends practical ways employers can prevent the spread of the virus in the workplace and mitigate risks to workers. The guidance contains information concerning OSHA’s Personal Protective Equipment (PPE) Standard, which may require certain employers to provide different types of PPE to employees who are expected to have exposure to COVID-19. Most of the information in OSHA’s guidance document, however, describes recommended practices that OSHA strongly encourages employers to implement.

While the implementation of these guidelines will differ based on your industry, specific work environment, and work activities, OSHA suggests that all employers take the following actions:

- **Develop an infectious disease preparedness and response plan.** These plans should consider the level of risk associated with certain job sites and duties and prepare a plan to mitigate those risks.
- **Prepare to implement basic infection-prevention measures.** Employers should promote handwashing, proper hygiene, explore flexible and remote work possibilities, and implement routine cleaning and disinfecting practices.
- **Develop policies and procedures for prompt identification and isolation of sick people, if appropriate.** Where appropriate, employers should restrict the number of personnel entering the workplace and develop policies for immediately identifying, reporting and, as necessary, isolating individuals with signs and/or symptoms of the virus.
- **Develop, implement and communicate about workplace flexibilities and protections.** Employers should encourage sick workers to stay home and be flexible in allowing remote work or alternative schedules.
- **Implement workplace controls.** Employers should implement engineering and administrative controls to protect against the spread of COVID-19, as well as provide personal protective equipment as necessary.

For each of the categories above, OSHA offers additional details, examples, and practical steps that may apply to your workplace. In addition to its initial guidance, OSHA recently launched a [COVID-19 webpage](#) that provides infection prevention information for workers and employers. OSHA reports that it is actively reviewing and responding to employee complaints regarding perceived exposure to COVID-19 and is also conducting outreach activities to educate employers and employees. Employers are encouraged to take all steps necessary to not only promote the safety of their workforce but also to ensure they are compliant with existing OSHA safety and health standards.

## Use of Respirators in Healthcare

OSHA's follow-up publication, [Temporary Enforcement Guidance](#), specifically recognizes the risks to healthcare industry workers and, in particular, the potential supply shortages of N95 filtering facepiece respirators used by many health care providers (HCPs) in response to the COVID-19 outbreak. OSHA's guidelines provide some necessary flexibility to HCPs relating to the normally strict requirements associated with filtering facepieces and respirators. In particular, the guidance provides three methods by which healthcare providers may conserve respirator supplies:

- First, employers may provide HCPs with another respirator of equal or higher protection, such as N99 or N100 filtering facepieces, reusable elastomeric respirators with appropriate filters or cartridges, or powered air-purifying respirators (PAPR).
- Second, employers may change the method of fit testing from a destructive method (i.e., quantitative) to a non-destructive method (i.e., qualitative). For filtering facepiece respirators, qualitative and quantitative fit-testing methods are both effective at determining whether the respirator fits properly.
- Finally, OSHA field offices are instructed to use enforcement discretion for the annual fit testing requirements, as long as employers conduct initial fit tests and make others good-faith efforts to comply with the regulations as necessary.

Such measures should be a relief to HCPs who find themselves quickly running out of facepieces and respirators that are necessary to perform their lifesaving functions.

## Requirements for Voluntary Use of Respirators by Employees

Under OSHA's Respiratory Protection Standard for general industry ([29 C.F.R. § 1910.134](#)), employers who require employees to wear respirators for work must develop and implement a detailed respiratory protection program with components including, but not limited to, initial and annual employee training, fit testing, and

medical evaluations for covered employees.

The standard also contains provisions that are unfamiliar to many employers. These provisions require employers who permit employees to wear respirators on a voluntary basis to give each such employee a copy of respirator selection and safety information contained in [Appendix D to the Respiratory Protection Standard](#). During the COVID-19 pandemic, employers in all industries have encountered employees wearing facemasks and respirators at work due to their beliefs that such equipment can prevent transmission of COVID-19. Employers should, therefore, be aware of the Appendix D requirement and other nuances of OSHA's requirements for voluntary use of respirators in the workplace.

