

Updated: As Agencies Issue Updated Coronavirus Guidance, Existing Policies Should Be Evaluated and Updated

Alert

05.27.2020

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Content updated May 29, 2020

The CDC, OSHA and other local, state and federal agencies continue to rapidly issue and modify guidance related to COVID-19. As states are in various phases of reopening, employers must continue to keep a watchful eye and incorporate changing recommendations into existing plans and procedures.

In the last week, OSHA updated two guidance documents relating to its enforcement procedures, and how to handle work-relatedness determinations for purposes of recording COVID-19 cases in the workplace.

The CDC has also continued to update its guidance, including: the symptoms of COVID-19, how long people diagnosed with COVID-19 should stay home from work, workplace-specific guidance, including recommendations for employers with high-risk workers, and for reopening office buildings. . Each of the changes is described below.

From a more general, practical perspective, given the frequency of new and modified guidance and recommendations, the best practices we recommend employers undertake include:

- Assigning a person or group of people with checking requirements and guidance at the local, state and federal levels frequently (at least every day or two) to ensure that employers have the most up to date information included in their pandemic plan or other safe workplace practices
- Taking screenshots of relevant guidance documents, with dates, to assist in determining when changes occur or to justify the basis of work practices or decision-making

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- Communicating regularly with employees to keep them apprised of safe workplace practices and changes impacting them, and to allow a forum for concerns
- Documenting safe workplace procedures and practices, and keeping current procedures and prior versions readily accessible and in a format that can be easily reviewed and audited by agencies in the event of an inspection

OSHA 300 Log Recording of COVID-19 Diagnoses

OSHA [issued guidance](#) in April that COVID-19 cases in employees should be reported/recorded when:

- There is confirmed COVID-19 case
- It is work-related
- It meets recording criteria of 29 CFR 1904.7 (requires days away from work or medical treatment)

Under that guidance, OSHA said that it wanted employers to focus on good hygiene practices, rather than making difficult work-relatedness decisions in circumstances where there was community transmission.

OSHA [issued](#) its Updated Interim Enforcement Plan for COVID-19 effective May 26, 2020. In the updated guidance, OSHA indicated that it will be scrutinizing the employer's work-relatedness determination much more closely. While the guidance is not retroactive, it provides an opportunity to evaluate how work-relatedness determinations were made under the prior guidance, and update procedures to withstand the enhanced scrutiny. It is still not necessary to undertake an extensive medical inquiry, but OSHA will look at the reasonableness of the investigation into work-relatedness.

Under the new OSHA guidance, it will generally be sufficient to:

- Ask the employee how they believe they contracted the COVID-19 illness
- While respecting employee privacy, discuss with the employee their work and out-of-work activities that may have led to the COVID-19 illness
- Review the employee's work environment for potential SARS-CoV-2 exposure (This review should be informed by any other instances of workers in that environment contracting COVID-19 illness.)

OSHA will evaluate what evidence was available to the employer when it made its work-relatedness determination. However, if more information becomes available, that should be taken into account as well when determining whether the employer's work-relatedness determination was reasonable. If, after the reasonable and good faith inquiry the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness.

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OSHA provided scenarios which may be work-related when there is no alternative explanation, including: where multiple cases are found in employees who work close together; when a case is associated with close contact with a co-worker; and when employees have frequent, close exposure to the general public in an area with ongoing community transmission.

Updated Interim Enforcement Guidance

OSHA also issued an [Updated Interim Enforcement Response Plan for COVID-19](#). It went into effect May 26 and supersedes prior guidance (although it is not substantially different from the prior guidance in many respects).

In the updated enforcement guidance, OSHA reiterates it will continue to prioritize high-exposure risk employers and COVID-19 cases. However, in areas where community spread has decreased, OSHA will begin reverting to its normal inspections procedures as outlined in its [Field Operations Manual](#). OSHA will also be developing a random inspection protocol for high-priority facilities that were not inspected because of resource limitations and will undertake interim remote inspections at facilities with a high number of complaints or COVID-19 cases until an on-site investigation can be conducted at a later time.

