



COVID-19 Guidance

NSC Divisions

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COVID-19: FEDERAL & STATE ETS

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OVERVIEW

- After issuing shifting/conflicting guidance during 2020, OSHA now working on new enforcement approach, new guidance issued 1/29/21; decision on ETS coming by March 15th
- MSHA largely follows CDC/NIOSH/OSHA guidance but has no GDC and few tools for enforcement
- CalOSHA, MI-OSHA, OR-OSHA & Virginia OSHA have COVID ETS
 - Virginia **finalized permanent rule** on COVID-19 – effective 1/27/21 until Governor declares state of emergency over.
 - CalOSHA had ATD standard prior to COVID-19; has adopted ETS and working on additional rules and policy (Dan Leiner to address)
 - OR-OSHA has proposed permanent COVID-rule to replace ETS (expiring 5/4)
 - MIOSHA adopted COVID ETS in October 2020 – in effect for 6 mo. (further action TBA)
 - NJ Gov. issued declaration effective 11/5/20 imposing workplace S&H protections, enforceable by state DOH, due to federal OSHA inaction
- In total, 14+ states have adopted some form of worker safety protections in addition to separate executive orders requiring face masks in the workplace, which have been issued by some governors

IMPACT OF VARIOUS STATE PLAN COVID ETS

- Multi-state operations with worksites in Virginia, California, Michigan or Oregon - where COVID rules are enforceable - may have that used to impute knowledge of risk and feasibility of abatement under federal OSHA GDC until federal ETS is finalized
- Tort issues in multi-employer worksites (esp. temporary workers) if provide “lesser level of protection” to those at non-VA/OR/CA/MI worksites than to those at state plan worksites
- Potential for state plan OSHA agencies in MD, NC, TN, SC, KY, WA etc. to follow VA, OR-OSHA, MIOSHA and CalOSHA examples if federal action delayed (or litigated indefinitely)

FEDERAL COVID ETS STATUS

- President Biden signed Executive Order directing regulators to issue stronger guidance for workplaces – guidance revised 1/29/21
 - <https://www.osha.gov/coronavirus/safework>
- OSHA must consider whether an ETS is needed by **MARCH 15, 2021**
 - MSHA does not have any enumerated requirements for COVID ETS but must consider whether one is needed, and issue ASAP
 - DOL may consider whether to extend any OSHA ETS to worksites “outside normal OSHA jurisdiction” (Mining? Nuclear? Aviation? Public sector?)
- ***EO asks DOL to “clarify that workers have federally guaranteed right to refuse employment that will jeopardize health and will qualify for unemployment insurance if they do***
- Under E.O., OSHA must also:
 - review enforcement efforts and identify changes that can better protect workers and ensure “equity” in enforcement,
 - launch national emphasis program focusing on violations putting the largest number of workers at risk, and
 - Coordinate a multilingual outreach campaign with multiple stakeholders

COVID-19: REPORTING & RECORDING

- 1/29/21 Guidance:
 - ✓ Employers are responsible for recording work-related cases of COVID-19 illness on their [Form 300 logs](#) if the following requirements are met:
 - (1) the case is a confirmed case of COVID-19;
 - (2) the case is [work-related](#) (as defined by [29 CFR 1904.5](#)); and
 - (3) the case involves one or more [relevant recording criteria](#) (set forth in [29 CFR 1904.7](#)) (e.g., medical treatment, days away from work).
 - ✓ Employers must follow the requirements in [29 CFR 1904](#) when [reporting COVID-19 fatalities and hospitalizations to OSHA](#). More information is available [on OSHA's website](#).
 - ✓ Employers should also report outbreaks to health departments as required and support their contact tracing efforts.
 - ✓ Employers should be aware that reprisal or discrimination against an employee for speaking out about unsafe working conditions or reporting an infection or exposure to COVID-19 to an employer or OSHA would constitute a violation of [Section 11\(c\) of the Act](#).
 - ✓ [29 CFR 1904.35\(b\)](#) also prohibits discrimination against an employee for reporting a work-related illness.
- **Guidance also recommends that employers set up anonymous system for employees to report COVID-related workplace concerns**

