

Employers Must Protect Workers During the COVID-19 Pandemic

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As the COVID-19 crisis continues, employers must be aware of evolving guidelines from the federal Occupational Safety and Health Administration (OSHA) and state and local agencies that are meant to keep workers healthy and safe during the pandemic.

"This is a situation that's changing every day," said Denise Greathouse, an attorney with Michael Best in Milwaukee. Employers are trying to figure out how to safely bring employees back to the worksite, and once they think they understand the situation, things change again, she said during a session at the American Bar Association's 14th Annual Labor and Employment Law Conference, which was held virtually.

Federal Guidelines

Employers should review OSHA's existing standards, which cover pandemic-related safety risks. Under the Occupational Safety and Health Act's general duty clause, all employers must provide a work environment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm." OSHA has also released COVID-19-specific guidelines for limiting workers' exposure to the coronavirus.

"All employers need to make an assessment of their workplace to determine if a hazard is present," said panelist Brian A. Broecker, senior attorney for the U.S. Department of Labor in Washington, D.C.

If employers discover a hazard, they need to provide appropriate personal protective equipment (PPE), train employees on how to use it and ensure that employees actually do use it, he said.

The type of PPE required will depend on the workplace and the job. For example, nurses may need gloves, gowns, face masks, eye protection and respirators if airborne precautions are necessary.

OSHA has proposed about \$2.5 million in fines (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/osha-fines-for-covid-19-safety-violations.aspx) for COVID-19-related safety violations since the beginning of the pandemic. The majority of citations have been for violations of respiratory protection rules, and many have been in the health care field, Broecker noted. OSHA has also cited several meatpacking plants (www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/meatpacking-citation.aspx) for failing to protect workers against the coronavirus.

Guidance changes as agencies learn more about the coronavirus, so employers should periodically check OSHA's website (<https://www.osha.gov/SLTC/covid-19/>), as well as the U.S. Centers for Disease Control and Prevention (CDC) website (<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>) for updates.

In May, OSHA released updated interim enforcement guidelines (<https://www.osha.gov/memos/2020-05-19/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>) prioritizing COVID-19-related cases for the agency's field offices. "Particular attention for onsite inspections will be given to high-risk workplaces, such as hospitals and other healthcare providers treating patients with COVID-19, as well as workplaces with high numbers of complaints or known COVID-19 cases," according to the agency.

State Action

The federal Occupational Safety and Health Act covers most private employers and their workers. However, OSHA allows states to develop their own workplace health and safety plans, as long as those plans are "at least as effective" as the federal program.

Some states require employers to follow specific coronavirus safety rules. Virginia was the first state to adopt a COVID-19-related workplace safety mandate, which includes reporting and training requirements (www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/virginia-employers-must-complete-their-covid-19-response-plans.aspx).

The California Division of Occupational Safety and Health, which is known as Cal/OSHA, has issued state-specific resources for employers (<https://www.dir.ca.gov/dosh/coronavirus/>).

Some existing rules also apply to the coronavirus crisis. For example, Cal/OSHA's Aerosol Transmissible Diseases standard, which was adopted in 2009, is meant to protect workers from infectious diseases that can be transmitted by inhaling air that contains viruses and bacteria. Only certain health care providers in the state are required to follow the standard, but it may provide a helpful roadmap for protecting other workers who are exposed to COVID-19.

Carmen Comsti, policy specialist for the California Nurses Association in Oakland, Calif., thinks California leaders aren't doing enough to protect workers in high-risk jobs, such as nurses.

More than 1,700 health care workers have died from COVID-19, according to National Nurses United (<https://www.nationalnursesunited.org/press/new-report-reveals-widespread-government-failure-track-and-report-data-covid-19-deaths>). "I think these deaths simply shouldn't have happened, because we've known for decades how to protect workers from respiratory diseases," Comsti said during the session.

She noted, however, that Cal/OSHA just released a draft COVID-19 emergency regulation (<https://www.dir.ca.gov/OSHSB/documents/COVID-19-Prevention-Emergency-txtbrdconsider.pdf>) on Nov. 12. On Nov. 19, the Occupational Safety and Health Standards Board will decide whether to approve the draft.

[Looking for state-specific information? See [State & Local Updates](http://www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/default.aspx) (www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/default.aspx)]

Some states that don't have a state-specific OSHA plan are still taking action to keep workers safe during the pandemic. New York does not have a state OSHA plan for private employers, so the governor has issued numerous executive orders (<https://www.governor.ny.gov/executiveorders>), and the New York State Department of Health has created regulations and guidelines for workers. The state legislature has also passed COVID-19-related measures (<https://paidfamilyleave.ny.gov/covid19>) that the governor approved.

"The pandemic was—and is—a big deal in New York," said panelist Darren Cohen, assistant counsel to Gov. Andrew Cuomo for labor and workforce development. "Early on we were the focus of a lot of attention, and we've taken a lot of action." He noted that many measures cover public health emergencies in general and will apply if there is a similar crisis in the future.

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