



OSHA compliance...and beyond under COVID - by Thomas Bianco

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As businesses open up, employers are faced with multiple limitations, requirements, and guidance issued by the Occupational Health and Safety Administration, Center for Disease Control, Department of Health, and Department of Building (OSHA, CDC, DOH, DOB). This alphabet-soup can be near incomprehensible for employers.

OSHA is the federal agency that sets, implements and enforces standards to ensure safe and healthful working conditions for employees and provides training, outreach, education and assistance for employers.

OSHA Regulations

OSHA has established specific and non-specific regulatory standards that are mandatory and non-mandatory "guidance" which establishes a best practice protocol. The other agencies adapt and incorporate these standards as "required protocols," adding further requirements, and "guidance."

No specific standard regulates occupational exposure to the COVID- 19 virus nor outlines mandatory steps to follow. Related standards, however, directly impact an employer's obligations.

Under the General Duty Clause, OSHA requires employers to furnish to each worker "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." This means that every employer must assess potential hazards and evaluate exposure risk; and then ensure that employees use appropriate controls to prevent exposure.

Personal Protective Equipment

OSHA's Personal Protective Equipment Standards (PPE) require employers to identify and provide employees with PPE "appropriate to the hazard" at no cost to the employee. PPE gear may include

gloves and hard hats and foot, face, eye, hearing and respiratory protection. Employers must train employees in the proper use of PPE and replace worn or damaged equipment.

Although the CDC recommends wearing cloth face coverings in addition to social distancing, OSHA cautions that cloth face coverings are not PPE or appropriate substitutes in workplaces where respirators or facemasks are recommended or required to protect the wearer.¹ For example, workers may be exposed to silica dust or other particles where the respirator is necessary to protect the worker (wearer).

Safe Work Practices

OSHA has issued recommended (non-mandatory) safe work practices for industries that include construction:

- Encourage workers to stay home when sick;
- Allow workers to wear masks over their nose and mouth to prevent spreading the virus;
- Continue normal control measures that protect workers from job hazards associated with construction activities, including PPE;
- Advise workers to avoid physical contact with others to maintain at least six feet of personal space where possible;
- Workers utilizing work trailers should maintain social distancing while inside;
- Encourage respiratory etiquette, including covering coughs and sneezes;
- Promote personal hygiene. If there is no immediate access to soap and water for handwashing, provide alcohol-based hand rubs containing at least 60% alcohol;
- Use Environmental Protection Agency-approved cleaning chemicals from List N or that have label claims against the coronavirus;
- When tools or equipment are shared, provide and instruct workers to use alcohol based wipes to clean tools before and after use;
- When cleaning tools and equipment, workers should consult manufacturer recommendations for proper cleaning techniques and restrictions;
- Keep in-person meetings (including toolbox talks and safety meetings) brief, limit number of attendees, use social distancing;
- Clean/disinfect portable jobsite toilets regularly, including door pulls and toilet seats. Keep hand sanitizer dispensers filled;
- Encourage workers to report any safety and health concerns.

State and City Requirements

The NYS Department of Health has issued a document (the Guidance) which sets forth the policies and practices for the construction industry to follow when they re-open for regular business activity (Interim Guidance for Construction Activities During the COVID-19 Public Health Emergency). The Guidance incorporates all of the mandatory OSHA requirements regarding PPE and non-mandatory

recommended safe work practices, but has made the recommended safe work practices mandatory.

The Guidance goes further than OSHA with additional requirements, such as:

Employer must sign and submit an Affirmation that the Guidance issued by the Department of Health has been reviewed, is understood and will be implemented;

Employer must formulate a Site Safety Plan for each jobsite to be posted onsite;

Designate a site safety monitor responsible for enforcement of the Site Safety Plan;

Implement daily health screening practices;

Regular cleaning and disinfection of the worksite at least daily;

Cleaning logs that include the date, time and scope of cleaning must be maintained.

There are a number of additional requirements to be found in the Guidance which employers are expected to follow. It is recommended that it be reviewed to determine which, if any, of the other requirements are immediately applicable to your operation. We will be happy to assist you in this regard.

1 When respiratory hazards exist employers must comply with the Respiratory Protection Standard which requires, among other things, medical evaluations and fit testing. Under current conditions OSHA is providing enforcement flexibility under the standard.

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