OSHA GUIDANCE ON COVID INSPECTIONS

- 11/2020 - OSHA issued new guidance on most-frequently cited standards in COVID-related inspections:
 - Violations of Section 5(a)(1) – General Duty Clause
 - Not performing appropriate fit testing of respirators
 - Failure to keep required records of work-related injury/illness and fatality cases
 - Improper storage of respirators and other PPE
 - Not conducting hazard assessment for COVID-19 to determine need for respirator or PPE
 - Insufficient training on safe use of respirators and/or other PPE in the workplace
 - Failure to establish/implement written respiratory protection program with site-specific procedures
 - Not providing medical evaluation before workers are fit-tested or use a respirator!

OSHA: GUIDANCE ON VENTILATION IN WORKPLACE

- 11/5/2020 – Federal OSHA released new guidance to assist employers in ensuring “adequate ventilation throughout the work environment”
- Policy could add specificity to vague ventilation provisions in State OSHA ETS
- Policy is not mandatory ... but could be incorporated into future OSHA ETS or infectious disease rule
 - Knowledge of these “best practices” or implementation at certain locations could = GDC citation
- Employers are directed to work with HVAC professionals to consider steps to optimize building ventilation
- Steps recommended:
 - Ensure HVAC systems are fully functional, especially those shut down or operating at reduced capacity during pandemic
 - Remove/redirect personal fans to prevent blowing air from one worker to others
 - Use HVAC system filters with MERV rating of 13 or higher (where feasible)
 - Increase HVAC system’s outdoor air intake, and open windows and fresh air sources where possible
 - Use portable high-efficiency HEPA fan/filtration systems to increase clean air
 - When changing filters, wear appropriate PPE (N95 respirator, eye protection, disposable gloves)
 - Make sure exhaust fans in restrooms are fully functional, operating at max capacity, and set to remain ON

COVID & WORKER NOTICE

- *At this time*, federal OSHA does NOT require employers to notify other employees if one of their coworkers gets COVID-19 but must take appropriate steps to protect other workers:
 - cleaning and disinfecting the work environment,
 - notifying other workers to monitor themselves for signs/symptoms of COVID-19, or
 - implementing a screening program in the workplace (e.g., for signs/symptoms of COVID-19 among workers).
- OSHA will pursue hazard complaints and whistleblower complaints related to work refusals or belief that employer is concealing COVID cases from workers
- The [CDC Guidance for Business and Employers](#) recommends employers determine which employees may have been exposed to the virus and inform employees of their possible exposure to COVID-19 in the workplace
- Employers should also reference EEOC's FAQ on medical info, and for provisions in state COVID ETS that relate to worker notification and reporting of illnesses and clusters under state OSHA ETS or reporting rule (see VA, MI, CA, OR)

2020 FINAL RULE: MEDICAL RECORDS REVIEW

- 7/31/2020 OSHA issued final rule to preserve worker medical privacy & streamline agency review of medical records during inspections
 - This impacts OSHA's ability to verify worker statements about reports of work-related COVID-19 cases and conduct record audits using worker's comp records and personnel files
 - OSHA only has a 180-day Statute of Limitations and cannot issue citations for violations occurring beyond that point (Obama "continuing violation" rule vacated by CRA)
- Establishes new position of "medical records officer" who will decide when field staff CSHOs will have access to employee med records containing info identifying the worker (previously OSHA Asst Sec made decision)
- OSHA is also prohibited from releasing or sharing worker medical records except in limited circumstances (NIOSH research or enforcement cases where worker health is a concern)

