

OSHA Issues COVID-19-Related Guidance for Employers.

Preparing Workplaces for COVID-19

The centerpiece of OSHA's advice to employers is its 32-page Guidance on Preparing Workplaces for COVID-19. (<https://www.osha.gov/Publications/OSHA3990.pdf>) This Guidance is divided into two sections – "Steps All Employers Can Take to Reduce Workers' Risk of Exposure to SARS-CoV-2" and "Classifying Worker Exposure to SARS-CoV-2."

First, OSHA recommends the following steps all employer can take:

- Develop Infection Disease Preparedness and Response Plan that incorporates the latest guidance from public health officials and agencies into workplace-specific plans that evaluate and consider the risk level associated with each employer's particular worksites and job duties, non-occupational risk factors at home and in the community, and all steps the employer can implement to reduce the risk of worker exposure to COVID-19.
- Prepare and implement basic infection prevention measures.
- Develop policies and procedures for prompt identification and isolation of sick individuals, if appropriate.
- Develop, implement, and inform employees of newly implemented workplace accommodations, changes, "flexibilities," and protections that reduce the risk of workplace exposure.
- Select and implement available "workplace controls," i.e., means to control and reduce the risk of workplace exposure, such as engineering controls, administrative controls, safe work practices, and rigorous use to approved Personal Protective Equipment (PPE).
- Follow all applicable existing OSHA standards.

Examples of commonly used measures include testing employees for COVID-19 (if feasible), monitoring employees for COVID-19 symptoms, and providing effective sanitizers employees can use to decontaminate their work area.

Second, OSHA applies an "Occupational Risk Pyramid" to classify jobs into risk levels – very high risk, high risk, medium risk, and low risk. (<https://www.osha.gov/Publications/OSHA3993.pdf>) OSHA believes most workers fall in the low risk or medium risk categories.



OSHA considers the following jobs to be Very High Risk:

- Healthcare workers;
- Healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients; and
- Morgue workers performing autopsies on the bodies of people known or suspected of having COVID-19 at the time of death.

OSHA considers the following jobs to be High Risk:

- Healthcare delivery and support staff;
- Medical transport workers moving known or suspected COVID-19 patients; and
- Mortuary workers involved in preparing the bodies of people known or suspected of having COVID-19 at the time of their death.

OSHA considers the following jobs to be Medium Risk:

- jobs that require frequent and/or close contact with (within 6 feet) people who are not known or suspected of having COVID-19;
- jobs that require frequent contact with travelers who may have returned from international locations or other areas where there is ongoing community transmission; and
- jobs that require frequent close contact (within 6 feet) with the general public.

OSHA considers the following jobs to be Low Risk: jobs that do not require contact with people known or suspected of being infected **and** involve minimal close contact (within 6 feet) with the general public and with coworkers.

For High Risk or Very High Risk jobs, OSHA recommends the following:

- Engineering Controls (e.g., partitions and barriers) to reduce risk of exposure to COVID-19;
- Administrative Controls to reduce risk of exposure to COVID-19;
- Proper use of suitable PPE to reduce risk of exposure to COVID-19; and
- Safe Work Practices, e.g., provide hand sanitizer with at least 60% alcohol for such employees to use for decontamination purposes. (Note: safe work practice is a type of Administrative Control.)



For Low Risk or Medium Risk jobs, OSHA recommends the following:

- Engineering Controls to reduce risk of exposure to COVID-19;
- Administrative Controls to reduce risk of exposure to COVID-19; and
- Proper use of suitable PPE to reduce risk of exposure to COVID-19.

OSHA's COVID-19 Guidance includes examples of engineering controls, administrative controls, proper PPE, and safe work practices employers may consider. Of course, each particular employee's exposure risk and other workplace variables must be considered; one size does not fit all.

In addition, OSHA recently issued separate COVID-19 Guidance for employers in the following industries:

- [COVID-19 Guidance for the Construction Workforce \(https://www.osha.gov/Publications/OSHA4000.pdf\)](https://www.osha.gov/Publications/OSHA4000.pdf)
- [COVID-19 Guidance for the Manufacturing Industry Workforce \(https://www.osha.gov/Publications/OSHA4002.pdf\)](https://www.osha.gov/Publications/OSHA4002.pdf)
- [COVID-19 Guidance for the Package Delivery Workforce \(https://www.osha.gov/Publications/OSHA3998.pdf\)](https://www.osha.gov/Publications/OSHA3998.pdf)
- [COVID-19 Guidance for Retail Workers \(https://www.osha.gov/Publications/OSHA3996.pdf\)](https://www.osha.gov/Publications/OSHA3996.pdf)

Interim Enforcement Guidance for Recording COVID-19 Cases

On April 10, OSHA issued Interim Guidance for enforcing recordkeeping requirements as they pertain to COVID-19. This Guidance took effect immediately and remains in effect until further notice; it is time-limited to the current public health crisis. COVID-19 is to be coded as a respiratory illness on OSHA Form 300, and because it is an illness, as opposed to injury, if an employee requests that their name not be entered on the log, the employer must comply as specified in 29 CFR 1904.29(b)(7)(vi).

The general rule is that employers must record COVID-19 cases if the case:

- Is confirmed as COVID-19 illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, i.e., death, medical treatment beyond first aid, time off work, restricted work, transfer to another job, or loss of consciousness.



