

## ***Are Construction Employers at Risk for an OSHA Citation for COVID-19 Exposure?***

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The Occupational Safety and Health Act requires employers to maintain a workplace that safeguards workers from “recognized hazards” to health or safety.

OSHA has issued enforcement guidance to its field offices. This guidance directs OSHA'S field personnel to investigate complaints, referrals, and employer-reported fatalities and hospitalizations, to identify potentially hazardous occupational exposures and to ensure that employers take prompt action to mitigate hazards and protect employees. The Agency has reported that complaints received during the initial months of the outbreak describe concerns related to lack of personal protective equipment (PPE), such as respirators, gloves, and gowns. OSHA has also received complaints expressing concern about a lack of training on appropriate standards and about possible COVID-19 illnesses in the workplace.

Enforcement activities relating to infectious disease hazards can potentially identify violations of OSHA's Personal Protective Equipment (PPE) standards, which normally require use of gloves, eye and face protection, and respiratory protection. When respirators are necessary to protect workers or where employers require respirator use, construction employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134).

Many local authorities have issued orders requiring the use of face coverings to prevent the spread of the virus on construction sites. These orders mirror CDC recommendations, which have not gone beyond recommending face coverings, which include any type of cloth covering, given the shortages of masks for health care workers. Even OSHA recommendations, discussed below, do not require anything more than masks that prevent the spread of the virus. Nevertheless, there may be circumstances in which the use of respirators to prevent employees from contracting the virus is called for. If employers require respirators such as the N-95 mask, they must develop and implement a respiratory protection program. Employers that allow, but do not require employees to use filtering face piece respirators must determine that the respirator itself will not create a hazard. Employers are not required to have a written respiratory protection plan for voluntary use of respirators, but they must provide information to those using such devices. The information, taken from OSHA'S standards, contains certain precautions to be sure that the respirator itself does not create a hazard.

The second, and more likely basis for an OSHA citation relating to the hazards associated with the pandemic is OSHA's General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which 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.” Under this standard, the OSHA will determine if the employer had knowledge of a hazard in its workplace and, if so, took steps such as establishing and enforcing work rules designed to eliminate the risk.

OSHA has issued guidelines setting forth its recommendation for measures to be taken by employers protect workers from the hazards associated with the potential transmission of Covid-19 on construction sites. Such measures include:

- Encourage workers to stay home if they are sick.
- Allow workers to wear masks over their nose and mouth to prevent them from spreading the virus.
- Continue to use other normal control measures, including personal protective equipment (PPE), necessary to protect workers from other job hazards associated with construction activities.
- Advise workers to avoid physical contact with others and direct employees/contractors/visitors to increase personal space to at least six feet, where possible. Where work trailers are used, all workers should maintain social distancing while inside the trailers.
- Train workers how to properly put on, use/wear, and take off protective clothing and equipment.
- Encourage respiratory etiquette, including covering coughs and sneezes.
- Promote personal hygiene. If workers do not have immediate access to soap and water for hand washing, provide alcohol-based hand rubs containing at least 60 percent alcohol.
- Use Environmental Protection Agency-approved cleaning chemicals from [List N](#) or that have label claims against the coronavirus.
- To the extent tools or equipment must be 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) as short as possible, limit the number of workers in attendance, and use social distancing practices.
- Clean and disinfect portable jobsite toilets regularly. Hand sanitizer dispensers should be filled regularly. Frequently-touched items (i.e., door pulls and toilet seats) should be disinfected. Encourage workers to report any safety and health concerns.

Finally, OSHA requires employers to create and maintain records injuries and illnesses that occur in the workplace beyond those merely requiring first-aid. OSHA has also issued [temporary guidance](#) for contractors clarifying under what circumstances a case of COVID-19 on the jobsite should be recorded as an illness on [OSHA Form 300](#)

First, OSHA does not consider construction a high-risk industry like healthcare and emergency response industries when it comes to transmission of the virus, so the agency has stated that it will not enforce record-keeping requirements mandating contractors to make determinations whether a COVID-19 case is work related or not. The exception is when there is “reasonably available” objective evidence that a COVID-19 case may be [work related](#). In those cases, contractors are required to log the case when it is confirmed and involves one or more of [general recording criteria](#), like medical treatment beyond first aid or days away from work. In determining whether the case is work related contractors are not required to conduct an investigation.

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