MSHA & COVID-19

- MSHA largely follows CDC/NIOSH/OSHA guidance – has started inquiring into # of COVID cases
 - All work-related COVID cases involving medical treatment, DART or death must be reported to MSHA online (Form 7000-1) within 10 working days – miners and mine contractors
- Recent reports indicate miners are at elevated risk of COVID complications due to prior exposures to coal, silica and other mine dusts, gases and chemicals
- Mine operators must notify MSHA if closing temporarily due to COVID
- Mine operators – including contractors – must provide miner health information to MSHA upon request or can be cited under Part 50 (recordkeeping) and/or Section 103(a) of Mine Act (interference with inspection)
- MSHA is exempt from HIPAA as a public health agency and also has warrantless search authority
 - MSHA COVID webpage: <https://www.msha.gov/msha-response-covid-19>

COVID-19 MINE WORKER PROTECTION ACT

- Bi-partisan legislation (S. 184) introduced 2/2/21 by Sens. Manchin & Capito & 6 co-sponsors to compel MSHA to issue ETS to protect mine workers from COVID-19 within 7 days of enactment followed by permanent rule (legislation endorsed by UMWA)
- Requirements include:
 - Developing comprehensive infectious disease control plan (relying on CDC/NIOSH guidance) with miners' input
 - Provide miners with PPE
 - Add requirement for recording/reporting of work-related COVID infections and deaths under 30 CFR Part 50
 - Track, analyze and investigate mine-related COVID-19 infections data to inform guidance and recommendations, in conjunction with NIOSH



CAL-OSHA PRESENTATION BY DAN LEINER

VIRGINIA OSHA (VOSH) PERMANENT COVID-19 STANDARD

- Virginia issued United States' first COVID ETS in 2020 – Permanent rule enacted 1/21
 - Most provisions took effect 1/27/21 but provisions for training and development of infectious disease prevention and response plans take effect March 26, 2021
- Modifies detailed standard in some ways but retains focus on applying specific provisions to places of employment based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment
- Employers may comply with CDC guidelines, both mandatory and non-mandatory, instead as long as CDC recommendation provides equivalent or greater protection than provided by a provision of VOSH rule
 - In order for an employer to take advantage of the provision, it would have to demonstrate that it was complying with language in CDC publications that could be considered both “mandatory” (e.g., “shall”, “will”, etc.) and “nonmandatory” (“it is recommended that”, “should”, “may”, etc.). In other words, an employer would have to comply with a CDC “recommended” practice even if the CDC publication doesn't “require” it.

VOSH COVID-19 PERMANENT STANDARD

- VOSH recognizes that various hazards or job tasks at the same place of employment can be designated as “very high”, “high”, “medium”, or “lower” as presenting potential exposure risk for purposes of application of the requirements of this standard.
- Factors to consider for types of hazards encountered:
 - Exposure to airborne transmission of COVID-19
 - Contact with contaminated surfaces or objects (e.g., tools, workstations, break rooms, locker rooms, and entrances and exits to facilities)
 - Shared work vehicles
 - Employer sponsored shared transportation such as ride-share vans, shuttle vehicle, car-pools and public transportation
- *Don't forget to document COVID hazards on your PPE Hazard Assessment under 29 CFR 1910.132*

PROVISIONS APPLICABLE TO ALL VIRGINIA EMPLOYERS

- Employers shall:
 - assess their workplace for hazards and job tasks with potential COVID-19 exposure
 - classify each job task according to the hazards employees are potentially exposed to and ensure compliance with applicable sections of standard
 - develop and implement policies and procedures for employees to report when they are experiencing signs and/or symptoms consistent with COVID-19, and no alternative diagnosis has been made
 - NOT permit employees known to be infected to report to or be allowed to remain at work or on a job site until cleared for return to work
 - discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies
 - notify employees at the place of employment, other employers, and the building/facility owner if an employer is notified of a COVID-19 positive test for one of its own employees, a subcontractor employee, or other person who was present at the place of employment
 - notify VDH and DOLI in certain situations and implement policies and procedures for employee return to work

