

## OSHA & COVID-19: Updated FAQs for Employers

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As employers receive more information about the COVID-19 pandemic, they have important questions about how to keep their employees safe at work and what are their legal obligations to do so. While every work environment may be different and the risks may vary to some extent, we have answered some frequently asked questions to provide general guidance to employers based on requirements that may apply under the Occupational Safety and Health Act of 1970 (“OSHA Act”). Employers should recognize that in many locations, state or local authorities may be issuing emergency orders or ordinances that could supersede generally applicable OSHA standards or requirements. Also, our understanding of the risks and issues remains evolving. Because recommendations are changing frequently, we intend to provide periodic updates when new information becomes available.

**Q: Are there special OSHA rules for COVID-19 that businesses need to follow?**

A: No. OSHA has provided a guidance document for employers, but, in general, OSHA would base its enforcement on the General Duty Clause of the OSHA Act, which requires employers to provide a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. For specific safety advice in this area, employers

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should look to the CDC's COVID-19 guidance to business. Guidance from both agencies recommends that employees who are working in an environment with a low risk of exposure maintain a safe distance (6 feet) when feasible.

Per OSHA guidance, employers must assess the respective risk level their work presents; employers in industries or communities with low risk of exposure must prepare differently than employers with medium, high, or very high risk of exposure to known or suspected sources of COVID-19. OSHA has identified healthcare, death care, laboratory, airline, border protection, and solid waste and wastewater management as industries on the higher end of the risk spectrum, and has provided specific recommendations to employers in these industries.

Employers outside of these industries have been advised to:

- Develop an infectious disease preparedness and response plan;
- Prepare to implement basic infection prevention measures such as promoting proper hygiene and implementing routine cleaning and disinfecting practices;
- Develop policies and procedures for prompt identification and isolation of sick people, if appropriate;
- Develop, implement and communicate about workplace flexibilities and protections; and
- Implement workplace controls, ranging from physical barriers to protect against the spread of COVID-19 (e.g., engineering controls) to providing personal protective equipment.

California employers should note that Cal/OSHA released Interim Guidelines for General Industry on 2019 Novel Coronavirus Disease. These guidelines highlight that California requires "employers covered by the Aerosol Transmissible Diseases (ATD) Standard (California Code of Regulations, title 8, section 5199) to protect employees from airborne infectious diseases such as COVID-19 and pathogens transmitted by aerosols."

**Q: An employee has reported that they received a positive test result or are experiencing symptoms. Do we need to alert the employee's co-workers and send them home?**

A: In many cases, yes. If an employee reports a positive test result or reports experiencing symptoms of COVID-19, the employer should determine which other employees may be affected based on CDC guidance in an ADA-compliant manner. The factors that the CDC recommends considering are:

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- Who was in “close contact” with the employee, meaning within 6 feet;
- Whether the exposure was for a “prolonged” time period, which could be up to a half hour; and
- Whether the prolonged close contact occurred within the 48-hour period before symptoms developed.

Current guidance suggests that employees who had prolonged close contact with a symptomatic co-worker during the 48-hour period before symptoms developed should stay home for 14 days to monitor for symptoms. This 48-hour lookback period is shorter than prior recommendations and should be more manageable.

In addition, we recognize that the CDC has provided guidance to the healthcare industry that takes into account whether a healthcare worker and an ill patient were both wearing appropriate PPE during a prolonged close contact interaction. At this time, until the guidelines to non-healthcare employers change, we do not recommend that non-healthcare employers take into account whether employees were wearing respirators or other face masks when assessing whether to send home employees. If the guidance changes again, we will provide an update.

Each appearance of an individual in the workplace with COVID-19 or related symptoms will be different. Therefore, a one size fits all approach may not apply. And, the recent suggestion that everyone should wear a mask in public may impact your approach and your employee’s expectations of proper safety measures. (Click here for our guidance on masks.) You should coordinate with your local Departments of Public Health and your Laner Muchin attorney to determine the appropriate response to each unique situation. **(Updated April 5, 2020)**

**Q: An employee has reported that they received a positive test result or are symptomatic. When can the employee safely return to work?**

A: Current CDC guidance allows for two approaches on when an individual may end self-isolation, which are either based on the individual’s symptoms or when the individual has tested negative for COVID-19. Employers should continue to check CDC guidance for updates, and, whenever possible, coordinate with a treating physician or a public health department before allowing an employee to return to work.