However, in areas where there is “ongoing community transmission,” employers, “**other than those in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions**,” are not required to make the determination of work-relatedness and are not required to record COVID-19 cases on OSHA Form 300. Until further notice, OSHA will **not enforce** 29 CFR 1904 to require such employers to record COVID-19 cases as being work-related, **unless** both of the following are true, in which case the COVID-19 case must be recorded on OSHA Form 300:

- “There is objective evidence that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
- Such objective evidence was reasonably available to the employer. Examples of reasonably available evidence” include information given to the employer by employees, as well as information that an employer learns in the ordinary course of managing its business and employees.”

To be clear, however, this OSHA Guidance specifies that employers in the healthcare industry, emergency response organizations, and correctional institutions must continue to make work-related determinations pursuant to 29 CFR § 1904 and must record work-related COVID-19 cases.

Interim Enforcement Response Plan or COVID-19

On April 13, OSHA announced its Interim Enforcement Response Plan for the COVID-19 pandemic, which provides instructions and guidance to OSHA area offices for handling coronavirus-related complaints, referrals, and severe illness reports. OSHA’s Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19) is time-limited to the current public health crisis. It went into effect immediately, and it remains in effect until further notice.

OSHA’s interim enforcement plan outlines procedures for addressing reports of COVID-19-related workplace hazards. COVID-19 fatalities and imminent danger exposures will be prioritized for on-site inspections. OSHA’s enforcement plan specifies that workers requesting inspections, complaining of coronavirus exposure, or reporting COVID-19 illnesses may be protected by one or more whistleblower statutes and will be informed of their legal protection from retaliation.

Under the enforcement plan, OSHA will investigate complaints, referrals, and employer-reported fatalities and hospitalizations to identify potentially hazardous occupational exposures to COVID-19 and to ensure that employers take prompt actions to mitigate hazards and to protect employees. OSHA notes that it has already received complaints about the lack of required PPE, e.g., respirators, gloves, and gowns, lack of training on appropriate standards, and possible COVID-19 infections in the workplace.



Before a COVID-19-related inspection is conducted, each area director must evaluate the risk level of exposure to COVID-19 and prioritize OSHA's resources in coordination with OSHA's regional offices to determine if an on-site inspection is necessary.

When the area director determines that an onsite COVID-19-related inspection is needed, OSHA inspectors must evaluate potential hazards to limit any possible exposure to themselves, and must maximize their use of electronic means of communication, such as remote video surveillance, phone interviews, email correspondences, facsimile and email transmittals of documents, and/or video conferences, throughout such inspections.

Among the attachments, OSHA included guidance designed to help employers identify risk levels, i.e., Very High Risk, High Risk, Medium Risk, and Low Risk, and implement appropriate engineering controls, administrative controls (including safe work practices), and personal protective equipment.

Discretion in Enforcement When Considering an Employer's Good Faith Efforts During the COVID-19 Pandemic

On April 16, OSHA separately issued instructions to its compliance officers to evaluate employers' good faith efforts to comply with certain OSHA standards during the COVID-19 pandemic. This new Guidance, Discretion in Enforcement when Considering an Employer's Good Faith Efforts During the Coronavirus Disease 2019 (COVID-19) Pandemic, explains how OSHA will determine whether an employer engaged in a "good faith attempt" to comply with certain OSHA standards during the current public health crisis.

OSHA acknowledged that current infection control practices may limit the availability of employees, consultants, or contractors who normally provide training, auditing, equipment inspections, testing, and other essential safety and industrial hygiene services. Business closures and other restrictions may also preclude employee participation in training where trainers are unavailable and access to medical testing facilities may be limited or suspended. For these reasons, during an inspection, OSHA inspectors must assess the employer's efforts to comply with OSHA standards **that require annual or recurring audits, reviews, training, or assessments.**

With regard to such standards, OSHA inspectors are now required to evaluate whether the employer made a good faith effort to comply, which includes consideration of the following:

- whether the employer explored all options to comply with applicable standards (e.g., use of virtual training or remote communication strategies);
- whether the employer implemented interim alternative protections, such as engineering or administrative controls; and
- whether the employer rescheduled required OSHA compliance annual activity as soon as possible.



OSHA included the following examples of when “enforcement discretion” (i.e., no citation) should be exercised by OSHA inspectors, so long as the employer made a good faith attempt to comply:

- Annual audiograms;
- Annual process safety management requirements (process hazard analysis (PHA) revalidation, review of operating procedures, and refresher training);
- Hazardous waste operations training;
- Respirator fit testing and training;
- Maritime crane testing and certification;
- Construction crane operator certification; and
- Medical evaluations.

In addition, in the event employers are unable to comply with OSHA requirements because local authorities temporarily closed the workplace, such employers may demonstrate their “good faith attempt” to meet applicable OSHA requirements **as soon as possible after re-opening of the workplace**. When employers demonstrate a “good faith attempt” at compliance, OSHA must take the employers’ good faith into “strong consideration” when determining whether to issue a citation. However, OSHA will issue a citation when an employer fails to demonstrate “any efforts to comply.” To ensure employers implement corrective actions once normal activities resume, OSHA will conduct monitoring inspections from a randomized sampling of cases where OSHA noted, but did not issue, any citations.

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