MORE PROVISIONS APPLICABLE TO ALL VIRGINIA EMPLOYERS

- Employers shall:
 - establish and implement policies and procedures that ensure employees observe physical distancing while on the job and during paid breaks on the employer's property, including policies and procedures for verbal announcements, signage or visual cues to promote social distancing; and implement procedures to decrease worksite density
 - control access to common areas, break or lunchrooms and implement procedures when multiple employees occupy a vehicle for work purposes
 - comply with applicable respiratory protection, personal protective equipment regulations and ensure compliance with mandatory requirements of any applicable executive order or order of public health emergency.
 - implement sanitation and disinfecting procedures, and assure compliance with the VOSH hazard communication standard

WORKPLACE CLASSIFICATIONS: VOSH

- **Very High** – Places of employment with high potential for employee exposure to known or suspected sources of COVID-19, or known or suspected to be infected with COVID-19
 - Group – Special medical, postmortem, or laboratory procedures
- **High** – Places of employment with high potential for employee exposure inside 6 ft with person known or suspected sources of COVID-19, or person known or suspected of being infected with COVID-19
 - Group – Healthcare, first responders, medical transport, mortuary services
- **Medium** – Not classified as Very High or High, that require more than minimal contact inside 6 ft with other employees, persons, or general public or may be but are not known or suspected to be infected with COVID-19
 - Group is large and will capture most non-office plant, manufacturing, and construction jobsites.
- **Lower** – Not classified as Very High, High, or Medium and that does not require contact inside 6 ft with persons known or suspected of being infected with COVID-19 (offices or workplaces that have achieved minimal contact through implementation of engineering, administrative and work practice controls)

VOSH COVID-19 TRAINING REQUIREMENTS

- Employers with hazards or job tasks classified as **VH, H, or M** exposure risk at a POE shall provide training on hazards and characteristics of COVID-19 to all employees working at the POE regardless of risk classification
- *Training must be given in a language and vocabulary that workers understand, bearing in mind illiteracy issues if using written materials*
- Employees should be able to recognize the hazards of COVID-19 and train employees to minimize these hazards
- Training must include,
 - Requirements of this rule
 - Mandatory and non-mandatory recommendations of CDC guidelines or VA guidance documents the employer is complying with in lieu of the rule
 - Characteristics and methods of transmission
 - Signs and symptoms of COVID-19 illness and underlying health conditions
 - Awareness of pre-symptomatic and asymptomatic COVID-19 persons to transmit

VOSH PERMANENT COVID STANDARD

- Reporting COVID Cases:
 - Employers shall report to the Virginia Department of Health (VDH) when the worksite has had two or more confirmed cases of COVID-19 of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period
 - Employers shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases
 - Employers shall continue to report all cases until the local health department has closed the outbreak.
 - After the outbreak is closed, subsequent identification of two or more confirmed cases of COVID19 during a declared emergency shall be reported
- Key Revised Definitions:
 - "Face covering" means an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape, and shall not be made of material that makes it hard to breathe, such as vinyl. A face covering is not a surgical/medical procedure mask or respirator
 - "Minimal occupational contact" means no or very limited, brief, and infrequent contact with employees or other persons at the place of employment. Examples include, but are not limited to, remote work (i.e., those working from home); employees with no more than brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet); healthcare employees providing only telemedicine services; a long-distance truck driver

VOSH COVID STANDARD: RETURN TO WORK STRATEGY

- Employers shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work.
- Symptomatic employees known or suspected to be infected with the SARS-CoV-2 virus are excluded from returning to work until all three of the following have been met:
 - The employee is fever-free (less than 100.0° F) for at least 24 hours without the use of fever-reducing medications,
 - Respiratory symptoms, such as cough and shortness of breath have improved, and
 - At least 10 days have passed since symptoms first appeared. However, a limited number of employees with severe illness may produce replication-competent virus beyond 10 days that may warrant extending duration of isolation for up to 20 days after symptom onset.
- Employees who are severely immunocompromised may require testing to determine when they can return to work - consider consultation with infection control experts.
- Employees known to be infected with SARS-CoV-2 who never develop signs or symptoms are excluded from returning to work until 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

