



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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Managing COVID-19: Considering Workplace Safety Under OSHA

The novel Coronavirus (COVID-19), continues to impact the globe at alarming rates. The virus was declared a pandemic by the World Health Organization (“WHO”) and a national emergency by the United States government. Accordingly, employers and employees should continue to be informed by the Center for Disease Control and Prevention (CDC) guidelines regarding COVID-19 (<https://www.cdc.gov/coronavirus/2019-ncov/index.html>). Further, under present conditions, employers and employees should maintain an understanding of obligations under the Occupational Safety and Health Act of 1970 (OSH Act), which is enforced by the Occupational Safety and Health Administration (OSHA). The following addresses some of the specific OSH Act requirements to consider when making Covid-19 related workplace decisions.

First, employers should identify the potential sources of workplace exposure. Employers should evaluate how often employees interact with the general public, co-workers, customers, workers who have traveled, or infected patients. Second, employers should consider what measures will be effective in that specific workplace to minimize potential exposure, bearing in mind that every workplace has unique characteristics. A construction job site would have drastically different points of exposure in comparison to an office setting or a laboratory environment. Note that OSHA has not published strict OSHA requirements for reducing the risk of exposure on job sites of any kind, but OSHA has issued guidance addressing workplace risks and outlined three major recommendations as to how to minimize exposure sources generally: (1) practice good hygiene, (2) maintain social distancing, and (3) eliminate unnecessary interactions with co-workers and the public.

Further, in the absence of specific requirements, the OSH Act’s general duty clause (“GDC”) applies. GDC requires an employer to maintain the workplace in a safe condition and take steps to ensure that work is performed safely. Employers should expect COVID-19 to be treated as a known hazard by OSHA, which would require employers to take reasonable steps to eliminate or materially reduce the risk of exposure for employees.

Based on the nature of the workplace, employers may also need to further consider obligations with respect to sanitation, personal protective equipment (PPE), and respirators. OSHA’s sanitation standard requires employers to keep the workplace “clean,” to maintain washing facilities in a “sanitary” condition, to provide running water and soap, and to maintain food preparation and consumption areas in accordance with “sound hygienic principles.” OSHA’s respirator standard requires employers to evaluate the respiratory hazards in the workplace, select the appropriate type of respirator necessary to protect against those hazards, provide a medical examination to each employee prior to their using the respirator, provide fit testing and extensive employee training, and develop protocols for the cleaning and storage of respirators. Both OSHA and the CDC have issued guidance recommending that respirators should be worn by “high risk” employees like healthcare workers but not necessarily by lower risk employees in a general office or manufacturing setting.

Employers of all types may also want to consider the following controls to safeguard the workplace for employees:

- Install a high efficiency ventilation system or air filter to better remove airborne contaminants
- Increase supplies of soap, sanitizer, and sanitary wipes containing at least 60% alcohol
- Frequently sanitize equipment that is used by multiple employees
- Expand janitorial services to include sanitizing common surfaces that many will touch (*i.e.* doorknobs)
- Require a separation distance of at least six feet between employees to prevent the spread of COVID-19
- Consider staggering shifts and allowing employees to work remotely
- Designate a person to monitor informational updates regarding COVID-19
- Train employees on the fundamentals of good hygiene, including washing their hands properly and sneezing/coughing into a tissue or their elbow and then washing their hands
- Direct employees who are sick to stay home and direct employees who are sick and still come to work to return home, as well as providing the sick employee with a surgical-type mask to prevent transmission of the virus from the sick employee into the workplace as he/she exits the workplace
- Minimize face-to-face contact among co-workers, clients, and customers and use alternative means of communication, such as webinars and conference calls
- Postpone company-sponsored events and eliminate unnecessary travel
- Require employees to self-quarantine for fourteen days if they have exhibited symptoms or may have been exposed to others who have tested positive

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