

Publications

Managing OSHA Issues in the Age of the Coronavirus Pandemic

Related Professionals

Robert A. Harris

Benjamin A. Shepler

Related Services

Labor and Employment

Workplace Safety and Workers'
Compensation

CLIENT ALERT | 3.13.2020

The Occupational Safety and Health Act covers most private sector employers in addition to some public sector employers. While employers in certain industries are familiar with their obligations under the Act, the Occupational Safety and Health Administration (OSHA) recently reminded **all** covered employers of their obligations to provide a safe and healthy workplace in light of COVID-19. The agency also produced a “Guidance on Preparing Workplaces for COVID-19,” available [here](#).

OSHA Standards

There is no specific OSHA standard covering COVID-19. However, OSHA’s General Duty Clause requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.” Given the statements from public health authorities, COVID-19 now likely qualifies as a “recognized hazard.”

Other OSHA requirements may apply for preventing occupational exposure to COVID-19. Among the most relevant are:

- **Personal protective equipment standards**, which require using gloves, eye and face protection, and respiratory protection. When respirators are necessary, employers must implement a comprehensive respiratory protection program in accordance with detailed OSHA standards.
- **Bloodborne pathogens standards**, which apply to occupational exposure to human blood and other potentially infectious materials. This standard does not typically include respiratory secretions that may transmit COVID-19. However, OSHA notes the standard offers a framework that may help control some sources of the virus, including exposures to bodily fluids that are not otherwise covered by the standard.
- **Hazard communications standards**, which requires employers to inform their employees of **hazardous chemicals used for cleaning and disinfection**. The U.S. Environmental Protection Agency has

released a list of “registered antimicrobial products for use against [COVID-19],” [available here](#).

State Health and Safety Standards

Twenty-eight states have their own OSHA-approved plans to operate occupational safety and health programs. Each of these plans has standards and enforcement programs that are at least as stringent as OSHA's, but some may have different or more stringent requirements. Employers should determine if there are any unique requirements in states in which they operate.

Recordkeeping Obligations

OSHA's recordkeeping requirements mandate that employers record certain work-related injuries and illnesses on their OSHA 300 log. Generally, an employer is covered by this requirement if it has more than 10 employees. Failing to maintain this log can result in fines.

Employers are not required to record the common cold and flu. However, OSHA has stated that COVID-19 is a recordable illness **when the employee is infected on the job**. Practically speaking, it may be difficult for employers to determine whether an infection occurred on- or off-duty. In such cases, OSHA notes that employers “must evaluate the employee's work duties and environment” to decide whether exposures at work caused or contributed to the employee's COVID-19 infection.

Practical Considerations

Given public officials' statements, news reports, and general public anxiety over the severity and spread of COVID-19, employers will likely face questions from employees about whether it's safe to report to work, and, if so, what measures are being taken to ensure employees' health and safety.

OSHA allows employees to refuse to work if they believe they are in “imminent danger” -- which means “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.” However, employees cannot simply refuse to report to work because of an abstract fear of contracting COVID-19.

Relatedly, the Centers for Disease Control (CDC) has advised that respirators or masks are unnecessary for most employees to protect themselves from COVID-19. Specifically, the CDC states that individuals should only wear a mask if recommended by a healthcare professional; if they have COVID-19 and are showing symptoms (to protect others from the risk of getting infected); or if they are health workers or others who are taking care of someone infected with COVID-19 in close settings (at home or in a health care facility). Given the CDC's recommendation, in most cases it is unlikely that an employee can simply refuse to work unless he or she is provided a mask.

Contact your Vorys lawyer if you have questions about COVID-19 and workplace safety and health standards.

--

VORYS COVID-19 TASK FORCE:

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We are taking significant steps to ensure we remain proactive during this extremely fluid environment. The business and legal challenges our clients are facing are changing each day.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.