For employees who are not able to be tested, the CDC recommends that the following factors be considered:

- the employee has been fever-free for at least 72 hours (that is three full days of no fever without the use of medicine that reduces fevers); AND

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- other symptoms have improved (for example, when a cough or shortness of breath have improved); AND
- at least seven days have passed since the employee's symptoms first appeared.

To the extent possible, the employer should document when the employee has satisfied all three criteria before allowing the employee back into the workplace. As the CDC and other agencies have pointed out, it may not be possible in all cases to obtain a doctor's note confirming that the employee has been cleared to return to work, especially when the employee had not been tested. Contact your servicing Laner Muchin attorney for assistance if you have concerns about a return to work scenario involving an employee who cannot provide a doctor's note.

If an employee can be tested and has been tested, the CDC recommends that an individual can end a self-isolation period when:

- the employee no longer has a fever (without the use of medicine that reduces fevers); AND
- other symptoms have improved (for example, when your cough or shortness of breath have improved); AND
- the employee has received two negative tests in a row, 24 hours apart.

Presumably, under these circumstances, the employee will be able to provide medical documentation consistent with the testing, or a written return to work document from a treating physician.

Also, if an employee tested positive for COVID-19, but never developed symptoms, the employee could return to work after seven days from the date of the positive test result. Ideally, an employer should obtain medical documentation under these circumstances, whenever possible. Again, you can contact your servicing Laner Muchin attorney for advice if you have concerns about a return to work scenario involving an employee testing positive for COVID-19, but who cannot provide a doctor's note. **(Updated April 5, 2020)**

**Q: An employee has reported that they received a positive test result or are symptomatic. How should employers approach cleaning and disinfecting the workplace?**

A: Although we encourage you to verify information about the virus to obtain the latest guidance, current CDC guidance states that employers do not need to clean areas where an ill employee has not been present for at least seven days. For facilities that do not house individuals overnight, the CDC recommends closing off areas used by the affected employee and waiting 24 hours before cleaning, in order to reduce the chance of infection from possible droplets in the air. For further information, please consult the CDC's

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Environmental Cleaning and Disinfection Recommendations.

Residential facilities should consult the CDC's guidance to U.S. Institutions of Higher Education.

All individuals performing the cleaning should be provided PPE and be trained under the OSHA PPE Standard and, if certain respirators or dust masks are mandated or used voluntarily, the OSHA Respiratory Protection Standard must also be followed, which you can learn more about here. **(Updated April 5, 2020)**

**Q: Our business is an essential business under our state's "stay at home" order, but we are unable to structure our workplace to have employees maintain a safe distance. Do we need to shut down?**

A: Probably not. OSHA and the CDC, as well as many "stay at home" orders that have been issued so far, have recommended that employees work at a safe distance when feasible. When it is not feasible, the guidance does not specifically require the employer to shut down. However, employers in these situations remain subject to OSHA's General Duty Clause requirement that they provide a safe workplace, as mentioned previously. Employers should review CDC guidance, linked above, on ways to reduce the risk of transmission in the workplace, including, for example, having employees take their own temperatures before coming into work. Employers should also provide regular training reminders to employees of safe work practices, hygiene, and the importance of staying home if possibly ill. Employers should also review the specific requirements of the applicable "stay at home" order for any mandatory social distancing requirements for essential businesses. Employees who do not feel safe in their work environment may be unwilling to appear for work or may suffer from morale problems, which employers in these situations should anticipate. **(Updated April 5, 2020)**

**Q: If we have a retail or customer-facing business, should we provide gloves and face masks to our employees? What if employees want to wear do it yourself cloth face masks?**

A: Face masks are a form of PPE subject to the OSHA PPE Standard. Some face masks are considered "respirators," such as the N95 respirator, and are also subject to the OSHA Respiratory Protection Standard. These Standards require advanced planning and some consideration, even when employees want to voluntarily wear face masks. In light of the CDC's recommendation that individuals wear cloth face masks in public, we have published a separate article discussing what employers need to know about face masks here. **(Updated April 5, 2020)**

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### **Q: What OSHA training requirements may apply if we are ramping up our safety precautions in response to COVID-19?**

