OLD REPUBLIC CONTRACTORS INSURANCE GROUP

REGREVIEW℠

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OSHA Develops Interim Guidance on Preventing Worker Exposure to Coronavirus

While the novel coronavirus exposure risk to most workers is currently low, OSHA recommends employers remain aware of the evolving outbreak situation and adapt infection control measures as needed. The highest risk for worker exposure is in the following industries:

- healthcare,
- deathcare,
- laboratory,
- airline,
- border protection,
- solid waste and wastewater management operations, and
- international travel to areas with ongoing, person-to-person transmission of the novel coronavirus, or COVID-19.

OSHA notes that measures for protecting workers from exposure to, and infection with, the novel coronavirus, depend on the type of work being performed and exposure risk, including the potential for interaction with infectious people and contamination of the work environment.

The Agency says employers should adopt infection control strategies based on a thorough hazard assessment, using appropriate combinations of engineering and administrative controls, safe work practices, and personal protective equipment (PPE) to prevent worker exposures.

Some OSHA standards that apply to prevent occupational exposure to COVID-19 also require employers to train workers on elements of infection prevention, including PPE.

May Employees Take FMLA Leave for the Coronavirus?

The 2019 Novel Coronavirus (2019-nCoV) has been justifiably making headlines as it continues to spread, and could easily make its way into the workplace if it hasn't already. Employers may need to respond to the issue, walking a fine line between keeping the workplace safe and not stepping on employee rights.

Those rights include the FMLA, which entitles eligible employees to up to 12 workweeks of job-protected leave in a 12-month leave year period. Here is how the FMLA might apply to some situations:

- An employee has traveled through China and might have been exposed: If the employee is not incapacitated, the FMLA would not apply. You could require that the employee refrain from returning to work until cleared by a doctor.

- An employee has the condition but has no symptoms: You could require the employee to stay away from work and should report the situation to your local health department. You may also suggest that the employee seek medical attention. Since the employee is not incapacitated, the FMLA would not apply.
- An employee has the condition and is exhibiting symptoms: If the employee meets the FMLA eligibility criteria and is incapacitated to the point he or she is unable to work because of the condition, the employee would be entitled to FMLA protections for the related absence.

The issue might also involve an employee's family member, entitling an employee to take FMLA leave to care for the family member.

Beyond the FMLA

You are also prohibited from discriminating against individuals who are disabled or perceived as disabled because they are exhibiting symptoms suggestive of having contracted the coronavirus, per the Americans with Disabilities Act, or against individuals belonging to certain races or nationalities where the virus is most prevalent, per Title VII of the Civil Rights Act.

The ADA requires that you keep employee (and applicant) medical information confidential and separate from the general personnel file, so you should not share employee medical information. Therefore, while you might want to announce to all your employees if a coworker is at risk of or actually has the disease, please refrain.

Instead, as with any other transmittable disease, inform your employees on how to avoid the coronavirus. This includes frequently washing their hands with soap and water for at least 20 seconds; avoiding touching their eyes, nose, or mouth with unwashed hands; avoiding close contact with people who are sick, staying home when sick; covering coughs or sneezes with a tissue then throwing the tissue in the trash; cleaning and disinfecting frequently touched objects and surfaces; and generally using universal precautions. They may also wear a facemask when around other people who might have been exposed.

Coronavirus Concerns: Recordable Cases and Respirators

If an employee contracts the coronavirus from a coworker or workplace exposure, OSHA has said that it would be a recordable case on the 300 Log. To protect themselves or their coworkers, some employees might request to wear dust masks or surgical masks.

According to the Centers for Disease Control (CDC), the virus would most likely spread from person-to-person among close contacts (about 6 feet). Transmission is thought to occur mainly via droplets when an infected person coughs or sneezes, similar to how influenza spreads. It's currently unclear if a person can get coronavirus by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes.

Illness recordkeeping
Although the injury and illness recordkeeping regulation provides an exemption from recording the common cold and flu, the coronavirus is recordable if it results from a work-related exposure. Other contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are also considered work-related cases if the employee is infected at work.

OSHA addresses tuberculosis (TB) at §1904.11 as a disease spread from person to person by airborne bacteria, so the

provisions should translate to cases of coronavirus. Under that section, if an employee is occupationally exposed to anyone with a known case of active TB and develops an infection (diagnosed by a physician or licensed health care professional), you must record the case on the OSHA 300 Log by checking the "respiratory condition" column.