OTHER VOSH RULE PROVISIONS

- Final Rule provides:
 - *No enforcement action shall be brought against an employer for failure to provide PPE required by standard, if PPE is not readily available on commercially reasonable terms, and the employer or institution makes a good faith effort to acquire or provide PPE*
 - Final Rule could serve as template for federal OSHA ETS - also subject to litigation by business community
 - Final Rule: <https://www.doli.virginia.gov/wp-content/uploads/2021/01/Final-Standard-for-Infectious-Disease-Prevention-of-the-Virus-That-Causes-COVID-19-16-VAC25-220-1.27.2021.pdf>
 - Guidance on Final Rule: <https://www.doli.virginia.gov/proposed-permanent-standard-for-infectious-disease-prevention-for-covid-19/>

MICHIGAN COVID-19 ETS

- MIOSHA adopted Emergency Rules for all businesses , with specific requirements for manufacturing, construction, retail, health care
 - Took effect 10/14/2020 and will remain in effect 6 mo.
- Employer must determine exposure for employees (routine and anticipated tasks) and classify as Lower, Medium, High and Very High
- Employer must create a COVID-19 Preparedness & Response Plan (written) including exposure determination, and detailed measures employer will implement including engineering and administrative controls, hand hygiene, PPE, health surveillance (screening protocols and reporting), and employee training
- A COVID-19 “workplace coordinator” must be identified
- Employer must:
 - Consider policies like telework
 - Mandate face coverings as required
 - Employee health screening procedures
 - Procedures for Sick employees to report and self-isolate, and notification of other workers

OR-OSHA COVID-19 ETS

- OR-OSHA's ETS rule was adopted 11/6/2020 – took effect on 11/16/2020 (with certain parts phased in but all now in effect) – continues in effect until May 4, 2021 – and expands state guidance (also enforceable by OR-OSHA) requiring physical distancing, use of face coverings, and sanitation in all workplaces
- Final version reflects changes from the draft after stakeholder meetings with employer/worker reps
- Basic provisions:
 - Employer must ensure 6-foot distancing between all individuals in the workplace through design of work activities and workflow, unless shown infeasible
 - Employer must ensure that face coverings are worn at the workplace by ALL individuals (employees (FT/PT), and customers, as well as at any establishment under employer's control
 - Face masks/coverings/shields must be provided to employees by employer at no cost
 - Whenever employees are transported in a motor vehicle for work purposes, all persons inside must wear a face covering (unless all members of the same household).
 - Employer must maximize the effectiveness of existing ventilation systems, maintain and replace air filters, clean intake ports (but do not have to purchase new ventilation systems)
 - Post COVID-19 Hazards poster (available from state in English/Spanish)

OR-OSHA COVID-19 ETS

- Employers must develop an infection control plan, with participation and feedback from employees
 - This involves conducting risk assessment to address when workers must use PPE, and a description of other specific hazard controls
- Employers must provide information and training to their employees:
 - Employers must train their employees about PPE/social distancing requirements and how they will be implemented in the workplace, and
 - Employers must provide an opportunity for employee feedback about those practices (through the Social Distancing Officer and through either the Safety Committee, an interactive safety meeting, or both). Such notification must be conducted in a manner and language understood by the affected workers.
- Employers must provide an explanation of the employer's policies and procedures for employees to report signs or symptoms of COVID-19. Such explanations must be conducted in a manner and language understood by the affected workers.
- Employers must notify affected workers with 24 hrs of work-related COVID-19 infection and cooperate with public health officials if testing within the workplace is necessary.
- *Additional measures included for high-risk jobs including: detailed infection control training and planning, sanitation procedures for routine cleaning & disinfecting, "robust" use of PPE, operating ventilation systems according to nat'l standards, use of barriers and isolation rooms, and screening/triaging for C-19 symptoms*

QUESTIONS???

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Thank you!

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