To date, OSHA has received almost 4,400 complaints and state-led health and safety agencies have received almost 10,500 complaints related to workplace standards. Having documents and procedures in an auditable format is critical in the event businesses are targeted (or randomly selected) for inspection.

Updated CDC Guidance

The CDC has also continued to update its guidance, often materially. Recent updates include the following:

Symptoms of COVID-19: The CDC [updated the symptoms](#) of COVID-19 to include gastrointestinal symptoms. The CDC's list of symptoms as of May 27, 2020, includes the following:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat

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- Congestion or runny nose (new symptom)
- Nausea or vomiting (new symptom)
- Diarrhea (new symptom)

The CDC notes that the list does not include all possible symptoms, and will continue to be updated. Employers who have already incorporated employee screening or self-screening into their safe workplace practices and procedures should update their screening processes, questionnaires or other materials to include the new symptoms.

Ending Quarantine after COVID-19 Diagnosis: The CDC also released a new guidance document titled, “When You Can be Around Others,” which reiterates the CDC’s recently updated guidance that people diagnosed with COVID-19 who had COVID-19 symptoms can be around others after:

- Three days with no fever and
- Symptoms improve and
- Ten days since symptoms first occurred

People diagnosed with COVID-19, but who were asymptomatic, can be with others 10 days after their COVID-19 positive test. The CDC urges anyone in close contact with someone with COVID-19 to stay home for 14 days after exposure, based on the time it takes to develop illness.

Guidance for Specific Workplace Settings: The CDC [issued long-awaited guidance](#) to assist with implementation of the White House Plan for [Opening America Up Again](#). The guidance includes workplace considerations for a variety of sectors, including employers with workers at higher risk, which the CDC identifies as “individuals over age 65 and those with underlying medical conditions. Such underlying conditions include, but are not limited to, chronic lung disease, moderate to severe asthma, hypertension, severe heart conditions, weakened immunity, severe obesity, diabetes, liver disease, and chronic kidney disease that requires dialysis.”

For these workers, the CDC recommends a variety of measures, including:

- Continuing to support and encourage telework
- Offering workers at higher risk duties that minimize their contact with customers and other employees
- Allowing workers at higher risk to “shelter in place” during steps 1 and 2 of the scale-up of operations. (Only at Step 3 does the CDC anticipate that workers at higher-risk can return to work.)

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Guidance for Office Settings: The CDC also issued guidance for employers opening in office buildings. The overarching recommendation is to develop a workplace health and safety plan (which should be used in conjunction with or incorporated into your OSHA Pandemic Plan, Infectious Disease Preparation and Response Plan, and/or COVID-19 Assessment Control Plan). The CDC also recommends:

- **Building checks:** ensure ventilation systems operate properly generally and upon restarting; increase circulation of outdoor air as much as possible; evaluate the mechanical and safety systems to confirm they are ready for occupancy (pests, stagnant water, mold).
- **Identify areas for exposure:** conduct a hazard assessment to identify areas of potential close contact or overlapping equipment and develop workplace communication plans to disseminate ultimate workplace safety practices.
- Develop hazard controls using OSHA's hierarchy of controls, including:
 - **Engineering controls (modifications to the space):** examples include spacing out workstations or furniture, using floor markings to indicate spacing or one-way traffic, installing barriers, improving ventilation, etc.
 - **Administrative controls (modifications to the way people work):** examples include employee health screenings, encouraging sick employees to stay home, staggering shifts, posting reminder signs, enhanced cleaning and disinfection, implementation of social distancing practices, offering alternatives to public transportation, wearing cloth face coverings, etc.
- Train all employees on how to protect themselves and others at work, including what actions to take when not feeling well, signs and symptoms of COVID-19, safe workplace policies and procedures at the workplace, hand hygiene, personal protective equipment, and identifying and minimizing transmission.

For more information about returning to work, see Stinson's [Return to Work Guide](#) and [Can't Touch This: Managing Return to Work Complications and Concerns Webinar](#).

CONTACT

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