

# OSHA Guidance for Keeping Construction Workers Safe During the Pandemic

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**T**he COVID-19 pandemic has presented substantial challenges and concerns for both construction workers and the construction industry as a whole which are beyond the usual occupational conditions and hazards. The industry regularly deals with extreme heat and cold, high elevation, heavy equipment, electrified wires and hazardous chemicals which, when safeguards are disregarded, can result in injury, illness or death. The nature of construction work requires that safety hazards be identified and that safety rules and measures be implemented to prevent on-the-job accidents and incidents that can result in injury, illness, death and damage to property.

To that end, the Occupational Safety and Health Administration (OSHA) sets and enforces standards concerning worker health and safety. In the wake of the COVID-19 pandemic, OSHA issued guidance on how to assess risk and implement safety protocols on jobsites, which, if complied with, may help to avoid the potential consequences of COVID-19 exposure, including worker illness, jobsite shutdowns, layoffs/furloughs and increased project expenses.

As of Monday, Aug. 3, OSHA's guidance is nonbinding. OSHA has not enacted new rules in response to COVID-19. But, state and local authorities have issued mandates,

often stricter than OSHNs guidelines, which employers should familiarize themselves with in preparing their workers to deal with COVID-19.

## TAKEAWAYS FOR THE CONSTRUCTION INDUSTRY

- **Perform a Hazard Risk Assessment for COVID-19**

OSHA has divided job tasks into four risk exposure levels: very high, high, medium and lower risk, as shown in the occupational risk pyramid. The four exposure risk levels represent the probable distribution of risk. Most American workers will likely fall in the lower or medium exposure risk levels.

Lower-risk exposure applies to workers who have very limited exposure to the public, publicly handled goods and potentially contaminated surfaces as part of their routine job duties. Examples include remote workers, long distance truck drivers and office workers with limited close contact to the public.

Medium-risk exposure applies to workers who have frequent exposure to the public, publicly handled goods and potentially contaminated surfaces as part of their routine job duties. Examples might include

front office receptionists, sales personnel and facilities management.

High-risk exposure applies to workers with a high potential for exposure to known or suspected sources of COVID-19. Health care workers are the typical high risk example.

OSHA considers most construction workers to be in the low- to medium-risk levels. A construction job is more likely to be considered high risk if the jobsite is located indoors or in an enclosed space.

- **Prepare a COVID-19 Safety Plan (Preferably in Writing)**

Once an employer determines the levels of occupational risk in its workforce, it should design and implement a COVID-19 safety plan. Per OSHA, this plan, if possible, should contain a mix of engineering controls, administrative controls and personal protective equipment (PPE).

Engineering controls are favored over administrative controls and PPE because they are designed to remove the hazard at the source before it comes into contact with the worker. Further, engineering controls do not rely upon worker compliance. Examples of engineering controls include: installing high efficiency air filters, increasing ventilation rates and installing physical barriers.

Administrative controls require action by the worker or employer and frequently are comprised of changes in workplace policy. Examples of administrative controls include: social distancing encouraging sick workers to stay home, screening workers for symptoms, replacing face-to-face meetings with virtual meetings, staggering

shifts and training workers to recognize the signs and symptoms of COVID-19. Administrative controls also encompass safe work practices, such as requiring frequent hand washing and the provision of soap or alcohol-based sanitizers.

PPE helps prevent some exposure, but it is not considered a replacement for administrative and engineering controls. In the context of construction safety, OSHA does not consider cloth face coverings to be PPE. Cloth face masks can be used to decrease transmission of COVID-19, but they are not an appropriate substitute for respirators, which might be required for hazards posed by dust or chemicals on a jobsite.

Notably, OSHA has not yet issued a directive that employers require the use of face coverings on jobsites. Instead, OSHA calls upon employers to evaluate the continuing need for PPE and, if required, to provide the appropriate PPE to their workforce. (29 CFR 1910.132.) In the absence of such a mandate, employers will need to review state and local protocols as well as the protocols of other companies on the jobsite. For example, a subcontractor should ascertain whether the general contractor requires cloth face masks onsite.

- **Know When COVID-19 Is a Recordable Illness for the OSHA 300 Log**

OSHA requires employers to complete a log (OSHA Form 300), which tracks work-related injuries and illnesses to note the extent and severity of each case. OSHA has deemed COVID-19 to be a recordable illness. Employers must perform an investigation to determine if the suspected COVID-19 case meets all of the following criteria of a recordable illness:

- The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC);
- The case is work-related as defined by 29 CFR Section 1904.5; and
- The case involves one or more of the general recording criteria set forth in 29 CFR Section 1904.7.

For point one, the CDC defines a confirmed case of COVID-19 as one that has been confirmed through laboratory testing. Accordingly, employers are not required to report cases of COVID-19 until and unless the case has been verified by a conclusive lab test. For point two, a case of COVID-19 is deemed "work-related" if, after a reasonable and good faith investigation, the employer determines that, more likely than not, the case was contracted at work. As to the third point, any number of events may trigger an employer's duty to record an illness, including but not limited to death, days away from work or medical treatment beyond first aid.

- **Consider How the Company's Safety Plan Will Practically be Implemented on the Jobsite and Adjust Accordingly**

While the measures discussed above are well-intended, there is a concern that efforts to keep workers safe from COVID-19 may be unrealistic on the jobsite. To begin with, social distancing policies discourage the use of carpooling to and from work. It also makes eating lunch, going to the water cooler and taking breaks with coworkers more difficult. Physical proximity is also problematic with respect to using elevators or attending daily jobsite meetings, tool box talks and orientations that occur in the

field, often in a small construction site office trailer. Virtual meetings only go so far.

Sanitizing protocols also raise questions. Requiring workers to wash their hands frequently may not be feasible if the workers are routinely far away from a restroom or a running source of water (e.g., working on a roof or highway). And if an employer is able to obtain a portable hand washing station, is it available for use by all the contractors on a jobsite or just the employer's workers? Where does this cost get reimbursed, and if it is exclusive to the employer's workers, how is that exclusivity enforced? To that end, perhaps hand sanitizer is a more practical solution.

Further, there is a concern that different employers on a jobsite will issue conflicting guidance. If a subcontractor does not require its workers to wear masks, but the general contractor does, who is right? Contractors should make a habit of requesting and reviewing safety plans for the other contractors on site. To the extent that uniformity can be achieved safely, employers should endeavor to do so.

Lastly, it is important to remember that overzealous efforts to comply with COVID-19 on a jobsite could inadvertently increase a worker's risk of injury from other more traditional jobsite hazards. As an example, consider the interaction of eye protection and face masks on a humid summer day (a frequent Philadelphia occurrence).

Depending on the task they are completing, a safety plan may call for a worker to wear both safety glasses and a cloth face covering. But the combination of high humidity, eye protection and face masks

can easily result in foggy safety glasses, which obscure vision and lessen the worker's ability to observe their surroundings. Poor vision on a worksite exposes that worker to immediate risks of injury from more traditional hazards (e.g., high elevation, heavy equipment, power tools, etc.). In that context, a cloth face covering may not be the most appropriate PPE, especially if social distancing can be accomplished.

## CONCLUSION

The challenges posed by COVID-19 to the construction industry are unprecedented. Employers need to familiarize themselves with the most recent guidelines and mandates from OSHA and state and local

authorities. Proactive measures to keep workers safe should be tailored to meet the practical realities of the construction industry such that when and if litigation arises out of COVID-19 exposure, employers can be prepared to demonstrate the actions they took and why.



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