

# New OSHA COVID-19 Construction Guidance: How Does it Impact Your Job Site?

Alert

06.10.2020

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## *16,000 nationwide complaints to OSHA agencies since April prompt sector-specific guidance*

OSHA continues to publish new COVID-19 guidance, including issuance of a recent [construction work guidance](#) on May 26. As employee complaints to OSHA continue to rise, the agency has been releasing sector-specific guidance. There have been more than 16,000 nationwide complaints to state and federal OSHA agencies since early April. Construction is the third most common industry to generate workplace safety complaints, after healthcare and retail. The new construction work guidance walks through the processes and analysis that OSHA recommends for keeping construction workers and job sites safe. However, while structurally very helpful, it omits many of the practicalities and does not describe how to overcome logistical issues that are likely to arise on job sites with contractors.

### New OSHA Construction Work Guidance

Under OSHA regulations and prior COVID-19 guidance, it is the responsibility of all employers (owners, contractors, subcontractors and vendors) to assess hazards, evaluate the risk of exposure to COVID-19, and select and implement proper controls and safe workplace practices. This new guidance assigns the exposure risk levels to construction work tasks as a guide for use in conducting hazard assessments:

- Lower (Caution): Tasks that allow employees to remain at least six feet apart and involve little contact with the public, visitors or customers
- Medium: Tasks that require workers to be within six feet of one another, or require workers to be in close contact (within six feet) with customers, visitors or members of the public

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- High: Entering an indoor work site occupied by people such as other workers, customers or residents suspected of having or known to have COVID-19, including when an occupant of the site reports signs and symptoms consistent with COVID-19
- Very High: Category not applicable for most anticipated work tasks

OSHA also provides a series of recommendations for engineering and administrative controls, personal protective equipment (PPE) and other safe workplace practices, including:

- When a job hazard analysis identifies activities with higher exposure risks, and those activities are not essential, consider delaying them until they can be performed safely.
- For essential or emergency indoor construction work where a person known or suspected of having COVID-19 is present in close proximity to the work area: use closed doors and walls as barriers, and consider using plastic sheeting when workers need to go into a shared area.
- Develop standard operating procedures (SOPs) based on CDC, OSHA, state and local guidelines for preventing the spread of COVID-19. While OSHA does not go into detail on this point, the CDC has handouts and posters simplifying topics such as [COVID-19 symptoms](#), [stopping the spread of germs](#), and how to protect yourself and others. OSHA has also [issued short-form guidance](#). These SOPs should be provided to employees. If that is not feasible, another option may be posting a list of SOPs at the job site with other safety-related materials and making the full SOPs available for review.
- Screen calls when scheduling indoor construction work to assess potential exposures in the work environment before worker entry. This includes asking questions such as:
  - Is the work at an occupied site essential, urgent or emergency?
  - Are individuals in the site under quarantine or isolation due to a confirmed case of COVID-19?
  - Are individuals or contractors on the site suffering symptoms that employees may be exposed to?
- Conduct widespread training for construction workers, including on:
  - Signs and symptoms of COVID-19 and how the disease is spread
  - All policies and procedures applicable to their duties to prevent exposures to COVID-19, including the SOPs for the project
  - Social distancing and hygiene practices
  - How to correctly use PPE for COVID-19 purposes in accordance with OSHA regulations, and how to use that PPE in conjunction with ordinarily required PPE for construction activities
  - The importance of staying home when sick and how to report illness
  - Wearing masks to reduce the spread of COVID-19 (an analysis should be done as to the appropriate mask both for the job duties and to reduce spread of COVID-19; the level of mask required could be

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different)

- Cleaning measures and approved cleaning chemicals
- Before entering into home environments or areas where construction is ongoing in occupied buildings, implement SOPs and train workers on requesting individuals diagnosed with COVID-19 or experiencing symptoms remain separated from the worker and communicate remotely with the worker (by cell phone, e-mail, etc.). Workers should also ask individuals to wear a face covering and cover coughs and sneezes.
- Wear cloth face coverings in accordance with CDC recommendations.
- Screen all visitors on sites for COVID-19 symptoms in advance of their arrival on-site.
- Adopt staggered work schedules.
- Identify areas where workers are in close contact (hallways, elevators, break areas, etc.) and implement policies to maintain social distancing.
- Coordinate site deliveries to minimize contact and cleaning protocols; keep delivery personnel in vehicles if possible.
- Implement a rigorous housekeeping program to reduce dust levels on job sites to decrease the need for respirators (and help conserve/divert them to activities with higher COVID-19 exposure).
- Keep in-person meetings as short as possible and use social distancing practices.
- Ensure clean toilet and handwashing facilities are available and disinfected, and that soap and sanitation dispensers are regularly filled and disinfected.
- Provide workers with PPE necessary to protect against COVID-19 and what is needed for job tasks.

## On-Site Issues and Best Practices

While the OSHA COVID-19 guidance was drafted with the objective of protecting all individuals on construction sites, implementation at specific job sites could be practically challenging. Nevertheless, the best practices for those in the construction industry are to evaluate their jobs and take reasonable steps to comply with this OSHA guidance to protect employees, and to take steps to limit liability that may arise from failing to do so (from an OSHA inspection, employee complaint or civil lawsuit). If a company fails to comply with an OSHA recommendation and subsequently faces a claim alleging COVID-19 exposure at a worksite, the company may be found liable. The theory being that the company breached a duty owed to others because the OSHA and CDC guidance could be considered the standard of care that governed the company's actions. For the same reasons, businesses should document compliance with the guidance or alternative steps taken to keep job sites safe if they cannot strictly comply.

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It is also possible that compliance with the new OSHA guidance will cause delays or increased costs not contemplated in current construction contracts. Parties to construction contracts should promptly communicate about the new guidance and how ongoing or future performance under such contracts will be impacted by OSHA's new construction-specific guidance. These issues were likely not anticipated when contracting, and companies should consider getting construction counsel involved to address how to navigate these unexpected issues.

As discussed in OSHA's Updated [Interim Enforcement Guidance](#), OSHA continues to prioritize COVID-19 exposures when evaluating where to inspect or issue information requests. Workplaces with fatalities and imminent danger exposures related to COVID-19 will also be prioritized, as will employee complaints of unprotected exposure in high-exposure workplaces. Inspections can be surprise inspections, coordinated inspections, or can start with a document request. Whether through an inspection or document request, OSHA's first question will be to see the pandemic plan (or comparable document), hazard assessment, and PPE protocols, so each of these should be documented and kept in a format in which they can be easily obtained in the event of an inspection or request. Employees should also be trained on these practices and a point person for dealing with agencies should be identified in advance to minimize confusion in the event of a surprise inspection.

From a practical perspective, OSHA's guidance requires deliberate and thoughtful implementation. Stinson attorneys can assist in working through questions about the guidance, the factual and legal basis for the guidance, and help scope implementation in light of other state, local and job site-specific factors.

For more information on this new guidance, please contact [Brittany Barrientos](#), [Patrick Edwards](#), Sherman Botts, [Alisa Nickel Ehrlich](#), [Steve Lindemann](#), [Stephen Schemenauer](#) or the Stinson LLP contact with whom you regularly work.

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