If you later learn that the disease was not caused by occupational exposure, you may line out or remove the case from the 300 Log if:

- The worker lives in a household with a person who was diagnosed;
- The Public Health Department identified the worker as a contact of an individual with a case unrelated to the workplace; or
- A medical investigation shows that the employee's infection was caused by exposure away from work, or proves that the case was not related to workplace exposure.

Respirator use
The CDC does not recommend the use of face masks for the general public to prevent infection. Instead, the CDC recommends frequently washing hands with soap and water for at least 20 seconds; avoiding touching eyes, nose, or mouth with unwashed hands; and avoiding close contact with people who are sick.

Still, employees might voluntarily choose to wear surgical masks or filtering facepiece respirators. If you allow voluntary use of filtering facepiece respirators, you must determine that such use will not itself create a hazard and provide a copy of Appendix D of the respiratory protection standard to each voluntary user. However, OSHA doesn't consider a surgical mask to be a respirator, even if the employer provides them so that voluntary use does not create obligations on the employer.

FMCSA: CDL Drug and Alcohol Clearinghouse Identifies nearly 8,000 Violations

The CDL Drug and Alcohol Clearinghouse has identified nearly 8,000 positive substance abuse tests of commercial drivers during the first weeks of operation, the Federal Motor Carrier Safety Administration (FMCSA) said.

The data is the first information that FMCSA has released to the public since the clearinghouse launched on January 6, 2020. Since the launch, more than 650,000 registrants have signed up for the service.

FMCSA established the clearinghouse to help employers identify drivers who have violated FMCSA drug and alcohol testing program requirements and are prohibited from operating a commercial motor vehicle (CMV). The site also confirms that drivers have received the required evaluation and treatment before returning to driving.

How does an employer learn of a violation?

Employers who are subject to 49 CFR Part 382 (i.e., operate CMVs requiring a CDL) must query the clearinghouse to learn of and act on any unresolved FMCSA testing violations. Employers may use a designated third party to perform queries on their behalf.

Clearinghouse queries are required:

- Before a prospective employee performs a safety-sensitive function for the first time, and
- Annually on existing drivers to learn of any violation occurring under another motor carrier's testing program.

As a best practice, employers may query the system more often than annually on current drivers.

EPA Proposes 2020 Multi-Sector General Permit (MSGP)

EPA has proposed a 2020 National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit (MSGP) for stormwater discharges associated with industrial activity in areas where EPA is the permitting authority. The proposed permit, if finalized, will replace the 2015 MSGP, which expires June 4, 2020.

Major changes to the permit would include new requirements for permit eligibility, authorization, and monitoring. In addition, EPA also will update the stormwater control fact sheets. The Agency incorporated recommendations made by the National Academies of Sciences, Engineering, and Medicine's National Research Council under a 2016 settlement agreement.

Once the proposal is published in the *Federal Register*, EPA will take comments during a 60-day period via regulations.gov for docket ID # EPA-HQ-OW-2019-0372. The Agency also will host two webcasts on the proposed changes, to be held March 10 and April 9; the presentations will be available online for those unable to attend.

OSHA Revises National Emphasis Program to Reduce, Eliminate Worker Exposure to Silica

OSHA has issued a revised National Emphasis Program (NEP) to identify and reduce or eliminate worker exposures to respirable crystalline silica in general industry, maritime, and construction. The NEP – which took effect February 4 – targets specific industries expected to have the highest numbers of workers exposed to silica, and focuses on enforcement of the new silica standards. However, OSHA says it will conduct 90 days of compliance assistance for affected employers prior to beginning programmed inspections for the NEP.

Revisions to the NEP include:

- Revised application to the lower permissible exposure limit (PEL) for respirable crystalline silica to 50 micrograms per cubic meter ($\mu g/m^3$) as an 8-hour time-weighted average in general industry, maritime, and construction;
- Updated list of target industries – listed by NAICS codes – that OSHA area offices will use to develop randomized establishment lists for targeted inspections;
- OSHA compliance safety and health officers (CSHOs) will refer to current enforcement guidance for silica inspection procedures;
- OSHA regional and area offices must comply with the NEP, but are not required to develop and implement corresponding regional or local emphasis programs; and
- State Plan participation in the NEP is mandatory.