- Employers should be aware that voluntary use of respirators is permitted only if the employer determines that such use will not in itself create a hazard for employees.
- The provision requiring distribution of Appendix D only applies to voluntary use of respirators (i.e., tight-fitting facepieces including N95 and similar dust masks) and does not apply to employees' use of loose-fitting surgical masks.
- Employers must provide a copy of the Appendix D information regardless of whether the employer is supplying respirators or employees are bringing their own respirators into the workplace to wear.
- If employees are only using dust masks, which OSHA refers to as "filtering facepieces," then the employer need only provide employees with a copy of the Appendix D information. If, however, employees are permitted to wear more advanced types of respirators at work, such as elastomeric respirator equipment or full-face respirators, then there are additional measures, including medical evaluation and respirator cleaning requirements, that the employer must satisfy.

## OSHA Standards and Regulations Implicated by COVID-19

Although OSHA has not issued any temporary emergency standards or other specific standards related to infectious diseases generally

or COVID-19 specifically, there are several existing standards and requirements that may apply to occupational exposure to the virus. Employers should take note of the following:

- **Personal Protective Equipment Standard** (in general industry, 29 CFR 1910 Subpart I). The PPE standards generally require employers to supply various protective equipment, including but not limited to, gloves, eye and face protection, and respiratory protection to protect workers from hazards associated with certain job duties. When respirators are necessary to protect workers, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection Standard, as discussed above. With the advent of COVID-19 in the workplace, even more job categories may require these protective measures, particularly where it is reasonably anticipated that employees will have to provide direct care and treatment to individuals known to be or suspected to be infected by COVID-19.
- **Hazard Communication Standard (HCS)** (29 CFR 1910.1200). This section requires employers to identify and communicate risks associated with any toxic or hazardous substances in the workplace and also to make Safety Data Sheets (SDSs) available to employees who could be exposed. Workplaces now making use of new disinfectants and cleaning chemicals may need to supplement their lists and collections of SDSs.
- **Recordkeeping Requirements** (29 CFR Part 1904). OSHA recordkeeping requirements mandate covered employers to record certain work-related injuries and illnesses on their OSHA 300 log. COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if (1) the case is confirmed by the CDC; (2) the case is work-related; 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, etc.).
- **General Duty Clause** (Section 5(a)(1) of the OSH Act, 29 USC 654(a)(1)). The general duty clause requires that each

employer furnish to each of its employees a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. OSHA has indicated that it may cite employers who knowingly expose employees to hazards associated with COVID-19 under the general duty clause. Employers are therefore encouraged to adopt the recommended measures outlined in OSHA's guidance materials discussed above to minimize employee exposure to COVID-19 hazards.

Employers should also bear in mind that there are twenty-eight [OSHA-approved State Plans](#), operating state-wide occupational safety and health programs. State Plans are required to adopt and enforce standards and enforcement programs that are at least as effective as OSHA's and may have different or more stringent requirements that apply to your workplaces. Employers should carefully consider their current OSHA policies and which standards may be impacted by COVID-19 in their industry.

## Working from Home (or "Teleworking")

With businesses and offices shutting down to contain the spread of COVID-19, many employees find themselves working from home or from a remote location. OSHA has [previously stated](#), however, that it will not inspect, nor does it expect employers to inspect, employee's home offices for health or safety hazards. Still, employers may have to record work-related injuries and illnesses suffered by employees working from home on their OSHA injury logs, provided the injury or illness is otherwise recordable and (1) occurs while the employee is performing work for pay or compensation in the home and (2) is directly related to the performance of work rather than to the general home environment or setting. (29 C.F.R. § [1904.5\(b\)\(7\)](#)).

## Next Steps

As the country and workplaces continue to adapt to the risks and challenges associated with COVID-19, we will continue to update you on your obligations as employers. For now, employers should review their health and safety policies, identify which standards

apply to their industry, and implement OSHA's practical guidance where applicable and practicable.

For additional guidance on workplace safety, questions about this article, or questions about your OSHA requirements that may apply to your specific industry and location, please contact [Jay Schoeny](#), [Kyle Johnson](#), [Steve Tolbert](#), or any of the attorneys in Frost Brown Todd's [Employee Safety & OSHA](#) practice.

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***To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.***

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