

Federal Agencies Issue Revised COVID – 19 Guidelines for Construction Contractors and Other Employers



By Lynn Patton Thompson and Michelle High



Even as some states, including Mississippi, begin to lift mask-wearing mandates, Federal agencies continue to release updated guidelines and regulations that impact the workplace to be provided by employers.

In January 2021, the Centers for Disease Control (“CDC”) revised its Construction Safety Covid-19 Safety Checklists for Employees and Employers. This revision included the addition of checklists applicable to employee mental health. The CDC’s guidelines initially focused on the physical safety of the workplace for construction employees. Previously, the CDC had published Construction COVID- 19 checklists and its publication of “What Construction Workers Need to Know about COVID-19.” These focus on ways employers can protect construction workers and slow the spread of COVID-1, such as by conducting hazard assessments for appropriate selection of Personal Protection Equipment (“PPE”) and designating a safety and health officer (“SHO”) to be responsible for responding to COVID-19 concerns at every jobsite and notifying employees who the SHO is and how to contact them.

Now the CDC is addressing COVID-related mental safety. Employers are expected to be aware of factors that can add work- or home-related stress to workers during a pandemic. The CDC’s checklist encourages employers to talk openly with employees about how the pandemic is affecting work and to communicate clear expectations to the workforce. Additionally, employers should anticipate behavior changes in employees, such as irritation, anger, increased sadness or

difficulty concentrating; and ensure that there is a system in place to identify and provide mental health services to employees in need of support. The CDC's guidelines are intended to serve as recommended practices based on the best evidence available. While not mandatory, these guidelines are widely recognized as standards of practice. The revised Employer and Employee checklists for the construction industry are linked here.

Mississippi's Back-to-Business Liability Assurance and Health Care Emergency Response Liability Protection Act provides immunity for any person (defined to include individuals, the state and its political subdivisions, associations, educational entities, for-profit or non-profit entities, religious, and charitable organizations) and owners/occupants of premises from civil damages for injuries or death resulting from exposure to COVID-19, provided they show a "good faith" attempt to follow applicable public health guidance. The CDC recommendations are the type of public health guidance employers will want to try to follow in order to avail themselves of this protection from liability.

Like the CDC, the Occupational Safety and Health Administration ("OSHA") has COVID-19 Guidance for the Construction Workforce. These guidelines contain recommendations combined with descriptions of mandatory safety and health standards, intended to assist employers in providing a safe and healthful workplace. While the guidelines are not mandatory *per se*, it is important for employers to remember that the Occupational Safety and Health Act ("OSH Act") requires employers to comply with safety and health standards and regulations promulgated by OSHA. More specifically, the Act's broadly enforced General Duty Clause requires employers to provide employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

On January 29, 2021, OSHA released Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace. According to OSHA, the most **effective COVID-19 prevention programs include:**

- *Assignment of a workplace coordinator* who will be responsible for COVID-19 issues on the employer's behalf.
- *Identification of where and how workers might be exposed to COVID-19 at work.* This includes a thorough hazard assessment to identify potential workplace hazards related to COVID-19.
- *Identification of a combination of measures that will limit the spread of COVID-19 in the workplace, in line with the principles of the hierarchy of controls.* This should include eliminating the hazard, engineering controls, workplace administrative policies, personal protective equipment (PPE), and other measures.

- *Consideration of protections for workers at higher risk for severe illness through supportive policies and practices*
- *Establishment of a system for communicating effectively with workers and in a language they understand.*
- *Education and training of workers about the company's COVID-19 policies and procedures in a manner and language they can understand.* This should include discussion of Basic facts about COVID-19, including how it is spread and the importance of physical distancing, use of face coverings, and hand hygiene; information and training regarding the steps being taken to protect workers from COVID-19 in the workplace; and a method of tracking which workers have received this information. Employers need to be sure workers understand they have a legal right to a safe and healthy work environment and supervisors need to be familiar with the company's policies.
- *Instruct workers who are infected or potentially infected to stay home and isolate or quarantine to prevent or reduce the risk of transmission of COVID-19. (OSHA looks with disfavor upon policies that encourage employees to report to work if sick or exposed.)*
- *Minimize the negative impact of quarantine and isolation on workers and allow for remote work when possible.*
- *Isolating workers who show symptoms at work.*
- *Performing enhanced cleaning and disinfection after people with suspected or confirmed COVID-19 have been in the facility and providing guidance on screening and testing.*
- *Recording and reporting COVID-19 infections and deaths:* Employers are required by law to record work-related cases of COVID-19 in many circumstances and to report outbreaks to the health departments. In addition, it is a violation of the OSH Act for employers to discriminate against or take retaliatory action against an employee for speaking out about unsafe working conditions or reporting an infection or exposure to COVID-19 to an employer.
- *Implementing protections from retaliation and setting up an anonymous process for workers to voice concerns about COVID-19-related hazards.*
- *Making a COVID-19 vaccine or vaccination series available at no cost to all eligible employees.*

- *Not distinguishing between workers who are vaccinated and those who are not:* Workers who are vaccinated must continue to follow protective measures, such as wearing a face covering and remaining physically distant, because at this time, there is no evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person.

OSHA's "Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace" is available at <https://www.osha.gov/coronavirus/safework>.

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