While the silica standards became effective in June 2016, construction employers were required to begin complying with their standard as of September 23, 2017, and general industry and maritime employers were required to begin complying with their standard as of June 23, 2018.

FAQs for E-reporting Injury Data to OSHA

March 2, 2020, is the deadline for electronically reporting your OSHA Form 300A data for the calendar year 2019. The collection began on January 2, 2020. Only covered establishments must submit information, and they only submit the 300A, not the 300 Log or 301 Incident Reports.

Covered establishments include those with:

- 250 or more employees that must keep OSHA injury and illness records, and
- 20 to 249 employees in certain industries listed in Appendix A to Subpart E of Part 1904.

OSHA provides a secure website that offers three options for submission. First, users can manually enter data into a web form. Second, users can upload a CSV file to process multiple establishments at the same time. Last, users may transmit data electronically via an API (application programming interface). Employers in State Plan states will need to submit also, but some states use the federal portal. Check with your state office for details.

Frequently asked questions

Does coverage depend on the size of the establishment or the size of the firm? The electronic reporting requirements are based on the size (number of employees) at the establishment, not the size of the firm or company. Injury and illness records are maintained at the establishment level, defined as a single physical location where business is conducted or where services or industrial operations are performed. A firm may have more than one establishment.

If multiple establishments do different things, should I use the industry classification of the firm or the classification of the establishment? Use the industry the classification of the establishment, not the classification of the firm.

What if an establishment has more than one Employer Identification Number (EIN)? The collection of 2019 data and beyond will include each establishment's EIN. The submission portal will accept only one EIN per establishment. If a particular establishment has more than one EIN for different lines of business, OSHA suggests using the primary EIN for the business.

We sold an establishment in 2019. Do we still need to submit data for part of the year? No. If you no longer own the establishment, you are not required to submit injury and illness data for it. Only the current owner is required to submit data for the portion of the year that they owned the establishment.

One establishment closed permanently. Do I still have to submit data from the previous year? No. If the establishment is permanently closed, you do not have to submit the injury and illness data. Even if the establishment closed in 2020, but before the 2020 submission deadline, you do not have to submit the 2019 data in 2020.

Weigh Station Requirements Change from State to State

While the Federal Motor Carrier Safety Regulations (FMCSRs) apply to commercial motor vehicles (CMVs) traveling in interstate commerce, it's often up to the states to enforce certain aspects of the rules.

One area that states take control of is the operation of weigh stations.

Examples of enforcement
Carriers and drivers will find that states' enforcement standards can vary greatly. General examples of enforcement include:

- Requiring all CMVs to stop at weigh stations,
- Requiring only motor vehicles above a certain weight to stop, and
- Extending enforcement to some counties so they can establish their own requirements.

For a closer look at the differences from state-to-state, consider the weigh station rules for these three neighboring states:

- Idaho requires all vehicles or combination of vehicles with a gross weight of 26,001 pounds or more, and all vehicles hauling hazardous materials and livestock with a gross weight of 10,000 pounds or more, to stop at and clear each open Port of Entry before loaded vehicles proceed to the scales for weighing.
- Oregon requires CMVs over 20,000 pounds to stop and weigh at scales.
- Washington requires all trucks with a gross vehicle weight of greater than 16,000 pounds to stop at scales when open.

Plan ahead
Drivers should plan their trips ahead of time and verify requirements if they are unsure about what vehicles must stop at scales. Some states will also post messages ahead of the weigh stations to let drivers know if they need to stop or not.

If a driver is still unsure about what to do, advise him or her to stop. An unnecessary stop may seem like an inconvenience, but it's a much better choice to pull in and be waved, or greenlit through than skipping a weigh station and facing penalties, which could be a fine, a roadside inspection, or even a suspended license for the driver.

Research jurisdictions
It's important that carriers who operate interstate familiarize their drivers with the weigh station rules in each jurisdiction.

RegSense can help you with that task. You can find state-by-state requirements by clicking the "Topics" box in the upper right-hand corner of RegSense, then click on "W" under the Topic Letter, then scroll down to Weigh Stations.