A: If an employer introduces additional PPE (e.g., gloves, masks, smocks, etc.) or hazardous chemical (such as cleaning solutions) into the workplace, employees may need additional training, as noted above. Among other considerations, although OSHA normally does not apply its hazardous chemical standards to household cleaning supplies that are used consistent with home use, employers that ramp up their sanitation efforts might need to review safety issues with employees who might be using a product available on a grocery store shelf. Although OSHA has relaxed the standard somewhat for the healthcare industry, other employees who are required to use respiratory protection devices (such as the N95 face mask) should have current fit tests and otherwise should be working in full compliance with the Respiratory Protection Standard (which again is discussed in our separate article on face masks). Depending upon changes in job duties, staff may need to be trained under the Bloodborne Pathogens Standard and be offered a vaccination. Employers should consider providing additional training and regular safety talks based on COVID-19 concerns and changes in duties. **(Updated April 5, 2020)**

### **Q: If we take our employees' temperature ourselves, do we need to use PPE?**

A: Possibly, yes. Current guidance suggests that few precautions are needed if you can take someone's temperature without coming into close contact with the other person, such as by using a scanning thermometer.

When it is not possible to avoid close contact and scanning thermometers are not available, an employer would be obligated to evaluate the potential hazards. An employer may need to provide masks, gloves, eye protection, and aprons. Employers should also assess potential transmission risks to employees who are having their temperatures taken or who are possibly waiting in line. For these reasons, many employers opt to obtain assistance from outside service providers.

When taking employee temperatures, employers should also maintain the privacy of the employee's information, both as to the records of the testing and the possibility of a co-worker overhearing testing-related discussions. Employers should also consult with their Laner Muchin servicing attorney to confirm whether employees who appear for work, but who are sent home, are entitled to any type of "show up" pay under State or federal law or an applicable collective bargaining agreement, or whether the time spent in line waiting for a screening may be considered compensable time. **(Updated April 5, 2020)**

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**Q: If we bring in additional cleaning supplies and chemicals to sanitize or disinfect the workplace, are there OSHA issues that need to be considered?**

A: Yes. Common sanitizers and sterilizers could contain hazardous chemicals. Where workers are exposed to hazardous chemicals, use household cleaners more frequently than everyday household rates, or new chemicals are introduced into the workplace, employers must comply with OSHA's Hazard Communication Standard. Among other things, employees should be trained on the specific hazards of the chemicals to which they may be exposed, as well as the steps that they should take in the event that there is an accidental spill or if there are steps that the employee should take if they get a chemical in their eyes or on their skin. Employers should also consider whether additional PPE would be required, such as gloves, masks, sleeves, or aprons. Also, the CDC has issued guidance on cleaning after an employee or person in the workplace has been diagnosed with COVID-19.

**Q: Do employers have safety obligations to employees who are working from home?**

A: In some cases, yes. In 2000, OSHA stated that its policy was not to hold employers liable for employees' home offices, and that OSHA does not expect employers to inspect the home offices of their employees. OSHA generally does not conduct inspections inside homes, and employers are certainly not required to ensure the safety of non-working areas of their employees' homes. However, OSHA may take a different approach to home-based manufacturing or assembly operations. Nevertheless, employers may be required to report serious injuries or fatalities to OSHA, and record injuries for home-based employees. In some cases as well, employers could face workers' compensation claims from employees who were working at home and should take steps to assess potential coverage for such claims. For these reasons, when employees set up home offices, safety should be part of the discussion. To reduce the risk of liability, employers should understand what portion of the home employees are using and what times of day employees are working.

**Q: Do employers need to record COVID-19 illnesses on our OSHA 300 logs?**

A: In some cases, yes. OSHA requires employers to record work-related illnesses, which, unlike the flu or the common cold, could include COVID-19, if the employee was exposed to the virus while working. Employers are required to assess whether an employee contracted the illness while at work based on the circumstances. Employers should be cautious of "over-recording" illnesses, as an over-report of illnesses will result in the employer maintaining unusually high numbers of lost days for injuries or illnesses, which could create difficulties for businesses that need to disclose injury and illness records when bidding for work or could result in an inspection. In addition, hospitalization and fatalities involving work-related

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COVID-19 would likely trigger mandatory reporting obligations to OSHA.